

Western Orange County Self-Funded Workers' Compensation Agency

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September 15, 2015

BY MESSENGER

The Honorable Glenda Sanders
Presiding Judge, Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Re: Orange County Grand Jury Report
Joint Power Authorities: Issues of Viability, Control,
Transparency, and Solvency
Penal Code Section 933.05(f)

Dear Judge Sanders:

The purpose of this letter is to provide a formal response on behalf of the Western Orange County Self-Funded Workers' Compensation Agency ("WOCJPA" or the "Agency") to the Orange County Grand Jury Report entitled *Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency*. This response is provided in compliance with Penal Code section 933, subsection (c), and section 933.05.

The Orange County Grand Jury concluded that Findings 4 and 5 and Recommendation 3 apply to WOCJPA. While greatly respecting the role and efforts of the Grand Jury, and respecting the importance of the issues reviewed, WOCJPA respectfully disagrees with the Findings and the Recommendation as to WOCJPA for the reasons set forth below. In summary, with the aid of further information and records, it is clear that WOCJPA is a horizontal, not a vertical Joint Powers Authority, rendering Findings 4 and 5 inappropriate. As to Recommendation 3, WOCJPA already is honoring all statutory obligations as to audits and audit reporting, and what is recommended is already in place.

ORIGINAL

Findings 4 and 5

Findings 4 and 5 are as follows:

- F.4. Vertical Joint Powers Authorities with a single controlling entity, such as a city council, have the potential to use this organizational structure as a shell company to avoid other legal constraints on the controlling entity and to obfuscate taxpayer visibility.
- F.5. Vertical Joint Powers Authorities in which the controlling entity transfers assets from itself to a Joint Powers Authority for the purpose of obtaining additional funding, or signs a long-term lease to a Joint Powers Authority to obtain assets, are avoiding transparency and are not acting in the best financial interest of the taxpayers.

Central to the application of these Findings as to WOCJPA is the Grand Jury's preliminary conclusion that WOCJPA is a Vertical Joint Powers Authority. While again respecting the efforts of the Grand Jury, the true fact is that WOCJPA is and always has been a Horizontal Joint Powers Authority. That is readily capable of being confirmed by looking to the definitions of "Horizontal" and "Vertical" Joint Powers Authorities, and then fairly and objectively applying them to the structure and operation of the Governing Board of WOCJPA. The Grand Jury Report describes Horizontal Joint Powers Authorities as follows:

[Horizontal] JPAs provide shared services such as insurance pools, training, area transportation, communication systems, workers compensation, area flood protection, and water supply to the community. JPAs were determined to be horizontal if their members were composed of similar entities that shared a common problem or opportunity. That is, each of the members was looking to delegate a function of their authority to a JPA in order to either improve the service that is provided or to reduce the cost through economies of scale. Each member in the JPA is motivated to have the JPA perform better than the individual member could do it alone. A JPA member is motivated to be looking out for their entity's best interest. As a result, if the JPA is not providing the desired results or improvements, then the member can withdraw from the JPA and go it alone. As a result, there are organizational checks and balances that tend to allow for self-correction and accountability. Many of these horizontal JPAs also tend to provide a real service to the community.

Secondary authorities define horizontal forms of governance in much the same way. A research brief entitled "Understanding Horizontal Governance" by Daniel Ferguson, a research partner at Connecting the Dots: Accountability and Adult Literacy, offers:

A horizontal initiative may take place across levels of government, across boundaries between units of a single department or agency or among multiple departments or agencies, or across public, private and voluntary sectors. It replaces hierarchical leadership with collaboration, coordination, shared responsibility for decisions and outcomes, and a willingness to work through consensus.

(*Id.* at 1.) (A copy of the Ferguson research brief is attached as Exhibit A for convenient reference.) Ferguson compares horizontal forms with vertical organizations:

Horizontal governance contrasts with the “vertical” or “ministerial” ... structure of authority where decisions over policy development and service implementation are made in a centralized hierarchical manner. In a horizontal approach issues are dealt with by actors who collaborate and share power and responsibility.

(*Ibid.*)

Matthew R. DalSanto of the Berkeley Center for Law, Business and the Economy, explained in a working paper how these considerations apply to Joint Powers Authorities:

Intrastate governments, referred to in the California Government Code as public agencies, are authorized by state statute to enter into JPAs. This statutory authorization permits the signatory governments to enter into contractual relationships and exercise any power common to them, which allows intrastate governments to enter into agreements concerning a wide array of issues.

The statute requires that certain provisions are addressed in the agreement. If the agreement has a specific purpose, then it must specify what that purpose is and how it will be accomplished. If, on the other hand, the agreement states the power that is to be jointly exercised, it must state the manner in which it will be exercised.

An entirely separate entity independent of the signatory governments can be created pursuant to the terms of the JPA. Cal. Gov't Code 6507. Regional governments can thus create an administrative agency that is charged with executing the agreement. The administration agency “possess[es] the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement.” *Id.* This agency can “make and enter contracts, ... employ agents and employees, ... acquire, construct, manage, maintain or operate any building, works or improvements, or to

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acquire, hold or dispose of property or to incur debts, liabilities or obligations, [and it] ... shall have the power to sue and be sued in its own name.” *Id.* at 6508.

The agency may have a governing body such as a commission or board that oversees it. *Id.* Such a body would have members representing the various agencies or legislative bodies that enacted the JPA. Despite the fact that these representatives are supposed to represent the wishes of their constituents, they are not obligated to vote in line with the position of the “legislative body” which appointed them. 83 Cal. Op. Att’y Gen. 267 (2000).

DalSanto, Matthew R., “The Economic of Horizontal Government Cooperation,” at 16-17. (A copy of the DalSanto working paper is attached as Exhibit B for convenient reference.)

WOCJPA meets the definition of a horizontal organization in every way possible. WOCJPA’s Joint Powers Authority Agreement (attached as Exhibit C for convenient reference) provides in Paragraph 2 that its purpose is one of those the Grand Jury expressly mentions approvingly as to those of Horizontal Joint Powers Authorities:

The Agency is established to operate and shall operate for the purpose of administering this Agreement pursuant to the joint powers provisions of the Government Code of the State of California, and to exercise such common powers jointly by creating a regional authority that will provide the Members with a comprehensive program for the establishment and operation of cooperative self-funded or insured workers’ compensation and related programs. The functions of WOCJPA are to design and implement cooperative self-funded or insured workers’ compensation programs, to provide ancillary services and related programs, and to perform such other functions and provide such other services as may be necessary or appropriate to the purpose of this Agreement.

(Western Orange County Self-Funded Workers’ Compensation Agency Joint Powers Authority Agreement (“Agreement”), p. 2, ¶2.) The responsibilities of WOCJPA also meet the Grand Jury’s cited examples of horizontal organizations:

The Agency, through the Board of Directors, shall: (a) provide for a plan and system for self-insured, insured and other workers’ compensation program[.]

(Agreement, p. 2-3, ¶ 5.)

Separate from the Joint Powers Authority Agreement, the Bylaws – effectively the operational document of WOCJPA – is entirely reflective of a horizontal organization. The Preamble of the By-Laws of the Western Orange County Self-Funded Workers’ Compensation Agency (“By-Laws”) (attached as

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Exhibit D for convenient reference) confirms the purpose of WOCJPA fits within the parameters of a horizontal organization as outlined by the Grand Jury:

The Western Orange County Self-Funded Workers' Compensation Agency, a California joint powers authority, is established for the purpose of providing the services, facilities, and items necessary and appropriate for the establishment, operation, and maintenance of a self insurance program for workers' compensation claims against and involving member public educational agencies (the "Members"), and to provide a forum for discussion, study, development, and implementation of recommendations of mutual interest in the self-insuring or insuring of workers' compensation-related risks and ancillary programs and services.

(By-Laws, Preamble, p. 1.)

The composition and operation of the Board of Directors of the WOCJPA also effectively demonstrates the horizontal nature of WOCJPA:

The Agency shall be under the direction and control of a Board of Directors comprised of one authorized representative from each Member appointed or otherwise designated by the Member's governing board.

(Agreement, p. 2, ¶ 3.) This is confirmed by how the Board of Directors does its work as shown through a review of its Minutes. The roll call in each month's Minutes lists the members of the WOCJPA Board, demonstrating that each of the directors comes from a different school district and all of them handle governance. The votes on each item on the Agenda are listed not just in terms of whether a motion was passed, but exactly who voted how, showing governance by all members, not by one person or entity. The rules of order are followed scrupulously, so that, for instance, the Minutes from the June 3, 2015 meeting show the second reading of a proposed Investment Policy before any vote would be held, while the April 20, 2015 Minutes show the first reading. (June 3, 2015 Minutes at 3; April 20, 2015 Minutes at 9.) Financial reports are reviewed by the Board in detail. (June 3, 2015 Minutes at 4-5; April 20, 2015 Minutes at 9-11; March 16, 2015 Minutes at 8-10; January 26, 2015 Minutes at 7-9; December 18, 2014 Minutes at 8-9.) The attention to detail by the Board is impressive, i.e., the March 16, 2015 Minutes reflect the correction of a typographical error in the previous meeting's Minutes, while the December 18, 2015 Minutes reflect the holiday wishes of one of the Board members. (March 16, 2015 Minutes at 1; December 18, 2015 Minutes at 10.) (Copies of the Minutes of the last five meetings of the Board of WOCJPA are attached as Exhibit E for convenient reference.)

The By-Laws further provide that a member may leave WOCJPA and "go it alone," something the Grand Jury indicated is required for it to be considered a Horizontal Joint Powers Authority:

Any Member may withdraw from WOCJPA and terminate its membership status after having completed three full fiscal years as a Member by Notifying the Board of Directors in writing not later than December 31. Such a withdrawal shall be deemed effective on the following June 30 provided that (and subject to) the withdrawing Member has discharged or arranged for the discharge of its known or potential obligations to the satisfaction of the remaining representatives of the Board of Directors of WOCJPA.

(By-Laws, Article XII, ¶ 1, p. 10.)

The structure of WOCJPA, as set forth in its organizational chart (attached as Exhibit F for convenient reference), also confirms its horizontal nature. There are four member school districts in WOCJPA, each of which is an equal voting member of WOCJPA. All four organizations govern WOCJPA. The hierarchy is nearly completely flat, with only two levels: WOCJPA and its members. This is as horizontal as a Joint Powers Authority can possibly get.

Recommendations

The Grant Jury Report applied only one of its Recommendations to WOCJPA. Designated in the Report as Recommendation 3, it provides:

All Joint Powers Authorities should take the following actions to insure transparency to the taxpayers: (1) have an annual outside audit, (2) post the complete audit on their city website as a separate Joint Powers Authority entity, (3) send the audit to the County Controller and the State Auditor, and (4) ensure the required reports are filed annually to the County and the State.

WOCJPA appreciates this Recommendation, but requests it be withdrawn as to WOCJPA. The reason is that WOCJPA has followed the applicable law regarding auditing and reports throughout its existence. As such, it is requested that Recommendation 3 not be applied to WOCJPA since it is, in effect, already followed.

The WOCJPA Agreement requires an annual audit:

The Board of Directors shall cause an annual audit to be made with respect to all receipts and disbursements by a certified public accountant or public accountant, and a report of such audit shall be filed as a public record with each of the Members and also with the county auditor of each county in which the participating public agency is located. Such report shall be filed no later than twelve (12) months after the end of the fiscal year under examination. All costs of such audit shall be approved by the Board of Directors and

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paid by WOCJPA as a charge against funds established in the Bylaws for administrative costs and services.

(Agreement, p. 3, ¶ 7.) Article VII of the Bylaws of WOCJPA provides greater detail regarding the required audit:

The Board of Directors shall make, or contract with a certified public accountant or other qualified public accountant for an annual audit of the accounts and records of WOCJPA. The minimum requirements of the audit shall be those prescribed by the State Controller for Special Districts under Section 26909 of the Government Code of the State of California, and the audit shall conform to generally acceptable auditing standards of public agencies like or comparable to WOCJPA. The audit report shall be completed and filed within twelve months of the end of the fiscal year under examination, and the report shall be filed as a public record with each of the Members and with the County Auditor of the County of Orange. All costs of the audit shall be borne by WOCJPA and shall constitute a permissible and authorized charge against any unencumbered funds of WOCJPA otherwise available for such expenses and purposes.

(Bylaws, Article VII, ¶ 3, p. 7.)

Government Code section 26909, with which WOCJPA has always complied, requires that a report of the annual audit be filed with the Controller and with the county auditor of the county in which WOCJPA is located. (Gov. Code, § 26909(a)(2).)

Article VII of the Bylaws also makes all of WOCJPA's books and records open to examination by representatives of the members:

The Agency is strictly accountable for all funds received and disbursed by it, and to that end, WOCJPA shall establish and maintain such funds and accounts as may be required by good accounting practices or by any provision of law or any resolution of WOCJPA. Books and records of WOCJPA shall be open to inspection at all reasonable times by representatives of the Members. The Board of Directors, as soon as practical after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to each of the Members.

(Bylaws, Article VII, ¶ 1, p. 7.)

The Grand Jury's Recommendation 3 asks that all Joint Powers Authorities "post the complete audit on their city website." WOCJPA is not a subdivision of any city, does not have a website, and this portion of the Recommendation does not appear to have any application to it. The Grand Jury also recommends

that all Joint Powers Authorities provide "all required reports" to the State of California. California statutes do not ask that any reports be sent by WOCJPA to the State; instead, by law and governance documents, they are filed as a public record with all members and with the County Auditor of the County of Orange. Recommendation 3 is not applicable to WOCJPA.

Conclusion

Respectfully, WOCJPA notes that Findings 4 and 5, and Recommendation 3, were made as to all Joint Powers Authorities in Orange County. It does not appear that the Grand Jury made any specific findings as to which Joint Powers Authorities are horizontal entities and which are vertical entities, nor as to whether a specific Joint Powers Authority was in compliance with the applicable law regarding annual audits. The facts are that WOCJPA is and always has been a horizontal entity that has always complied with its Agreement, Bylaws and California law regarding an annual audit and public filing. Accordingly, WOCJPA submits that Findings 4 and 5 and Recommendation 3 do not apply to it, and asks that the Grand Jury modify its report to so state.

Respectfully submitted,



Barbara Ott, President
Board of Directors
Western Orange County Self-Funded Workers' Compensation Agency

- Enclosures:
- Exhibit A: "Understanding Horizontal Governance" by Daniel Ferguson;
 - Exhibit B: DalSanto, Matthew R., "The Economic of Horizontal Government Cooperation" by Matthew R. DalSanto;
 - Exhibit C: Western Orange County Self-Funded Workers' Compensation Agency Joint Powers Authority Agreement;
 - Exhibit D: Western Orange County Self-Funded Workers' Compensation Agency Bylaws;
 - Exhibit E: Minutes of the Western Orange County Self-Funded Workers' Compensation Agency Board of Directors for June 3, 2015; April 20, 2015; March 16, 2015; January 26, 2015; and December 18, 2015; and
 - Exhibit F: Western Orange County Self-Funded Workers' Compensation Agency Organizational Chart.

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cc: Orange County Grand Jury
700 Civil Center Drive West
Santa Ana, CA 92701
(with enclosures)
[By Messenger]

EXHIBIT "A"

Understanding Horizontal Governance

by Daniel Ferguson, M.Phil., Research Partner, Newfoundland and Labrador, Action Research Team

Editorial consultation by Nathalie Burlone, Assistant Professor, School of Political Studies, University of Ottawa

Connecting the Dots: Improving Accountability in the Adult Literacy Field in Canada

is a two-year pan-Canadian project funded by the Office of Literacy and Essential Skills (HRSDC) Canada. The goals are to examine the impact of accountability policies and practices on the adult literacy field in every province and territory; to help create a common language for practitioners and funders to talk about accountability; and to explore innovative approaches to accountability through action-research projects. This brief connects to the third goal.

Author Daniel Ferguson was a member of the Newfoundland and Labrador action research team that designed a demonstration project to put horizontal governance processes into action and evaluate the effectiveness. Participants from Literacy Newfoundland and Labrador and the provincial Department of Education collaborated with researchers to create a process for stakeholder consultations to inform the provincial strategic plan for adult literacy and improve communication between funder and provider.

This brief is not a comprehensive review of all research on horizontal governance but a summary of the Canadian literature as it relates to the project conducted by this team. To learn more about the findings and tools from this and four other action research projects funded through Connecting the Dots, visit www.literacyandaccountability.ca.

• WHAT IS HORIZONTAL GOVERNANCE?

Horizontal governance is an umbrella term that covers a range of approaches to policy development, service delivery issues, and management practices. A horizontal initiative may take place across levels of government, across boundaries between units of a single department or agency or among multiple departments or agencies, or across public, private and voluntary sectors. It replaces hierarchical leadership with collaboration, coordination, shared responsibility for decisions and outcomes, and a willingness to work through consensus. Over the years, horizontal governance has appeared under different names and guises including "interdepartmental actions, alliances, joint ventures, co-actions [and] especially partnerships" (Bourgault, J. & Lapierre, R. 2000).

Horizontal governance has evolved from the trend of contracting out public service delivery to private and not-for-profit partners, a characteristic of New Public Management since the 1980s. Horizontal governance goes further in the sense that it also places some measure of influence over policy in the hands of partners who deliver service. Actors across and outside of government may contribute to policy-making on issues for which they have shared responsibility (Phillips, S. 2006). However, it can be difficult for actors in the voluntary sector to participate in the policy process and maintain their service delivery role.

• HOW IS HORIZONTAL GOVERNANCE PRACTICED?

While some commentators suggest that "there are no hard and fast rules for leading a horizontal initiative, [or ...] a simple formula to successful horizontal management" (Hopkins et al, 2001), the literature does define some common characteristics. These include:

- **Non-hierarchical structures:** Horizontal governance contrasts with the "vertical" or "ministerial" (Fitzpatrick, 2000) structure of authority where decisions over policy development and service implementation are made in a centralized hierarchical manner. In a horizontal approach issues are dealt with by actors who collaborate and share power and responsibility. However, within government, horizontal initiatives cannot replace or operate without final review and approval by the department or agency.
- **Partnership over competition:** Bourgault, J. & Lapierre, R. (2000) suggest that in "authentic" horizontal initiatives, a person or organization considers who else has an interest in a particular case, and attempts to include those actors in developing a response. Horizontal initiatives take a markedly different approach from a traditional "silo" view of governance by prioritizing partnership and common interest over competition and individual recognition.
- **Coordination:** Peters (1998) roots horizontal practice in the concept of "coordinated government", emphasizing the need for departments to "work together" and "not produce either redundancy or gaps in services."

A horizontal approach to an issue can happen along a continuum of complexity and scope. For instance, Hopkins et al (2001) identify three "degrees" of horizontal efforts, distinguishing coordination from collaboration:

- Individual attitudes - at a micro level, a horizontal initiative is grounded by individuals making "a conscious effort to work horizontally" and building "informal ties that facilitate sharing".
- Coordination - at an organizational level, coordination reduces duplication and divides tasks and responsibilities.
- Collaboration - at the macro level, resources, decision-making and services are integrated across organizations.

Phillips (2004) summarizes horizontal governance as working through networks in place of hierarchies; through interdependence rather than power relationships; negotiation rather than control; and enablement rather than management.

• HOW IS HORIZONTAL GOVERNANCE PRACTICED?

Collaboration and partnerships between federal departments and agencies internal to government are not altogether new. In Canada, the term was used in the context of public policy in a 1995 article (Peters, B.G., & Savoie, D.J., 1995). The move to horizontal governance was given impetus by a 1996 Assistant Deputy Minister's Task Force. A Strong Foundation, the Task Force report, frames the issue of horizontality around a "whole of government" approach that starts with the public interest:

"One of the principal challenges is to overcome the vertical stovepipes that divide government somewhat artificially into separate domains either of service delivery or of policy, and to knit them up again in a holistic fashion that reflects the real life of real people."

THE CENTRE FOR LITERACY OF QUEBEC

Research Brief on Understanding Horizontal Governance

Writer: Daniel Ferguson, M.Phil.

Editorial Consultation: Nathalie Burlone

Editorial by: The Centre for Literacy of Quebec

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The 1996 Deputy Minister's Task Force established a focus on horizontal governance in service delivery and policy development. It recommended a strong role for the Privy Council Office to champion the management of horizontal issues. This coordinating role included:

- to identify horizontal issues;
- to set priorities for work around those issues;
- to establish mechanisms to support interdepartmental work;
- to provide stimulation for policy work; and
- to develop processes to support system-wide consensus.

By 2000, horizontal policy-making was included in annual reports by the Clerk of the Privy Council.

Following the 1996 report, a number of horizontal initiatives emerged in the federal government resulting in several "how-to" promotional guides. Lessons from some initiatives in that period are captured in "Moving from the Heroic to the Everyday: Lessons Learned from Leading Horizontal Projects", the report of the Canadian Centre for Management Development (CCMD) Roundtable on the Management of Horizontal Initiatives (Hopkins et al, 2001). Another example is "Using Horizontal Tools to Work across Boundaries: Lessons Learned and Signposts for Success" (Rounce & Beaudry, 2002).

One example of a large-scale horizontal project was the Voluntary Sector Initiative (VSI) that brought the government of Canada as a whole together with the voluntary sector, requiring consultation with a vast array of not-for-profit organizations (Voluntary Sector Initiative, 2009). This five-year project was launched in 2000 with the intent to "strengthen the voluntary sector's capacity to engage in policy dialogue and to enhance the relationship between the sector and the federal government." (HRSDC, 2004). In pursuit of this goal, the VSI accomplished several tasks, including:

- developing an accord and codes of good practice on funding and policy between the federal government and the voluntary sector;
- improving sector access to technology;
- raising the profile of the sector; and
- increasing sector participation in developing policy.

The horizontal nature of the VSI marked an important shift in policy development. The government practice of contracting out services to voluntary sector organizations raised the stake

of those organizations in influencing policy direction. As a model of horizontal governance, the VSI created an opportunity for service-providing organizations to have input into policies governing those services. Phillips (2004) suggests that "establishing stronger connections with citizens and their organizations, was seen to be a means of restoring some of the visibility and legitimacy that the federal government had lost" during the 1980s and 1990s.

• BENEFITS, LIMITATIONS AND THE FUTURE OF HORIZONTAL GOVERNANCE

The term "horizontal governance" has been used less frequently in Canadian public administration since the mid-point of the 2000s, because it has been replaced by the term "governance". However, studies on the concept remain abundant in the public administration literature. Horizontal governance has much to commend its continued practice, provided that it is effective in producing and delivering "public goods that are better adapted to the needs of citizens, of a superior quality and at a lower cost" (Bourgault and Lapierre, 2000). As Hopkins, et al (2001) contend:

Horizontal management is often the only or the best way to get results. It may not be the most efficient method, especially in the short run, but over time it can be the most effective. It responds to public service challenges that are increasingly complex and being analyzed afresh from horizontal perspectives.

Nevertheless, a major challenge to horizontal governance is the multiplicity of accountabilities. At a minimum, partners in a horizontal initiative have dual accountabilities – those holding between partners, and the vertical accountabilities each partner has to their governing authorities (Fitzpatrick, 2000). The trade-off for highly effective outputs from a horizontal initiative may be a decrease in efficiency. A number of authors have identified additional problems, namely turf protection (Bardach, 1996); power distribution (Bryson and Einsweiler, 1991); and competition for resources (Peters, 1998).

Phillips (2004) raises this issue in her discussion of the limitations and challenges that emerged in the VSI – challenges that may apply to other horizontal projects:

- The accountability structure of a contracting system may undermine attempts at collaborative relationships. This is because a system of results-based management "with its emphasis on system-wide controls and efficiency has not been adapted to joint processes that unfold and evolve at the direction of the partners."

- A related challenge is that "outcomes and deliverables may not be able to be specified with precision in advance" of a horizontal project, and so measures of accountability may be unclear.
- High turnover in the public service also creates challenges because horizontal collaborations depend on relationship-building.
- A perhaps more serious challenge unique to the voluntary sector is the issue of advocacy. Bureaucrats are obliged to meet the vertical accountabilities associated with ministerial priorities, and these accountabilities can strongly influence what can and cannot happen within a collaborative project. By working within these constraints, voluntary sector actors may risk weakening their own advocacy agendas if they do not coincide with government priorities.

• LITERACY AS A HORIZONTAL ISSUE

Literacy appears to be a good fit for a horizontal approach. It does not fall neatly under the priorities of a single government department. It is a "government-wide" issue in that it has broad social and economic implications bearing on policy development across many departments. A comprehensive approach to developing literacy policy requires many partners to collaborate across traditional departmental boundaries and private and not-for-profit organizations. However, the literacy field faces many of the challenges apparent in initiatives such as the VSI. For instance, accountability for literacy is complicated by the fact that partners must negotiate between multiple accountabilities across departments, sectors and the community. Government bureaucrats may be limited in their commitments to a horizontal project because of the vertical accountabilities within their departments. Non-governmental partners may be limited in committing to government priorities, even through a horizontal collaboration, if those commitments do not reflect their own mandates. Finally, a horizontal project that depends for success on the personal working relationships of partners is jeopardized if one or more of those partners leaves the project. A challenge for any horizontal project is to find a working structure that remains intact and survives changes in personnel. Recent research, such as that carried out through Connecting the Dots in the NL project, is exploring the possibilities of creating effective horizontal governance structures for adult literacy.

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The Economics of Horizontal Government Cooperation*

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Abstract

This paper analyzes the ability of intrastate and interstate cooperative agreements to either minimize or capitalize on interjurisdictional externalities. These agreements are commonly referred to as compacts or joint powers agreements (intrastate compacts). The compact mechanism allows regional governments to enter into contractual agreements with one another to coordinate policy choices and to engage in cooperative endeavors. Given the inter-jurisdictional nature of the issues that affect horizontally situated governments, this mechanism is a powerful tool to achieve welfare-enhancing outcomes for citizens.

A review of the legal case law surrounding compacts is conducted to analyze the legal properties from an economic perspective. These economic properties are used to develop a simple game-theoretic environment and a neoclassical growth model. In these two environments, behavior under the compact is compared with regional governments acting in a non-cooperative manner where they take the period actions of the other governments as given. The models demonstrate that the compact mechanism can lead to Pareto-superior outcomes for the signatory governments' citizenry.

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1 Introduction

The legal and political economy literature is replete with articles discussing the benefits of competitive horizontal federalism. However, virtually nonexistent is a serious examination of whether and under what circumstances it may be beneficial for horizontally situated governments to cooperate. This paper begins this line of research by examining how cooperation among horizontal regional governments in certain circumstances may potentially increase the welfare of their citizens either through lower taxes or increased quality or quantity of beneficial public services.

Most discussions regarding intrastate or interstate interactions among regional governments in the United States are based on the belief that competition among regional governments leads to the efficient production of public goods. The basic argument for competition is that through the process of regional governments competing with one another for citizens and firms, they are incentivized to provide efficient levels of public goods. While the literature has embraced this idea, there has been little discussion about cooperative agreements among horizontally situated regional governments.

The problem in applying this competitive model to all interstate and intrastate interjurisdictional issues is that it does not take into account the fact that the decisions of one government affect the welfare and decisions of other governments in ways other than merely through competition. For instance, a problem that has plagued many states is the issue of how to allocate water among different interstate regions. Illinois' decision to divert more water out of Lake Michigan for the purpose of increasing certain services within its territory can have profound effects on the lake levels of the other Great Lakes states. To offer these better public services, Illinois is not the only state to incur costs, the other Great Lakes States will incur a cost as well - a reduction in their lake levels and the corresponding effects that has on their economies.

While compactual agreements between regional governments have the potential to lead to Pareto superior¹ outcomes for their citizens, interstate and intrastate compacts are seldom dis-

¹An outcome or economic allocation is Pareto superior if there does not exist another feasible outcome or allocation that makes at least one economic agent better off without making any other agent worse off. If an outcome or allocation is not Pareto superior, it is Pareto inferior and it is Pareto dominated by another feasible allocation that makes at least one agent better off while making the other agent(s) no worse off.

cussed in the academic literature. The reasons often cited for a lack of serious consideration of their use are the high costs associated with negotiating them and the belief that regional governments should always compete with one another, not cooperate.

However, according to data collected by the Council of State Governments on interstate compacts, the supposed high negotiation costs associated with their enactment has not stopped states from entering into numerous compacts with one another. There are approximately 200 compacts that are currently in effect in the United States. On average each state is a member of 25 compacts. Over 20 compacts are national in scope, with several having more than 35 member states. And approximately 20 compacts are regional in scope and have more than eight signatory states (National Center for Interstate Compacts 2010).

No organization tracks intrastate agreements, so there is scant data on the number of such agreements in effect today. However, at least one state's association of cities has recently surveyed its members and found that such agreements are widely used. The League of Minnesota Cities conducted a survey of its member cities regarding how many cooperative endeavors they were currently engaged in with other cities. These cooperative endeavors, as with most other states, are statutorily authorized and are commonly referred to as joint powers agreements.² The cities responded that they were party to 1,682 "current cooperative efforts." 433 of those related to police or fire services, 265 related to parks and recreation, and 245 were "general government" agreements, which included planning and joint purchasing agreements (League of Minnesota Cities 2008).

The second argument against compacts often invokes the cornerstone of modern economic thought: competition between potential competitors leads to the efficient allocation of resources, or in this case the efficient provision of public goods. It is generally accepted in the economic literature that competition among economic actors, including governments, generally enhances consumer or citizen welfare through the efficiencies that competition generates. This economic rationale is similar to the underlying justifications for our national policy to encourage competition as embodied in the U.S. antitrust laws. These laws prohibit any (unreasonable) contract, combination,

²Since this paper addresses the economics of these agreements and there is no substantial economic difference whether they are interstate or intrastate, all such agreements will be referred to as "compacts." Compacts thus refer to all contractual or administrative cooperative agreements between regional governments commonly referred to as joint powers agreements.

or conspiracy in restraint of trade or commerce.³ Economic theory recognizes, however, that there are situations where competition, or even just a basic lack of cooperation, can lead to suboptimal outcomes. Over time federal courts have also come to realize that not all cooperative endeavors among competitors should be per se violations of the antitrust laws, including certain information sharing arrangements among competing firms, industry standards, firms bundling intellectual property rights, and firms engaging in joint cooperative endeavors. These agreements have been found to actually increase consumer welfare even though they diminish or altogether prohibit certain aspects of competition. The lesson to take away from antitrust jurisprudence and economic theory is that competition is generally good, but there are some situations when cooperation will enhance consumer welfare.

This same strand of theoretical argument can also be applied to relationships between regional governments. There are situations in which it is beneficial for regional governments to coordinate their actions or engage in cooperative endeavors even though it is usually optimal for them to compete against one another both for citizens and firms.

It should be noted here that this paper doesn't delve into how compacts are negotiated, and its author doubts that a reliable theory can be developed that would accurately describe all such situations and resolutions. Some economic theories predict that such agreements are impossible to negotiate due to high negotiations costs, hold-out problems, etc. Since, as already shown, regional governments do enter into such agreements, what is needed is a comprehensive general theory that examines the benefits and costs of these agreements once enacted. This paper merely seeks to begin this important line of research.

This paper also does not propose to craft a general rule which prescribes when compacts should be permitted in lieu of encouraging competition (or at least non-cooperation) among regional governments.⁴ That is a topic for a paper in and of itself. Rather, this paper does demonstrate that there

³"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. 1 (West).

⁴This paper should not be construed as arguing that all compacts are welfare enhancing. Compacts can be used to "legalize" inefficiencies that provide no benefit except for the special interest groups who are responsible for lobbying for their enactment. The recently enacted and now defunct Northeast (Interstate) Dairy Compact is a good example of an anticompetitive compact that led to financial harm for consumers in the form of higher prices.

The following is an excerpt from the website of the Commission created pursuant to the terms of the compact:

are circumstances where cooperation leads to better outcomes than non-cooperation. It analyzes the efficacy of compacts to (1) act as a legal commitment technology for optimal policy choices, (2) solve prisoner dilemma-type situations faced by regional governments, and (3) allow regions to internalize productivity spillovers in a neoclassical growth environment.

2 Legal Review

While there has been economic research on specific compacts, there has been no in-depth analysis of the legal properties of an interstate compact or joint powers agreement from an economic perspective. Both a complete legal analysis and an economic framework are both necessary to arrive at credible conclusions about the ability of a compact to function as a cooperative commitment mechanism for regional governments. This review of compact law considers the legal implications of compact jurisprudence from an economic perspective. This requires a direct review of the relevant law involving interstate and intrastate compacts, the latter being commonly referred to as joint powers agreements.

A major theme flows through the reviewed law - both state and federal courts have a strong disposition to uphold the terms of a compact. Federal courts have held a state to its compactual

The Northeast Dairy Compact was established in an effort to restore the authority of the six New England states to set prices for Class 1 fluid milk sold in the region. Recognizing the regional character of the northeast dairy industry, the Compact serves several major functions. These functions include assuring the region of an adequate supply of milk, recognizing the cultural and economic benefits of a viable dairy industry in the region and facilitating the Constitutional rights of individual states to act collectively in order to regulate milk prices.

The participating states concluded that their ability to control the price that dairy farmers in the region receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market as well as encouraging the vitality of the northeast economy and preserving open spaces.

The commission attempts to justify the compact as in the public interest, but it is no more than a legally sanctioned price cartel among the representatives of dairy farmers. As with all cartels, the benefits are to the producers for artificially restricting supply and driving up the price. Thus, if the public interest is solely the profitability of the dairy farmers and not the consumers who are forced to pay the competitive market price plus a cartel premium, then the public interest would certainly be served.

Compacts such as these not only hurt consumers but they retard growth in more productive areas of the economy. Due to the artificially inflated profitability of the dairy farmers investments will be inefficiently made in the industry when they otherwise would have been made in more productive sectors. Inefficient investments such as these lead to diminished economic growth. Decreased growth rates are an often overlooked dynamic consequence of misallocations of resources - an often overlooked consequence of a predominant analysis on static economic effects.

obligations even in instances where the state's obligations are in conflict with a plain-meaning reading of its constitution.⁵ This strong disposition allows a compact to serve as a commitment technology for cooperative government policies. The fact that the judiciary, with or without the assistance of the other two branches of the federal or state government, will step in to enforce the mutually agreed terms of the compact, implies that regional governments are bound to the terms, or are at least strongly discouraged by an external authority from breaching their obligations. Signatory governments correctly believe that the other governments will adhere to the terms of the compact, and they know they are obligated to do so as well.

2.1 Interstate Compacts

An interstate compact is a constitutional mechanism through which states commit themselves to a legally binding contractual agreement. The following legal analysis is an examination of relevant case law pertaining to interstate compacts from their inception to their termination. While a few legal treatises have been written by interstate compact experts, their analyses focused solely on the political or legal nature of interstate compacts - not the economics. This section is a thorough examination of the landmark cases that define interstate compact jurisprudence analyzed from an economic perspective.

2.1.1 Mechanisms for Resolving Interstate Disputes

An interstate compact is one of two legal mechanisms provided by the Framers of the Constitution for states to resolve interstate controversies in our federal system of government.⁶ *Hinderlider v. La Plata*, 304 U.S. 92, 104 (1938).⁷ The other is for the states to bring their dispute before the Supreme Court for resolution: “[t]he judicial power [of the Supreme Court] shall extend to ... controversies between two or more states...” (“The Constitution of the United States,” Article III,

⁵See *Washington Metro. Area Transit Auth. v. One Parcel of Land in Montgomery County, Md.*, 706 F.2d 1312, 1316 (4th Cir. 1983).

⁶A third is Congress enacting legislation to remedy the problem. However, the solutions to interstate and intrastate controversies in this paper are limited to those by the regional governments themselves either through litigation or entering into a compact.

⁷When citing to court decisions, this paper follows the Bluebook 19th ed. citation format.

Section 2, Clause 1). While the two mechanisms both lead to a final resolution of the dispute, in one, the states themselves control the outcome; in the other, a third party is the controlling legal authority. The Supreme Court has stated that the interstate compact, at least some of the time, is the preferred mechanism for resolving such disputes. In a case regarding New Jersey's release of sewage into the Upper Bay of New York Harbor, the Court stated:

We cannot withhold the suggestion, inspired by the consideration of this case, that [this] grave problem ... is one more likely to be wisely solved by co-operative study and by conference and mutual concession on the part of representatives of the states so vitally interested in it than by proceedings in any court however constituted. *People of State of New York v. State of New Jersey*, 256 U.S. 296, 313 (1921).

2.1.2 Interstate Administrative Compacts

Originally, the interstate compact was primarily used to resolve border disputes between states. Consequently, case law up through the early 20th century is predominantly related to state border compacts. Since then the purposes for enacting an interstate compact and the number of signatories to the agreement have greatly expanded. Recent interstate compacts encompass a multitude of states and a multitude of issues - not merely disputes, but cooperative endeavors (Zimmermann and Wendell 1976). The legality of the relatively recent inception of states entering into a compact that delegates administrative authority to an interstate agency has been specifically recognized and unanimously upheld by the U.S. Supreme Court. *State ex rel. Dyer v. Sims*, 341 U.S. 22, 30-31 (1951). When entering into the agreement the signatories cede a specified part of their sovereignty by constraining their activities to comply with the decisions of an interstate administrative agency created by the terms of the compact.

2.1.3 Compact Ratification and Congressional Consent

A compact is generally ratified when the identical terms of the compact agreement are enacted into law by each state's legislature and signed into law by the governor and, if necessary, after congressional consent has been granted (Zimmermann and Wendell 1976, p. 16). The Compact Clause of the US Constitution requires that "[n]o State shall, without the Consent of Congress,

..., enter into any Agreement or Compact with another State...” (“The Constitution of the United States,” Article I, Section 10, Clause 1). A plain language reading seems to indicate that every interstate compact requires express congressional consent. However, as *Virginia v. Tennessee* suggested, congressional consent may be implied or not even necessary at all in some cases.

2.1.3.1 The Requirement of Congressional Consent In *Com. of Va. v. State of Tenn.*, 148 U.S. 503, 519 (1893), the Court in dicta stated the test to determine when congressional consent for a compact is necessary: when the compact’s enactment would “[tend] to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States.” The Court provided an example of states entering into a compact to drain a malarious and disease-producing district that overlaps both of their boundaries, and stated that there could be no basis for requiring congressional consent. *Id.* The Court stated “[i]t would be at the height of absurdity to hold that the threatened states could not unite in providing means to prevent and repel the invasion of the pestilence without obtaining the consent of congress, which might not be at the time in session.” *Id.* at 518. The “*Virginia v. Tennessee*” congressional consent rule was referenced in a number of cases, but became controlling when it was applied in *New Hampshire v. Maine*, 426 U.S. 363 (1976).⁸

In cases where Congressional consent is necessary, Congress can attach specific conditions that the group of states must meet before its consent is given. The Supreme Court upheld the validity of congressional imposition of such conditions in *Cuyler v. Adams*, 449 U.S. 433, 440-441 (1981). The Ninth Circuit Court of Appeals later held that Congress can even require the signatory states to establish a compact agency as a condition necessary for its consent. *Seattle Master Builders Ass’n v. Pac. Nw. Elec. Power & Conservation Planning Council*, 786 F.2d 1359, 1364 (9th Cir. 1986) (cert. denied 479 U.S. 1059 (1987)).

⁸For a thorough discussion of the evolution of the Compact Clause’s interpretation see *U.S. Steel Corp. v. Multistate Tax Comm’n*, 434 U.S. 452 (1978).

2.1.3.2 “Alter, Amend, or Repeal” Consent? If consent is necessary and is granted, a question arises over whether it can be altered, amended, or repealed.⁹ While the Supreme Court has never addressed this particular question itself, federal courts have visited, though not ruled on, the issue. In *Tobin v. United States*, the court in dicta reasoned that despite Congress’s express reservation of the right to “alter, amend, or repeal” when granting its original consent for the creation of the Port Authority of New York and New Jersey, such a condition is meaningless unless the Constitution gives Congress that authority. *Tobin v. United States*, 306 F.2d 270, 273 (D.C. Cir. 1962). The Compact Clause of the U.S. Constitution grants Congress no such express power, and there is no case which the court could locate which either supports or rejects the proposition that Congress has such authority. To be valid, it must be an implied power of Congress. *Id.* The *Tobin* court believed that the federal plenary powers, such as regulation of interstate commerce, that the Constitution does grant to Congress are sufficient “to supervise and regulate the activities of operational compacts in such a way as to insure that no violence is done by these compacts to more compelling federal concerns.”¹⁰ *Id.* The court is thus strongly suggesting that Congress has no authority to withdraw its consent.

2.1.4 Compacts as Contracts between States

The substantive law of interstate compacts is mostly contract law (Zimmerman and Wendell 7). An interstate compact was first explicitly recognized as a contract in *Green v. Biddle*, 21 U.S. 1, 39 (1823). In *Texas v. New Mexico* the Supreme Court said “[a] Compact is, after all, a contract.” *Texas v. New Mexico*, 482 U.S. 124, 128 (1987) (quoting *Petty v. Tennessee-Missouri Bridge Comm’n*, 359 U.S. 275, 285 (1959) (Frankfurter, J., dissenting)). The Court explained that a com-

⁹This is a separate question from whether the Compact restrains Congress’s legislative authority after congressional consent has been granted. For a more thorough discussion of this issue see *State of Ariz. v. State of Cal.*, 373 U.S. 546 (1963).

¹⁰

We have no way of knowing what ramifications would result from a holding that Congress has the implied constitutional power to alter, amend or repeal its consent to an interstate compact. Certainly, in view of the number and variety of interstate compacts in effect today, such a holding would stir up an air of uncertainty in those areas of our national life presently affected by the existence of these compacts. No doubt the suspicion of even potential impermanency would be damaging to the very concept of interstate compacts. *Tobin* at 273 n. 14.

compact remains a legal document that must be construed and applied in accordance with its terms.” *Id.* at 128 (quoting *State ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951)).

All contracts require an offer and acceptance to be legally binding. The offer component for an interstate compact is almost always satisfied by each signatory state adopting the exact language of the compact agreement as a statute. However, a state legislature can authorize a state administrative agency to enter into an agreement with another state’s administrative agency as long as the terms are sufficiently spelled out in the adopted legislation. This setup means, though, that the exact terms of the compact agreement are not contained in the adopted legislation.¹¹ Once a state has ratified the terms of the compact, the acceptance requirement is satisfied (Zimmermann and Wendell 1976, p. 8).¹²

2.1.4.1 Breach of the “Contract” Often a compact is likened to a treaty among states instead of foreign powers. In fact the Supreme Court used principles of treaty interpretation in its discussion of an interstate compact between Arizona and California.¹³ However, unlike a treaty between nations, where unilateral action in violation of treaty terms is a feasible action of all signatories, a compact’s unique legal standing does not allow for such unilateral actions, unless the compact itself provides for it.

In *Green v. Biddle*, after establishing that a compact was a contract, the Supreme Court quoted a previous holding in which it declared “a State has no more power to impair an obligation into which she herself has entered, than she can the contracts of individuals....” *Green v. Biddle*, 21 U.S. 1, 39 (1823). While the Court’s declaration was based on the Contract Clause jurisprudence of the era, which has since fallen out of favor, it illustrates the Court’s long-standing tradition of holding states to their compactual obligations. The Court’s disposition to enforce the terms of interstate compacts are now based on other legal theories such as the transformation of the terms into federal law.

¹¹See Western States Vehicle Proration and Reciprocity Agreement, and also several bilateral agreements between the states of Kansas and Oklahoma, and North Dakota and Montana.

¹²A compact may not immediately go into effect. Most compacts require a threshold number of states, or a critical mass, to enact the compact implementing legislation before the terms of the compact are in effect.

¹³See *Arizona v. California*, 292 U.S. 341, 359-360 (1934).

2.1.4.2 Basis for Enforcement of Contract: Compacts as Federal Law An interstate compact is transformed into federal law, and thus may preempt state action, if it passes the test laid out in *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). “[W]here Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States’ agreement into federal law under the Compact Clause.” *Id.* “When approved by Congress, a compact becomes a statute of the United States and must be construed and applied according to its terms.” *Nebraska v. Cent. Interstate Low-Level Radioactive Waste Comm’n*, 207 F.3d 1021, 1023 (8th Cir. 2000) (quoting *Oklahoma v. New Mexico*, 501 U.S. 221, 236 n. 5 (1991)). Federal supremacy would prohibit any action by a state in conflict with the terms of the compact.¹⁴

2.1.4.3 Remedies for Breach of Compact The question of remedy for other compact signatory states if a state does not meet its obligations has been specifically addressed in *Texas v. New Mexico*, 482 U.S. 124 (1987). The controversy in the case surrounded the bi-state Pecos River Compact that divides the water from the Pecos River between New Mexico and Texas. *Id.* at 126. The water flow of the Pecos River is irregular and the compact did not specify a particular amount of water that New Mexico was to deliver to Texas annually. *Id.* Rather, the compact stipulated that New Mexico could not deplete the water flow of the river below that which was available to Texas under the 1947 condition by “man’s activities.” *Id.*

The Supreme Court appointed a Special Master to define what the 1947 condition meant. *Id.* at 126-127. The Special Master’s report was approved by the Court and later the methodology was accepted to determine Texas’s entitlement. *Id.* at 127. The Special Master determined that New Mexico should have delivered 340,100 acre-feet more water to Texas than it received. *Id.* New Mexico was found to have breached the compact for a period of over thirty years and was continuing to do so. *Id.*

The Court disagreed with New Mexico’s assertion that it should not have to remedy the short

¹⁴“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding” (“The Constitution of the United States,” Article VI, Section 2).

deliveries of the past thirty plus years, holding that it could “find no merit in [New Mexico]’s submission that we may order only prospective relief, that is, requiring future performance of compact obligations without a remedy for past breaches. If that were the case, New Mexico’s defaults could never be remedied.” *Id.* at 128. The Court continued “[t]here is nothing in the nature of compacts generally ... that counsels against rectifying a failure to perform in the past as well as ordering future performance called for by the Compact.” *Id.* Once it was decided that New Mexico could be ordered to remedy its historic non-compliance, the question became what form such a remedy would take, since the compact itself did not detail any remedies for a breach. *Id.* at 129-130.

The Special Master concluded that monetary damages were inconsistent with the Compact’s terms and thus could not be ordered by the Court. *Texas v. New Mexico*, 482 U.S. 124, 130 (1987). However, the Court held that this was incorrect, and that while there was no specific provision for what type of remedy could be awarded in the case of a breach, the compact did not mandate repayment in water as opposed to money damages. *Id.* The Court requested the Special Master to calculate the money damages for New Mexico’s default. *Id.* at 132.

Enforcing the Supreme Court’s Ruling The Court noted two potential problems in enforcing its order to provide monetary relief for the past harm caused by the breach. The first was that monetary relief would allow New Mexico to continue to default on its compactual obligation if it determined the benefit associated with its deviation from the terms of the Compact exceeded the cost of the monetary relief to Texas. *Id.* at 132. This outcome, sometimes referred to as efficient breach, is permitted in contracts between private parties.¹⁵ However, the discussion of this concern

¹⁵In general, when two non-governmental parties contract, the default remedy for breach of the agreement is an award of “expectation damages” to the breached against party (promisee) by the breaching party (promisor). Expectation damages are a monetary award equivalent to the minimum amount necessary to put the promisees in the position they expected they would have been in when the contract was formed, if the promisor had adhered to the contract’s terms. “[A]ny greater sum operates to punish the breaching promisor and results in an unwarranted windfall to the promisee, while any lesser sum rewards the promisor for his or her wrongful act in breaching the contract and fails to provide the promisee with the benefit of the bargain he or she made” (Williston 2009, Ch. 64:1). “Even if the breach is deliberate, it is not necessarily blameworthy. The promisor may simply have discovered that his performance is worth more to someone else. If so, efficiency is promoted by allowing him to break his promise, provided he makes good the promisee’s actual losses. If he is forced to pay more than that, an *efficient breach* may be deterred, and the law doesn’t want to bring about such a result.” *Patton v. Mid-Continent Systems, Inc.*, 841 F.2d 742, 750 (7th Cir. 1988) (emphasis added).

by the Court suggests that it differentiated between a permissible efficient contract breach between private parties and an impermissible compact breach between states.

The Court determined that New Mexico's continued breach of the compact was not a substantial concern, since it could continue to "order remedying shortfalls to be made up in kind, with whatever additional sanction might be thought necessary for deliberate failure to perform." *Id.* Thus the Court was prepared to order "specific performance," or the performance that was specifically called for in the agreement, if New Mexico continued to breach the compact. Specific performance is almost always disfavored as a remedy for breach of a contract between private parties,¹⁶ but in this instance the Court indicated it would not hesitate to order such an extraordinary remedy for breach of a compact between states.

The second potential problem was the difficulty of enforcing judgment against a state. *Id.* at 130-131. The Court was not concerned about this in the present case, because if a problem arose with money damages, a specific order would be entered for repayment in water. *Id.* at 131. The problem arises when there is no other remedy available to substitute for money damages. This was the situation addressed by the Court in *Com. of Virginia v. State of W. Virginia*, 246 U.S. 565 (1918).

In a suit by Virginia against West Virginia, the Court ordered a judgment of over \$12 million to be paid by West Virginia to Virginia pursuant to the original compact agreement between the states. The compact states the amount of debt West Virginia would assume from Virginia when it was granted statehood. *Id.* at 589. The case was brought by Virginia, invoking the original jurisdiction of the Court to enforce the judgment. The Court noted its authority specifically to enforce judgments between two states. *Id.* at 591. It also noted this is a universally recognized doctrine that has been accepted and applied since the foundation of the United States. *Id.* at 592. West Virginia claimed that the Court could not enforce the judgment if it impeded the authority that the Constitution left to the states. *Id.* at 595-596. The Court, however, affirmed through its holding that it can enforce such judgments even though the appropriate remedy may "operate upon the governmental powers of the State." *Id.* at 600.

The final issue the Court addressed in the proceeding was what remedies are appropriate for

¹⁶See Williston (2009, Ch. 64:1).

enforcement. *Id.* “As the powers to render a judgment and to enforce it arise from the grant in the Constitution on that subject, looked at from a generic point of view, both are federal powers, and comprehensively considered are sustained by every authority of the federal government, judicial, legislative or executive, which may be appropriately exercised.” *Id.* at 601. The Court continued to detail various means that both Congress and the Judiciary under current legislation can use for enforcement. *Id.*

The Compact Clause gives Congress the power to consent to a contract between states. The agreement becomes operative by the will of Congress. *Id.* This gives Congress the authority to assure that the contract is enforced by appropriate legislation. *Id.* The judiciary may have the power to levy a tax either directly or by an order commanding the legislature of the state of West Virginia to levy a tax, to pay the judgment. *Id.* at 603-604. However, the Court declined to address this issue in its ruling. *Id.* at 604. The Court decided not to act so as to give Congress the “full opportunity” to act on its own behalf. *Id.* at 605.

Damages and Interest In *Kansas v. Colorado*, 533 U.S. 1 (2001), the Court addressed the issue of damages, specifically the issue of how to calculate the appropriate amount of interest for the damages. The compact at issue was the Arkansas River Compact. It had been negotiated by the two states to apportion the water from the John Martin Reservoir. *Id.* at 5. Colorado had breached the compact and Kansas was claiming damages. *Id.* at 4-5.

The Court was split on how to award prejudgment interest (i.e., the amount of interest to be awarded from the time of the breach of the compact to the resolution of the case). Four of the justices felt that interest should begin accruing from the time the compact was breached. *Id.* at 15 n. 5. However, to gain the necessary fifth vote to reach a majority opinion they decided to let the accrual begin at the time the complaint was filed. *Id.* at 15 n. 5, 16. Several justices were concerned that the modern rule to award interest on damages from the time of the actual breach was not the law at the time the compact was enacted and thus Colorado was not on notice that it would be liable for such damages if it breached the compact (See O’Connor, J. concurring and dissenting).

2.1.5 Amendment and Termination of a Compact

A compact may lay out specific terms for termination or withdrawal of a signatory. An example of a termination clause is Article X of the Colorado River Compact: “[t]his compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.” An example of a withdrawal clause that has a temporal restriction is provided in Article VI of the Potomac River Compact: “[a]ny signatory body may by legislative act, after one year’s notice to the Commission, withdraw from this compact.” A compact may be terminated even if there is no specific termination clause if each signatory state, through the same legal means used to adopt the compact, declares it to be dissolved (Zimmermann and Wendell 1976, p. 10).

A compact may also include specific provisions for its amendment or none at all. The recent trend has been for interstate compacts to include specific provisions detailing an amendment process (Zimmermann and Wendell 1976, p. 84). An example of a compact with a specified amendment process is the Yellowstone River Compact. Article VI of the compact states: “[w]hen the Commission has made such determination for any interstate stream, it shall report its findings to the President of the United States and to the Governor of each State in the form of an agreement supplemental to this compact, which agreement shall be in full force and effect from the time of its approval by the Commission until disapproval by the Congress of the United States or by the Legislature of Wyoming or by the Legislature of Montana” (Zimmermann and Wendell 1976, p. 10).

2.1.6 Interstate Compact Legal Conclusions

The purpose in reviewing these cases and some of their factual details is to emphasize that the Supreme Court attempts whenever feasible to hold each state to their agreed upon obligations under the compact. The terms of a compact once ratified by Congress and if related to a federal concern are federal law. While the Court would likely never allow any absolute commitment technology between states, the interstate compact comes as close as a legal mechanism can.

The Supreme Court enforces the terms of a compact by granting monetary damages or an order

of specific performance for past breaches, and by ordering states to adhere to their obligations in the future. The Court has even suggested that it would enlist the powers of the other two branches of government to force a state into compliance if necessary. This strong disposition for upholding the terms of a compact makes an interstate compact a powerful commitment technology for interstate government cooperation and coordination.

2.2 Intrastate Compacts: Joint Powers Agreements

This section examines the intrastate analog of the interstate compact mechanism, joint powers agreements (“JPAs”).¹⁷ As a baseline for discussion, since there are numerous provisions in different state codes that authorize JPAs, this paper examines California’s Joint Exercise of Authority Act.¹⁸

This section is markedly shorter than the last section on interstate compacts because there is little authoritative case law concerning the interpretation of the Act. Due to the lack of such a well-developed case law, this section primarily relies on a plain meaning interpretation of the sections of the Act. However, this plain meaning interpretation is supplemented where an authoritative case does exist.

2.2.1 Authority to Enter into JPA

Intrastate governments, referred to in the California Government Code as public agencies,¹⁹ are authorized by state statute to enter into JPAs.²⁰ This statutory authorization permits the signatory governments to enter into contractual relationships and exercise any power common to them, which

¹⁷Throughout the remaining sections of this paper, JPAs will be referred to as compacts between intrastate governments, so as to not confuse the reader that the economic analyses regarding interstate compacts also apply to JPAs.

¹⁸See Cal. Gov’t Code 6500 et seq.

¹⁹“As used in this article, ‘public agency’ includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, or any joint powers authority formed pursuant to this article by any of these agencies.” Cal. Gov’t Code 6500.

²⁰“If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting agencies may be located outside this state...” Cal. Govt. Code Section 6502.

allows intrastate governments to enter into agreements concerning a wide-array of issues.

The statute requires that certain provisions are addressed in the agreement. If the agreement has a specific purpose, then it must specify what that purpose is and how it will be accomplished. If, on the other hand, the agreement states the power that is to be jointly exercised, it must state the manner in which it will be exercised. Cal. Gov't Code 6503.

For example, in *Burbank-Glendale-Pasadena Airport Auth. v. Hensler*, 99 Cal. Rptr. 2d 729 (Cal. Ct. App. 2000), the court of appeal held that three cities, which had entered into a JPA that created an airport authority, had the ability to delegate their eminent domain powers to the authority. The court reached this conclusion because each city already possessed the power of eminent domain and the JPA merely exercised that which was common to all parties. A JPA “grants no new powers but merely sets up a new procedure for the exercise of existing powers.” *City of Oakland v. Williams*, 103 P.2d 168, 172 (Cal. 1940).

2.2.2 Creation of an Administrative Agency

An entirely separate entity independent of the signatory governments can be created pursuant to the terms of the JPA. Cal. Gov't Code 6507. Regional governments can thus create an administrative agency that is charged with executing the agreement. The administrative agency “possess[es] the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement.” *Id.* This agency can “make and enter contracts, ... employ agents and employees, ... acquire, construct, manage, maintain or operate any building, works or improvements, or to acquire, hold or dispose of property or to incur debts, liabilities or obligations, [and it] ... shall have the power to sue and be sued in its own name.” *Id.* at 6508.

The agency may have a governing body such as a commission or board that oversees it. *Id.* Such a body would have members representing the various agencies or legislative bodies that enacted the JPA. Despite the fact that these representatives are supposed to represent the wishes of their constituents, they are not obligated to vote in line with the position of the “legislative body” which appointed them. 83 Cal. Op. Att’y Gen. 267 (2000).

The agreement can specify how the debts, liabilities, and obligations of the agency are shared

among the signatory governments and JPA. Cal. Gov't Code 6508.1. By default, the JPA's debts, liabilities, and obligations are those of the signatory governments. However, the signatories are allowed to specify that the JPA alone bears these responsibilities independent of the signatories. *Id.* The agreement does not need to specify any entity beyond the agency itself that will assume the burden if the agency is unable to do so.²¹

2.2.3 JPA Conclusions

As the previous section detailed, there has been significant Supreme Court case law that illuminates the legal properties of interstate compacts. Yet, in spite of their widespread popularity, there is little state case law involving JPAs. Thus the majority of this legal analysis has consisted of a plain-meaning interpretation of the Joint Exercise of Authority Act supplemented by the few cases where a court has had to interpret the meeting of the statute. This review suggests that the interpretations of JPAs in many ways mirrors that of interstate compacts. If signatory intrastate governments renege on their obligations under the terms of the JPA, contract law will operate as the legal framework in which damages should be apportioned and injunctive relief granted. Similarly, just as interstate compacts can create interstate administrative agencies, JPAs can also establish administrative agencies that are independent of the government bodies that entered into the JPA.

2.3 Legal Conclusions

Often scholars state that the main problem with enacting welfare enhancing treaties between sovereign powers is a lack of a third-party external authority that will force the signatories to adhere to the terms of the agreement. Compacts are in some sense treaties between subnational or substate sovereign powers with one exception - the federal or state government can force each to adhere to their obligations under the terms of their compact. The power of the federal or state government to remedy past breaches and enforce compliance with future obligations allows regional

²¹“[S]ection 6805.1 ... mean[s] [nothing] ... other than what it plainly says, that the debts of the JPA are the debts of the constituent entities unless the agreement specifies otherwise. Here, the agreement specified otherwise, i.e. that the constituent entities would not be responsible for the debts of the JPA. [W]e find [no] ... implication that liability should be imposed because the constituent agencies did not specify an alternative to liability being solely vested in the JPA.” *Tucker Land Co. v. State of California*, 114 Cal. Rptr. 2d 891, 897 (Cal. Ct. App. 2001).

governments to avoid the potential pitfalls associated with the unenforceability of international treaty obligations.

As it has been shown through the review of interstate compact case law and the review of JPA law, the federal and state governments will uphold the terms of a compact either under the principles of the supremacy of federal law or contract law. Under federal law, states are obligated to adhere to the terms of the compacts they have entered into under contract law principles and the judicial theory that the terms of the compact are transformed into federal law, and thus are the “supreme” law of the land under the Supremacy Clause. Under state law JPAs are committed to their obligations under the agreement through the principles of contract law.

The next section of this paper examines regional governments that face a prisoners’ dilemma type situation. While the compact mechanism is offered as a tool to reach the welfare enhancing cooperative equilibrium, the section concludes that there are situations in which a regional government may rationally wish to breach its compactual obligations despite the knowledge that it will be forced into compliance. This is a consequence of how damages are calculated for the breach of a compact. As already noted, this possibility was acknowledged by the Supreme Court in *Texas v. New Mexico*. The section concludes that the signatory governments, given that they are sophisticated parties relative to private contractual parties, should be able to decide in the compact agreement itself how to calculate damages in the event of a breach.

3 Compacts as a Solution to the Prisoner’s Dilemma

States manage their water resources under statutory schemes or common law water doctrines. However, legislators, judges, and other state officials are responsible only to their state’s electorate. By the design of our federal system they are not positioned to internalize the effects of their actions on other states. If their goal is to maximize the likelihood of their (re)election, then their only considerations should be to take into account the preferences and welfare of their states’ citizens. This can lead to potentially great costs being imposed on the citizens of another state if the resource at issue is common to both states.

For example, in the late 19th century, Chicago experienced an outbreak of several illnesses at-

tributable to its drinking water supply from Lake Michigan. Lake Michigan had been contaminated by Chicago releasing its sewage into the Chicago River, which then flowed into the lake (Lynde 1930, p. 243-246). In 1900, Chicago reversed the flow of the Chicago River, so that it flowed into the Illinois River thus eliminating the contamination problem for Illinois, but thereby inflicting it on other states (Percival 2004, p. 720).

The state of Illinois's project to alter the direction of the Chicago River has been called "an epic environmentally unsound public works project" (Hall 2006). This is because the Illinois River flows into the Mississippi then on downstream into the Gulf of Mexico. Thus states that border the Mississippi as it flows south were affected by Illinois's release of sewage. From 1900 to 1906, Missouri unsuccessfully litigated the flow diversion under a public nuisance claim before the Supreme Court (Percival 2004, p. 721-726).

By the mid-1920s, Chicago had increased the flow diversion by over four-fold. In 1924, Wisconsin along with Michigan and New York filed a complaint against Illinois requesting injunctive relief. *Wisconsin v. Illinois*, 278 U.S. 367 (1929). A special master appointed by the Supreme Court concluded that the Illinois diversion had lowered the levels of Lake Michigan and Huron by six inches, and Lake Erie and Ontario by five inches. *Id.* at 407-408. The special master's report stated that the increased diversion had caused damage "to navigation and commercial interests, to structures, to the convenience of summer resorts, to fishing and hunting grounds, to public parks and other enterprises, and to riparian property generally." *Id.* at 408. The special master concluded that this caused "great losses" to the plaintiff states.²² *Id.* at 409.

Thus while benefitting Illinois and specifically the citizens of the City of Chicago, the diversion imposed severe negative externalities on other states both in terms of its sewage release and the accompanying increased flow diversion which lowered the level of the Great Lakes. However, the Illinois legislators (or CoC officials) who passed the enabling legislation were not responsible to the citizens of the other states. There was no need for them to take into account the effects on the welfare of the the Great Lakes states or the other states downstream.

There are numerous instances of other Great Lakes states imposing similar negative externalities on one another. Such an environment is well-represented by the often noted prisoner's

²²See also Hall (2006, p. 419-420)

dilemma, or a special case of it known as the Tragedy of the Commons. Each state is in an environment where it takes the actions of the other states as given. Given these actions, a state chooses its optimal response. While a theoretical benevolent social planner charged with maximizing the welfare of the affected states would take into account, or internalize, the costs and benefits to the states when deciding the appropriate course of action or policy, in this non-cooperative environment each state only takes into account its own costs and benefits.

This lack of cooperation, as illustrated by the example of the Great Lakes, where there is a negative externality by one government imposed on another, results in too much of the negative activity being undertaken. Conversely, in the case of a positive externality such as technological spillovers or productivity gains from investment in shared public infrastructure, governments invest too little in the beneficial activity. In either situation, the fact that a state does not take into account the costs or benefits to all other states leads to a socially suboptimal or Pareto inferior outcome. Absent some agreement that commits states to cooperate with one another over the management of the Great Lakes, they are relegated to the Pareto inferior outcome that plagued them and the Lakes for decades.

The potential for a compact to bind the Great Lakes states, or any group of states that share a common resource, to cooperate in the preservation and use of that resource was discussed in 1925 by future Supreme Court Justice Felix Frankfurter with his colleague Professor James Landis:

Even before the Constitution we find that the common interest in natural resources, of a region embracing two States, was furthered by an agreement between such States. . . . An exploration of the possibilities of the compact idea furnishes a partial answer to one of the most intricate and comprehensive of all American problems (Frankfurter and Landis 1925, p. 696).

The Great Lakes states did recently make use of the “compact idea.” The Great Lakes-St. Lawrence River Basin Water Resources Compact requires the states to adhere to minimum regulatory standards to which all signatory states have agreed. The compact imposes requirements on all the Great Lakes states for new withdrawals of water and in general prohibits transfers of water outside of the Great Lakes Basin. If a state is allowed to make a new withdrawal of water, that state is required to ensure that the water will be returned to the watershed less an allotment

for consumptive uses and that the purpose for the withdrawal meets a “reasonableness” standard. The withdrawal is also to be done in an economic and environmentally sound manner so as to conserve as much water as possible (Hall 2006, p. 435-441). These regulations will improve and then maintain the quality of the Great Lakes watershed and its surrounding ecosystem. This is not only aesthetically pleasing, but necessary for a continuation of the beneficial commercial activity that the Great Lakes generate for their regional economies.

The following sections analyze the general properties of states locked into a prisoners’ dilemma environment and under what circumstances a compact can be used to improve the welfare of the states’ citizens. Recommendations for how federal and state courts should calculate damages for breach of a compact are discussed in light of a rational regional government’s incentive for doing so.

3.1 One Shot PD

The Prisoner’s Dilemma (PD) is well-known in both economics and other social sciences. Each “player” in the “game” has two feasible strategies - either *cooperate* (*C*) with the other player or *defect* (*D*). Despite the fact that both players know that their individual payoff from the situation where both cooperate is strictly greater, or Pareto superior, than the payoffs in the event both defect, both players’ dominant strategy is to always defect, regardless of what they expect the other to do. This can be seen by examining the payoffs in the 2x2 payoff matrix in Figure 1, which is representative of a PD game for two players.

Suppose that the players are two regional governments - Government 1 and Government 2. Government 1’s best response to Government 2 playing cooperate (*C*) is to play defect (*D*), since it would receive a payoff of 2 as opposed to 1. Government 1’s best response to Government 2 playing defect is to play defect (*D*), since it would receive a payoff of 0 as opposed to -1. Thus, Government 1’s dominant strategy is always to defect (*D*). By the symmetry of the problem, Government 2’s dominant strategy is always to defect (*D*) as well.

A Nash Equilibrium is an equilibrium strategy profile for all players, where for each player its chosen strategy is its best response to the given strategies of all the other players. In the PD

		Government 2	
		<i>C</i>	<i>D</i>
Government 1	<i>C</i>	1, 1	-1, 2
	<i>D</i>	2, -1	0, 0

Figure 1: Two Governments in a Prisoner's Dilemma

game, since the dominant strategy is always to defect, because it is always the best response to any strategy played by the other player, the Nash Equilibrium is $(D;D)$. This equilibrium outcome is not Pareto optimal: there is another feasible strategy profile that leads to a strictly higher, or Pareto superior, payoff for both players; they could both Cooperate $(C;C)$.

Prisoners Dilemmas come up in many different situations involving horizontally related governments. For example, the fact pattern surrounding *New York v. New Jersey* discussed in the introduction is one such foul case.²³ New Jersey had been disposing of its sewage by releasing it into the Upper Bay of New York Harbor. This created a public nuisance to New York residents and New York filed suit in the U.S. Supreme Court.

The following example is a slight variation of the situation in *New York v. New Jersey*. It details how regional governments can face PD type situations. Suppose that New York and New Jersey each have two options: either dump their respective sewage into the Upper Bay of New York Harbor (D) or transport it to another location (C). The resulting four feasible outcomes would generate payoffs of a PD game.

If both New Jersey and New York cooperate (C), then each receives a payoff of 0, the payoff from maintaining the status quo of neither dumping their sewage into New York Harbor. If only one state dumps (D), the defector receives a payoff of 1 and the the other government receives a payoff of -2. When both dump (D) sewage they each receive a payoff of 1 but incur a payoff of -2 from the dumping of the other government, resulting in each having a net payoff of -1. These payoffs are represented in Figure 2.

In this game, the Nash equilibrium is for New York and New Jersey to dump their sewage into the bay. This equilibrium leads to reductions in the welfare of both states. These welfare losses could have been avoided had the states cooperated.

²³See *People of State of New York v. State of New Jersey*, 256 U.S. 296 (1921).

		New Jersey	
		<i>C</i>	<i>D</i>
New York	<i>C</i>	0, 0	-2, 1
	<i>D</i>	1, -2	-1, -1

Figure 2: Sewage

If this game accurately captures the dynamics of interaction among governments, regional governments facing a PD type situation are relegated to achieve suboptimal outcomes absent some external mechanism to mandate cooperation. However, such a mechanism does exist, of course, it is the compact. A compact could be used to commit the governments to follow the cooperative strategy thereby achieving the Pareto superior outcome. In the event of a defection, the terms of the compact could specify how damages would be awarded against the breaching government.

Most intrastate and interstate interactions occur over the course of many year, decades, or even centuries. Thus, the next section further explores the compact solution in an environment where regional governments do not interact merely once, but for the foreseeable future in a Repeated Prisoners' Dilemma environment.

3.2 Infinitely Repeated PD

Regional governments typically interact with one another repeatedly over the course of many years with no foreseeable ending. In fact, each year governors and legislatures, county boards, and city councils make decisions about how to interact with one another on a number of policy issues. In the example above, New Jersey might decide to not dump its sewage this year, but next year the governor and legislature are free to change their policy. Likewise City 1 may decide to continue paying City 2 for fire department services this year, but next year decrease or cut its payments due to other funding obligations and expect to free-ride on City 2's services. Thus, a single period or "one-shot" PD does not fully capture the relevant repeated interactions of regional governments. The Repeated Prisoner's Dilemma (RPD) more accurately represents these continuous interactions.

For the purposes of modeling interregional government interactions, it is assumed that each government believes that it will be in existence forever and thus there are an infinite number of

periods of interaction. Each government j discounts future payoffs at the geometric rate β_j , i.e. the discount factor. For readers more familiar with the notion of a discount rate, the discount factor is inversely related to the discount rate. That is, as the discount factor, β_j , increases, the discount rate, r_j , decreases and vice versa. Formally, the two are related by $r_j = \frac{1-\beta_j}{\beta_j}$.

There are two possible ways that cooperation can arise in this environment. The first way is to make it so that both governments cooperate because if they act otherwise by deviating or defecting for a period - the cost will outweigh the benefit. Thus it would be irrational for the government to defect. Such a trigger strategy could involve a strategy rule saying: if you defect, even once, I will defect for T periods. The other way is for an external agent to enforce *ex post* a compact that governments had agreed to *ex ante* and award damages equal to the harm caused by the breach.

The first solution could have New York dump sewage for some sufficiently high T periods if New Jersey dumps sewage even once. This would punish New Jersey by not allowing it to gain the higher payoffs it would have received if both governments had cooperated. Of course this assumes that such a sufficiently high T even exists. Proposition 3.1 below emphasizes that even in the case of a severe punishment such as minimaxing the other government (playing D for T periods), there may not exist a finite length of punishment T such that it is irrational for the other government to defect. However, it likewise may be the case that the resulting costs from invoking the punishment of the trigger strategy on New Jersey *may* be potentially greater than its benefit from defecting one period. Under this scenario, if New Jersey knows that this is New York's strategy *and* also believes that it is committed to following this policy if a deviation occurs, it *may* not be rational for it to deviate from the terms of the agreement.

It should be emphasized that this grim-trigger strategy is only effective if New Jersey cares sufficiently about its future payoffs from the repeated interactions, that is β_2 is sufficiently close to 1, and New York can commit to adhering to this policy *ex post* if a defection occurs. The following proposition illustrates this formally.

Proposition 3.1 *As β_2 tends towards 0, there does not exist a finite number of periods of punishment, T , such that would induce New Jersey to cooperate every period.*²⁴

²⁴**Proof.** In this model, New York's only means to induce New Jersey to cooperate is to punish it by playing D if

Thus repeated interactions may or may not lead to cooperative behavior on the part of regional governments if (1) either government cares more about short-term benefits rather than long term ones (β_j is relatively close to 0), or if (2) the other regional government believes that the other will not be able to commit to the T periods of punishment if such a suitable time period even exists.

General Framework The framework described above is useful if there are just two governments and the game is symmetrical. However, real interregional government interactions can occur between numerous governments and their payoffs are not necessarily symmetric. The following framework generalizes the arguments discussed above, in which case two or more governments interact in a RPD framework with different discount factors and different payoffs. However, for ease of exposition it is still assumed that regional governments can only play their pure strategies C and D . That is, they are prohibited from playing mixed strategies that randomize their decision to cooperate or defect in any one period.

Let the set of governments who are affected by one another's interactions be \mathcal{P} and let the number of such governments be denoted by P . $V_j(S_{-i}, S_i)$ is the period game value to government it does not. New York's strategy would then be to play C in the first period and every period after unless New Jersey played D in the last period, in which case New York will play D for $T < \infty$ periods. Thus New York's strategy is to minmax New Jersey for T periods unless New Jersey cooperates.

If in period t New Jersey defects and dumps its sewage, its discounted payoff from that period and the resulting T periods when New York also dumps its sewage is:

$$\begin{aligned} & \beta_2^t \cdot 1 + \beta_2^{t+1} \cdot -1 + \beta_2^{t+2} \cdot -1 + \dots + \beta_2^{t+T} \cdot -1 \\ = & \beta_2^t (1 + \beta_2 \cdot -1 + \beta_2^2 \cdot -1 + \dots + \beta_2^T \cdot -1). \end{aligned}$$

If New Jersey had instead adhered to the agreement not to dump sewage, and played C in period t through at least period $t + T$, its discounted payoff would have been

$$\beta_2^t \cdot 0 + \beta_2^{t+1} \cdot 0 + \beta_2^{t+2} \cdot 0 + \dots + \beta_2^{t+T} \cdot 0 = 0.$$

Therefore for it to be rational for New Jersey to defect and dump in period t , its gain from the one period deviation must be greater than the loss it incurs from New York dumping for the subsequent T periods. That is:

$$\beta_2^t (1 + \beta_2 \cdot -1 + \beta_2^2 \cdot -1 + \dots + \beta_2^T \cdot -1) > 0,$$

which is equivalent to

$$\frac{\beta_2 - \beta_2^{T+1}}{1 - \beta_2} < 1.$$

As β_2 gets closer to 0 New Jersey cares more about the present and less about the future. Defection will always be beneficial regardless of the number of periods New York commits to punishing New Jersey, T . ■

j when government i plays $S_i \in \{C, D\}$ and the other $P - 1$ governments ($-i$) play $S_{-i} \in \{C, D\}^{P-1}$.

Assumption 3.1 *The period payoff to each government j from all P governments cooperating exceeds the payoff to government j from all P governments defecting. That is,*

$$V_j(C_{-j}, C_j) > V_j(D_{-j}, D_j) \quad \forall j \in P$$

Assumption 3.2 *State j 's best response to all other governments' strategies in the period game is to defect (D), i.e. for all $S_{-j} \in \{C, D\}^{P-1}$,*

$$D = \arg \max_{S_j \in \{C, D\}} V_j(S_j, S_{-j})$$

Assumption 3.3 *If any government defects in a given period the payoff to all other players in that period decreases, ceteris paribus.*

These assumptions yield an environment that is equivalent to a P -regional government RPD. In this P -government RPD environment, cooperation may be possible absent any agreement enforced by an external party if governments can commit to the agreed to punishment for defection and all governments care sufficiently about the future (β_j is close to 1 for all j). The following proposition 3.2 states an existence result: cooperation *can* be attained if all governments are sufficiently patient and agree and can commit to a sufficiently long number of periods of punishment under a trigger strategy.

Proposition 3.2 *There exists a T^* and a $0 < \beta < 1$ such that if $T \geq T^*$ and $\beta_j \geq \beta$ for all $j \in P$ the cooperative equilibrium can be achieved.²⁵*

²⁵**Proof.** Assumptions 3.2 and 3.3 imply that the lowest payoff that any group of governments can impose on another government is $V_j(D_{-j}, D_j)$. This is the minimax value. That is $(D_{-j}, D_j) = \arg \min_{S_{-j} \in \{C, D\}^{P-1}} \max_{S_j \in \{C, D\}} V_j(S_{-j}, S_j)$.

Assume each government agrees to the following: in the first period it will play C and in each subsequent period it will play C as long as all other governments played C in the preceding period. If one or more governments in the preceding period play D, then the government will play D for T periods.

Without loss of generality, examining the case of government j , its discounted payoff from defecting in period t and

That is, there exists an equilibrium in the P -government RPD game in which the Pareto optimal cooperative outcome can be achieved each period if the length of punishment for defection from playing the cooperative strategy is higher than some number of periods T^* and all governments value the future sufficiently, $\beta_j \geq \beta$ for some β sufficiently close to unity.

Corollary 3.1 emphasizes the limitation of this result.

Corollary 3.1 *There exists a $0 < \beta < 1$, such that if $\beta_j \leq \beta$ the dominant strategy for government j will always be to play D .*²⁶

the resulting T periods of defection by all other governments is,

$$\beta_j^t V_j(C_{-j}, D_j) + \beta_j^{t+1} \cdot V_j(D_{-j}, D_j) + \dots + \beta_j^{t+T} \cdot V_j(D_{-j}, D_j).$$

State j 's discounted payoff from cooperating in period t and the subsequent T periods that it would have been punished had it defected is,

$$\beta_j^t V_j(C_{-j}, C_j) + \beta_j^{t+1} \cdot V_j(C_{-j}, C_j) + \dots + \beta_j^{t+T} \cdot V_j(C_{-j}, C_j).$$

Therefore for defection not to have been advantageous, it must be the case that:

$$\begin{aligned} \beta_j^t V_j(C_{-j}, C_j) + \beta_j^{t+1} \cdot V_j(C_{-j}, C_j) + \dots + \beta_j^{t+T} \cdot V_j(C_{-j}, C_j) > \\ \beta_j^t V_j(C_{-j}, D_j) + \beta_j^{t+1} \cdot V_j(D_{-j}, D_j) + \dots + \beta_j^{t+T} \cdot V_j(D_{-j}, D_j), \end{aligned}$$

which can be simplified to the following condition,

$$\frac{1 - \beta_j^{T+1}}{1 - \beta_j} V_j(C_{-j}, C_j) - \frac{\beta_j - \beta_j^{T+1}}{1 - \beta_j} V_j(D_{-j}, D_j) > V_j(C_{-j}, D_j).$$

As $\beta_j \rightarrow 1$, not defecting is rational for government j when,

$$T [V_j(C_{-j}, C_j) - V_j(D_{-j}, D_j)] > V_j(C_{-j}, D_j) - V_j(C_{-j}, C_j).$$

By Assumption 3.1 $V_j(C_{-j}, C_j) - V_j(D_{-j}, D_j) > 0$ and by Assumption 3.2 $V_j(C_{-j}, D_j) - V_j(C_{-j}, C_j) \geq 0$. Therefore a time period T can always be found that will cause State j to not Defect, i.e. Cooperate. By letting $\beta_j \geq \beta$, where β is sufficiently close to 1, and by letting T^* be the maximum of the T periods that satisfies the above condition for each government j , there necessarily exists a $(T^*, \beta) \in \mathbb{N} \times (0, 1)$ such that if all $\beta_j \geq \beta$ and $T \geq T^*$ the governments cooperate. ■

²⁶**Proof.** Given that the other governments would punish a government for T periods after it defected even once, it would not be advantageous for it to defect if

$$\frac{1 - \beta_j^{T+1}}{1 - \beta_j} V_j(C_{-j}, C_j) - \frac{\beta_j - \beta_j^{T+1}}{1 - \beta_j} V_j(D_{-j}, D_j) > V_j(C_{-j}, D_j)$$

As $\beta_j \rightarrow 0$, the inequality approaches

$$V_j(C_{-j}, C_j) > V_j(C_{-j}, D_j)$$

which by Assumption 3.2 is never true. Thus government j will defect as β_j gets arbitrarily close to 0 regardless of the number of periods of punishment, T . ■

It implies that it is not the case that for all $0 < \beta < 1$, there exists a T such that the cooperative equilibrium can be reached. That is, it is not the case that a suitable T can always be found to induce cooperation among the governments even if they could commit to the punishment strategy. If the governments care little about future payoffs relative to payoffs today, their dominant strategy will always be to defect regardless of the length of punishment T . This is an unfortunate result given that benevolent regional governments do not determine the preferences over future versus current payoffs of the citizens that they are elected to represent, and non-benevolent regional government officials may have their own agenda that effectively reduces the value of β_j . Therefore, in some circumstances, cooperation among governments absent an agreement enforced by an external third party may not be possible even in a RPD environment.

Moreover, even if cooperation is possible given some length of punishment T for the trigger strategy, governments may not punish a defecting government for the full length of T , because they might have a strong incentive themselves to cooperate again before the T periods of punishment have passed. The would-be defecting government realizes this and thus believes the other governments will not act on their threats after a defection occurs, which will make it more likely to defect in the first place. Regional governments that would have cooperated know this and will be likely to refuse to enter an agreement. However, an agreement enforced by an external third party could allow the governments to overcome these obstacles to cooperation.

The Compact Solution Consider another possible way to induce cooperation: the regional governments enter into a compact. Such a compact could take two forms. The first depends on whether there is a suitable T for each government that if enforced would make defection in any one period irrational. If there is such a value for T , then the compact could be used to force all the participating governments to adhere to the punishment policy of defecting for T periods after a member government defects. The compact would commit the participating governments to the T periods of punishment, even if a government has a strong desire to begin cooperating before then. This would require the federal or state government to be able to force the signatory governments to adhere to the punishment laid out in the terms of the compact. Whether or not this is feasible would depend on the subject of the compact and the agreed to punishment for defection.

The second possibility, and the one studied in this paper, is for the terms of the compact to stipulate that a government will be liable for the damages of all the other governments in the compact if it deviates from the terms of the compact (defects). As explained in the legal review section, damages for compacts are based on damages for breach of contracts. The default measure of damages are “expectation damages” - a monetary award equivalent to the minimum amount necessary to put the breached parties in the position they expected they would have been in when the contract was formed, assuming governments had adhered to the compact’s terms.²⁷ However, as the Supreme Court discussed in the case of *Texas v. New Mexico*,²⁸ it may be the case that a regional government wants to breach its compactual obligations despite the fact that it knows it will be forced back into compliance in some future period. In this infinitely repeated prisoners’ dilemma environment, a rational regional government j will breach the terms of the compact if the benefits from doing so, B_j , exceed the liability it would incur Δ_j . Thus it may be rational for a government to breach a compact for a few periods even if it knows the court will force it back into compliance and order it to pay damages.

The court can influence the value of Δ_j which will affect the cost to regional government j for breaching the compact as well as the amount of compensation that the other regional governments receive for the breach. The Court can do this through controlling the period in which it begins awarding interest on past damages. In the case considered in the interstate compact legal review section, the Court began awarding interest from the time the complaint was filed by the other state, instead of from the time the breaching state knew or should have known it was in breach of its compactual obligations, or from the time the breach actually occurred. This decision made it less costly for the breaching state to breach the compact and it also inadequately compensated the breached against state for its losses. The Supreme Court and state courts, or alternatively by state statute, should announce at their next opportunity that interest will accrue from the time a compact is breached in all future cases. This will increase the cost associated with breaching a compact, deterring regional governments from breaching their compactual obligations. It will also more completely compensate breached against governments.

²⁷See section 2.1.4.3, p. 11.

²⁸See section 2.1.4.3.

Another alternative is that regional governments, as relatively sophisticated parties, could be permitted to determine how damages are calculated even if that means that the the total damage award would exceed the default expectation damages amount under common law contract principles. As noted in the legal review section, when there is a large degree of uncertainty over the amount of damages, courts hesitate to award damages in an any amount. This lessens the expected liability, Δ_j , from a compactual breach making a state more likely to breach the compact, and also completely precludes the possibility of an efficient breach by the breached against state(s) because they can never recover their true losses. Allowing unbounded liquidated damages would allow states to mutually determine *ex ante* how to deal with such uncertainties rather than granting such authority to courts *ex post*.

Conclusion In a prisoners' dilemma or Tragedy of the Commons type environment, regional governments that are unable to reach the Pareto superior outcome even when they interact with each other repeatedly either due to being impatient or lacking the ability to commit to punish a defecting government, can obtain the social welfare maximizing result by entering into a compact that requires cooperation on the part of all governments. This compact will be enforced by the federal or state government in the event of a breach through the awarding of damages and the imposition of an injunction to order the breaching government back into compliance. Because the damages for breach of a compact will likely be calculated based on the expectation damages measure, it is important to analyze the incentives that determine whether a signatory government will breach the compact by examining its benefit and liability from doing so. If such an analysis concludes that damages from a breach will be difficult to calculate because of large uncertainties, then the parties should be able to contract freely for liquidated damages that may exceed the expectation damages amount. Negotiations over a liquidated damages scheme would also likely be intertwined with negotiations over the ability of a regional government to withdraw from or terminate its compactual obligations. This is because unlike private parties, regional governments will likely be ordered to adhere to their compactual obligations in the future. Regional governments should determine *ex ante* how to deal with a regional government that does not meet its obligations or wishes to withdraw from the compact.

4 Government Commitment

Kydland and Prescott (1977) showed that if consumers and firms are rational when forming their expectations about future government policies, changes in government policy in the future will be anticipated by consumers and firms today negating the welfare maximizing benefits of the “welfare maximizing” policy choice. Selecting an optimal policy and having some mechanism commit the government(s) to the policy indefinitely is welfare maximizing, because consumers and firms expect that the government policy will be in effect in the future and will thus make the choices that the policymaker sought when announcing the policy instrument in the first instance. This allows the policymaker to correctly evaluate the benefits and costs of each policy and select the optimal one.

The concept of the welfare losses and gains to be had from the adoption of a welfare maximizing policy, and commitment to it, can best be illustrated by an example. Specifically, a slight modification of one of the examples provided in Kydland and Prescott (1977). This modified example is motivated by the substantial property destruction that occurred during “The Great Flood of 1993.” In 1993, the Mississippi River flooded significant portions of land along its course in the midwest. The destruction from the flood was estimated at around \$20 billion. Entire towns were flooded, fertile farmland was destroyed, and 50,000 homes were either swept away by the currents or severely damaged by the standing water (Johnson et al. 2004). While the destruction was extensive and resulted from a realization of low probability events, it illustrated the unavoidable problems of property ownership along the Mississippi flood plain.

Suppose that a group of states along the Mississippi River decide that the government costs associated with the periodic flooding of homes and businesses in certain regions near the river could be minimized by interstate cooperation. Professional response teams might be formed and obligations for their perpetual funding developed. The response teams would be comprised of flood plain experts and relief workers who could be deployed to the affected areas in the event of a flood. Further, the state governments, concerned about the total cost of the significant property damage and the heightened risks associated with large populations living in the flood plain, could enact a set of uniform laws stating that if consumers or businesses build structures in an affected

area, they will not receive any state financial aid when the river floods and destroys their property.

A policy such as this will prevent rational citizens from building structures in the area only if the citizens expect the state to adhere to the stated policy in the future. However, if citizens expect state government to provide assistance to them if they build in the flood plain and then face flood losses, they will go ahead and build and the suboptimal outcome will occur - citizens will build homes and businesses in the flood plain.

Now suppose that instead the states enter into a hypothetical “Flood Plain Compact.” The terms of the compact are exceedingly straightforward: (1) each signatory state shares the cost of funding the response teams according to a cost-sharing scheme that induces each state to desire the same amount of aggregate investment in the program, and (2) signatory states are prohibited from providing state assistance to those residents and firms who choose to build new structures in the Mississippi’s designated flood plain no-build zone.

The enactment of the compact forces each state’s citizens and firms to realize that their state is bound by the terms of the compact. Each signatory state knows that it must fund the response teams at the amount it agreed to under the terms of the compact. If it does not, it knows that the federal government will force it into compliance and mandate that it pay damages for the breach of its obligations. Citizens and firms know that their state cannot provide them assistance if they build in the plain and a flood subsequently damages or destroys their property. Therefore, they do not build homes or businesses in the flood plain.

This example illustrates how compacts are not merely a tool for the implementation of a regional policy, but also a tool with a commitment technology that prohibits regional governments from wavering from that policy in the future. This, in particular, makes compacts more than a system of uniform laws adopted by several regional governments, but a mechanism that commits the governments to the desired policy, enhancing its welfare maximizing potential.

5 Compacts That Internalize Productivity Spillovers

While prior to 1921 compacts were primarily used to settle boundary disputes, that year the states of New York and New Jersey entered into the first modern regulatory compact which was de-

signed to provide for “the common harbor interests of New York and New Jersey.” The compact established what is now referred to as the Port Authority of New York and New Jersey.

Due to the close proximity of the New York and New Jersey ports, there are significant spillover effects to New Jersey from investment by New York and to New York by investment from New Jersey. Absent any coordination, each would be taking the investment decisions of the other as a given, and then choosing its optimal investment amount. While the investment alone would lead to increases in productivity for both regions, greater increases in productivity could be realized by the coordination of investment in both regions. That is, if the spillover effects between the jurisdictions could be internalized, both regions could be made strictly better off.

This potential benefit from coordination was recognized by the states and was the impetus for the compact. In the preamble to the compact both states acknowledged this by reciting the following reasons for entering into the agreement: they shared a common resource - the port; coordination was preferred to unilateral action; investment in the infrastructure of the port and surrounding area would lead to “great economies;” and this investment would require significant resources on the part of both states (New Jersey Statutes, Title 32, Chapter 1, Article 1).

This section addresses the ability of regional governments to coordinate their activity so as to internalize beneficial productivity spillovers that cross jurisdictional boundaries. These spillovers affect households’ welfare indirectly through the productivity effects on the region’s inputs of production such as capital and labor. This paper adopts the view that in certain circumstances regional governments can invest in “public capital” that benefits the region’s economy. For instance, a state may invest in roads, bridges, airports, and seaports that reduce the resource costs associated with the transport of capital from one location to another, or make it less costly for laborer’s to commute to work thereby increasing the geographical radius of which they can be employed.²⁹

The following model analyzes two mechanisms for public capital investment by the regional governments. They can tax their representative household and invest in their region’s public capital stock, taking as given the investment decisions of the other governments, or the regions can enter into a compact that can coordinate their spending on public capital investment. Both the re-

²⁹Such labor search costs have recently been recognized as an important aspect of economic development by the Nobel Committee when it awarded the 2010 Economics Memorial Prize to Diamond, Mortensen and Pissarides.

gional governments' and compact authority's objective is to maximize the welfare or utility of the representative household in their particular region or the welfare of all compact signatories' representative households according to the terms of the compact. The terms of the compact are modeled as a social welfare functional that takes as inputs the net discounted utility of all the signatories' regional government's representative households.

5.1 Model

A group of P regional governments is denoted by $\mathcal{P} = \{1, \dots, P\}$. The productivity of their private capital and labor, that is, their total factor productivity (TFP), is affected by their region's public capital as well as the spillover effects from the other $P - 1$ regions' public capital. The degree by which each region i 's public capital benefits, or spills over into, region j 's public capital is given by $\omega_{j,i}$, where $\omega_{j,j} = 1$ by definition. The public capital in each region depreciates at the uniform rate δ_h and is most easily thought of as consisting of public infrastructure or essential government services.

Each region has a representative household that lives forever and whose preferences over consumption in any period are represented by the utility function $u^j(\cdot)$. The household discounts next period utility at the rate β and is endowed with an amount of private capital in period 0, $k_{j,0}$.

The household owns all shares of the representative firm's stock in its region. All profits from the firm are remitted to the firm's shareholder - the household. The household accumulates private capital by purchasing an investment good on an aggregate market that consists of all the regions. Private capital depreciates at the uniform rate δ_k and is rented to the region's firm at the regional rental rate $r_{j,t}$. The household receives wage income at the regional market wage rate $w_{j,t}$. The price of the consumption and investment goods on the aggregate market in period t is p_t .

Each region's representative firm rents capital from the regional rental market and in conjunction with the inelastically supplied labor from its own representative household produces output which it sells on the aggregate market at the unit price p_t .

5.1.1 Representative Household's Problem

The objective of the household is to maximize its net discounted future utility stream subject to its budget and capital investment constraints. Each period, taking as given the regional, $(r_{j,t}, w_{j,t})$, and aggregate market, (p_t) , prices, the household purchases a consumption good $c_{j,t}^h$, that is taxed at the rate τ_j , and it also purchases an amount of private capital investment $x_{j,t}$. The consumption and investment goods are purchased on the aggregate market consisting of all regions.

The household's purchases of its consumption and investment goods are constrained by the income it receives each period from the return on its accumulated private capital, the amount of labor it supplies in the regional labor market, and the dividends paid by the region's firm. The unit return the household receives on its accumulated private capital stock, $k_{j,t}^h$, is $r_{j,t}$. The household supplies labor $l_{j,t}$ up to an amount l_j in the regional labor market and receives in return payment at the wage rate $w_{j,t}$. Since the household is the sole shareholder of the region's firm, it receives all, if any, of the profits each period, $\pi_{j,t}$. The amount of private capital next period, $k_{j,t+1}^h$, is the sum of the non-depreciated private capital this period $(1 - \delta_k)k_{j,t}^h$ plus the amount of investment $x_{j,t}$.

Definition of Household's Problem Given the regional sales tax rate τ_j and regional $(r_{j,t}, w_{j,t})_{t=0}^{\infty}$ and aggregate market prices $(p_t)_{t=0}^{\infty}$, each household $j \in \mathcal{P}$ chooses $(c_{j,t}^h, x_{j,t}^h, k_{j,t+1}^h, l_{j,t}^h)_{t=0}^{\infty}$ to solve

$$\begin{aligned} & \max_{(c_{j,t}^h, x_{j,t}^h, k_{j,t+1}^h, l_{j,t}^h)_{t=0}^{\infty}} \sum_{t=0}^{\infty} \beta^t u^j(c_{j,t}^h) \\ \text{s. to } & (1 + \tau_j)p_t c_{j,t}^h + p_t x_{j,t}^h \leq r_{j,t} k_{j,t}^h + w_{j,t} l_{j,t}^h + \pi_{j,t} \\ & k_{j,t+1}^h \leq (1 - \delta_k)k_{j,t}^h + x_{j,t}^h \\ & l_{j,t}^h \leq l_j \\ & c_{j,t}^h, x_{j,t}^h, k_{j,t+1}^h, l_{j,t}^h \geq 0 \\ & l_j = 1 \\ & k_{j,0}^h \text{ given.} \end{aligned}$$

5.1.2 Representative Firm's Problem

The objective of each region's representative firm is to maximize its profit each period. Given the aggregate market price for its output, p_t , and the regional prices of capital and labor, $(r_{j,t}, w_{j,t})$, the firm chooses the amount of private capital $k_{j,t}^f$ and the amount of labor $l_{j,t}^f$ to use in the production of its output $y_{j,t}$. The firm receives an increase in the productivity of its inputs, that is an increase in TFP, from the amount of investment in public capital by the regional government, $h_{j,t}$ as well as the spillover productivity effects from the other regions' public capital investments $\sum_{i \in \mathcal{P} - \{j\}} \omega_{j,i} h_{j,t}$.

Definition of Firm's Problem Each period given regional $(r_{j,t}, w_{j,t})$ and aggregate market prices (p_t) and the effective amount of the public capital in the region $h'_{j,t}$, each regional firm $j \in \mathcal{P}$ chooses $y_{j,t}^f$, $k_{j,t}^f$, and $l_{j,t}^f$ to solve

$$\begin{aligned} \max_{y_{j,t}^f, k_{j,t}^f, l_{j,t}^f} \quad & \pi_{j,t} \equiv p_t y_{j,t}^f - r_{j,t} k_{j,t}^f - w_{j,t} l_{j,t}^f \\ \text{s. to} \quad & y_{j,t}^f = F^j(h'_{j,t}, k_{j,t}^f, l_{j,t}^f) \\ & y_{j,t}^f, k_{j,t}^f, l_{j,t}^f \geq 0 \end{aligned}$$

where $h'_{j,t} = \sum_{i=1}^P \omega_{j,i} h_{j,t}$.

5.1.3 Balanced Regional Government Budget

The regional government runs a balanced budget each period. That is the cost of investment in the region's public capital stock $p_t i_{j,t}$ is exactly equal to the tax revenue from the government levying a consumption tax on the household $\tau_j p_t c_{j,t}$. The region's public capital stock next period is the sum of the non-depreciated amount of public capital this period, $(1 - \delta_h) h_{j,t}$ plus the amount of period investment $i_{j,t}$.

Definition of Balanced Regional Government Budget For all regional governments $j \in \mathcal{P}$,

$$\begin{aligned} p_t i_{j,t} &= \tau_j p_t c_{j,t} \\ h_{j,t+1} &= (1 - \delta_h) h_{j,t} + i_{j,t}. \end{aligned}$$

5.1.4 Market Clearing

The output from all of the regional firms, $\sum_{j \in \mathcal{P}} y_{j,t}^f$, is sold on the aggregate market. This supply of output is equal to the amount of consumption and investment goods demanded by all of the regions' households, $\sum_{j \in \mathcal{P}} c_{j,t}^h + \sum_{j \in \mathcal{P}} x_{j,t}^h$, plus the amount of investment goods for all of the regions' public capital stocks by their respective governments, $\sum_{j \in \mathcal{P}} i_{j,t}$.

The amount of capital demanded by each region's firm, $k_{j,t}^f$, is equal to the amount supplied by that region's household, $k_{j,t}^h$. Similarly, the amount of labor demanded by each region's firm, $l_{j,t}$, is equal to the amount supplied by that region's household, $l_{j,t}^f$.

Definition of Market Clearing

$$\begin{aligned} \sum_{j \in \mathcal{P}} y_{j,t}^f &= \sum_{j \in \mathcal{P}} c_{j,t}^h + \sum_{j \in \mathcal{P}} x_{j,t}^h + \sum_{j \in \mathcal{P}} i_{j,t} \\ k_{j,t}^f &= k_{j,t}^h \quad \forall j \in \mathcal{P} \\ l_{j,t}^f &= l_{j,t}^h \quad \forall j \in \mathcal{P}. \end{aligned}$$

5.1.5 Assumptions

Each region's household experiences diminishing marginal utility of consumption.³⁰ Second, there is diminishing marginal productivity of the inputs of production.³¹ Third, regional production is homogenous of degree one in private and public capital.³² Fourth, there will be some non-zero amount of each production input used by each region's representative firm.³³

It is further assumed that all regions are on a balanced growth path in equilibrium³⁴ and that the necessary interior first order conditions for each regional economy, $j \in \mathcal{P}$, hold.

Result 5.1 *The ad-valorem consumption tax is equivalent to a lump-sum tax on the household.*³⁵

Given Result 5.1, and for the ease of exposition and calculation, the sales tax will be replaced

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Assumption 5.1 $w^j : \mathbb{R}_+ \rightarrow \mathbb{R}_+$ is strictly concave.

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Assumption 5.2 $F^j : \mathbb{R}_+^3 \rightarrow \mathbb{R}$ is concave.

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Assumption 5.3 $F^j(h, k, l)$ is homogenous of degree one in (h, k) .

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Assumption 5.4 $\lim_{h \rightarrow 0} F_h^j(h, k, l) = \infty$ and $\lim_{h \rightarrow \infty} F_h^j(h, k, l) = 0$.

Assumption 5.5 $\lim_{k \rightarrow 0} F_k^j(h, k, l) = \infty$ and $\lim_{k \rightarrow \infty} F_k^j(h, k, l) = 0$.

Assumption 5.6 $\lim_{l \rightarrow 0} F_l^j(h, k, l) = \infty$ and $\lim_{l \rightarrow \infty} F_l^j(h, k, l) = 0$.

³⁴That is, for each region $j \in \mathcal{P}$ in equilibrium there exists a $g_j > 0$ such that $\frac{c_{j,t+1}}{c_{j,t}} = g_j$, $\frac{x_{j,t+1}}{x_{j,t}} = g_j$, $\frac{k_{j,t+1}}{k_{j,t}} = g_j$, and $\frac{h_{j,t+1}}{h_{j,t}} = g_j$ for all t .

³⁵**Proof.** The first order necessary conditions for the household's problem require

$$\frac{w_c^j(c_{j,t}^h)}{\beta w_c^j(c_{j,t+1}^h)} = r_{j,t+1} + (1 - \delta_k).$$

This is also the condition that is required by the household's problem where the sales tax is replaced with the lump-sum tax. Further, on the balanced growth path, the household's budget constraint and law of capital accumulation remain unchanged and the government budget and resource constraints are also unchanged when $p_t T_{j,t}$ is substituted for $\tau_j p_t c_{j,t}^h$. The firms problem and the market clearing conditions are unaffected as well. Therefore, a lump-sum tax that is defined to be $p_t T_{j,t} = \tau_j p_t c_{j,t}^h$ is equivalent to the consumption tax on a balanced growth path. ■

with a lump-sum tax, T_j from this point forward. It should be noted, however, that any of the results obtained also hold when the $\tau_j p_t c_{j,t}$ is substituted for $T_{j,t}$.

Result 5.2 *Each region's household will purchase an amount of goods from the aggregate market equal to the amount of goods that the region's firm produces and sells on the aggregate market.³⁶ That is,*

$$c_{j,t}^h + x_{j,t}^h + T_{j,t} = F^j(h'_{j,t}, k_{j,t}^h, l_{j,t}^h).$$

Thus, while each region participates in the aggregate market for consumption and investment goods, the regional economies may be modeled as though the household purchases only those goods which are produced in its region. This paper will use this result to simplify the analysis by writing each region's problem as though it is a closed economy, except for the increase in productivity it receives from the spillovers from the other regions' public capital stocks.

Each regional government that has not ceded its decision making sovereignty to a compact authority is assumed to be benevolent. That is, its objective is to maximize the net discounted utility of its representative household, $\sum_{t=0}^{\infty} \beta^t u^j(c_{j,t})$. Each is also assumed to have complete

³⁶**Proof.** The household's period t budget constraint is

$$(1 + \tau_j) p_t c_{j,t}^h + p_t x_{j,t}^h \leq r_{j,t} k_{j,t}^h + w_{j,t} l_{j,t}^h + \pi_{j,t}.$$

Given Result 5.1 and Assumption 5.1, the household budget constraint can be rewritten as

$$p_t c_{j,t}^h + p_t x_{j,t}^h = r_{j,t} k_{j,t}^h + w_{j,t} l_{j,t}^h + \pi_{j,t} - p_t T_{j,t}.$$

Given the definition of $\pi_{j,t}$ from the firm's problem,

$$\begin{aligned} \pi_{j,t} &= p_t y_{j,t}^f - r_{j,t} k_{j,t}^f - w_{j,t} l_{j,t}^f \\ \text{where } y_{j,t}^f &= F^j(h'_{j,t}, k_{j,t}^f, l_{j,t}^f), \end{aligned}$$

the firm's budget constraint can be written as

$$r_{j,t} k_{j,t}^f + w_{j,t} l_{j,t}^f + \pi_{j,t} = p_t F^j(h'_{j,t}, k_{j,t}^f, l_{j,t}^f).$$

And from the market clearing condition $k_{j,t}^h = k_{j,t}^f$ and $l_{j,t}^h = l_{j,t}^f$. Therefore,

$$c_{j,t}^h + x_{j,t}^h + T_{j,t} = F^j(h'_{j,t}, k_{j,t}^h, l_{j,t}^h).$$

■

and perfect information about the representative household and firm in its region. That is, each knows, given the tax amounts, how each sector of the regional economy will respond in terms of making allocative decisions. Formally, this means that each regional government knows that through its choice of taxes it implicitly selects the equilibrium allocation for its region according to the characterization in Result 5.3 below.

Result 5.3 *Letting $f^j(h, k) = F^j(h, k, 1)$ and given $((T_{i,t})_{t=0}^{\infty})_{i \in \mathcal{P}}$, each region's, for $j \in \mathcal{P}$, equilibrium allocation is characterized by*

$$\begin{aligned} \frac{u_c^j(c_{j,t})}{\beta u_c^j(c_{j,t+1})} &= f_k^j(h'_{j,t+1}, k_{j,t+1}) + (1 - \delta_k) \\ c_{j,t} + x_{j,t} + T_{j,t} &= f^j(h'_{j,t}, k_{j,t}) \\ k_{j,t+1} &= (1 - \delta_k)k_{j,t} + x_{j,t} \\ h_{q,t+1} &= (1 - \delta_h)h_{q,t} + T_{q,t} \quad \forall q \in \mathcal{P} \\ k_{j,0} &\text{ given} \\ h_{j,0} &\text{ given.} \end{aligned}$$

where $h'_{j,t} = \sum_{i=1}^P \omega_{j,i} h_{j,t}$.

5.2 Non-Cooperative v. Cooperative Equilibria

There are two possible ways in which the regions can choose the optimal tax amount each period: (1) the regions can either make decisions without cooperating with the other regions, or (2) the regions to enter into a compact that details an investment schedule for all signatory regions.

5.2.1 Non-Cooperative Equilibrium

In the non-cooperative equilibrium, each period regions choose the tax rate that maximizes their welfare given that they know, based on the observable decisions of the other regions, what the spillover effects of the other regions will be next period. This may be criticized as a strong assumption. However, it captures the assumption of non-coordination among regional governments

in their investment decisions.

Region j 's Government's Problem Each government $j \in \mathcal{P}$ takes as given the investments of the other $P - 1$ governments, $((T_{i,t})_{t=0}^{\infty})_{i \in \mathcal{P} - \{j\}}$ and thus the value of their public capital stocks $((h_{i,t})_{t=0}^{\infty})_{i \in \mathcal{P} - \{j\}}$. In each period t , regional government j chooses its optimal value of public capital in period $t + 1$, $h_{j,t+1}$, so as to satisfy

$$\max_{(T_{j,t}, h_{j,t+1}, c_{j,t}, x_{j,t}, k_{j,t+1})_{t=0}^{\infty}} \sum_{t=0}^{\infty} \beta^t u^j(c_{j,t}) \quad (1)$$

$$\text{s. to } \frac{u_c^j(c_{j,t})}{\beta u_c^j(c_{j,t+1})} = f_k^j(h'_{j,t+1}, k_{j,t+1}) + (1 - \delta_k) \quad (2)$$

$$c_{j,t} + x_{j,t} + T_{j,t} = f^j(h'_{j,t}, k_{j,t}) \quad (3)$$

$$k_{j,t+1} = (1 - \delta_k)k_{j,t} + x_{j,t} \quad (4)$$

$$h_{q,t+1} = (1 - \delta_h)h_{q,t} + T_{q,t} \quad \forall q \in \mathcal{P} \quad (5)$$

$$c_{j,t}, k_{j,t+1}, x_{j,t} \geq 0 \quad (6)$$

$$k_{j,0} \text{ given} \quad (7)$$

$$T_{q,t} \text{ given} \quad \forall q \in \mathcal{P} - \{j\} \quad (8)$$

$$h_{q,0} \text{ given} \quad \forall q \in \mathcal{P}. \quad (9)$$

where $h'_{j,t} = \sum_{i=1}^P \omega_{j,i} h_{j,t}$.

Definition of Non-Cooperative Equilibrium A Non-Cooperative equilibrium is a set of regions \mathcal{P} , and for each region $j \in \mathcal{P}$ an allocation $(c_{j,t}, x_{j,t}, k_{j,t+1}, h_{j,t})_{t=0}^{\infty}$ and a system of taxes $(T_{j,t})_{t=0}^{\infty}$ that satisfy Region j 's Government's Problem.

Result 5.4 Noting that $\omega_{j,j} = 1$ by definition, the regional government's problem, given $((T_{i,t})_{t=0}^{\infty})_{i \in \mathcal{P} - \{j\}}$,

is characterized by

$$\begin{aligned}
\frac{u_c^j(c_{j,t})}{\beta u_c^j(c_{j,t+1})} &= f_k^j \left(\left(h_{j,t+1} + \sum_{i \in P - \{j\}} \omega_{j,i} h_{i,t+1} \right), k_{j,t+1} \right) + (1 - \delta_k) \\
\frac{u_h^j(c_{j,t})}{\beta u_h^j(c_{j,t+1})} &= f_h^j \left(\left(h_{j,t+1} + \sum_{i \in P - \{j\}} \omega_{j,i} h_{i,t+1} \right), k_{j,t+1} \right) + (1 - \delta_h) \\
c_{j,t} + x_{j,t} + T_{j,t} &= f^j \left(\left(h_{j,t+1} + \sum_{i \in P - \{j\}} \omega_{j,i} h_{i,t+1} \right), k_{j,t} \right) \\
k_{j,t+1} &= (1 - \delta_k) k_{j,t} + x_{j,t} \\
h_{q,t+1} &= (1 - \delta_h) h_{q,t} + T_{q,t} && \forall q \in P \\
k_{j,0} &\text{ given} \\
h_{q,0} &\text{ given} && \forall q \in P.
\end{aligned}$$

5.2.2 Compact Equilibrium

The other option is for regional governments to enter into a compact where each agrees to a prescribed level of investment either by the terms of the compact, or according to investment decisions made by an administrative agency created pursuant to the compact. The compact would specify the tax rate at which consumption should be taxed in each region with the proceeds to be invested in that region's public capital stock. Unlike the non-cooperative equilibrium where regions make decisions individually taking as given the period investment decisions of the other regions, this option would internalize the productivity spillovers of each region's public capital investments into the others.³⁷

To analyze this environment, a few assumptions must be made. Assume that there is a subset of regions $S \subset \mathcal{P}$ that enter into a compact. Each affected region that is not a member of the compact never engages in any public capital investment (i.e., $h_{j,t} = 0$ for all t and for all $j \in \mathcal{P} - S$). The compact authority's objective is to maximize $\mathcal{U} : \mathbb{R}^S \rightarrow \mathbb{R}$, the "terms of the compact," which is a

³⁷For purposes of this analysis, it is implicitly assumed that the regions cannot renege on their compactual obligations.

strictly increasing function that takes as its inputs the net discounted period 0 utility of each region that is a signatory to the compact, $j \in S$.

The compact authority has the same information available to it that the signatory regional governments possess - complete and perfect information about the representative household and firm in each of the signatory regions. Formally, this means that the compact authority knows that through its choice of taxes it implicitly selects the equilibrium allocation for each signatory region according to the characterization in Result 5.3.

Definition of Compact Authority's Problem The compact authority's problem is to choose taxes $((T_{j,t})_{t=0}^{\infty})_{j \in S}$ and thus $((h_{j,t+1}, c_{j,t}, x_{j,t}, k_{j,t+1})_{t=0}^{\infty})_{j \in S}$, so as to solve,

$$\max_{((T_{j,t}, h_{j,t+1}, c_{j,t}, x_{j,t}, k_{j,t+1})_{t=0}^{\infty})_{j \in S}} \mathcal{U}((\sum_{t=0}^{\infty} \beta^t u^j(c_{j,t}))_{j \in S}) \quad (10)$$

$$\text{s. to} \quad \frac{u_c^j(c_{j,t})}{\beta u_c^j(c_{j,t+1})} = f_k^j(h'_{j,t+1}, k_{j,t+1}) + (1 - \delta_k) \quad (11)$$

$$c_{j,t} + x_{j,t} + T_{j,t} = f^j(h'_{j,t}, k_{j,t}) \quad (12)$$

$$k_{j,t+1} = (1 - \delta_k)k_{j,t} + x_{j,t} \quad (13)$$

$$h_{j,t+1} \leq (1 - \delta_h)h_{j,t} + T_{j,t} \quad (14)$$

$$c_{j,t}, k_{j,t+1}, x_{j,t} \geq 0 \quad (15)$$

$$k_{j,0} \text{ given} \quad (16)$$

$$h_{j,0} \text{ given.} \quad (17)$$

where $h'_{j,t} = \sum_{i=1}^P \omega_{j,i} h_{j,t}$.

5.3 Non-Cooperative Equilibrium v. Compact Equilibrium

Since the objective of this paper is not to empirically estimate the specific benefits of a particular compact on a given region, but rather to analyze the general effects of a compact on the growth rate of a regional economy relative to a non-cooperative agreement, this subsection assumes that

all regions are identical, so that general results can be proved.

5.3.1 Symmetric Environment

In a Symmetric Environment all regions have identical preferences $u^l(c) = u^m(c)$, identical production technologies $f^l(h, k) = f^m(h, k)$, identical initial endowments of public and private capital $h_{l,0} = h_{m,0}$ and $k_{l,0} = k_{m,0}$, and identical productivity spillovers which are normalized to unity $\omega_{j,i} = 1$ for all $l, m \in \mathcal{P}$.

It is further assumed that since all regions are identical, that in any compact equilibrium the terms of the compact are such that all compact regions will be taxed the same amount by the compact authority each period, that is, $T_{l,t} = T_{m,t}$ for all periods t and for all $l, m \in S$.

Proposition 5.1 *In a Symmetric Non-Cooperative Equilibrium, all compact regions' $j \in \mathcal{P}$ equi-*

librium allocations are characterized by the following system of equations,³⁸

$$\frac{u_c(c_t)}{\beta u_c(c_{t+1})} = f_k(P h_{t+1}, k_{t+1}) + (1 - \delta_k)$$

$$\frac{u_c(c_t)}{\beta u_c(c_{t+1})} = f_h(P h_{t+1}, k_{t+1}) + (1 - \delta_h)$$

$$c_t + x_t + T_t = f(P h_t, k_t)$$

$$k_{t+1} = (1 - \delta_k)k_t + x_t$$

$$h_{t+1} = (1 - \delta_h)h_t + T_t$$

$$k_0 \text{ given}$$

$$h_0 \text{ given.}$$

Proposition 5.2 *In a Symmetric Compact Equilibrium, all compact regions' $j \in S$ equilibrium*

³⁸**Proof.** The above assumptions along with the definition of a Non-Cooperative Equilibrium guarantee that constraints 3 through 9 in Region j 's Problem are equivalent. Further, since $u_j(\cdot)$ is a strictly increasing function and all region's problems are equivalent, the Region j 's Problem can be written equivalently as

$$\begin{aligned} & \max_{(T_t, h_{t+1}, c_t, x_t, k_{t+1})_{t=0}^{\infty}} \sum_{t=0}^{\infty} \beta^t u^j(c_{j,t}) \\ \text{s. to } & \frac{u_c(c_t)}{\beta u_c(c_{t+1})} = f_k(h_{t+1} + h'_{t+1}, k_{t+1}) + (1 - \delta_k) \\ & c_t + x_t + T_t = f(h_t + h'_t, k_t) \\ & k_{t+1} = (1 - \delta_k)k_t + x_t \\ & h_{t+1} \leq (1 - \delta_h)h_t + T_t \\ & c_t, k_{t+1}, x_t \geq 0 \\ & h'_t \text{ given} \quad \forall t \\ & k_0 \text{ given} \\ & h_0 \text{ given.} \end{aligned}$$

where $h'_t = (P - 1)h_t$. The first order necessary conditions and the resource constraints for this problem give the characterization. ■

allocations are characterized by the following system of equations,³⁹

$$\begin{aligned}\frac{u_c(c_t)}{\beta u_c(c_{t+1})} &= f_k(Sh_{t+1}, k_{t+1}) + (1 - \delta_k) \\ \frac{u_c(c_t)}{\beta u_c(c_{t+1})} &= S f_h(Sh_{t+1}, k_{t+1}) + (1 - \delta_h) \\ c_t + x_t + T_t &= f(Sh_t, k_t) \\ k_{t+1} &= (1 - \delta_k)k_t + x_t \\ h_{t+1} &= (1 - \delta_h)h_t + T_t \\ k_0 &\text{ given} \\ h_0 &\text{ given.}\end{aligned}$$

5.3.2 Results

Proposition 5.3 *The growth rate of regional governments in a Symmetric Compact Equilibrium, where $S \subset P$ with $S > 1$, is greater along a balanced growth path than any region in a Symmetric Non-Cooperative Equilibrium.*⁴⁰

Corollary 5.1 *As the number of signatory regions, S , increases all regions grow at a faster rate.*

³⁹**Proof.** The above assumptions along with the definition of a Symmetric Compact Equilibrium guarantee that constraints 12 through 17 in the Compact Authority's Problem are equivalent. Further since \mathcal{U} is a strictly increasing function and all regions' problems are equivalent, the Compact Authority's Problem can be written equivalently as

$$\begin{aligned}\max_{(T_t, h_{t+1}, c_t, x_t, k_{t+1})_{t=0}^{\infty}} & \sum_{t=0}^{\infty} \beta^t u^j(c_{j,t}) \\ \text{s. to} & \frac{u_c(c_t)}{\beta u_c(c_{t+1})} = f_k(Sh_{t+1}, k_{t+1}) + (1 - \delta_k) \\ & c_t + x_t + T_t = f(Sh_t, k_t) \\ & k_{t+1} = (1 - \delta_k)k_t + x_t \\ & h_{t+1} \leq (1 - \delta_h)h_t + T_t \\ & c_t, k_{t+1}, x_t \geq 0 \\ & k_0 \text{ given} \\ & h_0 \text{ given.}\end{aligned}$$

The first order necessary conditions and the resource constraints for this problem give the characterization. ■

⁴⁰**Proof.** The "effective" public to private capital ratio, $\frac{Sh_{t+1}}{k_{t+1}}$ for the Symmetric Compact Equilibrium along the balanced growth path is given by

$$f_k(Sh_{t+1}, k_{t+1}) - S f_h(Sh_{t+1}, k_{t+1}) = \delta_k - \delta_h.$$

Proposition 5.4 *If $S = \mathcal{P}$, the regions are strictly better off by entering into a compact than if they had not.*

5.4 Conclusions: Compacts Internalizing Productivity Spillovers

The models in this section demonstrate that the compact can be a useful mechanism for regions to coordinate their investment in public capital that has spillover effects into other regions. As Proposition 5.3 states, the compact leads the regions to a strictly higher rate of growth than if each had acted independently. Further, this higher rate of growth leads to increases in welfare for all of the signatory regional economies as proven by Proposition 5.4. Thus interregional coordination through a coordinating compact can be a powerful tool to achieve greater economic growth and

Let this ratio be denoted by κ_{Com} . Due to the fact that f is homogenous of degree one, the above condition can be rewritten as

$$f_k(\kappa_{\text{Com}}, 1) - S f_h(\kappa_{\text{Com}}, 1) = \delta_k - \delta_h.$$

The growth rate for the regional economies in a Symmetric Compact Equilibrium can be found from the following necessary first order condition

$$\frac{u_c(c_t)}{\beta u_c(c_{t+1})} = f_k(\kappa_{\text{Com}}, 1) + (1 - \delta_k)$$

Similarly the capital to labor ratio Ph/k for the Symmetric Non-Cooperative Equilibrium along the balanced growth path is given by

$$f_k(Ph_{t+1}, k_{t+1}) - f_h(Ph_{t+1}, k_{t+1}) = \delta_k - \delta_h.$$

Let this ratio be denoted by κ_{NA} . Due to the fact that f is homogenous of degree one, the above condition can be rewritten as

$$f_k(\kappa_{\text{NA}}, 1) - f_h(\kappa_{\text{NA}}, 1) = \delta_k - \delta_h.$$

The growth rate of the regional economies in a Symmetric Non-Cooperative Equilibrium can be found from the following necessary first order condition

$$\frac{u_c(c_t)}{\beta u_c(c_{t+1})} = f_k(\kappa_{\text{NA}}, 1) + (1 - \delta_k)$$

Thus given the strict concavity of u and f , if $\kappa_{\text{Com}} > \kappa_{\text{NA}}$, the growth rate will be higher under the Symmetric Compact Equilibrium. Given that f is strictly concave, it is straightforward to see that

$$\begin{aligned} f_k(\kappa_{\text{Com}}, 1) - S f_h(\kappa_{\text{Com}}, 1) &= \delta_k - \delta_h \\ \text{and } f_k(\kappa_{\text{NA}}, 1) - f_h(\kappa_{\text{NA}}, 1) &= \delta_k - \delta_h \end{aligned}$$

imply $\kappa_{\text{Com}} > \kappa_{\text{NA}}$. ■

greater prosperity for interaffected regional economies.

6 Conclusion

The compact is a valuable mechanism for regional governments to engage in cooperative endeavors or as a coordination mechanism for interjurisdictional policies. Compacts are more than just the adoption of a uniform set of laws or regulations by a group of regional governments. They are binding legal agreements that are enforced by an external authority. They cannot be altered or repealed unilaterally unless the agreement permits such actions. Compacts are legally analogized to contracts between private parties. When a regional government enters into a compactual agreement it assumes a duty to uphold its obligations to the other regional governments. If a regional government breaches its obligations, the other signatories may plead for injunctive or monetary relief before either state or federal courts.

The compact is a useful tool to deal with interjurisdictional externalities whether they be negative or positive. They can be used to overcome prisoner's dilemma or tragedy of the common's type situations by the terms of the agreement or by establishing an authority or regulatory body to make decisions on signatory governments' behalf. An administrative agency compact can be used to coordinate spending on productive activities that have spillover effects into other regional governments' jurisdictions, such as a government's investment in public capital or other services. Absent a compact or other agreement regional governments acting independently do not internalize the total benefits or costs that their actions have on other regions. A compact can be used to internalize these effects leading the regional governments to a Pareto superior outcome over non-cooperation.

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Appendix: Court Decisions Involving Interstate Compacts

Arizona v. California, 292 U.S. 341 (1934).

Arizona v. California, 373 U.S. 546 (1963).

Cuyler v. Adams, 449 U.S. 433 (1981).

Green v. Biddle, 21 U.S. 1 (1823).

Hayes v. State Property and Buildings Commission, 731 S.W.2d 797 (Ky. 1987).

Hinderlider v. La Plata, 304 U.S. 92 (1938).

Kansas v. Colorado, 533 U.S. 1 (2001).

Maready v. City of Winston-Salem, 467 S.E.2d 615 (N.C. 1996).

Mineo v. Port Authority of New York and New Jersey, 779 F.2d 939 (1985).

Mitchell v. North Carolina Industrial Development Financing Authority, 159 S.E.2d 745 (N.C. 1968).

Nebraska v. Central Interstate Low-Level Radioactive Waste Commission, 207 F.3d 1021 (8th Cir. 2000).

New Hampshire v. Maine, 426 U.S. 363 (1976).

New York v. New Jersey, 256 U.S. 296 (1921).

Oklahoma v. New Mexico, 501 U.S. 221 (1991).

Pacific States Telephone & Telegraph Co. v. Oregon, 223 U. S. 118 (1912)

Patton v. Mid-Continent Systems, Inc., 841 F.2d 742 (7th Cir. 1988).

Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275 (1959).

Rhode Island v. Massachusetts, 37 U.S. 657 (1838).

Seattle Master Builders v. Pacific N.W. Electric Power, 786 F.2d 1359 (9th Cir. 1986) (cert. denied 479 U.S. 1059 (1987)).

Texas v. New Mexico, 482 U.S. 124 (1987).

Tobin v. United States, 306 F.2d 270 (1962).

U.S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452 (1978).

Virginia v. Tennessee, 148 U.S. 503 (1893).

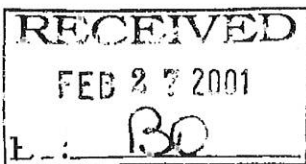
Virginia v. West Virginia, 246 U.S. 565 (1918).

Washington Metropolitan Area Transit Authority v. One Parcel of Land in Montgomery County, Maryland, 706 F.2d 1312 (4th Cir. 1983).

West Virginia ex rel. Dyer v. Sims, 341 U.S. 22 (1951).

Wisconsin v. Illinois, 278 U.S. 367 (1929).

EXHIBIT "C"



WESTERN ORANGE COUNTY SELF-FUNDED
WORKERS' COMPENSATION AGENCY
JOINT POWERS AUTHORITY AGREEMENT

This Agreement is made and entered into by those participating public educational agencies comprising the Western Orange County Self-Funded Workers' Compensation Agency, a California joint powers authority, amending and superseding all provisions of the existing Joint Powers Agreement (as previously amended).

RECITALS

WHEREAS, Title I, Division 7, Chapter 5 of the Government Code of the State of California generally authorizes public educational agencies in the State of California to agree to the joint exercise of any power common to them;

WHEREAS, Sections 39603 and 81603 of the Education Code of the State of California authorize the governing boards of the participating public agencies to establish a separate joint powers authority pursuant to Article 1 (commencing with Section 6500 of Chapter 5 of Division 7 of Title 1) of the Government Code of the State of California;

WHEREAS, Section 3602 of the Education Code of the State of California authorizes the expenditure of public agency resources for the purpose of self-funding against liabilities associated with workers' compensation claims and coverage for employees;

WHEREAS, the governing boards of the participating public educational agencies have determined that it is beneficial to establish and operate a self-funded program for workers' compensation claims; and

WHEREAS, it has been further determined by the governing boards of the participating public agencies that a joint powers authority is a necessary and appropriate means to maximize the operation and cost-effectiveness of a self-funded workers' compensation program on an individual and on a mutual basis.

NOW THEREFORE, the participating public educational agencies, for and in consideration of the mutual benefits, promises, and agreements set forth, individually and mutually agree as follows:

AGREEMENT

1. CREATION OF THE JOINT POWERS AUTHORITY

Pursuant to the provision of Article 1, Chapter, 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) the participating public educational agencies (the "Members") create and elect to continue a public agency and joint powers authority, separate and apart from the Members, to now be known as the

Western Orange County Self-Funded Workers' Compensation Agency (referred to as the "Agency" in this Agreement).

2. FUNCTIONS OF THE JOINT POWERS AUTHORITY

The Agency is established to operate and shall operate for the purpose of administering this Agreement pursuant to the joint powers provisions of the Government Code of the State of California, and to exercise such common powers jointly by creating a regional authority that will provide the Members with a comprehensive program for the establishment and operation of cooperative self-funded or insured workers' compensation and related programs. The functions of the Agency are to design and implement cooperative self-funded or insured workers' compensation programs, to provide ancillary services and related programs, and to perform such other functions and provide such other services as may be necessary or appropriate to the purpose of this Agreement.

3. FORMATION OF THE BOARD OF DIRECTORS

The Agency shall be under the direction and control of a Board of Directors comprised of one authorized representative from each Member appointed or otherwise designated by the Member's governing board. In addition, each Member shall appoint or otherwise designate an alternate who may attend, participate in, and vote at any meeting of the Board of Directors where the authorized representative is absent. The Board of Directors shall act to implement this Agreement in accordance with its provisions and pursuant to the Bylaws of the Agency.

4. BYLAWS OF THE JOINT POWERS AUTHORITY

The Agency will be maintained, operated, and governed pursuant to Bylaws adopted by the Board of Directors. These Bylaws will contain the terms and conditions under which each Member will participate in the Agency and in the Agency's self-insured or other workers' compensation programs, including, but not limited to, provisions for the allocation of losses, the establishment of reserves, administrative costs, withdrawal, and distribution of any unobligated funds upon dissolution of the Agency. A copy of the Bylaws will be provided to each of the Members, and each Member agrees to comply with and to be bound by the provisions of the Bylaws.

5. RESPONSIBILITIES OF THE JOINT POWERS AUTHORITY

The Agency shall be responsible for the operation of the joint powers authority, for the implementation of this Agreement, and for the protection of the interests of the Members. The Agency, through the Board of Directors, shall: (a) provide for a plan and system for self-insured, insured and other workers' compensation programs; (b) provide for the administration of Agency, and may designate, retain, or terminate administrative staff or third party administrative personnel or agencies for such service; (c) be responsible for public funds placed on deposit and to establish and administer such funds as necessary to

the self-insured, insured and other programs; (d) have the authority to make and enter into contracts, and to incur debts, liabilities and obligations necessary to accomplish the purpose of this Agreement; (e) have the authority to acquire, hold or dispose of real and personal property, and acquire, construct, manage, maintain and rent buildings or facilities as necessary for the operation of the Agency; (f) be able to receive gifts, contributions and donations of property, funds, services or other forms of assistance; (g) have the authority and capacity to sue and be sued in its own name; (h) be able to take actions that serve the best interests of the collective membership of the Agency; (i) have the authority to ensure that timely and appropriate communications are maintained with the Members; (j) join, participate with or enter into other arrangements with other joint power authorities and governmental agencies to provide services, coverage or other benefits and programs to or for the benefit of Members; and (k) may further exercise any power common to the Members in furtherance of the purposes of this Agreement.

6. RESPONSIBILITIES OF THE MEMBERS

Each Member shall: (a) cooperate in research and development activities conducted by the Agency by furnishing all statistical data, experience data, and other information as may be requested by the Agency; (b) pay such amounts as are determined to be due to cover premiums, self-insured or other losses until concluded, and other costs or obligations incurred by the Agency; (c) cooperate and participate in self-insured, insured and other workers' compensation programs and related programs and services offered by the Agency; (d) comply with the terms of the Agreement and the Bylaws; and (e) provide input to the Board of Directors on the Agency's programs and operations so as to continue to assure and promote needed programs and responsiveness to cultural sensitivity and diversity in program management and operation.

7. ANNUAL AUDIT AND AUDIT REPORTS

The Board of Directors shall cause an annual audit to be made with respect to all receipts and disbursements by a certified public accountant or public accountant, and a report of such audit shall be filed as a public record with each of the Members and also with the county auditor of each county in which the participating public agency is located. Such report shall be filed no later than twelve (12) months after the end of the fiscal year under examination. All costs of such audit shall be approved by the Board of Directors and paid by the Agency as a charge against funds established in the Bylaws for administrative costs and services.

8. ACCOUNTS AND RECORDS

The Agency is strictly accountable for all funds received and disbursed, and shall maintain such funds and accounts as are required by law and as directed by the Board of Directors. The Treasurer of Orange County is the Treasurer and the designated depository of the Agency, and shall have custody of all of the funds of the Agency and assume all duties and

responsibilities in accordance with Section 6505.5 of the Government Code of the State of California.

9. AMENDMENTS

This Agreement may be amended at any time by a subsequent writing approved by three quarters of the Members, which amendment(s) shall be effective upon execution of the writing by three-quarters of the Members.

10. SEVERABILITY

Should any portion, term, condition, or provision of this Agreement be decided by a Court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

11. TERM

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until revoked by an affirmative vote of three-quarters of the then existing Members following a determination that there are insufficient members to continue an actuarially sound program for self-insured workers' compensation benefits or other Agency programs. In the event of a dissolution of the Agency, any funds or interests remaining in the Agency, after satisfaction or other discharge of all remaining obligations, shall be returned to those participating public educational agencies which were Members of the Agency during its final three years based on their pro rata share of premiums paid during the three final years of the Agency.

12. EXECUTION

This Agreement may be executed by each current as well as future Member on a separate copy thereof with the same force and effect as though all Members had executed a single original copy. The collection of such separately executed copies shall be treated as a single copy executed by all Members.

BREA OLINDA UNIFIED SCHOOL DISTRICT, a public agency

By: Gary D. Goff

Gary D. Goff

Typed or Printed Name

Title: Asst. Supt., Business Svcs.

Date: July 7, 1997

Date Approved by Board of Education: July 7, 1997

OCEANVIEW SCHOOL DISTRICT, a public agency

By: Patricia L. Young

Patricia L. Young

Typed or Printed Name

Title: Asst. Supt., Business

Date: July 16, 1997

Date Approved by Board of Trustees: July 15, 1997

HUNTINGTON BEACH SCHOOL DISTRICT, a public agency

By: Jerry Buchanan

Jerry Buchanan

Typed or Printed Name

Title: Asst. Supt., Admin. Svcs.

Date: June 3, 1997

Date Approved by Board of Trustees: June 3, 1997

ORANGE COUNTY DEPARTMENT OF EDUCATION, a public agency

By: Lynn April Hartline

Lynn April Hartline

Typed or Printed Name

Title: Deputy Superintendent

Date: October 6, 1997

Date Approved by Board of Trustees: September 25, 1997

LAGUNA BEACH UNIFIED SCHOOL
DISTRICT, a public agency

By: Dena Graves

Dena Graves

Typed or Printed Name

Title: Chief Business Official

Date: August 26, 1997

Date Approved by
Board of Trustees: August 26, 1997

EXHIBIT "D"

**BYLAWS OF THE
WESTERN ORANGE COUNTY SELF-FUNDED WORKERS'
COMPENSATION AGENCY, A CALIFORNIA JOINT POWERS AUTHORITY**

PREAMBLE

The Western Orange County Self-Funded Workers' Compensation Agency, a California joint powers authority, is established for the purpose of providing the services, facilities, and items necessary and appropriate for the establishment, operation, and maintenance of a self insurance program for workers' compensation claims against and involving member public educational agencies (the "Members"), and to provide a forum for discussion, study, development, and implementation of recommendations of mutual interest in the self-insuring or insuring of workers' compensation-related risks and ancillary programs and services.

ARTICLE I – NAME

The name of this joint powers authority and organization is the Western Orange County Self-Funded Workers' Compensation Agency, a California joint powers authority (the "Agency").

ARTICLE II – POWERS

The Agency shall have the power to:

1. Exercise any power common to the Members which are parties to the Joint Powers Agreement, and any power available to joint power authorities under California law, provided that such powers are exercised in the furtherance of the purposes and functions of the Agency and in the manner that such powers could be exercised by public educational agencies and joint power authorities of the State of California.
2. Provide the Members with a plan and system of self-funding for workers' compensation claims and related programs whereby the Agency will pay for or provide, and maintain self-insurance or insured programs and ancillary programs as to such claims against Members as are set forth in the programs adopted by the Board of Directors, using funds provided by the Members for this purpose.
3. To handle any and all aspects of workers' compensation claims against participating Members arising out of actions or omissions to act occurring during their period of membership in the Agency.

4. Directly or by contract with third parties, to financially administer and oversee the workers' compensation claims and related programs, to develop and formulate policies and procedures, to provide comprehensive claims handling services, to provide legal representation for Members on workers' compensation claims, to provide advices on safety engineering and controls, and to otherwise develop and implement such programs and services as are necessary to a comprehensive self-funded workers' compensation program for the Members.
5. Establish and maintain a fund or funds to pay self-insured or other losses under a workers' compensation self-insured or insured program, to establish and maintain a fund or funds to pay for such programs, and for ancillary programs and services.
6. Acquire, hold, and dispose of property, real or personal, all for the purpose of providing the Members with the necessary education, study, development, and implementation of the self-funded workers' compensation program or programs, including, but not limited to, the acquisition of necessary facilities and equipment, the retention of staff, the making and entering into contracts, the operations and maintenance of a system for the handling of the self-funded plan or plans, and the incurring of debts, liabilities, or obligations.
7. Receive, accept, and utilize the services of personnel offered by any Member or its representatives or agents; to receive, accept, and utilize property, real or personal, from any Member or its agents or representatives; to receive, hold, dispose of, to construct, operate, and maintain buildings and other improvements; and to receive, accept, expend, and disburse funds, by contract or otherwise, for the purposes consistent with the provisions of the Joint Powers Agreement and Bylaws. Such funds may be provided by any Member or its agents or representatives.
8. Pursue any Members right of subrogation when, in the discretion of the Board of Directors, such subrogation may inure to the benefit of the Member incurring the loss and/or the Agency.
9. Perform such other functions as may be necessary or appropriate to carry out the purposes and programs of the Agency.

ARTICLE III – MEMBERSHIP

1. Public educational agencies located within the State of California are eligible for membership in the Agency provided that membership is contingent upon being a signatory to the Joint Powers Agreement and satisfaction of Article III, Section 2, of the Bylaws. A "public educational Agency" is defined as a school district, a community college district, a county superintendent of schools, a county department of education, a regional occupational program, a regional occupational center, a charter school, a joint powers authority, or any other public agency as defined in the California Government Code.

2. Public educational agencies shall be required to apply for membership in the Agency prior to April 1 of any year to be effective on July 1 of that year (unless otherwise determined by the Board of Directors), and prospective Members shall be subject to the following conditions for review and approval:
 - a. Submission of a completed Agency questionnaire or other provision of information as requested by the Agency;
 - b. Review of the prospective Member's appropriate insurance and claims experience by the Agency or its authorized representatives;
 - c. Determination of eligibility by the Agency and the conditions and terms under which the applicant may be admitted to membership;
 - d. Execution of the Joint Powers Agreement together with a resolution formally adopted by the applicant's governing body;
 - e. Payment to the Agency of the Agency's determined contribution from the prospective Member; and
 - f. The applicant shall become a Member upon receiving the approval of two-thirds of the Board of Directors of the Agency.
3. Upon admission to membership, each new Member shall be entitled to appoint an authorized representative and an alternate to the Board of Directors of the Agency. The appointed representative and alternate shall be a management-level employee of the Member.
4. Should any Member reorganize in accordance with state statutes, the successor-in-interest or successors-in-interest to the obligation of any such reorganized Member shall be substituted as a Member, provided that the Member continues to be a public educational agency under California law, meets the terms and conditions of the Joint Powers Agreement and Bylaws, and executes the Joint Powers Agreement.

ARTICLE IV – FORMATION OF THE GOVERNING BOARD

1. The Agency shall be under the direction and control of, and shall be governed by, a Board of Directors in accordance with Section 3 of the Joint Powers Agreement.
2. No one serving on the Board of Directors shall receive any salary or compensation from the Agency.

3. The Board of Directors shall elect from its Member representatives a President, Vice President, and Secretary-Treasurer to serve as officers. Elections shall be held in June of each year unless otherwise scheduled by the Board of Directors.
4. Representation on the Board of Directors may cease for any of the reasons stated below, provided that the Board of Directors takes specific action to ratify the termination of any representative by a two-thirds vote of the remaining Member representatives:
 - a. Voluntary resignation;
 - b. If the Member represented by the individual ceases to be a Member of the Agency; or
 - c. If the representative's Member no longer qualifies as a public educational agency as required for membership in the Agency.
5. Each representative on the Board of Directors shall have one vote. No proxy or absentee votes shall be permitted. A vote of the majority of a quorum (as defined in Article VI, Section 5) present at a meeting shall be sufficient to constitute action, except actions concerning adoption or amendment of Bylaws and membership in the Agency, which requires a two-thirds vote of the total membership of the Board of Directors, and dissolution or termination, which requires a three-quarters vote of the total representatives of the Board of Directors.

ARTICLE V – POWERS AND DUTIES OF THE BOARD OF DIRECTORS

The Board of Directors shall have the authority to exercise the powers of the Agency as set forth in the Joint Powers Agreement, and the Board of Directors is specifically empowered to:

1. Establish Bylaws, rules, and regulations of and for the Agency not inconsistent with applicable law or with the Agency's Joint Powers Agreement, as may be necessary for the conduct of the Agency's business and programs.
2. Provide for the management and administration of the Agency and its programs in a manner that is in the best interests of the Members. This power shall include the power to employ and terminate a management firm or firms (or other third party vendors) for such purpose or to directly employ staff.
3. To create and provide for the appointment or election of an Executive Committee and to delegate to the Executive Committee such powers and functions as deemed appropriate and necessary by the Board of Directors, and to further designate a representative of the Executive Committee as the Executive Director and to require such bonding or other protection as legally required and in the best interests of the Agency.

4. Determine annual premium or contribution rates and the formulas and the method by which such contributions will be paid to the fund or funds created pursuant to the Agency's purpose.
5. Provide for additional assessments during the year, if necessary, to allow for payment or reserving of funds for the payment of the Agency's costs or other obligations.
6. Determine whether, and by what method, new Members shall be allowed to join the Agency and to participate in existing or contemplated programs consistent with Article III of the Bylaws.
7. Appoint and dissolve working committees from its active membership and contract vendors, or by contracting for such services consistent with the purpose of the Agency.
8. Assure that a complete, accurate, and supervised system of accounting for all Member funds is maintained at all times.
9. Determine the manner in which the workers' compensation programs shall be operated, including (but not limited to) defining the scope of the Agency's benefits and coverages under the programs and notifying Members of the scope and limitations of the programs.
10. Maintain, or cause to be maintained, accurate case records for all risks insured against and accurate records of all claims paid.
11. Provide for loss control services.
12. Enter into contracts consistent with the terms of the Joint Powers Agreement.
13. As appropriate and necessary, make periodic reports to the Members on the status of the Agency and its programs, including (but not limited to) loss reports on at least a quarterly basis.
14. Adopt an annual budget for the Agency.
15. Annually evaluate, or cause to be evaluated, the performance of the Agency staff and third-party vendors.
16. Perform any and all other functions necessary or appropriate to accomplish the purpose of the Agency.

ARTICLE VI – MEETINGS, SECTION 1

1. The Board of Directors shall meet regularly but not less than four times per year. Member-designated representatives and alternates to the Board of Directors, to be entitled to participate in Board of Directors' meetings, shall be designated in accordance with Article III, Section 3, and be management-level employees of the Member.
2. The Board of Directors shall, at its June meeting, approve the date and time for its regular meetings. All Members shall be promptly notified of the meeting schedule.
3. Special Meetings of the Board of Directors may be called as necessary, provided 24-hour advance notice is given and the legal requirements for Special Meetings satisfied.
4. All meetings of the Board of Directors shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California).
5. A majority of the total representatives of the Board of Directors shall constitute a quorum for the transaction of business, except that less than a quorum shall be sufficient to adjourn or conclude any meeting of the Board of Directors.
6. A majority of a quorum shall be required to transact business, except as to changes to the Bylaws and membership (which shall require an affirmative vote of two-thirds of the representatives of the Board of Directors). No proxy or absentee votes shall be permitted, and each representative on the Board of Directors (including alternates in the event the representative is absent) shall have one vote.
7. An Agenda shall be prepared for all meetings in compliance with the Ralph M. Brown Act and shall be made available to all Agency Members at least three (3) working days prior to regularly scheduled meetings.
8. Minutes shall be kept of all Open Sessions of meetings held by the Board of Directors and made available to each Member of the Agency.
9. Items may be placed on the Agenda provided a written request is received by the President of the Board of Directors at least ten working days prior to the regularly scheduled meeting.
10. Any member of the public desiring to make a personal appearance before the Board of Directors to discuss an item of interest shall be limited to a maximum of five (5) minutes, unless otherwise provided for by the Board of Directors.

ARTICLE VII – FINANCE

1. The Agency is strictly accountable for all funds received and disbursed by it, and to that end, the Agency shall establish and maintain such funds and accounts as may be required by good accounting practices or by any provision of law or any resolution of the Agency. Books and records of the Agency shall be open to inspection at all reasonable times by representatives of the Members. The Board of Directors, as soon as practical after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to each of the Members.
2. The Treasurer of the County of Orange shall be the depository and custodian of all Agency funds, from whatever source, except that a separate trust fund may be established for payment of claims for a thirty (30) day period, as authorized by Sections 39602, 39603, and 81602 of the Education Code of the State of California. Funds placed with the County Treasurer shall be handled in accordance with Sections 39602, 39603, and 81602 of the Education Code and Section 6505.5 of the Government Code of the State of California. The County of Orange shall be reimbursed by the Agency for such services by the County Treasurer in an amount or in amounts as determined by the Orange County Board of Supervisors as the actual expenses of the services described. Such expenses shall also be required to be approved by the Board of Directors of the Agency.
3. The Secretary-Treasurer shall, unless otherwise designated by the Board of Directors, be the Chief Financial Officer of the Agency. The Secretary-Treasurer shall draw warrants to pay demands against the Agency when such demands have been duly approved by the Board of Directors. The Board of Directors shall make, or contract with a certified public accountant or other qualified public accountant for an annual audit of the accounts and records of the Agency. The minimum requirements of the audit shall be those prescribed by the State Controller for Special Districts under Section 26909 of the Government Code of the State of California, and the audit shall conform to generally acceptable auditing standards of public agencies like or comparable to the Agency. The audit report shall be completed and filed within twelve months of the end of the fiscal year under examination, and the report shall be filed as a public record with each of the Members and with the County Auditor of the County of Orange. All costs of the audit shall be borne by the Agency and shall constitute a permissible and authorized charge against any unencumbered funds of the Agency otherwise available for such expenses and purposes.

ARTICLE VIII – ANNUAL PREMIUMS

1. Each Member shall pay the Agency each fiscal year the annual premium calculated pursuant to Section 2, provided that the Board of Directors, in its sole discretion, may consider additional factors in setting the annual premium and may accept other advance partial payments or installments in amounts and on a schedule as approved by the Board of Directors and made the subject of a formal written resolution, provided that any

Member's excess premiums paid in connection with prior fiscal year(s) coverage may not be used as a credit against a current or future fiscal year(s) premium (as any credit arising from any excess premium paid will instead be separately rebated to the Members for accounting purposes). The Board of Directors (unless delegated to the Executive Committee) shall inform Members of the estimated annual premiums for the upcoming fiscal year not later than April 1.

2. The annual premium for each Member shall be calculated as follows: An Actuarial Report shall be performed on an annual basis and this report shall have a derived method of calculating rates for Members using the Member's estimated annual payroll which is then multiplied by the Member's current experience modification factor, which is then subject to adjustments by any factors determined by the Board of Directors to be reasonable and appropriate. Estimated annual premiums shall be adjusted by the Board of Directors to the actual earned annual premium following the close of the fiscal year and the completion of the required accounting.
 - A. The Board of Directors may at its discretion, modify the annual premium provided to the Members.
 - B. The experience modification factor for each Member shall be calculated and determined by the Board of Directors based primarily upon the Member's verifiable experience of the most recent five completed fiscal years of comparable experience.
 - C. The Member's annual premium shall be paid to the Agency in installment payments in August, December, and April prior to the commencement of the Agency's next fiscal year, with the amount of the installment to be set by the Board of Directors. Payment shall be due upon the Member's receipt of the Agency's invoice. In the event the Member fails to timely pay the premium installment due, the Agency shall charge the Member a late charge of one percent (1%) of the amount of the overdue premium installment for each month it is overdue after sixty (60) days, unless otherwise determined or waived by the Board of Directors.
 - D. Should workers' compensation claims against the Members of the Agency exceed the total yearly premiums billed to the Members and received by the Agency, each Member may be assessed by the Board of Directors an additional premium based upon the percentage of yearly premiums paid by each Member relative to the total yearly premiums paid by all Members.
 - E. Each Member hereby authorizes the Orange County Superintendent of Schools and the Treasurer of the County of Orange to transfer to the Agency from the Member's funds all amounts sufficient to pay the Member's required premium, and each Member agrees to further execute any and all documents to effectuate such transfers (if any).

ARTICLE IX – FUNDS

1. An Operating Fund shall be established and maintained by the Agency out of the contributions of the Members and shall be for the purpose of paying for the following: (a) insurance premiums; (b) claims management expenses; (c) administrative costs; (d) safety engineering; (e) data processing and information management expenses; (f) investigation-related expenses; (g) legal fees and related expenses; (h) fund transfer expenses; and (i) such other expenses as are necessary and reasonably incurred and/or paid by the Agency. In addition, the Agency shall accept and deposit in the Operating Fund additional funds received from interest and other investment income, refunds of excess workers' compensation insurance premiums, workers' compensation subrogation recoveries, grants, or other contributions from any Member or third party.
2. A Claims Fund shall be established and maintained by the Agency out of the contributions of the Members into which may be deposited sums determined by the Board of Directors or a service company or management firm contracted to administer the self-funded program to be sufficient to provide for the settlement of claims for a sixty (60) day period.
3. The Board of Directors shall have the power to invest, or cause to be invested, in compliance with Sections 6509.5 and 6505.5 of the California Government Code, such reserves as are not necessary for the immediate operation of the Claims Fund in such securities as allowed by Section 53601 of the California Government Code. The level of funds to be retained in the Operating Fund or Claims Fund shall be determined by the Board of Directors.

ARTICLE X – BYLAWS

1. These Bylaws shall be deemed the operational provisions by which the Agency is governed.
2. These Bylaws shall not be inconsistent with the provision of the Joint Powers Agreement of the Agency.

ARTICLE XI – FISCAL YEAR

The fiscal year of the Agency shall begin at 12:01 a.m. on July 1 and end June 30 at midnight.

ARTICLE XII – WITHDRAWAL AND TERMINATION

1. Any Member may withdraw from the Agency and terminate its membership status after having completed three full fiscal years as a Member by notifying the Board of Directors in writing not later than December 31. Such a withdrawal shall be deemed effective on the following June 30 provided that (and subject to) the withdrawing Member has discharged or arranged for the discharge of its known or potential obligations to the satisfaction of the remaining representatives of the Board of Directors of the Agency.
2. Upon any withdrawal, or involuntary termination of a Member, the withdrawing or terminated Member shall continue to be responsible for the amount of any additional assessments or contingencies required because of costs incurred while the withdrawing or terminating Member was a Member of the Agency. However, a withdrawing or terminated Member shall incur no additional liability after the effective date of withdrawal or termination. The Agency shall continue to be responsible for the reported claims of the terminated or withdrawing Member provided that (and subject to) the claims having been incurred while membership was still in force. A withdrawing or terminated Member shall not be entitled to participation in any net assets of the Agency unless otherwise determined by a two-thirds vote of the remaining representatives of the Board of Directors.
3. A Member may be involuntarily terminated from continued membership in the Agency, provided the Board of Directors so recommends and two-thirds of the Members agree. Grounds for involuntary termination include, but are not limited to, nonpayment of premiums, intentional wrongdoing, breach of the Agreement or Bylaws of the Agency, and failure to address safety concerns communicated to the Member by the Agency. Involuntary termination shall have the effect of eliminating the party as a signatory to the Joint Powers Agreement and as a Member of the Agency effective upon the date of involuntary termination set by the Board of Directors. The Member being terminated shall be so notified at least ninety (90) days prior to the end of the fiscal year with termination becoming effective on the last day of the fiscal year unless otherwise agreed to between the terminated Member and the Board of Directors.

4. This Agreement may be terminated at the end of any fiscal year by the affirmative vote of three-quarters of the then participating Members. However, termination shall require that the affirmative vote be taken on or before January 1 of the fiscal year then in force and a resolution of all obligations of the Agency (directly or through a paid-up contract or other instrument removing and resolving any further obligations of and from the Agency), which resolution may include individual Member acceptance of responsibility for its outstanding claims.
5. In the event of a dissolution, complete rescission or other final termination of the Agency, any property interest remaining in the Agency following a discharge or other satisfaction of all existing and potential obligations shall be returned to the participating public educational agencies that were Members of the Agency during its final three years based on their pro rata share of premiums paid during the three final years of the Agency.

ARTICLE XIII – LIABILITY

1. Except as otherwise provided by individual contract, pursuant to the provisions of Section 895, et seq., of the Government Code of the State of California, each Member of the Agency shall be liable for its pro rata share of all debts and liabilities of the Agency and its pro rata share of all debts and liabilities for workers' compensation claims against the Agency arising out of facts occurring while a Member of the Agency. A Member's pro rata share shall be determined based upon that Member's premium in proportion to the total premiums paid by all participating Members in the Agency. To achieve such purpose, each Member agrees to and shall indemnify and hold harmless the other Members of the Agency for any liability, loss, cost, or expense that may be imposed upon such other Member in excess of the other members' pro rata liability pursuant to Civil Code Section 2778, which is incorporated by reference and made a part of these Bylaws.
2. The independent tort liability of the Agency, representatives of the Board of Directors and Executive Committee, and any officers, employees, or agents of the Agency shall be controlled and governed by the provisions of Division 3.6 of Title I of the Government Code of the State of California.

ARTICLE XIV – AMENDMENT

1. Amendments to these Bylaws may be proposed by any Member in writing and made the subject of consideration as an Agenda item by the Board of Directors at its next regularly scheduled meeting (unless a Special Meeting is required).
2. All amendments must be approved by two thirds (2/3) of the Board of Directors before the amendment shall become effective.

EXHIBIT "E"

MINUTES

WESTERN ORANGE COUNTY
SELF-FUNDED WORKERS' COMPENSATION AGENCY
BOARD MEETING
MONDAY, JUNE 3, 2015, 9:00 a.m.
Orange County Department of Education
200 Kalmus Dr., Esplanade 5-108B
Costa Mesa, CA 92626

- I. CALL TO ORDER** Action 14/15 - 229
The meeting was called to order by President Ott at 9:04 a.m.
- II. ROLL CALL** Action 14/15 - 230
PRESENT:
Breia Olinda Unified School District Ms. Barbara Ott
Laguna Beach Unified School District Ms. Leisa Winston
Ocean View School District Mr. Felix Avila
Orange County Department of Education Ms. Ann Kantor

Manager: York Risk Services Group Ms. Angela Hatley
Ms. Kim Michels
Ms. Suzie Carmona
Ms. Erika Schwartz
Ms. Jessica Blushi
Ms. Chris Retama
- III. APPROVAL OF AGENDA – June 3, 2015** Action 14/15 - 231
A motion was made by Ann Kantor, seconded by Leisa Winston, and carried by a 4-0-0 vote to approve the agenda, moving item 14/15 – 235 to follow item 14/15 – 232.
- AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None
- IV. APPROVAL OF MINUTES – April 20, 2015** Action 14/15 - 232
A motion was made by Ann Kantor, seconded by Felix Avila, and carried by a 4-0-0 vote to approve the Minutes of April 20, 2015.
- AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

VI. JPA ADMINISTRATION

APPROVE EXCESS WORKERS' COMPENSATION COVERAGE FOR 2015/16

Action 14/15 – 235

John Chino of Arthur J. Gallagher presented options for 2015/16 coverage, including buy-down and pool retention options, noting that a more competitive market has resulted in lower rate offerings. Arch offered coverage at a rate of .1354 per \$100 of payroll, the lowest offer in the JPA's history, resulting in a premium reduction of approximately \$20,000. Mr. Chino also noted that the escalation exclusion in the proposal is not correct (Arch has no such exclusion), and he would send a corrected proposal.

A motion was made by Ann Kantor, seconded by Leisa Winston, and carried by a 4-0-0 vote to accept the Arch proposal at .1354 per \$100 of payroll.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

V. CLOSED SESSION - CLAIMS ADMINISTRATION

Action 14/15 - 233

The Board convened in closed session at 9:37 to discuss the following claims:

Settlement Ratifications		
Claim Number	Claimant	District
WOCA-006745	Elizabeth Sellers	HBCSD
WOCA-006984	Ramona Vosburg	OCDE
Settlement Authority Requests		
Claim Number	Claimant	District
WOCX-008432	Evangeline Navarro	BOUSD
WOCX-008271	Kimberly Leeds	LBUSD
WOCX-008325	Regina Wood	OCDE

A motion was made by Ann Kantor, seconded by Felix Avila, and carried by a 4-0-0 vote to ratify/approve settlement of the claims listed in the agenda.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

The Board convened in open session at 9:42 a.m.

VI. JPA ADMINISTRATION

MEDICAL MANAGED CARE: SUITE OF REPORTING

Information 14/15 - 234

York presented and discussed the Managed Care Suite of Reporting covering March and April 2015 activities. A question was raised regarding utilization review for prescriptions; Kim Michels of York responded that it is only used for new prescriptions. There were no further questions.

MEDICAL PROVIDER NETWORK (MPN) IMPLEMENTATION

Action 14/15 – 236

This item was deferred to the next meeting.

BICKMORE SERVICES

Action 14/15 – 237

This item was deferred to the next meeting.

INVESTMENT POLICY (SECOND READING)

Action 14/15 – 238

A motion was made by Ann Kantor, seconded by Leisa Winston, and carried by a 4-0-0 vote to approve the second reading of the Investment Policy.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

DATE AND TIME OF JPA MEETINGS

Action 14/15 – 239

After discussion, it was decided the previously scheduled June and July meetings would not be necessary. The next meeting will be held on August 17th, which Laguna Beach Unified School District offered to host, with lunch preceding the meeting at a location to be determined.

ELECTION OF OFFICERS FOR 2015/16

Action 14/15 - 240

The current officers are Barbara Ott, President, Leisa Winston, Vice President, and Ann Kantor, Secretary/Treasurer. After a brief discussion, it was recommended to leave the current officers in place for 2015/16.

A motion was made by Ann Kantor, seconded by Felix Avila, and carried by a 4-0-0 vote to continue with Barbara Ott, President Leisa Winston, Vice President, and Ann Kantor, Secretary/Treasurer for 2015/16.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

ESTABLISH MEETING SCHEDULE FOR 2015/16

Action 14/15 – 241

After discussion, it was decided Monday afternoons at 1:00 p.m. would be a more convenient time for members. Ann Kantor will schedule new meeting dates and forward to staff.

DESIGNATE OFFICIAL ADDRESS AND CORRESPONDENCE ADDRESS FOR 2015/16

Action 14/15 – 242

A motion was made by Leisa Winston, seconded by Felix Avila, and carried by a 4-0-0 vote to designate Orange County Department of Education, 200 Kalmus Dr., Costa Mesa, CA 92626 as WOC JPA's address for 2015/16.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

AUTHORIZE WARRANT SIGNATURES FOR 2015/16

Information 14/15 - 243

It was determined that no vote was required to authorize warrant signatures.

DESIGNATE MEDICARE AUTHORIZED REPRESENTATIVE
FOR 2015/16

Information 14/15 – 244

It was reported that Ann Kantor will continue as the authorized representative.

QUARTERLY SELF-IMPOSED INCREASE REPORT

Information 14/15 – 245

Kim Michels, from York, reported that there were no self-imposed increases during the quarter.

SERVICE AGREEMENT WITH YORK RISK SERVICES GROUP
FOR CLAIMS AND JPA ADMINISTRATION FOR 2015/16

Action 14/15 - 246

York representatives stepped out while the Board discussed the contract renewal. Members were provided with a draft of changes to the contract proposal, including multi-year pricing. Requests were made for tiered pricing according to who was working on the file, a reduction in the bill review cap, and an addition of a \$65,000 utilization review cap. This item will be added to the next agenda for additional discussion.

VII. FINANCIAL

FINANCIAL REPORTS

Action 14/15 – 247

Ann Kantor reported excess recoveries of \$16,530 for a year-to-date total of \$152,000. Reimbursement was received from the excess carrier to account for actual payroll being lower than what was estimated at the policy's inception. The ending bank balance for April was \$18 million.

A motion was made by Felix Avila, seconded by Leisa Winston, and carried by a 4-0-0 vote to approve the Financial Report.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

REIMBURSEMENTS TO JPA IMPREST ACCOUNT

Action 14/15 – 248

Reimbursement requests to the JPA Imprest account were corrected to reflect a total of \$422,445.19. Payments of \$110,935.23 were made during the period of May 8 – 31, 2015.

April 1, 2015 – April 16, 2015	\$117,746.35
April 17, 2015 – April 30, 2015	\$165,114.30
May 1, 2015 – May 7, 2015	\$ 28,649.31
May 8, 2015 – May 31, 2015	\$110,935.23
Total:	\$422,445.19

A motion was made by Ann Kantor, seconded by Leisa Winston, and carried by a 4-0-0 vote to ratify the adjusted reimbursements to the JPA Imprest account for April and May 2015.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

BANK RECONCILLIATION

Action 14/15 – 249

No errors were reported in the March or April bank statement reconciliation.

A motion was made by Ann Kantor, seconded by Felix Avila, and carried by a 4-0-0 vote to accept the March and April 2015 bank reconciliations.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

APPROVAL OF PAYMENTS

Action 14/15 - 250

One approval for payment was submitted for the 2014/15 annual fee for staff services in the amount of \$21,000.

A motion was made by Leisa Winston, seconded by Ann Kantor, and carried by a 4-0-0 vote to approve the payment.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

APPROVE FINAL BUDGET FOR 2015/16

Action 14/15 - 251

The budget was presented by the Treasurer prior to knowledge of a decrease in premium. An adjusted, final budget will be presented at the August meeting.

QUARTERLY INVESTMENT REPORTS

Information 14/15 – 252

It was noted that WOC JPA's investments are currently earning .01%, and investments with higher returns should be considered.

VIII. REIMBURSEMENT PROGRAMS

SAFETY CREDIT PROGRAM

Action 14/15 – 253

Expenses were submitted by Ocean View School District in the amount of \$25,271 and Brea Olinda School District in the amount of 6,772.56 for costs associated with loss control.

A motion was made by Ann Kantor, seconded by Leisa Winston, and carried by a 4-0-0 vote to approve the safety credit reimbursements.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

FIRST AID PROGRAM

Action 14/15 - 254

Requests for reimbursement for first aid claims were submitted by Brea Olinda School District in the amount of \$2,893.90 and the Orange County Department of Education in the amount of \$192.63.

A motion was made by Ann Kantor, seconded by Felix Avila, and carried by a 4-0-0 vote to approve the requests for reimbursement for first aid claims.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

IX. INFORMATION REPORTS

VISITOR COMMENTS

Information 14/15 – 255

There were no visitor comments.

BOARD COMMENTS

Information 14/15 – 256

There were no Board comments.

AUTHORITY CORRESPONDENCE

Information 14/15 – 257

There was no Authority correspondence.

CLAIMS ADMINISTRATOR/MANAGER COMMENTS

Information 14/15 – 258

Kim Michels of York reported that claims administrator caseloads as of April 30, 2015 were 149 for Suzie Carmona, and 130 for Erika Schwartz. Suzie Carmona closed 2 claims in April, and Erika Schwartz closed 4. May, June and July numbers will be reported at the August meeting.

X. CONFERENCES

REQUESTS FOR CONFERENCE ATTENDANCE

Information 14/15 – 259

There were no requests for conference attendance, however, representatives from Ocean View and Laguna Beach Unified School Districts and the Orange County Department of Education plan on attending the California Association of Joint Powers Authorities (CAJPA) conference in the Fall.

XI. OTHER BOARD DISCUSSION

Information 14/15 – 260

Jessica Blushi from York encourage that CAJPA conference attendees provide feedback on the speakers so that she may relay their feedback to CAJPA's Conference Committee.

XII. FOLLOW-UP FROM PREVIOUS MEETING

Information 14/15 – 261

There was no follow-up from the previous meeting.

XIII. AGENDA ITEMS FOR NEXT MEETING

Information 14/15 – 262

Agenda items for the August meeting will include the Quarterly Self Imposed Increase Report and the Quarterly Investment Report.

XIV. CLOSED SESSION – CLAIMS ADMINISTRATION

CLAIMS OF HUNTINGTON BEACH CITY SCHOOL DISTRICT

Information 14/15 - 263

All claims were reviewed, and direction was given to staff.

EXCESS INSURANCE CLAIMS REPORTING/SELF EXCESS CLAIMS REPORT

Information 14/15 - 264

All claims on the excess report were reviewed, and direction was given to staff.

LARGE LOSS FILE REVIEW REGARDING BREA OLINDA
AND LAGUNA BEACH UNIFIED SCHOOL DISTRICTS AND
THE ORANGE COUNTY DEPARTMENT OF EDUCATION

Information 14/15 – 265

All claims were reviewed, and direction was given to staff.

XV. ADJOURNMENT

A motion was made by Ann Kantor, seconded by Felix Avila, and carried by a 4-0-0 vote to adjourn the meeting at 11:46 and to reconvene in August 2015.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor, Ms. Winston
NOES: None
ABSENT: None
ABSTAIN: None

Respectfully Submitted,

Chris Retama

DRAFT

MINUTES

Member Training Session 8:30am to 9:00am
MEDICAL PROVIDER NETWORK (MPN)
By Devora Brainard, Vice President, Services and Development
WellComp/York Risk Services Group

WESTERN ORANGE COUNTY
SELF-FUNDED WORKERS' COMPENSATION AGENCY
BOARD MEETING
MONDAY, APRIL 20, 2015
9:00 a.m.
Orange County Department of Education
200 Kalmus Dr., Room D-1003

I. CALL TO ORDER Action 14/15-198

The meeting was called to order by President Barbara Ott at 9:03 a.m.

Ms. Hatley reported to the Board that Laguna Beach Unified School District will arrive late.

II. ROLL CALL Action 14/15-199

PRESENT:

BREA OLINDA UNIFIED SCHOOL DISTRICT	Ms. Barbara Ott
OCEAN VIEW SCHOOL DISTRICT	Mr. Felix Avila
ORANGE COUNTY DEPARTMENT OF EDUCATION	Ms. Ann Kantor

Manager: York Risk Services Group	Ms. Angela Hatley
	Ms. Devora Brainard (arrived at 9:32)
	Ms. Kim Michels
	Ms. Suzie Carmona

NOT PRESENT

Laguna Beach Unified School District

III. APPROVAL / CHANGES TO AGENDA – April 20, 2015 Action 14/15-200

The Room location for the meeting should be Room A-1010/11 and not Room D-1003.

WESTERN ORANGE COUNTY SELF-FUNDED WORKERS' COMPENSATION AGENCY
MINUTES – April 20, 2015

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There were two Requests for Settlement Authority added to item 14/15-202;
WOCT-007837 and WOCX-008511.

Items 14/15-203 and 209 were moved after item 14/15-227, Large Loss File Review
Regarding Ocean View School District.

Item 14/15-224, Agenda Items for Next Meeting, item Solicit Financial Audit Bid should
be removed as the JPA entered in to a three year contract beginning FY 2013-14.

With those changes a motion was made by Ms. Kantor, seconded by Mr. Avila, to
approve the Agenda for April 20, 2015. The motion was approved by a 3-0-1 vote.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: Laguna Beach Unified School District

ABSTAIN:

IV. APPROVAL OF MINUTES – March 16, 2015

Action 14-15-201

Item 14/15-187, Board Comments, should state, “Ms. Ott discussed the Volunteer
Policy,” and not the “Bond Policy.”

With that change a motion was made by Ms. Kantor, seconded by Mr. Avila, to approve
the minutes of March 16, 2015. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: Laguna Beach Unified School District

ABSTAIN:

V. CLAIMS ADMINISTRATION

Closed Session

The Board adjourned to Closed Session at 9:06a.m. Ms. Carmona presented the following
claims:

CLAIMS

Information/Action 14/15-202

WESTERN ORANGE COUNTY SELF-FUNDED WORKERS' COMPENSATION AGENCY
MINUTES – April 20, 2015

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Settlement Ratifications		
Claim Number	Claimant	District
WOCU-008000	Bobette Hagedorn	Brea-Olinda Unified School District
WOCU-007941	Yolanda Quinones	Brea-Olinda Unified School District
WOCT-007837	Jennifer Spehar	Huntington Beach City School District
WOCX-008463	Jennifer Gamal	Ocean View School District
WOCX-008511	Debra Lew	Ocean View School District
WOCX-008575	Maria Atteberry	Orange County Department of Education
WOCW-008404	Arthur Fordin	Orange County Department of Education
WOCT-007842	Christine Sanderson	Orange County Department of Education
WOCU-007901	Traci Torres	Orange County Department of Education
Settlement Authority Requests		
	Claimant	District
WOCX-008434	Christie Hopkins	Brea-Olinda Unified School District
WOCX-008432	Evangeline Navarro	Brea Olinda Unified School District
WOCX-008572	Amy Foreman	Ocean View School District
WOCX-008511	Debra Kew	Ocean View School District

A motion was made by Mr. Avila, seconded by Ms. Kantor, to approve/ratify settlement of the claims listed in the agenda. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: Laguna Beach Unified School District

ABSTAIN: None

The Board returned to Open Session at 9:26a.m. Ms. Ott reported that during Closed Session, action was taken on the claims referenced in the agenda.

VI. JPA ADMINISTRATION

MEDICAL MANAGED CARE: SUITE OF REPORTING

Information 14/15-205

York presented and discussed the Managed Care Suite of Reporting covering February 2015 activities, including Table of Contents, Program Overviews, Bill Review Fees by Claim File, Review Fee Breakdown by Bill, Utilization Review Savings Report, New Pricing Structure comparison, Pay Code Register, and Zero Pay with Fees. Certain documents contain confidential information and the members are to safeguard the contents. Ms. Kantor had several claims where clarification is needed.

Ms. Brainard will present the reports for the 2014 calendar year summary and also to provide follow up information regarding the PBM first fill cards when she arrives at the meeting. This was an information item.

WESTERN ORANGE COUNTY SELF-FUNDED WORKERS' COMPENSATION AGENCY
MINUTES – April 20, 2015

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DISCUSSION / ACTION REGARDING MEDICAL
PROVIDER NETWORK (MPN) IMPLEMENTATION Information/Action 14/15-206

Ms. Hatley advised the MPN has been approved. Ms. Hatley distributed some MPN pamphlets as well as the information for the MPN training. The Board discussed a possible date for implementation. This was an information item.

DISCUSSION / ACTION REGARDING BICKMORE
SERVICES Information/Action 14/15-206

Ms. Hatley discussed the Return To Work Program. Ms. Hatley is awaiting receipt of the first draft to review with Ms. Bals of Bickmore Risk Services. Ms. Hatley will email the Board with the draft for editing and will then send it to Bickmore Risk Services. This was an information item.

DISCUSSION / ACTION RE INVESTMENT POLICY
(FIRST READING) Information/Action 14/15-207

Ms. Ott presented and discussed the proposed Investment Policy. Following discussion motion made by Ms. Kantor, seconded by Mr. Avila to carry this item to the next meeting for the required Second Reading and possible adoption as submitted. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: Laguna Beach Unified School District
ABSTAIN: None

DISCUSSION/ACTION RE DATE AND TIME OF
JPA MEETING Information/Action 14/15-208

This item was carried to the next meeting.

QUARTERLY STALE DATED CHECKS REPORT Information 14/15-210

Ms. Michels discussed the report which was based on the reconciliation dated April 20, 2015. Ms. Ott inquired if the Payees have been contacted. Ms. Michels advised they have been contact via U.S. mail. This was an information item.

VII. FINANCIAL

FINANCIAL REPORTS Information/Action 14/15-211

WESTERN ORANGE COUNTY SELF-FUNDED WORKERS' COMPENSATION AGENCY
MINUTES – April 20, 2015

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The Board discussed the reports covering February 2015. Ms. Kantor reported Excess Recoveries are \$134,000.00. Motion was made by Mr. Avila, seconded by Ms. Kantor, to accept the Financial Reports, as presented. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Mr. Avila Ms. Kantor
NOES: None
ABSENT: Laguna Beach Unified School District
ABSTAIN: None

REIMBURSEMENTS TO JPA IMPREST ACCOUNT Information/Action 14/15-212

A motion was made by Ms. Kantor, seconded by Mr. Avila, to approve the following Reimbursements to JPA Imprest Account for March 2015: The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: Laguna Beach Unified School District
ABSTAIN: None

March 1, 2015 – March 17, 2015	\$ 94,690.45
March 18, 2015 – March 31, 2015	\$ 78,440.27
Total:	\$173,130.72

BANK RECONCILIATION Information/Action 14/15-213

A motion was made by Mr. Avila, seconded by Ms. Kantor, to accept the Bank Reconciliation for February 2015. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: Laguna Beach Unified School District
ABSTAIN: None

APPROVAL OF PAYMENTS Information/Action 14/15-214

Ms. Kantor discussed the Approval of Payments dated April 20, 2015. A motion was made by Ms. Kantor, seconded by Mr. Avila, to approve/ratify payment of invoices itemized below. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: Laguna Beach Unified School District
ABSTAIN: None

Joie Phillips	Mileage expenses to attend 2015 PARMA Conference. Disneyland Hotel, Anaheim	\$ 51.75
Ocean View School District	Membership Dues and PARMA Conference Registration for Joie Phillips	600.00
Ocean View School District	PARMA Conference Registration for Cindy Pulfer	420.00
York Risk Services	Workers' Compensation Claims Administration Fee 3/1/15 – 5/31/15	52,685.50
York Risk Services	Workers' compensation JPA Administration Fee 3/1/15 – 5/31/15	1,600.00
Total		\$55,357.25

VIII. REIMBURSEMENT PROGRAMS

SAFETY CREDIT PROGRAM

Information/Action 14/15-215

Ms. Kantor presented a Safety Credits Usage Report as of April 17, 2015, for FY ending June 30, 2015. The following Safety Credit request for reimbursement was presented:

Orange County Department of Education	April 13, 2015	\$7,350.81
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A motion was made by Ms. Kantor, seconded by Mr. Avila, to approve the safety credits, as presented. The motion was approved by a 3-0-1 vote:

- AYES: Ms. Ott, Mr. Avila, Ms. Kantor
- NOES: None
- ABSENT: Laguna Beach Unified School District
- ABSTAIN: None

FIRST AID PROGRAM

Information/Action 14/15-216

The following First Aid request for reimbursement was presented:

Brea Olinda Unified School District	April 16, 2015	\$322.20
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A motion was made by Ms. Kantor, seconded by Mr. Avila, to approve the First Aid Claim request for reimbursement, as presented. The motion was approved by a 3-0-1 vote.

- AYES: Ms. Ott, Mr. Avila, Ms. Kantor
- NOES: None
- ABSENT: Laguna Beach Unified School District
- ABSTAIN: None

IX. INFORMATION REPORTS

VISITOR COMMENTS Information 14/15-217

There were no Visitor Comments.

BOARD COMMENTS Information 14/15-218

There were no Board Comments.

AUTHORITY CORRESPONDENCE Information 14/15-219

1. Letter from, Ms. Elea Sanchez, MPN Program, Medical Unit, State of California, Department of Industrial Relations, Division of Workers' Compensation, Medical Unit, dated March 20, 2015, regarding Approval of the Medical Provider Network, (MPN).

This was an information item.

CLAIMS ADMINISTRATOR / MANAGER COMMENTS Information 14/15-220

The Board reviewed York's Case Counts for March 2015. York discussed it's Perspectives for March 2015. Ms. Hatley discussed the SIU results. Ms. Hatley advised OSIP will be in the Upland office next week conducting reserving training. Ms. Sandra Sloan is the presenter. This was an information item.

X. CONFERENCES

REQUESTS FOR CONFERENCE ATTENDANCE Information/Action 14/15-221

There were no items presented for the Board's consideration. Ms. Hatley advised the Annual PARMA Conference will be February 23 – 26, 2016, in Indian Wells, CA. The Annual CAJPA Conference will be September 15 – 18, 2015, in South Lake Tahoe, CA.

XI. OTHER BOARD DISCUSSION Information 14/15-222

There was no other Board discussion

XII. FOLLOW-UP FROM PREVIOUS MEETING Information/Action 14/15-223

There were no directives from the March 16, 2015 meeting. No action was taken.

XIII. AGENDA ITEMS FOR NEXT MEETING – May 18, 2015 Information 14/15-224

The next meeting will be held on Monday, May 18, 2015 at 9:00 a.m. at Orange County Department of Education, 200 Kalmus Drive, A-1010/11, Costa Mesa, California. Items to be included on the Agenda for discussion and possible action are:

Carried from this meeting:

- A. MPN Implementation
- B. Bickmore Services
- C. Investment Policy
- D. Date and Time of JPA Meetings
- E. Request for Proposal for or Quote for Claims Administration, Managed Care, and JPA Administration.
- F. Service Agreement with York Risk Services Group Regarding Claims and JPA Administrations.

Per JPA Timeline for April 2015:

- 1. Prepare Preliminary Budget. (Secy-Treas)
 - 2. Quarterly Self-Imposed Increase Report. (York)
 - 3. Quarterly Investment Report. (President)
 - 4. Designated Medicare Authorized Representative. (Board)
-

XIV. CLAIMS ADMINISTRATION
Closed Session (2 of 2)

The Board reconvened Closed Session. Ms. Carmona presented and discussed the open indemnity claims for former member Huntington Beach City School District. Ms. Kantor directed York to obtain the Curriculum Vitae of Attorney Tappin. This was an information item.

**CLAIMS OF HUNTINGTON BEACH CITY
SCHOOL DISTRICT**

Information 14/15-225

**EXCESS INSURANCE CLAIMS REPORTING/
SELF EXCESS CLAIMS REPORT**

Information 14/15-226

The Board reviewed the monthly excess matrix report. The Board directed York to include an item showing the outstanding amount reported to the report. This was an information item.

WESTERN ORANGE COUNTY SELF-FUNDED WORKERS' COMPENSATION AGENCY
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LARGE LOSS FILE REVIEW REGARDING
BREA-OLINDA AND LAGUNA BEACH
UNIFIED SCHOOL DISTRICTS.

Information 14/15-227

Ms. Carmona discussed the large loss file review.

The Board returned to Open Session at 10:57 a.m. The Board did not take action on these information items.

DISCUSSION / ACTION REGARDING REQUEST
FOR PROPOSAL (RFP) OR REQUEST FOR
QUOTE (RFQ) FOR CLAIMS ADMINISTRATION,
MANAGED CARE AND JPA ADMINISTRATION

Information/Action 14/15-203

The Board dismissed York for further discussion and then requested this item be carried to the next meeting.

REVIEW / RENEW SERVICE AGREEMENT
WITH YORK INSURANCE SERVICES GROUP
RE CLAIMS ADMINISTRATION AND
JPA ADMINISTRATION

Information/Action 14/15-209

The Board dismissed York for further discussion and then requested this item be carried to the next meeting.

XV. ADJOURNMENT

Action 14/15-228

There being no further business to discuss, a motion was made by Ms. Kantor, seconded by Mr. Avila, to adjourn the meeting at 11:55a.m. The motion passed with a 3-0-1 vote.

AYES: Ms. Ott, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: Laguna Beach Unified School District

ABSTAIN: None

MINUTES

WESTERN ORANGE COUNTY
SELF-FUNDED WORKERS' COMPENSATION AGENCY
BOARD MEETING
MONDAY, MARCH 16, 2015
9:00 a.m.
Orange County Department of Education
200 Kalmus Dr., Room A-1010/11

I. CALL TO ORDER Action 14/15-169

The meeting was called to order by President Barbara Ott at 9:05 a.m.

II. ROLL CALL Action 14/15-170

PRESENT:

BREA OLINDA UNIFIED SCHOOL DISTRICT	Ms. Barbara Ott
LAGUNA BEACH UNIFIED SCHOOL DISTRICT	Ms. Leisa Winston
OCEAN VIEW SCHOOL DISTRICT	Mr. Felix Avila
ORANGE COUNTY DEPARTMENT OF EDUCATION	Ms. Ann Kantor

Manager: York Risk Services Group	Ms. Jody Gray
	Ms. Angela Hatley
	Ms. Kim Michels
	Ms. Suzie Carmona

III. APPROVAL / CHANGES TO AGENDA – March 16, 2015 Action 14/15-171

The Room location for the meeting should be Room A-1010/11 and not Room D-1003.

With that change a motion was made by Ms. Kantor, seconded by Mr. Avila, to approve the Agenda for March 16, 2015. The motion was approved by a 4-0-0 vote.

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: None

ABSTAIN: None

IV. APPROVAL OF MINUTES – January 26, 2015 Action 14-15-172

The first page, under the title, it should be corrected to January and not Januar.

WESTERN ORANGE COUNTY SELF-FUNDED WORKERS' COMPENSATION AGENCY
MINUTES – March 16, 2015

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With that change a motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the minutes of January 26, 2015. The motion was approved by a 4-0-0 vote:
AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: None
ABSTAIN: None

V. CLAIMS ADMINISTRATION
Closed Session

The Board adjourned to Closed Session at 9:06a.m. Ms. Carmona presented the following claims:

CLAIMS

Information/Action 14/15-173

Settlement Ratifications		
Claim Number	Claimant	District
WOCA-006893	Monica Johannsen	Orange County Department of Education
WOCY-008642	Valarie Patterson	Orange County Department of Education
Settlement Authority Requests		
Claim Number	Claimant	District
WOCW-008469	Pamela Cramer	Ocean View School District
WOXC-008575	Marla Atteberry	Orange County Department of Education
WOCX-008372	Rose Cote	Orange County Department of Education
WOCX-008532	Julie Neiswonger	Orange County Department of Education
WOCY-008642	Valarie Patterson	Orange County Department of Education
WOCA-007227	Virginia Taylor	Orange County Department of Education

Ms. Kantor advised to correct page 27 in the agenda package.

A motion was made by Ms. Kantor, seconded by Mr. Avila, to approve/ratify settlement of the claims listed in the agenda. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: None
ABSTAIN: None

The Board returned to Open Session at 9:16 a.m. Ms. Ott reported that during Closed Session, action was taken on the claims referenced in the agenda.

VI. JPA ADMINISTRATION

MEDICAL MANAGED CARE: SUITE OF REPORTING Information 14/15-174

York presented and discussed the Managed Care Suite of Reporting covering December 2014 and January 2015 activities, including Table of Contents, Program Overviews, Bill Review Fees by Claim File, Review Fee Breakdown by Bill, Utilization Review Savings Report, New Pricing Structure comparison, Pay Code Register, and Zero Pay with Fees. Certain documents contain confidential information and the members are to safeguard the contents.

Ms. Hatley advised Ms. Brainard was not able to attend the meeting and will present the reports for the 2014 calendar year summary and also to provide follow up information regarding the PBM first fill cards at the next meeting. This was an information item.

**DISCUSSION / ACTION REGARDING MEDICAL
PROVIDER NETWORK (MPN) IMPLEMENTATION** Information/Action 14/15-175

Ms. Hatley advised the MPN has been submitted for approval. This was an information item.

**DISCUSSION / ACTION REGARDING BICKMORE
SERVICES** Information/Action 14/15-176

This item was carried to the next meeting.

**DISCUSSION / ACTION ON ACTUARIAL STUDY
WITH EXPERIENCE MODIFICATIONS (EX-MODS)
FOR 2015-16** Information/Action 14/15-177

A motion was made by Ms. Kantor, seconded by Ms. Winston, to receive the Actuarial Study as discussed. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: None
ABSTAIN: None

The Board discussed the procedure for establishing funding rates and premiums for the next fiscal year. Ms. Kantor presented X-Mods with a Five-Year History. Following discussion, a motion was made by Ms. Kantor, seconded by Ms. Winston, to adopt Plan 5

WESTERN ORANGE COUNTY SELF-FUNDED WORKERS' COMPENSATION AGENCY
MINUTES – March 16, 2015

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which is a 70-80% split, with a manual rate of \$1.890 per \$100 of payroll, and a 3% contribution to safety credits. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: None

ABSTAIN: None

QUARTERLY SELF-IMPOSED INCREASES REPORT Information 14/15-178

Ms. Michels advised there were no self-imposed increases to report. This was an information item.

VII. FINANCIAL

FINANCIAL REPORTS Information/Action 14/15-179

The Board discussed the reports covering December 2014 and January 2015. Ms. Kantor reported a change for the December 2014, line 0004, Excess Recoveries, should state \$24,716 instead of \$228,569. With that change a motion was made by Ms. Kantor, seconded by Mr. Avila, to accept the Financial Reports, as presented. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila Ms. Kantor

NOES: None

ABSENT: None

ABSTAIN: None

REIMBURSEMENTS TO JPA IMPREST ACCOUNT Information/Action 14/15-180

A motion was made by Ms. Kantor, seconded by Mr. Avila, to approve the following Reimbursements to JPA Imprest Account for January and February 2015. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: None

ABSTAIN: None

January 1, 2015 – January 16, 2015	\$110,582.82
January 17, 2015 – January 31, 2015	\$ 44,872.09
February 1, 2015 – February 12, 2015	\$157,038.13
February 13, 2015 – February 28, 2015	\$ 59,767.58
Total:	\$372,260.62

WESTERN ORANGE COUNTY SELF-FUNDED WORKERS' COMPENSATION AGENCY
MINUTES – March 16, 2015

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BANK RECONCILIATION

Information/Action 14/15-181

A motion was made by Ms. Kantor, seconded by Ms. Winston, to accept the Bank Reconciliation for December 2014 and January 2015. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Ms. Kantor

NOES: None

ABSENT: None

ABSTAIN: None

APPROVAL OF PAYMENTS

Information/Action 14/15-182

Ms. Kantor presented and discussed the Approval of Payments dated March 16, 2015. A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve/ratify payment of invoices itemized below. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: None

ABSTAIN: None

Barbara Ott	Registration and mileage expenses for attending 2015 PARMA Conference.	\$312.65
Total		\$312.65

QUARTERLY INVESTMENT REPORT

Information 14/15-183

Ms. Ott presented and discussed the Quarterly Investment Report.

VIII. REIMBURSEMENT PROGRAMS

SAFETY CREDIT PROGRAM

Information/Action 14/15-184

Ms. Kantor presented a Safety Credits Usage Report as of January 27, 2015, for FY ending June 30, 2015. The following Safety Credit request for reimbursement was presented:

Brea Olinda Unified School District	March 12, 2015	\$1,465.58
Laguna Beach Unified School District	January 30, 2015	\$14,369.00
Orange County Department of Education	March 11, 2015	\$1,134.37

A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the safety credits, as presented. The motion was approved by a 4-0-0 vote:

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AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: None
ABSTAIN: None

FIRST AID PROGRAM

Information/Action 14/15-135

There were no requests for the Board's consideration.

IX. INFORMATION REPORTS

VISITOR COMMENTS

Information 14/15-186

There were no Visitor Comments.

BOARD COMMENTS

Information 14/15-187

Voluntary Policy

Ms. Ott requested clarification regarding PARMA membership. Ms. Kantor advised it is based on individual membership and not as a JPA. Ms. Kantor suggested the Board go out for bid regarding the Claims and JPA Administration. She will prepare a Request for Proposal, (RFP). Ms. Ott discussed the ~~Board~~ Policy, if an unsalaried person is injured, are they covered under the workers' compensation policy? Ms. Hatley advised under the Education Code it would go under the workers' compensation policy. Ms. Winston and Ms. Kantor advised they will share the policy they have in place for their respective Department and District. Ms. Ott advised she will prepare an investment policy and include it as an agenda item for the next meet.

AUTHORITY CORRESPONDENCE

Information 14/15-188

There were no items for the Board's consideration.

CLAIMS ADMINISTRATOR / MANAGER COMMENTS

Information 14/15-189

The Board reviewed York's Case Counts for January and February 2015. York discussed it's Perspectives for January and February 2015, RJN Special Investigations Quarterly Newsletter and the Overpayment log for March 2015. This was an information item.

X. CONFERENCES

WESTERN ORANGE COUNTY SELF-FUNDED WORKERS' COMPENSATION AGENCY
MINUTES – March 16, 2015

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REQUESTS FOR CONFERENCE ATTENDANCE Information/Action 14/15-190

There were no items presented for the Board's consideration. Ms. Hatley discussed several area Chapter meetings the Board is invited to attend at no cost to them.

XI. OTHER BOARD DISCUSSION Information 14/15-191

There was no other Board discussion

XII. FOLLOW-UP FROM PREVIOUS MEETING Information/Action 14/15-192

There were no directives from the January 26, 2014 meeting. No action was taken.

XIII. AGENDA ITEMS FOR NEXT MEETING – April 20, 2015 Information 14/15-193

The next meeting will be held on Monday, April 20, 2015 at 9:00 a.m. at Orange County Department of Education, 200 Kalmus Drive, Room D-1003, Costa Mesa, California. Items to be included on the Agenda for discussion and possible action are:

Carried from this meeting:

1. Discussion/Action re Medical Provider Network (MPN) Implementation. (Board)
2. Discussion/Action Regarding Bickmore Services. (York/Board)
3. Discussion/Action Regarding Request for Proposal (RFP), for Claims and JPA Administration. (Board)
4. Investment Policy, First Reading. (Board)

Per JPA Timeline for April 2015:

1. Quarterly Stale Dated Checks Report. (York)
 2. Discussion / Action for Service Agreement with York Risk Services Group regarding JPA Administration. (York)
-

XIV. CLAIMS ADMINISTRATION
Closed Session (2 of 2)

The Board reconvened Closed Session. Ms. Carmona presented and discussed the open indemnity claims for former member Huntington Beach City School District. This was an information item.

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CLAIMS OF HUNTINGTON BEACH CITY
SCHOOL DISTRICT

Information 14/15-194

EXCESS INSURANCE CLAIMS REPORTING/
SELF EXCESS CLAIMS REPORT

Information 14/15-195

The Board reviewed the monthly excess matrix report. Ms. Michels presented and discussed the claims regarding claim numbers WOCA-001394 and WOCA-006745. The Board discussed retaining Counsel regarding the claims. Ms. Michels advised she will have Counsel review and advise what the estimated cost will be to litigate. This was an information item.

LARGE LOSS FILE REVIEW REGARDING
BREA-OLINDA AND LAGUNA BEACH
UNIFIED SCHOOL DISTRICTS.

Information 14/15-196

Ms. Carmona discussed the large loss file review.

The Board returned to Open Session at 10:54 a.m. The Board did not take action on these information items.

XV. ADJOURNMENT

Action 14/15-197

There being no further business to discuss, a motion was made by Ms. Kantor, seconded by Mr. Avila, to adjourn the meeting at 10:58 a.m. The motion passed with a 4-0-0 vote.

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: None

ABSTAIN: None

AGENDA

WESTERN ORANGE COUNTY
SELF-FUNDED WORKERS' COMPENSATION AGENCY
BOARD MEETING
MONDAY, JANUARY 26, 2015
9:00 a.m.
Orange County Department of Education
200 Kalmus Dr., Room A-1010/11

I. CALL TO ORDER Action 14/15-142

The meeting was called to order by President Barbara Ott at 9:09 a.m.

II. ROLL CALL Action 14/15-143

PRESENT:

BREA OLINDA UNIFIED SCHOOL DISTRICT	Ms. Barbara Ott
LAGUNA BEACH UNIFIED SCHOOL DISTRICT	Ms. Leisa Winston
ORANGE COUNTY DEPARTMENT OF EDUCATION	Ms. Ann Kantor

Manager: York Risk Services Group	Ms. Angela Halley
	Ms. Devora Brainard
	Ms. Kim Michels
	Ms. Erika Schwartz

NOT PRESENT

Ocean View School District

III. APPROVAL / CHANGES TO AGENDA -- January 26, 2015 Action 14/15-144

A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the Agenda for January 26, 2015. The motion was approved by a 3-0-1 vote.

AYES: Ms. Ott, Ms. Winston, Ms. Kantor

NOES: None

ABSENT: Ocean View School District

ABSTAIN: None

IV. APPROVAL OF MINUTES -- December 18, 2014 Action 14-15-145

A motion was made by Ms. Winston, seconded by Ms. Kantor, to approve the minutes of December 18, 2014. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Ms. Winston, Ms. Kantor
NOES: None
ABSENT: Ocean View School District
ABSTAIN: None

V. CLAIMS ADMINISTRATION

Closed Session

The Board adjourned to Closed Session at 9:10 a.m. Ms. Schwartz presented the following claims:

CLAIMS

Information/Action 14/15-146

Settlement Ratifications		
Claim Number	Claimant	District
WOCX-007552	Johnny Thompson	Brea Olinda Unified School District
WOCT-007866	Joni Hyland	Ocean View School District
WOCX-008592	Lisa Garrett	Orange County Department of Education
Settlement Authority Requests		
Claim Number	Claimant	District
WOCX-008463	Jennifer Gamal	Ocean View School District
WOCA-006893	Monica Johannsen	Orange County Department of Education
WOCT-007842	Christine Sanderson	Orange County Department of Education

A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve/ratify settlement of the claims listed in the agenda. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Ms. Winston, Ms. Kantor
NOES: None
ABSENT: Ocean View School District
ABSTAIN: None

The Board returned to Open Session at 9:14 a.m. Ms. Ott reported that during Closed Session, action was taken on the claims referenced in the agenda.

VI. JPA ADMINISTRATION

MEDICAL MANAGED CARE: SUITE OF REPORTING

Information 14/15-147

York presented and discussed the Managed Care Suite of Reporting covering November activities, including Table of Contents, Program Overviews, Bill Review Fees by Claim File, Review Fee Breakdown by Bill, Utilization Review Savings Report, New Pricing

Structure comparison, Pay Code Register, and Zero Pay with Fees. Certain documents contain confidential information and the members are to safeguard the contents.

Ms. Brainard distributed and discussed a report regarding the Prescription Intervention. There have been reviews of nine patients with the physician reviewing medications, containing the Primary Treating Physician, (PTP) and discussing future treatment; if the PTP will speak with our physician.

The Board directed Ms. Brainard to present reports for the 2014 calendar year summary and also to provide follow up information regarding the PBM first fill cards at the next meeting. This was an information item.

DISCUSSION / ACTION REGARDING MEDICAL
PROVIDER NETWORK (MPN) IMPLEMENTATION Information/Action 14/15-148

The Board Directed York and WellComp to implement Kaiser On-The-Job as a provider in their Medical Provider Network (MPN). Ms. Ott stated she has concerns regarding creating a letter to employees about the MPN and pre-designation. Ms. Hatley advised she will send an email to the Members regarding the Pre-Designation FAQ's which includes questions concerning how the MPN and pre-designation interact. This was an information item.

DISCUSSION / ACTION REGARDING BICKMORE
SERVICES Information/Action 14/15-149

This item was carried to the next meeting.

DESIGNATE MEDICARE AUTHORIZED
REPRESENTATIVE Information/Action 14/15-150

Ms. Kantor updated her signature and returned the form for the Medicare Authorized Representative. This was an information item.

VII. FINANCIAL

FINANCIAL REPORTS Information/Action 14/15-151

The Board discussed the reports covering November 2014. Ms. Kantor reported a \$106,000 year-to-date in SELF reimbursements. Ms. Ott requested a list of outstanding reimbursements for the JPA. A motion was made by Ms. Kantor, seconded by Ms. Winston, to accept the Financial Reports, as presented. The motion was approved by a 3-0-1 vote:

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AYES: Ms. Ott, Ms. Winston, Ms. Kantor
NOES: None
ABSENT: Ocean View School District
ABSTAIN: None

REIMBURSEMENTS TO JPA IMPREST ACCOUNT Information/Action 14/15-152

Ms. Kantor advised there were no checking errors this month. A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the following Reimbursements to JPA Imprest Account for December 2014: The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Ms. Winston, Ms. Kantor
NOES: None
ABSENT: Ocean View School District
ABSTAIN: None

12/1/2014 through 12/16/2014	\$198,619.39
12/17/2014 through 12/31/2014	\$105,537.35
Total:	\$304,156.74

BANK RECONCILIATION Information/Action 14/15-153

A motion was made by Ms. Kantor, seconded by Ms. Winston, to accept the Bank Reconciliation for December 2014. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Ms. Winston, Ms. Kantor
NOES: None
ABSENT: Ocean View School District
ABSTAIN: None

APPROVAL OF PAYMENTS Information/Action 14/15-154

Ms. Kantor presented and discussed the Approval of Payments dated December 18, 2014. A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve/ratify payment of invoices itemized below. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Ms. Winston, Ms. Kantor
NOES: None
ABSENT: Ocean View School District
ABSTAIN: None

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York	Workers' Compensation, JPA Administration Fee, 12/1-14 -1 2/28/15	\$ 1,600.00
York	Workers' Compensation, Claims Administration Fee, 12/1/14 – 2/28/15	\$52,685.50
Department of Industrial Relations, Office of Self- Insurance Plans	2014-2015 Assessment based on 2013-2014 Public Annual Report	\$44,200.47
Total		\$98,485.97

VIII. REIMBURSEMENT PROGRAMS

SAFETY CREDIT PROGRAM

Information/Action 14/15-155

Ms. Kantor presented a Safety Credits Usage Report as of December 11, 2014, for FY ending June 30, 2015. The following Safety Credit request for reimbursement was presented:

Brea Olinda Unified School District	December 11, 2014	\$9,109.86
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A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the safety credits, as presented. The motion was approved by a 3-0-1 vote:

AYES: Ms. Ott, Ms. Winston, Ms. Kantor
NOES: None
ABSENT: Ocean View School District
ABSTAIN: None

FIRST AID PROGRAM

Information/Action 14/15-156

The following First Aid request for reimbursement was presented:

Brea Olinda Unified School district	December 10, 2014	\$1,817.53
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A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the First Aid Claim request for reimbursement, as presented. The motion was approved by a 3-0-1 vote.

AYFS: Ms. Ott, Ms. Winston, Ms. Kantor
NOES: None
ABSENT: Ocean View School District
ABSTAIN: None

IX. INFORMATION REPORTS

VISITOR COMMENTS

Information 14/15-157

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There were no Visitor Comments.

BOARD COMMENTS

Information 14/15-158

Ms. Ott advised she has a new email address. Ms. Kantor requested information regarding reimbursement on a claim regarding Western Medical Center and an update on the contact by and/or reimbursement from the excess carrier on Claim # WOCA-006745. QBF/Midlands have provided information to Ms. Michels and the examiner stating they could not locate the Medicare Set Aside. Ms. Michels will email the Board with an update after the meeting.

AUTHORITY CORRESPONDENCE

Information 14/15-159

There were no items for the Board's consideration.

CLAIMS ADMINISTRATOR / MANAGER COMMENTS

Information 14/15-160

The Board reviewed York's Case Counts for December 2014. York discussed it's Perspectives for December 2014, RJN Special Investigations Quarterly Newsletter and the Overpayment log for December 2014. This was an information item.

X. CONFERENCES

REQUESTS FOR CONFERENCE ATTENDANCE

Information/Action 14/15-161

There were no items presented for the Board's consideration.

XI. OTHER BOARD DISCUSSION

Information 14/15-162

Ms. Kantor distributed the Actuarial Report ending June 30, 2014, for the Board's review. The Actuarial Report will be brought back at the next JPA meeting.

XII. FOLLOW-UP FROM PREVIOUS MEETING

Information/Action 14/15-163

There were no directives from the December 18, 2014 meeting. No action was taken.

XIII. AGENDA ITEMS FOR NEXT MEETING – *March 16, 2015

Information 14/15-164

*Historically the Board does not meet in February.

The next meeting will be held on Monday, March 16, 2015 at 9:00 a.m. at Orange County Department of Education, 200 Kalmus Drive, Room A-1010/11, Costa Mesa, California. Items to be included on the Agenda for discussion and possible action are:

Carried from this meeting:

1. Discussion/Action re Medical Provider Network (MPN) Implementation. (Board)
2. Discussion/Action Regarding Bickmore Services. (York/Board)

Per JPA Timeline for February 2015:

1. Receive Actuarial Report. (Secy-Treas)
2. Prepare and Approve Ex-Mods. (Actuary & Board)
3. Quarterly Self-Imposed Increase Report. (York)
4. Quarterly Investment Report. (President)

Per JPA Timeline for March 2015

1. Initiate Excess Insurance Renewal. (Secy-Treas)
2. Obtain Estimated Payrolls for next FY. (Secy-Treas)

XIV. CLAIMS ADMINISTRATION

Closed Session (2 of 2)

The Board reconvened Closed Session. Ms. Schwartz presented and discussed the open indemnity claims for former member Huntington Beach City School District. This was an information item.

CLAIMS OF HUNTINGTON BEACH CITY SCHOOL DISTRICT

Information 14/15-165

EXCESS INSURANCE CLAIMS REPORTING/ SELF EXCESS CLAIMS REPORT

Information 14/15-166

The Board reviewed the monthly excess matrix report. Ms. Michels reported the Excess Carrier, Genesis, advised they will not reimburse on the claim number WOCA-001394 and that York's Claims Director is reviewing the claim and the issue. This was an information item.

LARGE LOSS FILE REVIEW REGARDING OCEAN VEW SCHOOL DISTRICT

Information 14/15-167

Ms. Schwartz discussed the large loss file review.

The Board returned to Open Session at 10:57 a.m. The Board did not take action on these information items.

XV. ADJOURNMENT

Action 14/15-141

There being no further business to discuss, a motion was made by Ms. Kantor, seconded by Ms. Winston, to adjourn the meeting at 11:58 a.m. The motion passed with a 3-0-1 vote.

AYES: Ms. Ott, Ms. Winston, Ms. Kantor

NOES: None

ABSENT: Ocean View School District

ABSTAIN: None

**Member Training Session 8:30am to 9:00am
TBD**

MINUTES

**WESTERN ORANGE COUNTY
SELF-FUNDED WORKERS' COMPENSATION AGENCY
BOARD MEETING**

THURSDAY, DECEMBER 18, 2014

9:00 a.m.

Orange County Department of Education
200 Kalmus Dr., Room A-1010/11

I. CALL TO ORDER **Action 14/15-115**

The meeting was called to order by President Barbara Ott at 9:10 a.m.

II. ROLL CALL **Action 14/15-116**

PRESENT:

BREA OLINDA UNIFIED SCHOOL DISTRICT	Ms. Barbara Ott
LAGUNA BEACH UNIFIED SCHOOL DISTRICT	Ms. Leisa Winston
OCEAN VIEW SCHOOL DISTRICT	Mr. Felix Avila
ORANGE COUNTY DEPARTMENT OF EDUCATION	Ms. Ann Kantor

Manager: York Risk Services Group

Ms. Angela Hatley
Ms. Kim Michels
Ms. Susie Carmona

ALSO PRESENT

N/A

III. APPROVAL / CHANGES TO AGENDA – December 18, 2014 **Action 14/15-117**

The Agenda was approved as presented.

A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the Agenda for December 18, 2014. The motion was approved by a 4-0-0 vote.

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: None

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ABSTAIN: None

IV. APPROVAL OF MINUTES – November 17, 2014

Action 14-15-118

A motion was made by Ms. Kantor, seconded by Mr. Avila, to approve the minutes of November 17, 2014. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: None

ABSTAIN: None

V. CLAIMS ADMINISTRATION

Closed Session

The Board adjourned to Closed Session at 9:11 a.m.

CLAIMS

Information/Action 14/15-119

Settlement Ratifications		
Claim Number	Claimant	District
None		
Settlement Authority Requests		
Claim Number	Claimant	District
None		

Ms. Kantor presented two claims, Monica Johannsen Claim # WOCA-006893 and Christine Sanderson Claim # WOCT-007842.

A motion was made by Ms. Winston, seconded by Mr. Avila, to approve/ratify Settlement of the claims listed. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Ms. Kantor, Mr. Avila

NOES: None

ABSENT: None

ABSTAIN: None

The Board returned to Open Session at 9:14 a.m. Ms. Ott reported that during Closed Session, action and/or direction was taken on the claims referenced.

VI. JPA ADMINISTRATION

MEDICAL MANAGED CARE: SUITE OF REPORTING Information 14/15-120

York presented and discussed the Managed Care Suite of Reporting covering November activities, including Table of Contents, Program Overviews, Bill Review Fees by Claim File, Review Fee Breakdown by Bill, Utilization Review Savings Report, New Pricing Structure comparison, Pay Code Register, and Zero Pay with Fees. Certain documents contain confidential information and the members are to safeguard the contents.

Ms. Kantor requested that York initiate a review of future medical claims for use of medications for chronic injuries to implement home delivery through the PBM. Ms. Hatley indicated she would initiate that project by contacting Ms. Brainard who will work with staff to identify appropriate cases.

This was an information item.

**DISCUSSION / ACTION REGARDING MEDICAL
PROVIDER NETWORK (MPN) IMPLEMENTATION** Information/Action 14/15-121

Ms. Hatley conveyed to the Board, in response to their question from the last meeting, that York would offer the MPN access fees at \$48.00 per claim, a 50/50 split of contracted savings (savings are contracted from zero to 8%) and the Application Fee Would be \$1,500.00. York will update MPN status/progress at the January meeting.

This item will be carried to the next meeting.

**DISCUSSION / ACTION REGARDING BICKMORE
SERVICES** Information/Action 14/15-122

Ms. Hatley presented the offer of a Bickmore service at no charge to the JPA. At the December meeting, the members wished to review the material presented listing the services offered. The Board discussed and decided to offer the service to Ocean View School District to use, which would benefit all the members. Ms. Hatley was directed to have Bickmore contact Mr. Avila directly.

A motion was made by Ms. Kantor, seconded by Ms. Winston, to allow member Ocean View School District the service provided by Bickmore. Mr. Avila was asked to report back to the Board with a status.

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The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Ms. Kantor, Mr. Avila
NOES: None
ABSENT: None
ABSTAIN: None

DESIGNATE MEDICARE AUTHORIZED
REPRESENTATIVE

Information/Action 14/15-123

The Board requested this item be deferred until the January 26, 2015 meeting.

VII. FINANCIAL

FINANCIAL REPORTS

Information/Action 14/15-124

The Board discussed the reports covering October 2014. A motion was made by Ms. Kantor, seconded by Ms. Winston, to accept the Financial Reports, as presented. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: None
ABSTAIN: None

REIMBURSEMENTS TO JPA IMPREST ACCOUNT

Information/Action 14/15-125

A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the following Reimbursements to JPA Imprest Account for November 2014: The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: None
ABSTAIN: None

11/1/2014 through 11/17/2014	\$156,325.72
11/18/2014 through 11/30/2014	\$ 10,322.34

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Total:	\$166,648.06
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BANK RECONCILIATION

Information/Action 14/15-126

A motion was made by Ms. Kantor, seconded by Ms. Avila, to accept the Bank Reconciliation for October 2014. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
 NOES: None
 ABSENT: None
 ABSTAIN: None

APPROVAL OF PAYMENTS

Information/Action 14/15-127

Ms. Kantor presented and discussed the Approval of Payments dated December 18, 2014. A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve/ratify payment of invoices itemized below. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
 NOES: None
 ABSENT: None
 ABSTAIN: None

Payee	Purpose	Amount
Department of Industrial Relations, Office of Self-Insurance Plans	2014-2015 Assessment based on the 2013-2014 Annual Report	44,200.47
York	Workers' Compensation JPA Administration Fee, 12/1/14 – 2/28/15	\$1,600.00
York	Workers' Compensation Claims Administration Fee, 12/1/14 – 2/28/15	52,685.50
Total		\$98,485.97

VIII. REIMBURSEMENT PROGRAMS

SAFETY CREDIT PROGRAM

Information/Action 14/15-128

Ms. Kantor presented a Safety Credits Usage Report as of December 11, 2014, for FY ending June 30, 2015. The following Safety Credit request for reimbursement was presented:

Brea-Olinda USD	December 11, 2014	\$9,109.86
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A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the safety credits, as presented. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: None
ABSTAIN: None

FIRST AID PROGRAM

Information/Action 14/15-129

The following First Aid Claims request for reimbursement was presented:

Brea-Olinda USD	December 10, 2014	\$1,817.53
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A motion was made by Ms. Kantor, seconded by Ms. Winston, to approve the First Aid Claims request for reimbursement, as presented. The motion was approved by a 4-0-0 vote:

AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor
NOES: None
ABSENT: None
ABSTAIN: None

IX. INFORMATION REPORTS

VISITOR COMMENTS

Information 14/15-130

There were no Visitor Comments.

BOARD COMMENTS

Information 14/15-131

Ms. Kantor: Merry Christmas to all.

Ms. Ott: There is a Grand Jury investigation taking place of a P&L JPA in Orange county. Ms. Ott distributed a draft of an investment policy for the Board's review. Ms. Ott also attached for reference the Education Code sections.

Ms. Winston inquired of the Board members who conducts their ergonomic evaluations and does trainings. Ms. Kantor indicated she manages the ergonomic evaluations and trainings at Orange County Department of Education. Ms. Ott suggested ASCIP may have the name of someone or information. Ms. Kantor indicated Rachel Shaw does an excellent job.

This was an information item.

AUTHORITY CORRESPONDENCE

Information 14/15-132

1. Email from Deborah O'Neill, Assistant Vice President, Sales Support Associate, Commercial Banking, Bank of America Merrill Lynch, dated December 5, 2014, regarding prior account.

This was an information item.

CLAIMS ADMINISTRATOR / MANAGER COMMENTS

Information 14/15-133

The Board reviewed York's Case Counts for November 2014. York discussed it's Perspectives for November 2014, and the Overpayment log for November 2014. This was an information item.

X. CONFERENCES

REQUESTS FOR CONFERENCE ATTENDANCE

Information/Action 14/15-134

Mr. Avila indicated Ocean View SD would have a representative attending PARMA in February 2015, Ms. Pulfer. Ms. Kantor indicated she would send out the Board's PARMA membership number. Ms. Kantor indicated she will coordinate registration.

There was no action taken.

XI. OTHER BOARD DISCUSSION

Information 14/15-135

There was no other Board discussion.

XII. FOLLOW-UP FROM PREVIOUS MEETING

Information/Action 14/15-136

There were no directives from the November 17, 2014 meeting. No action was taken.

XIII. AGENDA ITEMS FOR NEXT MEETING – January 26, 2015

Information 14/15-137

The next meeting will be held on Monday, January 26, 2015 at 9:00 a.m. at Orange County Department of Education, 200 Kalmus Drive, Room A-1010/11, Costa Mesa, California. Items to be included on the Agenda for discussion and possible action are:

Carried from this meeting:

1. Designate Authorized Medicare Representative
2. Medical Provider Network Implementation. (York)

Items to be included on the Agenda for discussion and possible action are:

Investment Policy

XIV. CLAIMS ADMINISTRATION

Closed Session (2 of 2)

The Board reconvened Closed Session at 10:01 a.m.. Ms. Carmona presented and discussed the open indemnity claims for former member Huntington Beach City School District. This was an information item.

**CLAIMS OF HUNTINGTON BEACH CITY
SCHOOL DISTRICT**

Information 14/15-138

**EXCESS INSURANCE CLAIMS REPORTING/
SELF EXCESS CLAIMS REPORT**

Information 14/15-139

The Board reviewed the monthly excess matrix report. This was an information item.

**LARGE LOSS FILE REVIEW REGARDING
OCEAN VIEW SCHOOL DISTRICT**

Information 14/15-140

Ms. Carmona discussed the large loss file review.

The Board returned to Open Session at 10:28 a.m. The Board did not take action on these information items.

XV. ADJOURNMENT

Action 14/15-141

There being no further business to discuss, a motion was made by Ms. Kantor, seconded by Ms. Winston, to adjourn the meeting at 10:28 a.m. The motion passed with a 4-0-0 vote.

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AYES: Ms. Ott, Ms. Winston, Mr. Avila, Ms. Kantor

NOES: None

ABSENT: None

ABSTAIN: None

EXHIBIT "F"

Western Orange County Joint Powers Authority

200 Kalmus Drive
Costa Mesa, CA 92626

