



Forum

VOLUME 7, ISSUE 2

MAY 2003

Insight into the User's Perspective of the DRB Process



**By William Edgerton,
Marketing Committee
Chair**

An important part of successful marketing is designing a product and message that meets the needs of your target audience. In order to achieve this, you must constantly be listening to your audience.

I recently distributed a survey on the Dispute Resolution Board Process to a small group (30) of owners, contractors and construction managers, primarily in the underground industry. Of this group, 18 responses were received as follows: 5 Owners, 5 Contractors, and 8 Construction Managers. This survey was intended to solicit the opinions of the users of the DRB process, not DRB practitioners. Therefore, by design, the survey was not

sent to people who currently sit on DRB panels. Although this sample is relatively small, the narrative comments provide an inside view of the current state of the industry's thinking. The results are thought-provoking, and should help stimulate discussion on how DRBs should evolve, and where we need to improve communication as an organization to insure success of the DRB philosophy and implementation.

Survey Interpretation

1. *Effectiveness:*
 - a. *Based upon your experience, do you think that having a sitting DRB helps either (a) avoid or (b) resolve project disputes, (c) both, or (d) neither?*

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“ The results... should help stimulate discussion on how DRBs should evolve, and where we need to improve communication as an organization to insure success of the DRB philosophy and implementation.”

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President's Page



Two years ago this Spring the Strategic Plan Committee (Mssrs. Chapman, Donaldson, Douglass, Baker, Woolf & Shipley) had its first all-day face-to-face brain-storming session at the O'Hare Hilton. The end of the day produced the outline that is your Foundation's present Strategic Plan (reprinted on page 13 of this issue). Notably, it had a two year horizon, and thus it is appropriate at this time to roll it out, note what has been accomplished, what remains to be done, and make the revisions necessary to steer the DRBF through the next two (or three, or four) years.

The Strategic Plan Committee's two-year objectives sought to accomplish three goals:

- To increase worldwide DRB usage by 25%.
- To maintain the integrity of the DRB process in the prevention and resolution of construction disputes.
- To increase membership to 750.

If our undertakings domestically (Idaho, Washington, Virginia and others) and internationally (Australia, China and other Pacific Rim nations) are any indication, the first goal – our most important – will be met.

Our second goal is maintaining the integrity of the DRB process. Growth in DRB usage is evidenced by increasing reports of new users or other stakeholders attempting to “modify” the basic process. While imitation may be the sincerest form of flattery, it often leads to inferior products yielding inferior results. The Foundation is addressing this problem and has done a tremendous amount of ground work in terms of awareness of problems, discussion, development of ethical standards, preparation of an ethics training workshop, and the like. Peter Chapman and Gordon Jaynes will be producing “Best Practices” guidelines which, after a full airing at the Annual Meeting, will become the basis for written materials published and distributed by the DRBF to further achieve this goal.

The membership target of 750 was considered ambitious but achievable. While significant gains have been made – not only in numbers but in the birth of regional chapters in the U.S. and internationally – projections of current trends show a 10- 20% shortfall.

Most of the “strategies” implemented pursuant to the Plan have been successful, notably: membership director and regional membership network, expanded international participation, web master and web site, training director and new training programs, development of empirical data on cost savings, and DRBF “brand recognition”; while a few will not bear fruit within the scheduled two year window, for example the creation of an Executive Director position, and group professional liability insurance benefits.

I have my own sense of where the DRBF is headed and what it will take to get there, but I'd like to know yours. What should be the Foundation's objectives for the next two years? I solicit your input via e-mail, letters to the editor, or both. □

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The *Forum* welcomes articles on all aspects of Dispute Resolution Boards, and members are encouraged to submit articles or topics to the DRBF, attn: Editor.

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Marketing Marketing Materials

The new DRBF brochures and covers have been printed, and supplies are available in the Seattle office. Contact Steve Fox at the DRBF office with your request for these materials.

Graphic design modifications to the membership brochure and covers for the Member Directory are currently underway. These will be done to match the new brochure graphics theme.

Conference Activities

The American Public Transit Association (APTA) conference at the Fairmont Hotel in San Jose, CA from June 7 to 12, 2003 will feature a panel discussion on Alternative Dispute Resolution: "The Use of Alternative Dispute Resolution (ADR) on Transit Claims and Disputes - What Works, What Doesn't, and Why."

The Rapid Excavation & Tunneling Conference (RETC) at the Marriott Hotel in New Orleans, LA will feature a panel discussion on Sunday June 15, 2003 on Dispute Review Boards. This event has been organized by Hugh Cronin and Pete Douglass, and will include the owner's perspective, and a discussion of current

challenges facing the DRB process.

Bill Edgerton

DATA REPORTING

With Spring housekeeping in vogue - let's take a stab at getting an early start on capturing NEW PROJECTS with DRBs; updating existing Project data and ferreting out PROJECTS in the PLANNING stages.

Please forward your input to Steve Fox. Thanks for your assistance - we all benefit from OUR OWN EFFORTS.

Richard Downs

Education

The DRBF training program has gotten off to a slow start probably the result of the situation in the Middle East and the state of the economy.

We had a successful Administration and Practice workshop in Daytona on April 11, with twenty-four people in attendance. Unfortunately, the Users' workshop scheduled for the previous day had to be cancelled due to lack of registrants.

The next workshop is an Administration

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Letters and E-mail to the DRBF

I was pleased to read the "Summary from Annual Meeting Breakout Session Group 3" in the last issue of *The Forum*. In general it was very well done and needed. However, I am very concerned about the last two sentences in Item A. [Regarding the perception of bias in Board member selection, "All reasonable steps should be taken prior to the first meeting to diffuse the perception. The board members should focus on establishing a relationship and common ground with the owner's representatives."] I don't believe this was the consensus reached at all.

The Board should never "focus on establishing a relationship" with either of the parties. This runs the risk of a perception of bias in reverse. Also, the second to the last sentence suggests that the Board should communicate with the owner prior to the first meeting and this is very risky as the rules and procedures have not yet been set by the Board and accepted by both parties. I don't feel that the DRBF should be advocating such procedures.

Pete Douglass

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and Practice workshop scheduled for Boston on May 10. We are also going to hold an Administration and Practice workshop and a Chaiiring workshop in conjunction with the DRBF Northwest Regional meeting which is scheduled for June 16 in Seattle. The workshops will be held on June 17 and 18.

We have also scheduled an Administration and Practice workshop and a Chaiiring workshop in conjunction with the DRBF Annual meeting in Washington DC. The workshops will be held on October 20 and 21, immediately following the Conference.

If you are interested in attending any of these workshops or know someone who is, call Steve Fox.

I will also be going to Australia the last week of May to help in the launch of an effort to expand and encourage the use of DRBs in Australia and New Zealand with presentations to various groups as well as meetings with potential users of the DRB process.

If you know of a potential sponsor of a training program please let me know.

Larry Rogers

International

The FIDIC assessment workshop for persons wishing to be listed by FIDIC as adjudicators will be held in UK (Oxford) on 20 -22nd June. Space is limited on this very tough assessment (not training) course but if you are interested, go to www.fidic.org for more details.

The DRBF International Conference 2003 will be held this autumn in Paris, France. See the back page of this newsletter for more details. The International Conference 2004 will be held in Germany in the Spring of 2004. A task force has been established and is working towards establishing dates and programmes.

A task force is working in the UK to pro-

duce DRB documentation for incorporation into UK construction contracts. Based on the FIDIC model, the new documents are aimed at falling within the statutory adjudication requirements that now applies to all UK construction work.

Several members of the DRBF (including two Board members) were speakers at a recent ICC/FIDIC conference in Paris. The event was oversubscribed and will be repeated in October 2003.

The ICC Dispute Board task force has almost completed its work in drafting clauses and procedures for incorporation into the ICC standard documents. These should be available shortly.

Peter Chapman □

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Of the 18 respondents, the largest number (13) said that a DRB accomplishes both an avoidance and a resolution function. Owners were less likely to see the avoidance function, and tended to see the function as purely one of resolution. Only one respondent, a contractor, felt that the process did neither.

Some of the reasons given for achieving the “avoidance” function were that one or both of the parties might be embarrassed by bringing forward claims of dubious merit. One person commented on the use of an “informal” hearing as a good method to avoid disputes.

Many of the respondents commented that the effectiveness of the process depends upon the knowledge, attitudes, and experience of the members.

Nevertheless, there was some indication that where the issues (namely money) are significant, the process can be viewed as strictly a step in the overall path to litigation, and that hearings at the DRB level are a warm-up for the later rounds of the bout.

There is some evidence that, because it so easy and relatively inexpensive to get a hearing with the DRB, parties who are most experienced at the dispute resolution process will abandon their contractual dispute resolution responsibilities, and take virtually everything to the DRB, to provide some “cover” for politically incorrect or unpopular decisions.

2. Cost Impact:

a. Do you think the presence of a DRB provision in the contract signals the willingness of the owner to be reasonable in the dispute resolution process?

There was a significant difference in the opinions of the respondents, depending upon their position. The owners were (almost) unanimous in their opinion that the presence of a DRB provision sends a firm message to the bidders about their willingness to be reasonable.

In contrast, the contractors were (almost) unanimous in their opinion that this was not necessarily the case, and in general were quite skeptical. Construction managers were fairly consistent in support of the idea that a DRB provision indicates that the owner will treat the contractor fairly, although there is some indication that the DRB process has evolved into a crutch to assist parties who don’t take their contract administration responsibilities seriously. Several respondents indicated that the absence of a DRB provision was a stronger indicator of the owner’s future behavior.

b. If so, do you think that this willingness is reflected in lower bid prices?

Both the owners and the contractors were in agreement the presence of a DRB was not reflected in lower bid prices. This signals that the owners are aware of the factors that go into the development of bid prices, and what factors do not. (One contractor respondent indicated that it caused him to raise bid prices.) One of the most interesting results was that, of the 8 construction manager respondents, exactly 50% thought that the presence of a DRB was reflected in lower bid prices and 50% thought that it was not. But a common theme among several respondents was that the presence of a DRB provision made a difference in the decision of whether to submit a bid or not, i.e. in the GO/NO-GO decision. This probably reflects the abundance of work in the underground industry, and may not be similarly applicable to other sectors of the construction industry. There were several comments concerning other factors that played a bigger part in the determining the competitiveness of the bids; for example the presence of competition, clear plans and specifications, and sensible risk allocation provisions.

c. At the beginning of a project, do you believe that the cost of having a DRB is worth the anticipated expense?

In response to this question, the owners were fairly consistent in their opinion that

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it was worth it. The contractors were split in their opinion, some agreeing that it was cheap compared to the cost of lawyers, and others pragmatically recognizing that the price of the DRB goes into the bid and the owner pays for it in any case. The construction managers universally agreed that it was worth the cost, some emphatically so. However, one of them put forth a suggestion that a more cost-effective approach would be to appoint a DRB for individual disputes, not for the entire project. Not only would this save money, but it would ensure that the proper technical discipline was included for the specific dispute. One of the comments from several different respondents was that a DRB may not be worth it on every project, and that it depended upon the complexity, risk and uncertainty of the work.

3. *Scope of Reviewable Disputes. Should the DRB hear disputes on:*

- a. *Entitlement only*
- b. *Entitlement and quantum*
- c. *Legal issues*
- d. *Any contract dispute*

The responses to this question were not consistent, in any of the groups. I expect that this reflects individual differences in past projects based upon specific contract wording.

One consistent comment was that the DRB should only hear what the parties want them to hear. Of course, this is easy to say, but less easy to administer, given that at the time of the dispute there are already significant differences of opinion.

The real import of this question lies in establishing the rules in the contract language setting forth the scope of what issues can and can't be referred to the DRB. In the past few years there has been a significant eroding of the scope of reviewable disputes.

Many respondents want the DRB to hear both entitlement and quantum, but many also want it to be a two-part process, first entitlement, then quantum. Others want both to be submitted together, particularly so that the owner has some idea of the value of the dispute to which he is a party. On the other hand, some experienced construction managers point out that including quantum in the initial submittal complicates the decision process, and might influence the DRB recommendations by encouraging considerations of equity, rather than merit only. It was also pointed out that it may be more difficult to justify a DRB panel's recommendations on quantum to an auditor, and that to facilitate the dispute resolution, the DRB panel should provide guidelines on concepts only, not numbers.

As to whether the DRB should hear legal issues, of the 18 respondents, yes was indicated by 2 owners, 1 contractor, and 4 construction managers (total 39%). Comments included the observation that public owners would not be inclined to accept a decision that hinged upon a legal issue. On the other hand, some respondents thought it helpful for the DRB to rule on interpretations of contract language that are standard to the industry, and others thought that the DRB should be able to interpret anything within the four corners of the contract, and to exclude some aspects of the contract was too restricting and could result in inappropriate recommendations.

4. *Process:*

- a. *In your experience, at a dispute hearing, do the participants faithfully present their case?*
- b. *Or do they present portions with an intent to leave the really good parts for subsequent dispute resolution methods such as litigation?*

The contractor respondents were unanimous in their comments that they always faithfully present their entire case at the DRB hearing, also commenting that to not do so would be counter-productive to their

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interests. One person said that it might appear that way sometimes, but in truth this is because other information is later developed that was not originally available. Another contractor representative mentioned that he suspects owners and their agents do withhold information.

Owner respondents were split in their view of this issue, and more than one is clearly cynical about the contractors' behavior in this regard. From the responses, it was unclear whether the owners agreed that their side withheld information, or whether their comments only indicated suspicions of the contractors' behavior.

Construction managers were more introspective. Some of them agreed that facts are sometimes withheld, due in part to the absence of formal discovery procedures. Others were adamant in their opinion that all facts are presented faithfully for the DRB to consider (and to do otherwise would be foolish), although clearly slanted to support your side of the case, as would be expected in either DRB proceedings or at trial.

- c. *Have the written DRB recommendations been helpful:*
 - i. *Reaching agreement between the parties?*
 - ii. *Convincing upper level management to accept the decision?*

For the most part, the owners are unanimous in concluding that written DRB recommendations are helpful to the process of resolving their disputes, and in many cases also helpful in convincing their upper level management to accept their decisions.

Contractors are less enamored of the written decisions, but generally not because they don't want them or find them useful, but because lengthy treatises can work to unravel the tentative agreement by allowing second-guessing of the logic behind the decision.

Construction managers were quite opinionated in noting that, although well-written

recommendations are extremely important in facilitating an agreement, such DRB recommendations are quite rare, and in some cases have driven "the parties even further from resolution through frustration, disgust, or confusion, and in a few cases just plain astonishment."

- 5. *Member Selection:*
 - a. *Is the method of selecting DRB members important to the overall effectiveness of the process?*

Only one of the 18 respondents said that the method of selection was not important to the overall effectiveness of the process. That person said that it was not so much the process as it was who was selected. Another interesting comment was that the current process, although fine for prime contractors, does not work for major subcontractors and suppliers, who can make up a significant part of the work. (This comment should be viewed in conjunction with the previous comment in response to whether a DRB is worth the cost. The suggestion there was that a panel be created at the time of the dispute, with discipline-specific individuals, instead of a project-long panel formed at the beginning of the job.)

- b. *If so, what methods have you used and/or do you recommend?*

There was fairly consistent (but not unanimous) agreement that the process should not result in the perception that one member is the "contractor's member," and that one is the "owner's member." The suggested methods encompassed three primary types:

- o Contractor selects one, owner selects one, and those two select a chairman.
- o Contractor provides a list of 3-5 names from which the owner selects, owner provides a list of 3-5 names from which the contractor selects, and those two select the chairman, to which both parties must agree.
- o Both parties select all three members together.

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There were some unique suggestions such as: the DRBF supply a list of qualified candidates from which all parties pick all members, and the board be selected for the individual dispute, and not for the project (see above).

There were some comments on one party having “veto power” over the appointment of the other’s member, to the extent that the parties should not hesitate to exercise the veto power, despite the fact that when the DRB members are selected the project is typically in the “honeymoon” phase. Another comment, more appropriate to large programs with many different contracts, is that one member should not sit on multiple boards for the same owner or contractor, because so doing tends to weaken their objectivity.

c. Have there been any perceived conflict-of-interest problems with the DRB members on any of your projects?

Answers to this question were split virtually 50-50, amongst all three groups. In addition, all three groups recognize the problem with both perceived and actual conflicts of interest. They all agreed that it should be addressed, but there were no recommendations on how to do so. One respondent commented that the underground industry is so small that it is impossible for a knowledgeable person to truthfully sign the conflict of interest statement.

6. Termination:

a. Under what circumstances do you think that a DRB should cease to function?

- i. Never, until the project is complete*
- ii. If one party loses confidence in the process*
- iii. If both parties (owner and contractor) agree*
- iv. When the DRB members agree to disband*

There were more variations in opinion on this question than on any other one in this survey. And there were no patterns that emerged that relate to the respondents background.

Many respondents said that the DRB should cease to function when both parties agree, but it is acknowledged that if the issue is being raised, then it is likely that the parties are having difficulty reaching agreement on much of anything. Many comments were related to the difference between (1) the parties losing confidence in the DRB, which would be a valid reason to disband, and (2) one of the parties not liking a recommendation, which would not be a reason to disband. However, the practical issue was also raised, in that if one party to the agreement doesn’t want to partake of the process, he/she can frustrate it by simply not showing up at DRB hearing, although that calls into question that party’s access to other dispute resolution methods, depending upon the contract language and local laws.

One of the most interesting comments was that the DRB process is founded upon commitment of the parties (not unlike the commitment gained from a partnering agreement), and if the parties have lost the commitment to work together to resolve disputes, then as a practical matter there is very little that legal arm-twisting and contract prohibitions about termination of the DRB can do to regain that commitment. In such a case, the DRB in essence serves no further purpose.

b. Should one party have the ability to terminate the member that they appointed?

Only two of the respondents indicated that one party should be able to terminate the DRB member they appointed. The remainder either said this should not be possible, or stated a member should be terminated only upon the agreement of the parties.

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Examples included perceived or actual misconduct by the member, but even in these cases it was suggested that the removal be done through the chairman of the panel.

7. *Other Issues: Are there any other issues that you wish to comment on?*
- a. *Should a DRB recommendation be admissible in later settlement proceedings (court, etc.)?*

Roughly two-thirds of the survey respondents thought that DRB recommendations should be admissible in future proceedings. Advantages include the efficiency of getting complex facts which have been reviewed by industry “experts” in front of the judge, and the commitment that the parties demonstrate to resolving disputes. Disadvantages include the fact that full discovery hasn’t been done, and there may be additional information developed that was not considered by the DRB, which may have altered their recommendation. Another argument against admissibility is that the DRB process can be considered an “independent” process that the parties can put behind them and thus not contribute to a follow-on legal process.

Two alternate recommendations were that (1) admissibility be determined by the dollar value of the dispute, allowing large disputes to go to court without including the DRB recommendation, and (2) letting the judge decide whether to admit or not, depending upon the facts of each case. Presumably each party would have the opportunity to brief the judge on the specific issues.

b. Other Issues

A lot of additional issues were raised in this open forum, for instance:

- The effects of partnering, and an argument for replacing DRB’s with formal partnering.
- The tendency of owners and engineers to push all cost and schedule problems downstream on the contractors, which is what causes disputes in the first place.
- Opinions that lawyers should not be involved in the DRB process
- The buy-in from engineers and construction managers to a DRB recommendation.
- The time at which the DRB should be inserted into the dispute resolution process to avoid either party being too fixed in their position, and not subject to change.

This small sample of DRB users provides interesting insight into the user’s perspective. My hope is that this is just the beginning of the dialog, as the Foundation seeks to solicit input in an on-going effort to fine tune the DRB process for all users. □

Construction Dispute Review Board Manual

by Matyas, Mathews, Smith and Sperry

An essential reference for all construction professionals, this book shows you how to use Dispute Resolution Boards to solve disputes on the job, avoid claims and reduce project costs. Whether you are an owner, contractor, construction manager, attorney or construction lender, this time- and money-saving sourcebook offers you the most complete guidance available on the successful establishment and practice of a Dispute Resolution Board during construction.

\$49.00 plus \$4 postage/handling

Contact DRBF to order your copy today!

Other News

DRBF Featured in National Web Conference Program



On June 10, 2003 a web conference on Dispute Avoidance and Early Dispute Resolu-

tion will be sponsored by CSG Interactive Web Conferencing. DRBs will be discussed as a critical part of an effective dispute resolution program. Larry Rogers will represent the DRBF as a featured presenter. DRBF members are encouraged to invite their clients and other individuals or entities who may be interested in DRBs to attend this program.

This web conference program is designed to be delivered into a conference room full of participants, which will provide an excellent opportunity for a large number of staff and advisors attend to hear the DRB presentation. This web conference can facilitate ongoing efforts to educate and bring greater awareness to potential users on the benefits of DRBs.

CSG is offering a 10% program discount to DRBF members. Register at www.contractsolutionsgroup.com using discount code 412. More information on this and other CSG programs is available by phone at 206.463.7487.

Arbitration and Adjudication Chambers to Open in London

DRBF members may be interested to learn about a new venture starting in June 2003 in London. A set of chambers for arbitrators, adjudicators and other 'disputologists' will commence operation from No 1 Chancery Lane (in the centre of 'legal London') in a few months time. Applications are invited from interested persons (of any profession) world-wide who may wish to enjoy the prestige of a London base, excellent facilities for convening arbitration, adjudication, DRB hearings, etc., back-up support services and the benefits of the chambers' marketing initiatives, seminars and workshops for a reasonable monthly subscription. Further details can be obtained from clerks@adr-associates.com.

Post Your Resume Online

As a benefit of DRBF membership, you can post a short resume free of charge on the DRBF website, www.drb.org. This is a great way to let others know that you are interested in serving on DRBs, and give them a little information about your background and areas of expertise. To participate in the Resume Bank, go to www.drb.org, and click on **Member Resumes** and **Add Resume**. It doesn't take long, so add your resume today! □

If you've got news about members, DRBs or other things of interest to our members, we'd like to hear it.



Deadline for the next issue is July 1, 2003

DRBF Board Meeting Summary Minutes

By Peter M. Douglass
Secretary/Treasurer

MARCH 14, 2003 MEETING

A DRBF Board of Directors meeting was held by conference call on March 14, 2003 with 10 directors and officers participating. The following is a brief summary of the discussions and actions taken at the meeting.

Treasurer's Report:

DRBF membership through the end of February 2003 continues to be well ahead of last year at this time with 460 members (2/3 of our 2003 target) registered since October. The number of workshops has slowed, however, and is currently projected at 8 instead of 10 for the year. Projected income for the year is now estimated at slightly less than budgeted, but is offset by a comparable reduction in projected expenses (reduced Workshop expenses and the decision not to hire an Executive Director at this time) such that 2003 net revenues are expected to be slightly higher than budgeted.

Marketing:

There has been a positive reaction to the new DRBF Brochure and jacket. Jim Donaldson reported that it was really well received when distributed at a recent presentation he had made to approximately 125 people. John Nichols also reported that the tri-fold flyer that he had requested is now available. Keeping in step, the Board unanimously passed a motion in support of Bill Edgerton proceeding with the Membership Brochure and Annual Directory. Steve Fox suggested that the printing be accomplished by the Foundation's printer in Seattle.

International:

Brison Shipley and Jim Donaldson had a

productive conference call with Norman Reich, DRBF country representative for Australia, regarding the formation of an Australian Chapter of the DRBF. Peter Chapman noted that there is a question of whether the dues should be paid directly to the DRBF in Seattle, or paid to the Australian Chapter. It was generally felt that some portion of the dues needed to be funneled back to support the Australian Chapter, but that the policy needed to be consistent throughout the DRBF organization. Peter agreed to set up a working group of US and International participants prior to the Washington, D.C. Annual Meeting. Suggested participants included John Nichols, Jim Donaldson and John Duke (current president of the DRBF Florida Chapter).

Peter Chapman reported that the International Annual Meeting scheduled for Paris in November 2003 will now have to be changed since ICC withdrew their offer to provide meeting space. Further, ICC is now getting close to issuing its own version of DRB Guidelines. Peter is looking at possibility holding the meeting in September, still in Paris. Peter feels that a September International meeting would not conflict with the October U.S. Annual Meeting as there has been very little overlap of attendees in the past.

Peter Chapman noted that China is quite adamant about having the DRBF President in attendance at their signing of the Memorandum of Cooperation with CIETAC.

Adele McKillop reported that she is continuing in her efforts in British Columbia to encourage the use of DRBs.

DRBF Annual Meeting :

The DRBF Annual Meeting is scheduled for October 18 and 19, 2003 at the Radisson Hotel. A possible ½ day or 1 day

(Continued on page 12)

Board of Directors Meeting Schedule

The Board has scheduled telephone meetings for:

May 9, 2003
July 11, 2003
September 12, 2003

If you have something you would like the Board to discuss or consider, notify Brison Shipley or one of the Directors.

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seminar is being proposed for October 17 with invited representatives of the World Bank and Federal Agencies. Peter Chapman felt that 40 to 45 people might be invited to attend (Board suggested that Sammie Guy and/or Adrian Bastienelli might be helpful in making the appropriate contacts).

A Board meeting will be held on October 17 starting in the early evening, followed by the Annual Meeting on the 18th and 19th. DRBF Workshops will be held on Monday and Tuesday, the 20th and 21st. A social program is being set up by one of the member wives.

Peter Chapman will e-mail the draft program to Steve Fox for use in making room arrangements, etc.

Corporate/Institutional Grant Money:

President Brison Shipley encouraged the Board to consider this form of fund raising for some of the staff and activities that the DRBF would like to see implemented. In particular, Brison requested that, within the next 2 to 3 weeks, each of the Board of Directors provide him with a list of 3 of their personal contacts that they would be willing to contact on this matter. Brison will then get some materials to each of the Board members with specific items to discuss in their pursuit of grant money. It was suggested that AE firms and large organizations, as well as Contractors, be identified and pursued in an effort to obtain funding support from a wide variety of organizations.

Initial suggestions for grant funding levels included:

- Gold level – possibly \$25,000 over a period of 5 years
- Silver level – possibly \$15,000 over a period of 3 years

White Paper:

Bryson Shipley reported that the “White Paper Committee” consists of Peter Chapman, John Nichols, Joe Sperry, Bob Smith, Bob Rubin and himself.

DRB Manual Rewrite:

There is still no official word from McGraw-

Hill on the matter and Joe Sperry wondered if we could push ahead without a formal letter. Joe is losing enthusiasm and there still remains an urgent need for the revised manual.

Other:

Steve Fox noted that the new *Forum* editor needs help identifying people who are willing to write articles.

John Nichols noted that over the past 7 years the number of arbitration cases in California has been dropping, while DRB hearing of disputes has gone up.

John also suggested that we add a form to our annual dues letter requesting each member to identify the number of DRBs appointed to and the number of disputes heard. This information could be useful in compiling our statistics and identifying membership experience on DRBs. □

Member Hotline

Do you have a question or concern about DRBs in general or a specific DRB you are working on? Consult with one of the Hotline Committee members:

Joe Sperry Auburn, CA 530-878-7305	Daniel F. Meyer Chicago, IL 847-295-9197
Jim Donaldson Seattle, WA 206-525-5216	Bill Baker Calistoga, CA 707-942-5886
Norman Nadel New York, NY 914-279-5516	Ray Henn Denver, CO 303-534-1100
Roger Brown Portland, OR 503-628-1707	Jack J. Woolf New York, NY 212-916-8890

DRBF Strategic Plan

I. Long-term Goals (Mission Statement, from the DRBF By-Laws, Article II):

1. To create and provide educational materials and services for Members and the public concerning the DRB process.
2. To exchange information with public and private organizations concerning DRBs.
3. To encourage, sponsor, or conduct seminars, expositions, and other means of creating interaction between providers and users of DRBs.
4. To publish articles, manuals, directories and other literature to educate participants in the construction process about DRBs.

II. Near-term Objectives to achieve Goals

1. To increase worldwide DRB usage by 25% over the next two years.
2. To increase membership to 750 over the next two years.
3. To maintain the integrity of the DRB process in the prevention and resolution of construction disputes.

III. Strategies to reach Objectives

1. Market DRBs to users.
2. Expand training programs.
3. Develop empirical data on cost savings realized from the use of DRBs.
4. Increase participation at national and international DRBF conferences.
5. Increase benefits to DRBF members.
6. Expand DRB promotion and DRBF membership through development of a regional network of member-representatives.
7. Promote awareness of “best practices” among DRB processes and procedures.

IV. Tactics to implement Strategies

1. Market DRBs to users.
 - 1.1. Employ a systematic approach to:
 - 1.1.1. Identify policy-makers at the local, state, national and international levels.
 - 1.1.2. Develop a “responsibility matrix” to coordinate DRBF member efforts to contact policy-makers.
 - 1.2. Expand the DRBF organizational structure
 - 1.2.1. Create three paid, part-time positions:
 - 1.2.1.1. Executive Director
 - 1.2.1.2. Training Director
 - 1.2.1.3. Web Master
 - 1.2.2. Create a network of member-representatives to identify, contact, and educate DRB users and potential DRB users.
2. Expand training programs.
 - 2.1. Investigate the feasibility of providing FIDIC awareness training in the United States.
 - 2.2. Market the DRBF training programs outside of the membership.
 - 2.3. Develop a standardized presentation package for use by regional member-representatives in contacting potential DRB users.
 - 2.4. Provide training services for AAA’s DRB Roster (both in the U.S. and internationally through AAA’s Dublin Office) on a fee basis.
 - 2.5. Promote DRBs as part of a spectrum of ADR mechanisms for preventing and resolving disputes in the construction industry.
3. Develop empirical data on cost savings from DRBs.

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- 3.1. Draft a DRBF “White Paper” on Litigation costs versus DRB costs.
4. Increase participation at national and international DRBF conferences.
 - 4.1. Investigate potential vehicles for disseminating conference announcements outside DRBF membership.
 - 4.2. Increase the number of Board of Directors positions to provide greater global diversity.
 - 4.3. Integrate Country Representatives more closely with the operations of the Board of Directors.
 - 4.4. Create an “International Section” in the *Forum* with contributions from the Country Representatives.
 - 4.5. Explore feasibility of “distance learning” over the Internet for international members.
 - 4.6. Amend membership fee structure to accommodate nationals of developing countries.
5. Increase benefits to DRBF members.
 - 5.1. On-line publication of DRBF member biographies, with indication whether he/she has attended DRBF workshops.
 - 5.2. Investigate group insurance discounts for members.
 - 5.3. Develop database on experience of DRBF members.
 - 5.4. Establish DRBF “brand recognition”; create a DRBF Logo.
6. Expand DRB promotion and DRBF membership through development of a regional network of member-representatives.
7. Maintain the integrity of the DRB process.
 - 7.1. Find an alternative method of providing updated material concerning the DRB process and procedures other than through McGraw-Hill.
 - 7.2. Create a regular section in the *DRBF Forum* dedicated to new developments, best practices, lessons learned, etc.
 - 7.3. Develop a vehicle for disseminating standards of DRB practice, with periodic updates.
 - 7.4. Provide standardized contract specification documents for the various types of DRBs – with copyrights and logo – on-line.
 - 7.5. Investigate feasibility of member survey as outlined in Edgerton 3/8/01 memo to the Board. □

First Annual DRBF Northwest Regional Conference

Join us June 16, 2003 for the First Annual Dispute Resolution Board Foundation Northwest Regional Conference at the Wyndham Hotel at SeaTac Airport in Seattle, Washington.

The Conference will feature presentations by DRBF President Brison Shipley on recent developments within the Foundation, and Regional Representative Jim Donaldson will discuss activities in the Northwest Region. There will also be a program on latest developments concerning DRBs, a DRB Users Forum, and a forum specifically designed to address current challenges facing DRB practitioners. Whether you are a DRB practitioner or interested in using DRBs, whether you are a member of the Foundation or interested in joining, you should make arrangements to attend.

Northwest Regional Conference

June 16, 2003 from 8:30 am to 5:00 pm

Wyndham Hotel at SeaTac Airport, Seattle, WA

Registration fee: \$75, includes conference materials, continental breakfast and lunch. To register, contact Steve Fox at the DRB Foundation office at 206-248-6156 or 888-523-5208.

Take advantage of a group room rate at the Wyndham of only \$115 for a single room or \$125 for a double. Call the Wyndham at 206-244-6666 and ask for the DRB Foundation rate. Arrangements should be made by June 1 to take advantage of this special deal.

Project Profile: GHAZI BAROTHA HYDROPOWER PROJECT

Three of the contracts for this impressive project feature a Dispute Review Board, one for the barrage and power channel contracts and one for the power complex civil works contract.

This major run-of-the-river power project on the Indus River in Pakistan is designed to have 1450MW installed capacity, principally to meet the acute shortage of peak power in Pakistan. One of the most important features of the Project is that it will daily provide power peaking capacity during four to five hours of high demand in evening period throughout the year, with full power generation during the months of May and June when there is reduced generation from Tarbela and Mangla Dams as a result of low reservoir levels.

The project has three main features dispersed over a considerable area of the Northern part of the country.

The first is a barrage, the subject of one contract, located about 7 km downstream of Tarbela Dam, which will re-regulate the daily discharges from Tarbela and divert water into the second principal feature, the power channel. Compensation water during the low-flow season and excess flows during the high-flow season will be released downstream of the barrage. The barrage will be able to pass the flood of record through its 20 standard bays and 8 undersluices at normal pond level. A fuse plug will help pass extreme floods up to the capacity of Tarbela's spillways and tunnels. The barrage also will have a public road crossing of the Indus River.

The second feature, a separate contract, is the power channel to convey water from the barrage to the third feature, the power complex. The power channel is concrete-lined and will be 52 km long, with a capacity of 1600 cumecs (56,000 cusecs). The water depth is 9m, with a base width of 58.4m and a velocity of 2.33m/s. There will be 34 road bridges, including a dual lane bridge for the Grand Trunk Road, 12 pedestrian bridges, a railway bridge, and 45 cross-drainage structures.

The third feature, the power complex, is located near the confluence of the Indus and Haro rivers, and will comprise a forebay, a siphon spillway, two headponds, a power intake structure, penstocks, a powerhouse with five 290 MW turbo-generators, and a tailrace channel. The headponds will allow daily peaking operations. Power will be transmitted by 500 kV circuits to the national grid system.

There are a total of 15 contracts for the power complex, including one for the civil works. That civil works contract and the contracts for the barrage and power channel all are based on the FIDIC civil conditions (4th Edition). The Employer in all of the contracts is the Water and Power Development Authority of Pakistan (WAPDA). The Engineer for the Project is Pakistan Hydro Consultants, a joint venture of National Engineering Services Pakistan (Pvt.) Ltd., Associated Consulting Engineers ACE (Pvt.) Ltd., Ewbank Preece Ltd., Harza Engineering Company International L.P., and Binnie & Partners (Overseas) Ltd.

The contracts for the barrage and the power channel were won by Ghazi Barotha Contractors, a joint venture of Impregilo S.p.A., Ed. Züblin AG, Nazir & Co. (Pvt.) Ltd. and Saddulah Khan and Brothers (SKB), and a single Dispute Review Board serves both of those contracts. That DRB presently is comprised of Robert Akenhead, Esq., QC (Chairman), Peter H.J. Chapman, Esq., and Balal A. Kawaja, Esq. The contract for the power complex civil works was awarded to Dongfang Electric Corporation DEC Barotha Construction and is served by a separate DRB comprised of Mr. Justice (Retd.) Khalil-ur-Rehman Khan, Haji Abdul Majeed, and Gordon L. Jaynes, Esq. (Chairman). □

Dispute Resolution Board Foundation

7TH ANNUAL MEETING AND CONFERENCE

OCTOBER 18 AND 19, 2003

WASHINGTON, DC

The Annual Meeting and Conference is for anyone using or interested in furthering the use of the Dispute Resolution Board process. All Foundation members and non-members are welcome to join us for what should be an educational and stimulating event.

CONFERENCE HIGHLIGHTS

Opening session: "A Debate: Should DRBs Attempt to Mediate?"

Lunch with keynote address by Armando Araujo from the World Bank

Breakout sessions:

- Best Practice Guidelines
- Conducting the Hearing
- Writing a Board Decision/Recommendation

WORKSHOPS

The DRBF will be offering the DRB Administration and Practice Workshop on October 20th and the Advanced/Chairing Workshop on October 21st. These are intensive one-day skill development sessions for those who are serving on or wanting to serve on Dispute Resolution Boards. These workshops are also excellent for owners or contractors who want to implement a DRB program. More information on these workshops is available from the Foundation.

REGISTRATION AND RESERVATIONS

Registration fees for members are \$220, or \$250 after September 26, 2003. Non-member fees are \$250 in advance and \$280 after September 26, 2003. Contact the DRB Foundation for a registration form, or see the August issue of the *Forum*.

The Annual Conference will be held at the Radisson Hotel in beautiful, historic Old Town, Alexandria, Virginia. Room reservations can be made by calling 1-800-333-3333 toll free in the USA, or 1-703-683-6000. Be sure to request the DRB Foundation group rate of \$139.00 per night when you make your reservation. The deadline for the guaranteed group rate is September 26, 2003.



CALL FOR NOMINATIONS FOR THE AL MATTHEWS AWARD

The Dispute Resolution Board Foundation shall present annually the “Al Matthews Award” to a DRBF member who has given exemplary service in advancing the use of the dispute resolution board concepts, and the DRBF.

NOMINATIONS

Nominations shall be solicited from the membership in the May edition of the *Forum*, and by the President from the Board of Directors.

THE AWARD

The Award will be presented to the recipient at the annual DRBF meeting and conference generally held in October. The Award will consist of a framed proclamation and a trophy with the recipient’s name and date of award engraved thereon.

Send your nominations, including an explanation of why you think the nominee is deserving of the award, to:

**Award Nominations
DRBF
6100 Southcenter Blvd.
Suite 115
Seattle, Washington 98188-2441**

Postmarked no later than 6/30/03

Workshop Calendar

May 10, 2003 Boston, Massachusetts
Administration and Practice Workshop

June 17, 2003 Seattle, Washington
Administration and Practice Workshop

June 18, 2003 Seattle, Washington
Advanced/Chairing Workshop

October 20, 2003 Washington, DC
Administration and Practice Workshop

October 21, 2003 Washington, DC
Advanced/Chairing Workshop

Attendees should take the Administration and Practice workshop prior to the Chairing Workshop. Registration fee includes lunch and materials. Each participant will receive a DRBF Certificate of Completion. The cost is \$395 for non-DRBF attendees and \$345 for DRBF members. To register for a workshop, contact the Dispute Review Board Foundation.

WELCOME TO NEW FOUNDATION MEMBERS

MEMBER ADDITIONS JANUARY THROUGH APRIL 2003

Mike Bergeron
Bergeron Group
Westboro, MA USA

Jack E. Brockway, P.E.
Herrenknecht Tunnelling
Systems
Tacoma, WA USA

Thomas J. Burke
Orion Associates
International, Inc.
Vero Beach, FL USA

Robert A. Cedeno, P.E.
ConsulTech Construction
Mgmt.
West Palm Beach, FL USA

Ronald M. Colas, P.E.
PHS Engineering Corp.
Miami, FL USA

Robert L. Collier
R.L. Collier Co., LLC
Seattle, WA USA

James S. Daniel
Eisman & Russo, Inc.
Jacksonville, FL USA

Paul L. Davis
Davis Black, LLC
Anchorage, AK USA

Ian Forrest
Tascott, NSW AUSTRALIA

Henry H. Fuller
Tallahassee, FL USA

John D. Glass
Glass Consulting Group
Clearwater, FL USA

Ernest L. Grigsby
Zimmer Gunsul Frasca
Partnership
Portland, OR USA

John F. Grubin
Wasserman Grubin &
Rogers, LLP
New York, NY USA

Phil W. Hammaker, Jr.
Ocala, FL USA

Gerald Hardage
Orlando, FL USA

Matthew B. McGowan
San Rafael, CA USA

D. Michael Miller, P.E.
Nova Consulting, Inc.
Coral Gables, FL USA

David J. Mitchell, P.E.
Navigant Consulting, Inc.
San Francisco, CA USA

Daniel P. O'Connor
Rochester, NY USA

Allen L. Overcash
Woods & Aitken LLP
Lincoln, NE USA

Ann Rackas Pate Esq.
Rackas Pate Law, PLLC
Alexandria, VA USA

James C. Perry
Paris, FRANCE

Marianne C. Ramey
Project Advisors International
Fairfax Station, VA USA

Raj Ragaswamy
Target Engineering Group
Weston, FL USA

Russel Rudden
Carter + Burgess
Oakland, CA USA

Jerry B. Sheets
Citimark, Inc.
San Diego, CA USA

Robert E. Alger
The Lane Construction Corp.
Meriden, CT USA

Barry Allan Tozer
Chatswood, NSW
AUSTRALIA

William R. Veale
Orinda, CA USA

R. Geoff Waite
West Palm Beach, FL USA

Tom White
Reynolds Smith & Hills
Edgewater, FL USA

John Wright
Lane & Partners
London, UK □



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FOUNDATION FORUM



DRBF Third Annual International Conference

The DRBF Third Annual International Conference is planned for Paris this Fall. The Conference Task Force is at work arranging a venue and soon will announce the date (possibly late September 2003).

To receive details of this Conference, just send your contact information to Jim Neville. He can be reached by email at drbf.fra@wanadoo.fr, or fax +33 (1) 34 22 53 70. His mailing address is: Jim Neville, Residence Foch-Alsace, 110 bis Avenue du Marechal Foch, 78100 St. Germain en Laye, France.

Plan now to attend and savour one of the world's most beautiful cities while meeting with colleagues from many countries. Contact Jim today!