



Forum

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MAY 2004

China's Ertan Hydroelectric Project A Dispute Resolution Board Case Study

DESCRIPTION: The project consists of a concrete dam and underground Hydropower Plant located on the Yalong River in Szechuan Province of southwest China (nearest city Kunming), over 900 miles from its source in the mountains of Tibet.

The dam is a double curvature arch dam over 800 feet high (6th highest in the world), with a concrete lined plunge

pool over 1300 feet long with a 120 foot high plunge pool dam. Total concrete placed on surface installations exceeded 6.5 million cubic yards. Reservoir is over 90 miles long with an active storage of 3.37 billion cubic meters. The underground power plant consists of six 550 MW units constructed in a cavern through challenging geology.

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As confidence in the DRB and the process grew, the DRB became more proactive and assisted the project in an informal capacity resolving potential disputes.

Shown at right: Ertan DRB with employer and contractor representatives.



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President's Page

For several years now the board of directors has been planning a new edition of the DRB Manual. There were various obstacles in our way but, with perseverance and determination, these have been overcome and the new manual is shortly to be released. The new edition is in a new format - it is to be loose leaf and thus capable of being regularly updated as DRB practices and procedures develop and grow. The new manual will be available on the web to all members of the DRBF without charge. Shortly, each DRBF member will receive spine and cover labels and the necessary tabs to identify each section. All you will need to do is purchase a binder and print out the manual from the web. The manual will be regularly updated so that members can re-print new sections as they become available and replace superseded section. I sincerely hope that the new manual will be as popular and respected as it was in its former hardback edition. The DRBF has many people to thank for the work that has gone into the production of the new manual. To list the names of all those responsible is guaranteed to omit someone from that list so I will just mention one person who has been at the very centre of the effort, Joe Sperry the new manual's principal contributor. On behalf of the Foundation thanks to all those who have assisted with the new manual, especially Joe.

This year the board of directors is departing from tradition and plans to hold a face-to-face board meeting in May. Normally the only time the board gets together is on the occasion of the annual meeting. The May meeting, to be convened in Chicago, will enable the various new committees to report and seek input and guidance from the full board.

The DRBF web site is undergoing a face-lift. It plans to be more user-friendly and to contain far more articles and information on DRBs than before. The new website should be complete by the middle of the year. Watch this e-space!

I had always hoped my year of presidency would be particularly focused on the international scene. It is extremely reassuring to see such a tremendous growth in the recent use of DRBs outside the USA. Of particular note is that certain European countries are in the process of changing their standard forms of construction contracts in order to incorporate provisions for the establishment of DRBs. Many of you will remember that over one year ago the DRBF signed a memorandum of understanding with CIETAC (from China). Due to a number of factors, including the SARS crisis, it has not been possible for the DRBF to visit Beijing. However, I currently plan to visit in late summer of this year to finalise the agreement with CIETAC and to promote DRBF activities in China.

Last but by no means least is the 4th International DRBF Conference. This year it will be held in Berlin, Germany from the 18th to 19th June. Details are contained in this edition of the *Forum*. This year, for the first time, the organisation of the international conference has been the responsibility of the DRBF Country Representative for the host country and our sincere thanks goes to Helmut Kontges and his team for their efforts in this regard. The international conference has always been informative and fun – a good chance to network on the international scene. I hope I will see you there in June.

For those who can bear to think even further ahead, the DRBF Annual Meeting will take place on the 23rd and 24th October 2004 in San Francisco, so do mark your calendar.

Sincerely, 

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Committee Reports

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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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Education

The education effort is going well for the Foundation so far this year. We have completed a successful workshop for DART in Dallas in February, four workshops for Caltrans in San Diego and Sacramento in March, two more workshops in Amman, Jordan and two in Atlanta in April. Two workshops are scheduled in San Francisco on October 25 and 26 in conjunction with the DRBF Annual Meeting and two in Orlando on November 10 and 11.

Many organizations sponsor workshop programs for their members. Are you a member of another organization that might be interested in sponsoring workshops concerning DRBs? If so, contact me at ADR-Systems@comcast.net. We need to spread the word about DRBs outside of the Foundation and this is an excellent way to do so.

Larry Rogers

International

The International Committee is formed with eight members. They include DRBF members from all around the world and with each member being responsible for a group of countries in his or her region will provide a global perspective for the DRBF. It is hoped that our new committee will be fully functional by the end of April and will encourage the integration of DRBF ideals within the construction industry from Manhattan to the Far East!! Most committee members have by now confirmed their willingness to participate and I will publish a full list of the members and their contact details in the next edition of the *Forum*.

Ongoing DRBF international activities and promotions currently include such countries as Germany, Viet Nam, China and Japan and in the global regions of Eastern Europe and the Far East. It is hoped that during the year new DRBF programmes will be undertaken in Romania and Europe and a new

chapter established in New Zealand.

We have also canvassed all country representatives throughout the world to record and report on all DRBF activities in their particular regions and we have asked them how we in the International Committee can assist with the "spreading of the word."

We are determined this year to push the frontiers of the DRBF into such regions as the Far East and China and events are being planned to be held in the Philippines and Beijing within the next three months to promote the concept.

If you are interested to know more about the international efforts of the committee or feel that you can assist in any way or provide us with some information about your region why not drop me a line at gwyn@easynet.co.uk. We are keen to hear of projects with possible DRB problems or how we can help promote the DRB concept in your country.

In future editions of the *Forum* I wish to feature a country or region to give all readers and members a flavour of what happens away from the home base. So if you feel that your region deserves a bit of publicity let me know.

Gwyn Owen

World Bank Liaison

Mr. John Bradshaw has obtained from the World Bank a CD which contains an example of their interactive training program for World Bank staff, and it is under review and consideration as a possible model for a training CD regarding Dispute Boards.

Also, the committee has begun discussions with the International Development Law Organization regarding a possible joint initiative to obtain funding from the World Bank Institute ("IDLO") to create a program on Dispute Boards for use on the Banks' Global Distance Learning Network.

(continued on page 4)

(continued from page 3)

This would be recorded to enable repetitive use in a series of audio-visual links on the Bank's Network, to reach a variety of developing countries.

Armando Araujo & Gordon Jaynes

Information Technology

The IT Committee is proceeding with the development process of an improved website which will provide additional features and facilities for members (like an on-line chat and searchable membership directory) as well as detailed information for those interested in using the DRB process. The first phase will feature a new design template consistent with the Foundation's other marketing materials. It is foreseen that the website will be augmented within mid 2004.

John Bradshaw

Best Practice

The first draft of the Best Practices Guidelines for Parties Utilizing Dispute Resolution Boards (DRBs) has been reviewed by the BPGC. Comments and suggestions have been received and incorporated in a revised version that will be sent to the committee for further review and comments by mid-April.

A first draft of the Best Practices Guidelines for Board members also will be sent to the committee for first comments by mid-April. Shortly thereafter the first draft of the Best Practices Guidelines for the Conduct of Hearings will be prepared.

The first documents prepared are intended to be general documents that set forth best practices applicable to all Dispute Resolution Boards irrespective of venue.

Harold McKittrick

DRB Manual Committee

Progress continues in spite of outside

interference. All members should have received inserts for the spine and cover pockets of your notebook, as well as the tab sheets, by mail in late April. Section 1 - Concept, has been approved and should be on the Internet by the time you receive this copy of the newsletter.

Section 2 - Users Guide, and Section 3 - Members Guide have been drafted and reviewed by the steering committee and are being revised prior to wider review. Section 4 - Multi-National Practice has been rewritten and is being expanded.

Section 2 will include the guide specification and Three Party Agreement, which present many thorny issues. These have been extensively reviewed and will be rewritten prior to wider review. This work may delay the release of Section 2.

We plan to notify all members by e-mail when sections are posted on the Internet. Assuming no further untoward interferences, we hope to have all sections of the revised Manual on the Internet before July.

Joe Sperry



Membership Directory Moves Online

Each June, the DRBF publishes the Membership Directory to provide contact information for fellow members. This year, the directory will become an online resource accessed through the member's only section of the website, www.drb.org. This advancement will allow the Foundation to provide the most current information in a readily accessible format, facilitating interaction among members. It is all part of the reorganized and expanded website effort underway by the Information Technology Committee.

If for any reason you are concerned about having your information shared with other members through the password protected section of the website, simply contact Steve Fox in the DRBF office.

DRBF Country Representatives

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Other News

DRBF Regional Representatives

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Wisconsin, Minnesota,
Iowa, Illinois, Missouri

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sas, Arkansas, Louisiana

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Wyoming, Colorado,
Utah, New Mexico

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Alaska, Washington,
Oregon, Idaho

JOHN NICHOLS

Southwest
California, Nevada,
Arizona, Hawaii

FIDIC AND ECV OFFER NEW TRAINING COURSE

A new training course, "The Practical Management of Contract Claims and the Resolution of Disputes under the 1999 FIDIC Contract Conditions" will be held June 28-29, 2004 in Brussels, Belgium. Co-organized by FIDIC and ECV, the program will be led by Gwyn Owen, senior ECVC consultant, FIDIC adjudicator and DRBF member, David Heslett, managing director of ECV, and Brian Totterdill, senior consultant with ECV.

The course is designed to provide practical assistance to those working with the New FIDIC Contract Conditions (1999 editions) in the management of claims, achieving resolution to claims,

and the workings of the Dispute Adjudication Board (DAB). It is designed for all parties involved in a FIDIC contract: employer, contractor, engineer, and DAB members. It is particularly designed for professionals from government ministries and agencies, private sector employees, consulting engineers, contractors, quantity surveyors, and legal advisers.



Registration forms and additional information can be downloaded from the following websites:

www1.fidic.org/seminars
www.cce-ecv.com

You may also contact ECV by telephone or fax at +44 1234 340 180 or by e-mail at dheslett@cce-ecv.com. □



CALL FOR NOMINATIONS FOR THE AL MATTHEWS AWARD

The Dispute Resolution Board Foundation presents the "Al Matthews Award" each year to a DRBF member who has given exemplary service in advancing the use of the dispute resolution board concepts, and the DRBF.

Nominations are solicited from the membership and by the president from the board of directors.

A framed proclamation and trophy will be presented to the recipient at the DRBF Annual Meeting and Conference.

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
Or by e-mail to home@drb.org
Subject: Al Matthews Award Nomination
Entries should be postmarked no later than 6/30/04

DRBF Survey Results – Conclusion

By William Edgerton

In the last several issues of the *Forum*, we presented results from the survey of DRBF members that was conducted in August and September of 2003, and which were summarized at the Annual Meeting in Alexandria on October 18, 2003. In Part 1 we covered initial questions related to projects which are appropriate for the use of DRBs, and the formation of the DRB. Part 2 focused on the series of questions concerning selection of DRB members, DRB member qualifications and experience, and regular operation of the Board. This issue concludes the presentation of survey results, with a discussion of questions related to hearings, recommendations, admissibility, and informal or “advisory” DRBs.

The contract parties establish the scope of the hearing, before it is presented to the DRB, in effect defining the dispute so that they receive a recommendation that will assist them to resolve it. Since many parties ask for a ruling on entitlement only, one question asked “What results in the most efficient and satisfactory recommendation?” 68% of the respondents agreed that the hearing should address entitlement only, and then quantum only if the parties couldn’t subsequently reach an agreement. Only 8% of the respondents insisted upon hearing only a complete dispute, i.e. entitlement and quantum together. Since some owner agencies have restricted the scope of hearings with contract provisions, another question asked whether DRBs should consider disputes which include legal issues and case law. Over 93% of the respondents said that there should not be restrictions of such kind, and only 4% said that such disputes should never be heard by a DRB.

Opinions of the respondents were solicited on several issues pertaining to the conduct of DRB hearings:

- Participation at hearings has been a contentious issue recently among Foundation members, particularly as to whether attorneys should be allowed to attend and/or participate at hearings. Of the owner respondents, 80% thought that attorneys should be present at hearings, but not allowed to participate. Of the non-owner respondents, over 20% felt that attorneys should be prohibited from even attending the hearings.
- Another question raised was whether the parties may present material at a hearing that has not previously been made available. Almost 2/3 of the owners surveyed wanted material presented at the hearing to be restricted to written material which has already been divulged. Interestingly, only 30% of the other respondents felt that way, indicating that non-owners were more receptive to “late breaking news” or new information if it was felt that it could help reach resolution.
- Another issue that has raised some controversy is how the Board should handle a hearing if one of the parties fails to appear; in essence refusing to participate in the process. The respondents were fairly evenly split on this issue: 1/3 wanting to cancel the hearing, 1/3 wanting to hold it anyway, and 1/3 wanting to re-schedule it or deal with it in another manner. It is of note that 50% of the owners and construction managers want to cancel, but only 15% of the contractor respondents want it cancelled. Perhaps this indicates the owners and their representatives see the process as

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facilitating agreement, and the contractors see it more as a step in the process to litigation.

In order to focus on the work product of the DRB hearing, several questions were asked about the recommendations:

- Over 75% of the respondents prefer a written recommendation from the Board that lays out in detail the rationale for making their decision. Yet almost 20% preferred a brief written recommendation without rationale, perhaps indicating that some feel the detailed rationale simply identifies reasons why one of the parties may decide to not accept the recommendation, and carry the dispute to the next level.
- With respect to the quality of the written recommendations, almost 75% of the contractors felt that they were very good, and the other 25% thought they were “mixed.” Yet owners’ experience was somewhat different, with only 50% rating them “very good,” and the other 50% as “mixed.” This result probably indicates that owners place more weight on the quality of the written recommendation, in order to justify the settlement to others within their agency. For the most part, contractors may not be that concerned with the written recommendation, since the primary decision-maker may have been present at the hearing anyway. In any case, the high percentage of “mixed” results points to a need for additional training in writing recommendations.
- Another issue that has been debated at several annual meetings of the DRBF is whether dissenting opinions should be signed, that is, whether the dissenting Board member should be identified. Over 60% of all the respondents felt that dissenting opinions should be signed by the dissenting Board member, whereas 25% felt that they should be anonymous. Of interest was that 13% of the respondents felt that dissenting opinions should not be allowed; that is, that the Board should be

required to work out a recommendation that all members could sign. It is uncertain whether there is any history of projects where this has been a contract requirement.

Respondents were asked whether the contract documents should specify that DRB recommendations should be admissible in subsequent settlement proceedings, including litigation. Fully 65% of the owners, contractors, construction managers, and DRB members felt that admissibility was an important part of the process. Only 33% of the attorneys felt that the DRB recommendations should be admissible.

Another question dealt with the members’ experience with “informal” or “advisory” DRB hearings. Only 45% of the respondents had had experience with the informal DRB hearing, and of those replies, 90% had had a positive experience with it, i.e., they thought that it helped avoid disputes. The other 10% were neutral.

This concludes the results of the member survey. Information from this survey has been used in the development of the revised Manual, set for publication in the spring/summer of 2004. It may be useful to repeat the survey at some future date, to identify changes in attitudes, and measure the progress of the industry toward successful dispute resolution. □

William Edgerton can be reached at Edgerton@jacobssf.com.

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, 2004

Spotlight on Columbia's Country Representative



Country Rep: Carlos Ospina

It gives me great pleasure to say a few words about one of our senior Foundation members and one who commands universal respect throughout the world particularly regarding major projects. Carlos Ospina was born in Colombia in 1920 and graduated in civil engineering at Berkley, California in 1942. After the second World War he returned to Colombia and almost immediately became involved as a consultant on major projects such as dams, tunnels, roads and bridges and mining projects. His reputation grew and soon he was internationally renowned for such works. His experience on dams alone consisted of direct involvement in 14 of the world's greatest projects. El Cajon, Ertan, Katse, and La Miel (being the highest RCC dam in the world) are amongst some of the names on Carlos' cv. As many readers will undoubtedly know, each of these four mentioned dams has achieved a milestone within itself not only as each has attained a world record in its engineering achievement but also has firmly established the regime of dispute resolution by consent in the form of the DRB method.

Carlos has been active in the International Commission of Large Dams (ICOLD) since 1956 and was chairman of its international relations for 12 years. He is a fellow of the American Society of Civil Engineers and has been regional executive secretary of the World Energy Conference for a number of years. As you can imagine, his professional activities are too numerous to mention here in this short article. It is of interest to note that apart from engineering he has spent a large period of his life as a spokesman for the Colombian Coffee

Federation, representing them at throughout the world.

I am not sure which of his honours Carlos would rate as his most coveted, but surely to have been elected as an honorary member of the International Commission of Large Dams in his 82nd year is surely an international recognition of a lifetime's achievement. He has also received medals of merit from the Colombian government and has been recognised by academic institutions in Latin America and the US as well as in Europe.

Carlos is currently general manager of Ingetec, the largest engineering firm in Colombia and is active in its running on a day to day basis. One thing I have observed about Carlos, both during researching his life and in meeting with him on a number of occasions, is that he is involved at the highest level of excellence in both his professional and personal life. His professional works are all world record breakers and are at the cutting edge of technology. Despite all of this he is a delightfully charming man, is modest of his achievements, and he is a great asset to the DRBF. I am proud to be associated with a foundation which has Carlos as one of its members particularly as he is such a keen advocate of its ideals. □

-Submitted by Gwyn Owen
International Committee Chairman

WORKSHOP CALENDAR

October 25
Administration and
Practice Workshop
San Francisco, California

October 26
Chairing Workshop
San Francisco, California

November 10
Administration and
Practice Workshop
Orlando, Florida

November 11
Chairing Workshop
Orlando, Florida

Attendees should take the Administration and Practice workshop prior to the Chairing workshop. Registration for the workshops is \$445 for Foundation members and \$495 for non-members, and includes all workshop materials and lunch. All workshops can also be provided on an "in-house" basis for a fixed daily rate. Each participant will receive a DRBF Certificate of Completion.

To register for a workshop, contact the Dispute Resolution Board Foundation. For the latest additions to the training schedule, visit www.drbf.org.



Would You Like to Be a Country Representative to the DRBF?

Help give the DRBF a voice in your country by becoming a Country Representative. You may be called upon to act as a spokesperson, and should be interested in raising the profile of DRBs and increasing membership. You may also be asked to help organize DRBF events within the country you represent.

To qualify, you must be a member of the DRBF and live in the country you represent (you need not be a national). Terms are for a three year renewable period.

If interested, contact the DRBF office today: Phone 206-248-6156, Fax 206-248-6453, or e-mail home@drbf.org

DRBF Board Meeting

Summary Minutes

By Peter M. Douglass
Secretary/Treasurer

FEBRUARY 13, 2004 MEETING

A DRBF board of directors meeting was held by conference call on February 13, 2004 with 11 directors and officers participating. The following is a brief summary of the discussions and actions taken at the meeting.

Treasurer's Report:

This early in the year we don't have a meaningful comparison to the budget, however, it is noteworthy that we are closer to being in the black in January than we have ever been before. Membership through 1/31/04 is slightly ahead of this time last year.

Following discussion over budget assumptions regarding the number of workshops and the number of members of the DRBF in 2004, it was agreed that the estimated number of members for 2004 should be dropped from 700 to 640. Based on a recent review of the workshops that are planned in 2004, it was agreed that the budgeted number should remain at 10. The board unanimously approved the remainder of the 2004 budget.

Website:

John Bradshaw reported on putting the DRBF Annual Directory on the website noting that there would be considerable savings in doing it this way. It was noted that some items will only be available to members and some members have expressed concern over possible access to their address on the website. It was agreed that there should be an "opt out" option for those who don't want their e-mail address on the website.

A notice will be put in the May *Forum* outlining what the DRBF expects to do

regarding the website. It was also agreed that 200 hard copy versions of the Annual Directory will be printed for those members who prefer to have a hard copy. The charge for the hard copy, if any, is yet to be determined.

Member Dues:

It was agreed to take this item up at the face to face meeting in Chicago in May.

2004 Annual Meeting:

Jimmy Lairscey reported that a boat tour of major bridge projects underway in San Francisco Bay and a tour of the Bay itself has been suggested for Friday morning, October 22, 2004. Other Annual Meeting agenda items include:

- Saturday AM business meeting
- Breakout sessions
- Possibly 2 guest speakers:
 - a tunneling contractor from the Bay area; and
 - an officer from Caltrans in the Bay area
- Possible breakout session topics include:
 - Dysfunctional DRBs – why some DRBs did not work
 - Law for non-lawyers – panel to include Bob Rubin and Bob Smith
 - Debate over the need for DRBs
 - Guidelines for the use of DRBs
 - Conflict of interest concerns
- Happy hour and dinner
- Sunday breakout sessions and closeout session

It was agreed that John Nichols should provide a brief write up about the boat tour for inclusion in the May *Forum*, with some sort of cut-off date to assure minimum attendance. A number of

Board of Directors Meeting Schedule

The board has scheduled meetings for the following dates:

May 7, 2004

If you have something you would like the board to discuss or consider, notify Peter Chapman or one of the directors.

options were discussed regarding timing, lunch, cost, etc. It was agreed that John Nichols would look into the alternatives.

Revised DRB Manual:

Joe Sperry reported on the progress of the revised manual, noting that it was progressing nicely. Joe also noted that Jimmy Lairscey could use some help pulling together case histories, particularly from DOTs and other owners.

- Hal McKittrick agreed to work on ones from WMATA and from VDOT.
- Peter Zuk (Central Artery in Boston) is now a lawyer and Bob Rubin will pursue him.
- Doug Holen (director of construction for the Univ. of Washington) is also a firm believer in DRBs and has used many. Pete Douglass agreed to get Doug's phone number to Joe.
- Doug McDonald at WSDOT could also be a good source. Hal noted that he is meeting with Norm Anderson (ex-WSDOT) and he will try to get Doug McDonald's phone number.
- Armando also agreed to prepare a brief case history on one of the World Bank projects.

Joe noted that there has been considerable controversy over what should be on the title sheet for the revised manual. Joe asked who has the final say on what goes in the manual? It was unanimously agreed that the Steering Committee plus the president and the president-elect would have the final say.

May Board Meeting:

Friday, May 7, starting at 6 p.m. (should arrive at the airport no later than 5 p.m.) with a two hour meeting planned that evening.

Saturday, May 8 – 8 a.m. until 2 p.m. (flights should be scheduled to leave no earlier than 4 p.m.)

Steve Fox will send out an e-mail reminding everyone of the dates and times, as well as the phone number for the Hilton O'Hare.

Please send any agenda items for the May face to face BOD meeting to Peter Chapman with a copy to Steve Fox.

It was agreed that we should keep the April 16, 2004 board of directors conference call as previously scheduled. However, it was also agreed that the BOD conference call scheduled for June should probably be cancelled.

Next BOD conference call will be held Friday, April 16, 2004.

April 16, 2004 Meeting

A DRBF board of directors meeting was held by conference call on April 16, 2004 with 14 directors and officers participating. The following is a brief summary of the discussions and actions taken at the meeting.

Treasurer's Report:

It was reported that the budget continues on target with some minor variations. The income from workshops is projected to be slightly less than budgeted because four of the workshops had been previously arranged at the old rates and these would be honored. Fortunately, offsetting reductions in expenses will result in meeting or exceeding the net workshop income assumed in the 2004 budget. Membership through 3/31/04 continues slightly ahead of this time last year.

With respect to the workshop leaders, we wish to thank Mr. Baker and Mr. Faulkner for filling in during Jim Donaldson's surgery and recovery. Jim is doing well and will be back with Larry Rogers teaching the workshops to be given in conjunction with the North American Tunneling 2004 conference in Atlanta in mid-April.

It was suggested that we try to include some attendees with multinational experi-

(continued on page 12)

ence to assist Larry in the workshops that are conducted abroad. This worked well with the workshops recently conducted in Jordan.

Website:

John Bradshaw reported that Ann McGough’s interaction with the webmaster is working well. John expects that a test version of the new website should be available for the Chicago meeting and John will send special website access information to the board members so that they can review the content prior to the Chicago meeting.

Membership:

Peter Chapman noted the need for a membership committee now that Larry Rogers is no longer membership director. John Nichols said that he has been unable to follow up on some of the items he set in motion due to health issues with his wife, but that he was now ready to get back on line. John was appointed as the US Regional Chapter Coordinator and it was not intended that this include “membership director” responsibilities as well. This was identified as an agenda item for the Chicago meeting. John Nichols indicated that he would not be able to attend the Chicago meeting, but that he could be reached by phone.

2004 Annual Meeting:

Jimmy Lairscey reported on the boat tour of San Francisco Bay, noting that John Nichols had been instrumental in arranging this tour. Jimmy reported the following boat tour info:

- Departing about 9:00 am Friday morning, returning about 1:00 pm (which will require an additional hotel overnight on Thursday);
- Going to two major bridges currently under construction;
- Additional spectacular tour of San Francisco Bay and surrounding cities;
- Continental breakfast
- Cash bar

The more people on the tour, the cheaper the cost is per person. However, the DRBF needs to make a deposit of \$2500 right away to hold the boat and will only have until June 22 to cancel. The Board authorized the

deposit.

It was also agreed a flyer should be sent to the membership and something included in the upcoming *Forum* about the boat trip. Bill Baker said that speaking as a long time resident of San Francisco, this was quite an opportunity and Bill agreed to put together a few words to this effect. Following some discussion on the matter, the Board authorized that the DRBF offer the boat trip at \$100 per person and this price would be included in the *Forum* and any flyer that went out.

Jimmy also noted that two speakers are currently lined up:

- Mr. Andrew Fremier, at officer at Caltrans; and
- Mr. Ron Tutor, owner of a construction company based in San Francisco

Five possibilities have currently been identified as potential breakout session topics as follows:

- Guidelines for the use of DRBs;
- Why some DRBs did not work;
- A debate over the need for DRBs;
- Discussion over the conflict of interest issue; and
- A session on education and training.

It was agreed that the breakout session topics would be set at the Chicago meeting.

Revised DRB Manual:

Joe Sperry reported the following:

- Tabs and coversheet examples have been approved and will be sent out with the next *Forum*;
- Section 1 is ready to go on the website;
- Need more endorsements:
 - o Although Pete Douglass had provided the phone number for Doug Holen (director of construction for the University of Washington who is very big on DRBs), Joe felt that it would be much better for someone who knew Doug to make the inquiry. Pete agreed to talk with Jim Donaldson on

follow up with Jim next week.

- o Hal McKittrick reported that he had spoken with Kevin Bacon of WashDOT and another party and both would be providing letters of endorsement.
- o Hal also noted that he had provided his contacts with copies of the endorsements contained in the 1991 ASCE/UTRC publication “Avoiding and Resolving Disputes During Construction” as examples.
- Joe also noted that we need a new leader for the Tabulations of DRBs.
 - o Igor Leto offered to do this for the International DRBs (in conjunction with Gwyn Owen and the country reps)
 - o Still will need someone to fill the slot for North America and it was agreed that this would be an agenda item for Chicago.
- Bob Rubin has been chasing the copyright issue and noted that formal copyright may require submission of a fully executed document. He noted that “common law” copyright is probably all that we need or want and it was agreed that the copyright symbol and date would be put on the documents that are produced.

May Board Meeting:

Peter Chapman noted that he hoped to obtain an update on the status of the newly formed committees and what help they may need. Peter will work on getting at least a member of each committee at the Chicago meeting.

International Conference:

Peter noted that there had been a change in location from Stuttgart to Berlin, but that the date of June 18 and 19, 2004 remains the same. Peter has recently received a draft of the agenda, will speak with Gordon Jaynes on the matter in the next few days, and will be sending the agenda to Ann for inclusion in the upcoming *Forum*. Steve Fox said that he will also send copies of the agenda to each of the International members.

Peter also noted that this conference will be bi-lingual (English and German) in hopes that it will attract more of the local people.

This is a new approach.

Other:

Sammie Guy noted that the By-Laws Committee had been considering the issue of Chapters, both national and international, having been asked to come up with guidelines for how this would be consistently addressed. Sammie identified several points that needed to be considered.

Sammie also noted that he had looked at how some other organizations handle this question but he didn't know if we were faced with the same issues, or if we wanted to handle them the same way or differently. Sammie expressed that this was very important and also requested some assistance for international direction.

It was agreed that this should be an agenda item for Chicago, and Peter asked if Sammie could prepare a working paper that laid out the various points that should be considered and a suggested direction for each that could then be considered by the board at the May meeting.

Steve Fox also noted that any written reports to be handed out at the Chicago meeting needed to be in his hands before April 30 in order to get reproduced.

The next Board of Directors meeting will be held in as a face to face meeting in Chicago on May 7 & 8, 2004. □

**DISPUTE RESOLUTION
BOARD FOUNDATION
4th International Conference
Friday 18 and Saturday 19 June 2004
Berlin, Germany**

The Fourth International DRBF Conference is to be held in Berlin on 18th/19th June 2004 at:
Haus der Deutschen Wirtschaft
Conference Center
Breite Straße 29
D – 10178 Berlin (Mitte/Center)

For the first time, the conference will be bi-lingual (in English and German). The conference is open to both members and non-members of the DRBF. The program is detailed on the opposite page, and covers a broad range of topics on the use of DRBs/DABs around the world.

The conference fee is €220 (excluding the cost of the riverboat dinner on Friday evening) and this sum will be debited from your c/c account by the DRBF upon receipt of your application. Delegates will need to make their own transportation arrangements and hotel accommodations, although a list of recommended properties is available. For further information please contact the DRBF representatives in Germany: Dr. H. Köntges at + 49 (0) 201 8242589, or in Switzerland: Pierre Genton at + 41 (0) 21 6952440.

Registration forms have been distributed by mail, and can be downloaded from the DRBF website. Application forms are due by 1st June 2004. Please complete the form and fax it to + 44 (0) 1372 843 420 or send it by e-mail to phjchapman@btinternet.com.

**Visit www.dr.org to download a registration form,
copy of the program, and hotel information.**

See you in Berlin! / Bis wir uns in Berlin treffen!



International Conference

Schedule/Tagungsprogramm

Friday/ Freitag, 18 June 2004

| Time/Zeit | Subject/Thema |
|--|---|
| 10:30 Registration | Registrierung |
| 11:00 Welcome and opening | Willkommen und Eröffnung |
| 11:15 DRB / DAB, concept and aims | DRB/ DAB Konzept, Ziele und Abgrenzungen |
| 12:00 Light lunch | Mittagessen |
| 13:00 Previous application and use (US and UK) | Bisherige Anwendungen und Verbreitung (US und UK) |
| 13:45 Previous application and use, international | Internationale Anwendung, FIDIC, Weltbank in Asien und Afrika |
| 14:30 New developments at the ICC | Neue Entwicklungen bei der ICC |
| 15:00 New developments, FIDIC, Italy, etc. | Neue Entwicklungen, FIDIC, Italien, etc. |
| 15:15 Coffee break | Kaffee Pause |
| 16:15 Dispute resolution in Germany | Schlichtung in Deutschland |
| 17:00 Dispute resolution and prevention in Austria and Switzerland | Schlichtung und Streitbeilegung in Österreich und Schweiz |
| 17:45 End of 1st day | Ende des ersten Tages |
| 20:00 Riverboat dinner | Abendessen auf dem Fluß |

Saturday/Sonnabend 19 June 2004

| | |
|---|---|
| 9:00 Opening 2nd day | Eröffnung 2. Tag |
| 9:15 Perspectives of DRB/ DAB in Germany | Mögliche Anwendung des DRB/ DAB in Deutschland |
| 10:00 Perspectives of DRB/ DAB in Austria and Switzerland | Mögliche Anwendung des DRB/ DAB in Österreich und Schweiz |
| 10:45 DRB/ DAB and the expansion of EU to the East | DRB/ DAB und die EU- Osterweiterung |
| 11:30 Coffee break | Kaffee Pause |
| 11:45 DRB/ DAB, an example | DRB/ DAB im Beispiel |
| 12:30 Considerations by public sector in Germany | Gesichtspunkte der öffentlichen Hand in Deutschland |
| 13:15 Closing remarks | Schlußbemerkung |



8th Annual Meeting and Conference

October 22 - 24, 2004

San Francisco, California

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 encouraged to join us for what should be an educational and stimulating event.

Conference Highlights

Friday Oct 22, 2004

San Francisco Bay Cruise (see back page for details)

Saturday/Sunday Oct. 23-24, 2004 Meeting and Conference

Saturday speakers include: Andrew Fremier, chief deputy director District 4, California DOT and Ron Tutor, owner and president of Tutor-Saliba Corp.

There will be three interactive breakout sessions on various DRB subjects

Saturday night: Reception/dinner and awards presentations

Sunday morning discussion/debate on Dysfunctional DRBs

Workshops

The DRBF will be offering the DRB Administration and Practice Workshop on October 25th and the Advanced/Chairing Workshop on October 26th. 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. Contact the DRBF office and request a brochure for additional details.

Registration and Reservations

Registration fees for members are \$220 in advance or \$250 after September 30, 2004. Non-member fees are \$250 in advance and \$280 after September 30, 2004. To register, fax, e-mail or mail a registration form which can be obtained from the DRBF office or downloaded at www.drb.org.

Registration is required for the optional San Francisco Bay Cruise, and space is limited. Sign up today to insure your space.

The Annual Conference will be held at the Hyatt Regency Hotel in Burlingame, California. Room reservations can be made by calling 800-233-1234 toll free in the USA, or 650-347-1234. Be sure to request the DRB Foundation group rate of \$105.00 per night when you make your reservation. The deadline for the guaranteed group rate is October 1, 2004.

WELCOME TO NEW FOUNDATION MEMBERS

MEMBER ADDITIONS FEBRUARY THROUGH APRIL 2004

Amjad Agha
Pakistan Hydro Consultants
Lahore, PAKISTAN

Jimmy D. Allison
Orlando, FL USA

Douglas Stuart Beckwith
Ipswich, Suffolk UK

Anders Beitnes
SINTEF
Trondheim, NORWAY

Tom Blackburn
Blackburn Consulting, Inc.
Auburn, CA USA

Ernest W. Blee
Alamo, CA USA

Joseph Byce, P.E.
Byce Construction Consulting
Alpharetta, GA USA

Philip B. Copare
Construction Services Enterprise
Tavares, FL USA

Simon Delves
Shadbolt & Co.
Reigate, Surrey UK

Robert DiRubbo
Union Switch & Signal
Pittsburgh, PA USA

Clarissa Easton
King County Government
Seattle, WA USA

E. Harvey Elwin
MWH
Bellevue, WA USA

Orrin F. Finch
Arbitration/Mediation Services
Sacramento, CA USA

James W. Foley, P.E.
Saratoga, CA USA

Andrew Golden
Institute For Conflict
Management
Santa Monica, CA USA

Donald G. Humphrey
Lithia, FL USA

David Jameson
Lakeland, FL USA

Christopher Koch
Georgana & Koch
Athens, GREECE

Walter F. Lange
Washington Group Int'l
Lake Worth, FL USA

David J.E. (Ted) Malan
Parsons Brinckerhoff
International
SINGAPORE

R. Sean McDonald
Law Office of R. Sean McDonald
Colleyville, TX USA

Kuena Mophethe
Lesotho Highlands Development
Authority
Maseru, LESOTHO

Dr. Issaka Ndekugri
University of Wolverhampton
Wolverhampton, UK

Webster J. Owen Jr.
Owen Engineering &
Management Consultants, Inc.
Cameron Park, CA USA

Charles Parisi
Bergen County Special Services
Paramus, NJ USA

Mark E. Puckett
DRMP
Orlando, FL USA

Wayne J. Reiter
Reiter Companies
Richardson, TX USA

Horst Roettgen
Hochtief Construction AG
Essen, GERMANY

Dr. Derek Ross
Layng Ross
Weybridge, Surrey ENGLAND

Shadbolt & Co.
George Rosenberg
Reigate, Surrey UK

J. Robert Shoff
Chagrin Falls, OH USA

Willard Mac Smith Jr.
Dallas Area Rapid Transit
Dallas, TX USA

Dennis Wogan
Queensland Dept. of Main Roads
Capability & Delivery Division
Brisbane, QLD AUSTRALIA □

(continued from page 1)

CONSTRUCTED: 1991-2000

PROJECT COST: Approximately \$2 Billion US

OWNER: Chinese State Hydropower Organization (EHDC)

CONTRACTORS: Two separate Chinese/foreign joint ventures were involved in the main civil works and in all comprised five continental European constructors together with two Chinese constructors. The dam joint venture was headed by Impregilo Spa of Italy. The underground joint venture was headed by Philip Holzmann AG of Germany.

ENGINEER/CM: The design was by a Chinese Design Institute (CHIDI). The joint ventures were supervised by a Chinese engineer while the employer was advised by international engineering firms.

CONTRACT PROVISIONS: Modified FIDIC 4 conditions were employed. One three person DRB was installed for the two main civil contracts consisting of members from the United Kingdom, Colombia, and Sweden. The parties each chose one member, and the members chose a chairman.

DRB FREQUENCY OF VISITS: On average, every four months with three days for site visits totaling over 20 visits.

SPECIAL FACTORS: This was the first DRB to be established in China. After an initial wariness of the DRB process, the parties grew to realize that the DRB could help the project by resolving difficult disputes. As confidence in the DRB and the process grew, the DRB became more proactive and assisted the project in an informal capacity resolving potential disputes.

DRB RECORD: Proceedings were conducted in English and Chinese. All referrals to the DRB were the subject of hearings on site which generally required two or three days, although the more complex matters such as extension of time lasted longer. Several disputes were heard by the DRB during many of the on-site sessions for hearings. Recommendations were typically rendered in writing several weeks later.

No restriction existed on the scope of the disputes brought to the DRB and disputes were heard on a wide variety of technical and contractual matters. The DRB appointed specialist advisers if it was found necessary, for example when local taxation was the subject of one dispute.

NUMBER OF DISPUTES REFERRED TO DRB: 40

NATURE OF DRB'S DETERMINATIONS: Recommendations were binding unless a party gave notice of referral to arbitration within set time limit. Where notice of referral was given by a party the recommendations were not binding in the interim, however recommendations were admissible in arbitration.

FINAL RESULT: No arbitration took place. All of the disputes were resolved in amicable settlements between the parties either immediately following publication of the recommendation or in final settlements following construction. The DRB was instrumental in gaining the parties consent to final settlement which was based on the DRB recommendations.

REFERENCES: Carlos S. Ospina – Chairman of DRB
Sven-Erik Frick-Meijer
Peter H. J. Chapman

Marine Industrial Park Tunnel Case History

PROJECT: MARINE INDUSTRIAL PARK TUNNEL, Boston, Massachusetts, USA
 CONTENT: 2567lf of tunnel for future I-90 connection to immersed tube
 CONSTRUCTED: 1992 – 1993
 PROJECT COST: \$244 Million
 OWNER: Massachusetts Highway Dept (MHD)
 CONTRACTOR: Kiewit, Perini, Atkinson, Cashman Joint Venture (KPAC)
 ENGINEER: Bechtel/Parsons Brinkerhoff

The first dispute regarded quantity overrun on disposal of contaminated material. Contract plans and specifications called for disposal of 10,000 tons of contaminated material. KPAC had bid the item at \$200/ton.

The Contract Quantity Variation Clause contained a trigger at 120% and provided for negotiation of equitable adjustment strictly based on increase or decrease due solely to variation of quantity.

The contract differing site condition provided that an equitable adjustment was called for if the actual subsurface conditions encountered differed substantially or materially from those shown on the plans or indicated in the contract documents.

Six months after the trigger was passed, MHD unilaterally lowered the unit price to \$75/ton and adjusted the periodic pay requisitions accordingly. The final quantity reached 85,000 tons but no negotiations took place.

Contractor KPAC requested the DRB to hear a dispute on entitlement in which they claimed that the overrun was a differing site condition. KPAC relied on a Federal Board of Appeals decision which maintained that no price negotiation was necessary unless the contractor had experienced economies of scale. KPAC stated no such economies existed as their records would substantiate.

MHD responded that Massachusetts courts were not bound by federal precedent in this case and that renegotiation of unit price was not limited to a consideration of economies of scale. At the hearing the DRB learned that the owner did not know what the contractor's actual costs were but felt that there must have been a savings.

The DRB concluded that both contract provisions provided for equitable adjustment but neither the DRB nor the parties had all of the relevant facts. A recommendation as to which clause governed would not resolve the dispute but would merely advance it to court.

The DRB's recommendation was that MHD exercise its audit rights under the contract, examine the contractor's costs, and proceed from there. The parties complied and were then able to negotiate a settlement themselves as part of a global settlement.

The DRB therefore promoted an amicable settlement of the dispute by recommending the parties follow the contract provisions more closely. □

Learning from Case Histories

Case histories provide a look at the DRB method in action. The two shared here are part of a larger volume of case histories being published as part of the new manual, *DRBF Practices and Procedures*. Section 1 Appendix B features 12 projects, varying in type, size and DRB approach. Let's not stop there! DRBF members are urged to submit similar interesting case studies of their projects, to help other members or potential DRB users learn from your experience. The real education comes from application, so share your experiences. Contact John Bradshaw at jbbconstruction@msn.com.



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FOUNDATION FORUM

Plan Now for Spectacular San Francisco Bay Cruise



In the 1850's many people saw the spectacular views of the San Francisco Bay while sailing to Gold Rush country. You too can take this scenic sail in the San Francisco Bay and also closely observe ongoing construction operations on two of the largest bridges in the Bay, if you attend the Dispute Resolution Board Foundation Annual Meeting in October. A four hour cruise has been arranged on Friday, October 22 for DRBF members. This will take you up close to the major marine construction operations now underway for the new Oakland-Bay Bridge and for the major seismic retrofit of the Richmond-San Rafael Bridge. At the same time you will be viewing the many city skylines around the Bay from a viewpoint not otherwise possible.

Plan to attend the DRBF Annual Meeting in San Francisco and also sign up for the Bay jobsite cruise. Space on the boat is limited, so sign up today. **DON'T MISS THE BOAT!**