



# Forum

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AUGUST 2003

## DRBs Overtake Arbitration in California

By John W. Nichols

An interesting phenomenon is occurring on major construction projects for the State of California's Department of Transportation (Caltrans). In 1994, the organization introduced the use of Dispute Resolution Boards (DRB) on large and/or complex projects. Within a few years, the process has taken hold and begins to show a significant impact on the number of formal arbitration cases. The DRB process is rapidly replacing arbitration as a method to resolve disputes on Caltrans projects.

### Arbitration in California

The State of California's Department of Transportation is a major construction entity with almost \$2 billion worth of transportation projects each year. California state law requires that the ultimate method of dispute resolution on state projects be by arbitration. This is true today, even with the inclusion of a required DRB on all large and/or com-

plex projects. If a dispute is not resolved either by negotiation or by a DRB, it will go on to arbitration for resolution if the claiming party so desires.

The resolution of a dispute by arbitration, in California, is a slow and stretched out process that results in considerable expense. The formal request for arbitration of a dispute cannot occur until long after a project is complete and formal acceptance by Caltrans has occurred. The law allows Caltrans eight months after final acceptance to issue their written determination on the merit and value of the claim that is the subject of the dispute. The formal request for arbitration cannot be filed until this written determination by Caltrans has been issued. The State of California's Office of Administrative Hearings has advised that, for Caltrans' arbitrations, the estimated average time from the filing of a formal request for arbitration until a decision is rendered by the panel is

*(Continued on page 7)*



**“ Most recently, when the use of a DRB on Caltrans projects has steadily grown, the number of disputes where arbitration has been formally requested has decreased.”**

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# Change of Voting Members on the Board of Directors

At the July Board of Directors meeting, the Board voted unanimously to recommend to the membership that the DRBF expand the voting number of directors on the Board from the present nine members to eleven members. This increase in the number of voting Board members will enable the DRBF to establish additional committees under the direction of a Board member and thereby allow the DRBF to undertake specific assignments and better serve the membership.

A vote on this proposed change will be taken at the Annual Meeting on Oct. 18, 2003. Please fax or e-mail your comments on this proposed change to:

Fax: 206-248-6453  
E-mail [home@drb.org](mailto:home@drb.org)

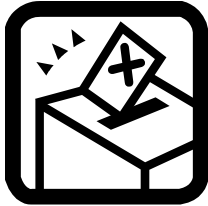
If you are unable to attend the Annual Meeting, please check one of the following and return this form to: Administrative Manager, The DRB Foundation, 6100 Southcenter Blvd. #115, Seattle, WA 98188-2441.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ I approve of expanding the Board from 9 to 11 voting Directors.

\_\_\_\_\_ I disapprove of expanding the Board from 9 to 11 voting Directors.



## CANDIDATES NEEDED!

The Board of Directors is looking for candidates for future openings on the Board. Help your DRB Foundation grow and expand its services by becoming an active member of the leadership team.

Submit your name or the name of someone else you think might be interested by **September 1, 2003**.

Send nominations to: Dispute Resolution Board Foundation  
Phone: 888-523-5208 (Toll free in the US) or 206-248-6156

Fax: 206-248-6453  
E-mail: [home@drb.org](mailto:home@drb.org)

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The *Forum* is published quarterly by the Dispute Resolution Board Foundation (DRBF). Any opinions expressed are those of the authors and do not necessarily represent the opinions of the DRBF.

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**

New DRBF application forms have been printed that match the graphic scheme of the brochure and folder. Supplies are available in the Seattle office. Contact Steve Fox at the DRBF office with your request for these materials.

Design for the covers for the Member Directory is also complete. This year's Directory should have the new cover.

**Conference Activities**

The 2003 Rapid Excavation & Tunneling Conference (RETC) was held from June 16 through June 18 at the Marriott Hotel in New Orleans, LA. On Sunday June 15, 2003, Hugh Cronin and Pete Douglass hosted a panel discussion on Dispute Review Boards, which included John Ramage, Bob Pond, Paul Gribbon and Nasri Munfah. After discussion of various viewpoints from the contractor, owner, and engineer communities, Pete Douglass presented a series of graphs with the key results of the recent survey on DRB's that he and Hugh had sent to all RETC attendees. It is expected that these results will be reduced so some sort of narrative form within the next few months, and made available to the membership. Several papers were presented, including: "The Use of Dispute Review Boards in Public Works Construction – An Owner's Perspective" by Paul Gribbon and Bill Ryan of the City of Portland, OR., and "Current Challenges Facing the Dispute Review Board (DRB) Process" by John Ramage and Hugh Cronin. See the article on page 8 for more information on this event.

Bill Edgerton

**International**

The third annual International Conference is scheduled for Sept. 26-27 in Paris, France. See page 13 for complete details about this exciting event.

FIDIC Assessment Workshop: 17 candi-

dates -including a past-president of the DRBF- presented themselves for assessment and consideration for inclusion in the FIDIC list of adjudicators. Nine different countries were represented. The standard of the candidates and of the examinations was high. Currently papers are being assessed.

Peter Chapman

**Membership and Education**

Membership in the Foundation stands a 558 members as of the end of July—80% of the Board's goal or 142 short of the 700 members planned for this year. If you know of someone who is interested in DRBs, give him or her an application or let Steve know and he will send them an information packet. Your assistance in spreading the word about DRBs and bringing in new members will help the Foundation in its efforts and is greatly appreciated.

The next scheduled workshops are those offered in conjunction with the Annual Meeting in Washington DC in October. If you are interested in attending or know someone who is, let Steve know. Also, if you know of a group or organization that might benefit from our workshops please notify me at 253-279-8158.

Larry Rogers □

**Post your resume on-line**

As a member, you can post a short resume free of charge on the DRBF website. Let others know that you are interested in serving on DRBs.

Just go to **www.drb.org**  
and click on  
**Member Resumes**  
and  
**Add Resume**

# Launch of Australasian Chapter in Sydney, Brisbane and Melbourne

**By Norman Reich**

Approximately 175 interested delegates attended a series of launches in Sydney, Brisbane and Melbourne in late May. Representatives were from government, contractors, project managers, leading legal firms active in the industry and consultants.

Larry Rogers, Education and Membership director of the DRB Foundation was brought out to Australia by the Chapter for the launches. The Australian Constructors Association sponsored his visit, as well as providing significant resources to organise the event through ACA Secretary Jim Barrett. In his keynote address at the launches, Mr. Rogers emphasized the nine essential elements for successful implementation of a DRB. He reviewed how the DRB process has spread widely in the US since the early 1970's, noting many clients now mandate the use of three-man boards for projects down to \$US10 million. A new trend is the use of one-man boards for projects below this value.

The Australasian Chapter believes that the process will be cost-effective in this part of the world on projects above \$50 million (\$A and \$NZ). Costs of implementing a three-man board amounts to between 0.2% and 0.3% of the contract value. This level will reduce as the project size increases. Extremely effective insurance!

Mr. Rogers also noted a trend in the US where DRBs chosen by the principal and the contractor have built up trust to such a point that they are being asked to deal with disputes between the contractor and his sub-contractors.

Notwithstanding that costs are usually shared between the principal and the contractor, Mr. Rogers noted that the Florida Department of Transportation, as an example, found the process so successful that it uses DRBs on all projects over \$US 10 million and paid the full cost of those Boards.

Mr. Rogers also provided details of the database of projects from around the world kept by the Foundation. There are 926 projects in the database totalling \$US74 billion. Only 1,125 recommendations were issued by the boards on these projects and only 31 of those went beyond the DRB to the formal process because of appeal by one of the parties. The process really does work!

“In future, when we see a Dispute Resolution Board process put up by a principal, we will reduce our risk margin for a project. It is a sign of an enlightened client,” said Bob Merkenhof, managing director of Australia's biggest contractor, Leighton Contractors, and one of the speakers. He summarised his company's experience on the recently completed Harvey Dam in Western Australia, which had such a process.

Providing the contractor's viewpoint at the launch in Melbourne, Mr. Merkenhof outlined the changes he had noticed in the behavioural patterns of the participants to the contract. This occurred principally by the presence of, and the respect generated for the “three wise men.” The contractor's staff eliminated ambit claims and clients eliminated flat rejection. Antagonism between the parties was reduced and pride in the resolution of differences grew.

## DRBF Country Representatives

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His view is that even where a difference was heading for the Board's consideration, the preparation of submissions usually leads to revised expectations and settlement. The consequential enhanced trust leads to improved focus on project goals. The industry's experience with dam construction had been notorious—dogged as it had been with many disputes. In the Harvey Dam case, there were issues—particularly on the foundations—but these had been amicably settled.

David Hudson, managing director of Barclay-Mowlem and vice president of the Australian Constructor's Association, echoed similar sentiments in giving the contractor's viewpoint at the Sydney and Brisbane launches. An important benefit of the DRB process was the early identification and resolution of differences, leading to certainty in both the client's budget and the contractor's cash flow.

Mr. Hudson said the ACA was committed to supporting the DRB process both in Australia, New Zealand and in the Pacific Basin and Southeast Asia. He said the ACA endorsed the new Chapter's objective to get eight simultaneous projects up and running in Australia and New Zealand by 2005 and three using predomi-

nantly Australian and New Zealand Board members overseas.

At the Sydney launch, Doug Jones, respected partner of Clayton Utz, raised the issue of whether it was always advantageous to have non-binding decisions. He believed the process empowered those charged with project delivery and avoided the "post-project project." He said he believed the process would spread rapidly as it had been taken up by such bodies as the World Bank, the Asian Development Bank and FIDIC.

At the Brisbane launch, Alan McLennan, formerly of Queensland Main Roads and Queensland Chairman of Engineers, Australia's Engineering and Dispute Resolution Committee, gave the clients viewpoint on the process. He believed the DRB process provided early identification, analysis and prompt resolution of disputes, allowing full production to be maintained, increasing the likelihood of all project goals being achieved in full, reducing unproductive time in protracted and uncertain resolution processes.

John Sharkey, well-known partner of Deacons law firm, provided the Melbourne launch with an illustration of what is possible when there is no clear process for dis-



**Pictured left to right: Larry Rogers, Norman Reich, and David Hudson**

(continued from p.5)

pute resolution on significant projects. He outlined the six-year-plus saga of *Robak v Boral Resources* using the conventional/traditional approach. No conclusion has as yet been reached.

Each of the launches generated lively question sessions that highlighted the operation of the process.

The Chapter took the opportunity of Larry Rogers's presence to also brief project initiators and participants on a "one-on-one" basis to deal with particular issues they faced. In Sydney, briefings were held with NSW Department of Commerce (formerly Public Works), the Parramatta Rail Link Project, ACEA and Thiess Contractors; in Brisbane with Queensland Main Roads, Public Works, Brisbane City Council and Queensland Rail; and in Melbourne, with Vic Roads and the Department of Infrastructure.

Mr. Rogers also met Australian members and potential members of the Foundation at well-attended meetings in Melbourne and Sydney.

The Australian construction industry has been at the forefront of implementing privately funded infrastructure projects (BOOT-schemes). The Chapter is preparing a position paper on the use of the DRB process on such projects, where it believes they could prove valuable in the construction contract and in contracts with major sub-contracts.

The Chapter has also targeted the mining and processing sector of the industry as having potential use for the process.

The Chapter has put in place the infrastructure to enable project initiators to take up the process. It has prepared a set of documents that can be used as the basis for setting up a Board, consisting of Draft Contract Clauses, Board Operating Procedures and Draft Three-Party Agreements.

The Chapter has also prepared a peer-

reviewed panel of potential board members from Australia and New Zealand that can be used as a starting point for the selection by the parties of a Board. The panel was selected from industry leaders with technical skills in particular fields and demonstrated negotiation and dispute resolution skills.

The DRB Foundation has an international conference once per year and the Chapter hopes to host the 2005 conference in Australia.

The Chapter is planning similar launches in Perth and New Zealand this calendar year. It plans to have a series of training programs for Board participants and project participants (principal's staff, contractor's staff and project manager's staff) in 2004.

Contact: Norman Reich, FIEAust (nreich@ozemail.com.au) or Larry Rogers, rgrsadr@cs.com.

**FOUNDERS OF THE  
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**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!**

*(Continued from p. 1)*

approximately 18 months. Therefore, if you look at a 24 month project without a DRB and with a dispute occurring midway as an example, the total time to reach resolution of the dispute by arbitration will not likely occur until at least 38 months after the dispute occurs, and often it can be several years.

**DRB’s Winning Numbers**

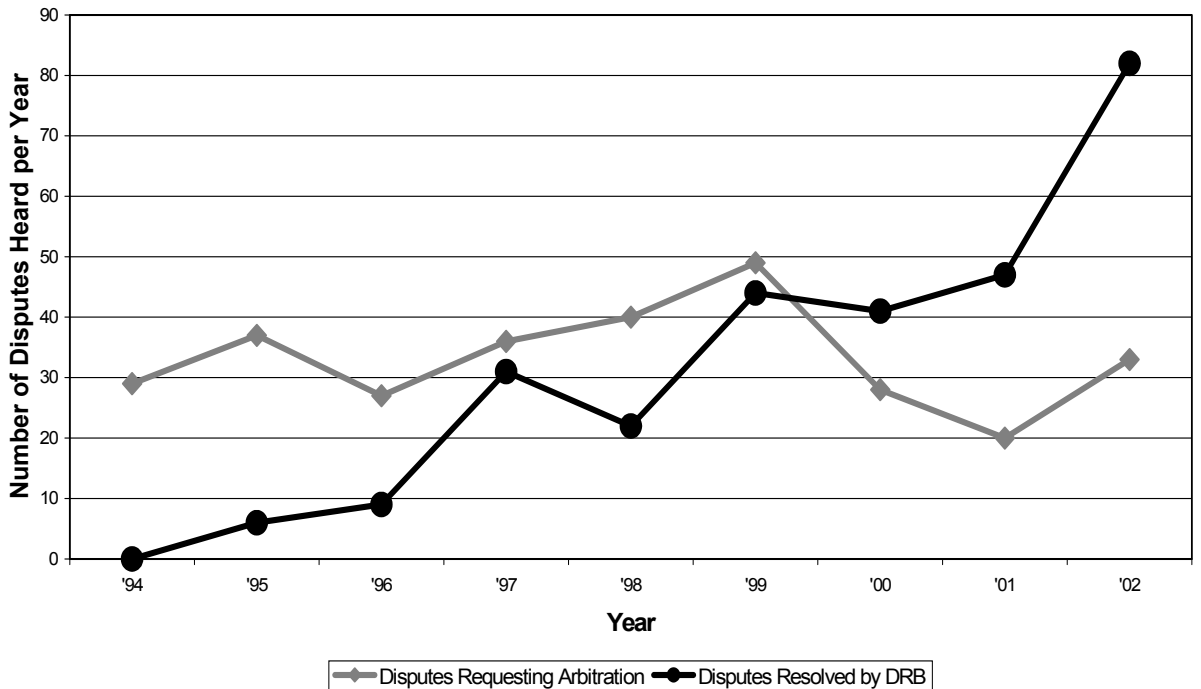
According to Caltrans, the DRB process was initiated in 1994 on eight projects. Since 1994, the total number of projects bid each year with a DRB is 240. At the present time there are 110 Caltrans projects underway with a DRB. The number of disputes heard by a DRB since 1994 is shown on the graph. For these 282 disputes heard by a DRB during this period, about 60 % of the recommendations have been accepted by both parties and most of the remainder were either settled by negotiation or dropped before completion of the project. During this period, only four of the 282 disputes (1.4%) have remained unresolved and moved into or toward arbitration. The other arbitrations shown on the graph were for either earlier jobs or jobs without

DRBs. Most recently, when the use of a DRB on Caltrans projects has steadily grown, the number of disputes where arbitration has been formally requested has decreased.

At the present time, Caltrans has approximately \$7 billion of work under construction. A total of approximately \$5 billion of this work is on contracts using the DRB process. The remaining \$2 billion is for minor jobs and/or jobs of short duration.

It can be noted, from the graph, that the number of disputes formally requesting arbitration in 1999 starts to decline. This is about three years after Caltrans started using a DRB to any extent on their larger and/or more complex projects. It also shows that after 1999, the number of arbitrations requested per year declines, whereas the number of disputes heard each year by a DRB increases. This clearly shows that the DRB process is rapidly replacing arbitration as a method to resolve disputes on Caltrans projects. □

**Dispute Resolution**





# DRB Survey and RETC Meeting

By Hugh Cronin

A new DRB survey was prepared between November 2002 and January 2003 by Hugh Cronin assisted by Pete Douglass and John Ramage, in preparation for the Rapid Excavation and Tunneling Conference (RETC) held June 15, 2003 in New Orleans, LA. The survey consisted of 79 questions with a numerical scale of 0-10 providing the respondent's opinion/experience relating to the use of Dispute Review Boards. In addition to the questionnaire, eight additional items were requested to define the DRB experience of the respondents and to segregate responses into categories i.e. owner, contractor, engineer, etc.

Over 300 surveys were sent via e-mail to a combined list of DRBF members, American Underground Construction Association (AUA) members and RETC early registrants. As of July 15, 109 responses have been received. The responses were 27 from owners, 29 from contractors, 18 from engineers, 29 from consultants, two from attorneys and four from others. In addition to the actual survey responses, many respondents added specific comments and/or suggested changes to the current DRB standards.

The Sunday June 15 conference session on DRBs was held in New Orleans as part of the RETC. The session co-chaired by Peter Douglass and Hugh Cronin drew over 100 attendees on the day preceding the technical paper presentations indicating the high level of interest in the subject. Papers were presented by Paul Gribbon and Bill Ryan of the City of Portland, Oregon on the apparent bias of the Board memberships and by John Ramage and Hugh Cronin on the distinction between DRB "recommendations" and "decisions" by the Boards to resolve disputes between the two parties. In addition to these papers, Pete Douglass out-

"advisory opinion" from the Board; Nasri Munfah, chief engineer for the East Side Access Project in New York discussed their decision to make Board recommendations non-admissible; C.H. (Bucky) Atherton, vice president of the J.F. Shea Co. (contractor) suggested a change to the Board selection process by having all three members negotiated by the owner and contractor representatives; and Bob Pond, executive vice president and director of Frontier-Kemper Construction presented his concerns that the DRB process is in danger of morphing into the existing AAA model and the downside risks associated with this possibility. Following each of the presentations the panel accepted questions, comments and suggestions from the attendees. Bryson Shipley, Big Dig DRB manager was scheduled to present an update of DRB experience for this major project in Boston but was unable to attend due to illness. At the conclusion, Peter Douglass presented some results from the survey that indicated surprising agreement and disagreement by the respondents on several key issues and DRB procedures. Most respondents were in strong agreement that DRBs were timely and successful in solving construction disputes. It was surprising to see that a high percentage of both owners and lawyers supported the admissibility of the DRB recommendations in any subsequent proceeding. Another surprise was provided by the contractors who were in favor of keeping the recommendations non-binding, whereas the owners were split but favored changing the recommendations from non-binding to binding. The session continued for almost three hours with many interesting and well-considered suggestions.

The survey results will be provided to all respondents and will be presented at the DRBF Annual Meeting, with suggestions for consideration in preparing the revised DRB practice manual. □



**Stay tuned...**

**An overview from the Annual Meeting presentation and the significant survey results will be published in a future issue of the Forum.**



# Other News

## DRBF AND AAA CO-SPONSOR CONFERENCE IN CHICAGO

The American Arbitration Association will be presenting a national conference on dispute avoidance and dispute resolution November 13-14, 2003 in Chicago, IL. The DRBF will co-sponsor this conference, along with other construction industry organizations. This conference will offer a session on Dispute Resolution Boards, with Dan Meyer, Robert Smith, Charlie Davidson and John O'Rourke slated to be presenters. Other topics will include mediation, legal updates in ADR, risk allocation and more. DRBF members will receive a reduced registration rate.

For more information about this program please look to the American Arbitration Association's web-site, WWW.ADR.ORG in August, 2003. Please plan to attend this exciting program and join many other industry professionals as they come together to learn more about dispute avoidance and dispute resolution.

## FIRST REGIONAL DRBF CONFERENCE HELD IN SEATTLE

The first regional DRBF conference was held in Seattle on June 16, with 30 people in attendance from Washington, Oregon and Canada. Adele McKillop and Jim Donaldson led off the conference with reports on Foundation activities both internationally and regionally. Larry Rogers then gave a presentation on new developments in DRB practice.

The balance of the morning was taken up with a DRB Users panel with Doug J. Holen, director, Capitol Projects South, University of Washington and Michael Mequet, PE, manager, Construction Services Engineering, Port of Seattle, Seattle-Tacoma Airport. The panelists discussed why they use DRBs, the benefits DRBs have provided on their various projects, and what can be done to make them better.

Following lunch the conference featured a Practitioners Forum led by Jim Donaldson, past president of the DRBF Board and Larry Rogers, Education and Membership director, with discussions of various challenges that practitioners are facing along with possible solutions. The conference concluded with an open Q&A period for participants to ask any questions that had not been addressed in the program.

The conference was followed by an A&P Workshop Tuesday with 15 people in attendance and an Advanced/Chairing Workshop on Wednesday with nine attending. □

## WORKSHOP CALENDAR

October 20, 2003 Washington, DC  
Administration & 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.

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  
October 1,  
2003**

# DRBF Board Meeting Summary Minutes

By Peter M. Douglass  
Secretary/Treasurer

## MAY 9, 2003 MEETING

A Board of Directors meeting was held by conference call on May 9, 2003 with 12 directors and officers participating. President Brison Shipley has recently undergone surgery and was unable to participate. President Elect Peter Chapman conducted the meeting. The following is a brief summary of the discussions and actions taken at the meeting.

### Treasurer's Report:

DRBF membership through the end of April 2003 continues to be well ahead of last year at this time with 528 members (only 12 short of the total 2002 membership). The number of workshops has slowed, however, and is currently projected at eight 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 still expected to be slightly higher than budgeted.

### Marketing:

The new membership application submitted by Bill Edgerton was approved by the Board. Supplies of these membership applications will be available through Steve Fox for handouts at conferences and will be sent to all regional representatives. A request for information regarding the number of Boards participated in and disputes heard will be incorporated as part of each renewal invoice and each new member package. This information could be useful in compiling our statistics and identifying membership experience on DRBs.

### International:

Larry Rogers will be leaving for Australia on May 22, 2003 to make DRB presentations to groups of up to 50 people in Sydney, Brisbane and Melbourne. Each of the meetings is also to include presentations by contractors who have used DRBs and a panel discussion by all of the participants. Additional meetings are also scheduled in each location to meet with other private and governmental individuals and organizations to discuss the DRB process.

Peter Chapman reported that the International Annual Meeting will be held in Paris in September 2003, but the exact dates are yet to be determined.

Peter also noted that the planned China trip to meet people and organizations who will be working on the Olympics developments and for the signing of the Memorandum of Cooperation with CIETAC has been postponed due to the SARS threat.

### DRBF Annual Meeting:

The DRBF Annual Meeting is scheduled for October 18 and 19, 2003 at the Radisson Old Town in Alexandria, VA. The Board of Directors meeting will be held the evening of Friday, October 17, 2003. A banquet will be held Saturday evening, October 18.

Federal Agencies are being invited to a morning session on Friday the 17th and any contacts that we may have within the Federal Agencies should be sent to Sammie Guy for consideration as invitees. Members of the World Bank staff are scheduled to attend a similar general information meeting that afternoon.

**Board of Directors Meeting Schedule**

The Board has a scheduled telephone meeting for:

September 12, 2003

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

**Draft Code of Conduct:**

Peter Chapman and Gordon Jaynes are pulling together a draft “Code of Conduct” outlining procedures for the conduct of a DRB. There may be a need for two separate codes to deal with “binding decisions” versus “recommendations.” A draft will be distributed to the Board for review and comment. This “Code of Conduct” is not in conflict with the “Code of Ethics” regarding an individual’s behavior that was passed last year.

**DRB Manual Rewrite:**

Bob Smith received a release from McGraw-Hill for preparation of a revised DRB Manual, although there are still a few loose ends to tie up. Joe Sperry suggested that there be an ad hoc meeting of those interested in providing input at 2 pm on Sunday, June 15, 2003 at the upcoming RETC conference. Joe will work on a new program to complete the revised manual.

**Al Mathews Award:**

Jack Woolf is responsible for appointing the committee and will start work on recommendations and report back to Peter Chapman.

**New Board Members for 2003/2004:**

Steve Fox advised that Armando Araujo, Bill Edgerton and John Nichols have each served one term or less and are up for re-appointment to the Board. Peter Chapman ask each of them if they would be willing to re-up and they all indicated that they would be willing. Assuming that the new President-Elect comes from the current Board of Directors, there will be a need for one other replacement. Brison, as the current President, has the responsibility to make a recommendation to the Executive Committee. However, in light of Brison’s surgery, Peter Chapman and Jack Woolf will work with Brison on this matter.

**Other:**

John Nichols e-mailed an item to Brison and Peter Chapman regarding the geographical subdivision of chapters within

the Foundation. John suggested that this item be sent to all Board members and put on the agenda for the next Board meeting.

Bob Rubin noted that he would be sending something to the rest of the “White Paper Committee” for their review and comment.

**JULY 11, 2003 MEETING**

A Board of Directors meeting was held by conference call on July 11, 2003 with 14 directors and officers participating. President Brison Shipley is recovering from surgery and was unable to participate. President Elect Peter Chapman conducted the Board meeting. The following is a brief summary of the discussions and actions taken at the meeting.

**Treasurer’s Report:**

DRBF membership through the end of June 2003 continues to be well ahead of last year at this time, with currently 558 members. The number of workshops has slowed largely due to the economy and state deficit budgets for 2003 and 2004. Projected income for the year is now expected to be less than budgeted, but is offset by a comparable reduction in projected expenses. Net revenues are still expected to be on the plus side, but slightly less than budgeted.

**Marketing:**

Bill Edgerton reported that the 2003 Membership Directory is out and that the membership application flyer is at the printers in Seattle.

**International:**

Larry Rogers reported on a successful trip to Australia, where he had two hour general meetings in three different cities with an attendance of some 175 people. He also met privately with several people from the private sector. The DRBF standard specifications have been somewhat Australianized to better fit their contracting practices. Approximately 10 new members from Australia have joined the DRBF since the trip.

*(continued on p. 12)*

(continued from p. 11)

Peter Chapman noted that the Australasia chapter has requested that a portion of the membership fees that they pay be given back to the chapter to defray some of their expenses. Considerable discussion ensued among the Board members with final agreement that seed money equal to 50% of the membership fees received would be returned the first year, and then some reduced percentage yet to be determined would be given back in subsequent years.

Peter Chapman reported that the International Annual Meeting will be held in Paris on September 26 & 27, 2003 and will include a session the first morning by invitation only in an effort to inform and educate key people about the Dispute Resolution Board process.

Bob Smith reported that the International Assessment meeting that he attended in London was humbling, exhausting and rigorous and reflected a great deal of effort on the part of the assessment panel led by Peter Chapman and Gordon Jaynes.

Peter Chapman stated that China is now pretty well free of the SARS problem and the trip to China for signing of the Memorandum of Cooperation with CIETAC looks like a go.

**DRBF Annual Meeting:**

The DRBF Annual Meeting is scheduled for October 18 and 19, 2003 at the Radisson Old Town in Alexandria, VA. An announcement in the upcoming *Forum* will include a tentative agenda for the meeting and a registration form. It was suggested that the results of the surveys conducted for the RETC, the DRB manual revisions and Kathleen Harmon's survey be presented at the Annual Meeting.

Sammie Guy reported that some 60 invitations went out this week to Federal Agencies being invited to attend a special session on Friday the 17th. A second mailing of invitations is expected to go out at the end of the month. Members of the World Bank staff are scheduled to attend a similar general information meeting that day. The Board of Directors meeting will be held the evening of Friday, October 17, 2003. A banquet will be

DRBF Workshops will be conducted on Monday and Tuesday, October 20 and 21, following the Annual Meeting.

**Draft Code of Conduct:**

Peter Chapman and Gordon Jaynes are continuing to put together a list of "Best Practice Notes" in an effort to avoid bad practices on DRBs. Peter intends to send out the list to the Board members in early August for review and comment in hopes that it will be ready for the International and Annual Meetings for debate and acceptance by the general membership.

**DRB Manual Rewrite:**

Joe Sperry reported that he was hopeful that a schedule for the development and publishing of the revised manual would be ready by the Annual Meeting. New chapters will need to be drafted and the survey results are to be included in the revised manual. Bill Edgerton noted that this survey is not a statistical survey but simply searching for feedback. Bill asked the Board to provide comments on the latest draft of the survey by the end of July and that Pete Douglass and Hugh Cronin provide input from the RETC survey by the same deadline. Bill hopes the survey will go out by mid-August with a return by mid-September so that the results can be processed in time for the Annual Meeting.

**Al Mathews Award:**

Jack Woolf is responsible for appointing the committee and will start working on the recommendations process and report back to Peter Chapman. Nominations for this award should be sent directly to Steve Fox or Jack Woolf.

**New Board Members for 2003/2004:**

Assuming that the new President-Elect comes from the current Board of Directors, there will be a need for a replacement. Armando Araujo, Bill Edgerton and John Nichols have each served one term or less and are willing to stand for re-election to the Board. A motion was also passed by the Board to increase the number of Board members from 9 to 11.

(continued on p. 20)



# DRBF THIRD ANNUAL INTERNATIONAL CONFERENCE

**Friday 26th and Saturday 27th September 2003**

**Delegate Fee €150**

Venue: La Maison des Arts et Metiers, Club d'Iena, 9 bis, avenue d'Iena,  
Paris 75116 FRANCE

*Join us in beautiful Paris, France for the Third Annual International Conference. Sessions will be chaired by experienced members of the DRBF. Delegates are invited to contribute to the discussions and to ask questions at the conclusion of the presentations. The conference will be conducted in English.*

## PROVISIONAL PROGRAMME

### Friday 26<sup>th</sup> September 2003

2.00-2.30 PM Registration

2.30 PM Opening by DRBF President Brison Shipley

3.00 PM *Paper 1: Decisions or Recommendations: the Atlantic Rift?*

4.00 PM Tea/Coffee and Networking

4.15 PM *Discussion 1: DRBF Good Practice Guidelines – Your Chance to Decide*

5.15 PM Close of day one

7.30 PM Conference dinner in Central Paris for those wishing to attend (partners welcome). Price not included in conference fee.

### Saturday, 27<sup>th</sup> September 2003

9.00 AM Opening day two

9.15 AM *Paper 2: Establishing Dispute Boards in Europe*

10.00 AM *Discussion 2: Dispute Avoidance – the Dispute Board's Special Magic*

11.00 AM Coffee break and networking.

11.30 AM *Paper 3: New Material at the Hearing – Admissible or Not?*

12.30 PM Luncheon

2.00 PM *Discussion 3: Dispute Boards circa 2025*

3.00 PM Open Forum Panel

3.45 PM Concluding Remarks

4.00 PM Conference Close, delegates depart

**Further details and registration forms for the conference are available at [www.drb.org](http://www.drb.org), or by contacting Peter Chapman at [pjchapman@btinternet.com](mailto:pjchapman@btinternet.com).**

# Promoting DRBs in Switzerland



By Pierre M. Genton

The issue of DRB procedure acceptance in Switzerland is almost the same as in most other European civil law countries: It takes time and effort to convince the public authorities and change habits. In my role as one of the seven members of the Alptransit Supervisory Board, (appointed by the Swiss Federal Council for a project over \$10 billion (US) for two railway tunnels of 52 km and 38 km), I have worked for years to support a more modern contract by promoting the entrepreneurship of contractors and consultants, as well as an efficient prevention/resolution of disputes by using DRB. Unfortunately, in this case the employer selected a traditional contract with a very detailed BOQ and a traditional dispute clause referring to ordinary civil court proceedings.

However, the interest in DRBs is growing in Switzerland. More and more institutions and organisations now try to introduce DRBs in their discussions. I am optimistic that DRB procedures will be introduced for projects in the Swiss domestic market as well. I have begun implementing a three step strategy:

(i) Conferences/seminars: I have been invited to speak on DRB procedures at several conferences in Switzerland (Swiss Arbitration Association --ASA, Swiss Chamber of Forensic Experts - CSEJ, Swiss Society of Lawyers – SJV, ICC Arbitration Commission and ICC Switzerland) and Germany (International Business Law Association – IBA, German Arbitration Association – DIS, German Construction Foundation), as well as at several specialized international conferences such as the International Construction Law Conference and the

Global Construction Conference.

- (ii) University Lecturing: I had the opportunity to give various lectures on DRBs at the economic, law or technical faculties of the Universities of Geneva, Lausanne and Lugano. I also gave a lecture at the Technical University (TU) in Graz, Austria.
- (iii) Publications: Various papers on DRBs have been published during the past years in specialised law magazines.

From a world-wide perspective, the International Chamber of Commerce (ICC) is now introducing new standard clauses with DB procedures, applicable to any mid/long term contract and in any field of activity. This follows an introductory report prepared by an ad hoc working group which I had the honour to chair. I have then been asked to continue with the preparation of the model clause, contract and rules. A new task force on DBs was then created, made up of more than 50 ICC members from different continents. Several members of the DRB Foundation were members of this ICC task force. I would like to express my thanks for their continuous/active participation and contribution to Gordon Jaynes, Robert Smith, Igor Leto, Thoshihiko Omoto, and Peter Chapman.

Four documents have been prepared and approved in principle in May 2003. They still need minor adjustments. The final version is expected to be formally adopted by the ICC Arbitration Commission at its autumn session 2003 and should be introduced early 2004. The four documents are the following:

- (a) Preamble: Introduction of the DB, selection of the DB approach, commencement of DB procedure and required contract documents



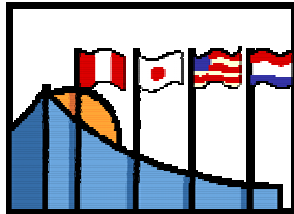
- (b) Standard Clauses Dispute Boards, with the three options of Dispute Review Board (DRB), Dispute Adjudication Board (DAB) and Combined Dispute Board (CDB).
- (c) Model Contract for Dispute Board Member or “Three Party Agreement Between the Two Parties and Each Board Member”
- (d) Rules for Dispute Resolution Boards, consisting of 39 articles related to the establishment of the DRB, obligations of the DRB members, obligations of the parties, DRB operation, potential disputes, referral of disputes, DRB hearing, DRB recommendation or decision, compensation of the DRB and general rules.

It is interesting to note that, following the ICC decision in May 2003 to introduce the DB in their standard documents, the Swiss Committee of the ICC will be discussing DB procedure together with arbitration and ADR techniques at a meeting with potential users, namely the counsels of the companies, at the beginning of July 2003.

**Note:** The author, Pierre M. Genton, Dipl. Eng. EPFL/SIA-IMD, C.Eng.FICE, is a graduate of Ecole Polytechnique Fédérale de Lausanne (EPFL) and the International Management Development Institute (IMD). He has over 30 years of experience as a DRB member, mediator, forensic expert, arbitrator and consulting engineer.

He is the founder and senior partner of PMG Engineers and Economists in Lausanne, Switzerland, specialising in the prevention and resolution of disputes for infrastructure and industrial projects and in the project management of multidisciplinary projects. In 1993, he was appointed member of the Supervisory Board for the Alp Crossing Railway Project (Alptransit) by the Swiss Federal Council, and in 1998 Commissioner at the United Nations Compensation Commission.

Pierre Genton is the Switzerland representative for the Dispute Review Board Foundation and a member of several associations in the field of engineering and arbitration. He is the chairman of the Task Force on Dispute Boards by the International Chamber of Commerce (ICC). □



## Would you like to be a Country Representative to the DRBF?

Help give the Dispute Resolution Board Foundation a voice in your country by becoming a Country Representative. You may be called upon to act as a spokesperson for the DRBF in the country, 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 you are interested, please contact the DRBF office today by phone 206-248-6156; Fax 206-248-6453; or e-mail [home@drb.org](mailto:home@drb.org).

# **Dispute Resolution Board Foundation**

## **7<sup>TH</sup> 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 in advance or \$250 after September 26, 2003. Non-member fees are \$250 in advance and \$280 after September 26, 2003. To register fax or mail the registration form in this issue of The Forum. The registration form is also available online at [www.drb.org](http://www.drb.org).

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.

# Annual Meeting & Conference Agenda

## Saturday 18<sup>th</sup> October

- 8 – 9 AM            Breakfast
- 9 – 10:30 AM       Welcome and DRBF Business and Reports
- 10:30 - 11:00 AM    Coffee
- 11:00 - 12:15 PM    Opening plenum session:  
A Debate: Should DRBs Attempt to Mediate?  
For the motion: Bob Smith and another  
Against the motion: Bob Rubin and another
- 12:30 – 1:45 PM     Lunch with speech by Armanda Araujo from World Bank
- 2:00 – 3:15 PM      Break Out Session 1:  
  
Best Practice Guidelines (discussion leaders: Gordon Jaynes, Bill Edgerton, Brison Shipley)  
Conducting the Hearing (discussion leaders: Joe Sperry, Peter Douglas, Jim Donaldson)  
Writing a Board Decision/Recommendation (discussion leaders: Kathleen Harmon, Adrian Bastianelli, Bill Baker)
- 3:15 – 3:45 PM      Tea
- 3:45 – 5:00 PM      Break Out Session 2 (as above)
- 5:00 PM              Close of Day 1
- 6:45 PM              Cocktails
- 7:30 PM              Dinner with guest speaker

## Sunday 19<sup>th</sup> October

- 8:30 - 9:45 AM      Break Out Session 3 (as above)
- 9:45 – 10:45 AM    Open House Discussion  
Current DRB Issues introduced by John Bradshaw and Jim Brady
- 10:45 – 11:15 AM    Coffee
- 11:15 – 12:15 PM    Summary of Break Out Sessions and final version of the Best Practice Guidelines
- 12:15 – 12:30 PM    Close of conference

# 7th Annual Meeting and Conference Registration Form

October 18th and 19th 2003  
Radisson Hotel  
901 North Fairfax Street  
Alexandria, VA 22314

NAME \_\_\_\_\_ FIRM \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ ST/CTY \_\_\_\_\_ ZIP \_\_\_\_\_  
PHONE \_\_\_\_\_ FAX \_\_\_\_\_

REGISTRATION FEES (circle):

	<u>Advance</u>	<u>After Sept. 26</u>		<u>Advance</u>	<u>After Sept. 15</u>
Member	\$220	\$250	Non-Member	\$250	\$280

\$190 Additional Registration(s) (up to 4 from the same company/employer group.  
Please provide names.)

Name of spouse/guest attending dinner (add \$35) \_\_\_\_\_ TOTAL \$ \_\_\_\_\_

I enclose my check or money order for the registration fee made payable to:  
***The DRB Foundation***

I would like to use my charge card to pay the registration fee.

Mastercard       Visa       AMEX      Begin \_\_\_\_\_ Expires \_\_\_\_\_

Card No. \_\_\_\_\_

Signature \_\_\_\_\_  
(Required for charge orders only)

Check here if you will be staying at the **Radisson Hotel**. For reservations phone: 1-800-333-3333 or 1-703-683-6000 and ask for the **DRB Foundation** group rate.

**Mail or Fax the completed registration form to:**  
**The Dispute Resolution Board Foundation**  
**6100 Southcenter Blvd. Suite 115, Seattle, WA 98188-2441**  
**Fax: (206) 248-6453**

Cancellation Policy: Before September 26, 2003 a \$25 processing fee will be assessed. No refunds will be issued after Sept. 26, 2003. Each individual is responsible for canceling his hotel reservations.

# WELCOME TO NEW FOUNDATION MEMBERS

MEMBER ADDITIONS MAY THROUGH JULY 2003

K. Subrahmanian  
Afcons Infrastructure Ltd.  
Mumbai, INDIA

Robert William Hunt  
Neutral Bay, NSW  
AUSTRALIA

Stuart B. Robbins  
BostonSolv, LLP  
Boston, MA USA

Jehan Bharucha  
Redmond, WA USA

Frank G. Adams, P.E.  
Interface Consulting  
International, Inc.  
Houston, TX USA

Theodore von Rosenvinge  
IV, P.E.  
GeoDesign Inc.  
Middlebury, CT USA

Richard A. Brown  
Port of Seattle  
Seattle, WA USA

Mark Kelsey  
Ohio DOT  
Columbus, OH USA

Charles B. Scarrott  
High Tower Construction  
Services LLC  
Simi Valley, CA USA

Peer Dalland  
Dalland Associates Pty Ltd  
Killcare, NSW AUSTRALIA

John L. Langer  
John L. Langer Construction  
Consultant  
Everett, WA USA

Gail Seidman  
GSE  
Walnut Creek, CA USA

Chester R. Davis, Jr.  
Davis Law Office  
Winnetka, IL USA

John Buxton Laurie  
Melbourne, VIC  
AUSTRALIA

Tossan Souchon  
Essen, GERMANY

Michael G. Delaney  
Lane Cove, NSW  
AUSTRALIA

Dr. Roger Maddrell  
Halcrow Group Ltd  
Swindon, Wiltshire UK

Matthew S. Stevens  
Stevens Construction  
Institute, Inc.  
Winter Park, FL USA

H. Bruce Duncan  
Littleton, CO USA

David A. Ellison  
Stevenson Ranch, CA USA

Jonah Mandli  
Oxford Fine Homes LLC  
Rockwall, TX USA

G. Tandon  
Kolkata, W. Bengal INDIA

Thomas Gervay  
Austin Australia Pty. Ltd.  
Artarmon, NSW  
AUSTRALIA

Alan Keith McLennan  
Alan McLennan Strategic  
Services Pty. Ltd.  
The Gap, QLD AUSTRALIA

Tony J. Vogel  
Ohio DOT  
Columbus, OH USA

Pratim Kumar Ghose  
Package Contracts Advisers &  
Engineers  
Bangkok, THAILAND

Steven D. Nelson  
SureTec Information Systems  
Austin, TX USA

David W. Waldby  
Maleny, QLD  
AUSTRALIA □

Edward D. Hamm  
St. Petersburg, FL USA

Harry Partridge  
Partridge Partners Pty Ltd  
St. Leonards, NSW  
AUSTRALIA

Timothy J. Heath, Sr.  
Coleman, FL USA



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## FOUNDATION FORUM

Dispute Resolution Board Foundation  
6100 Southcenter Blvd., Suite 115  
Seattle, WA 98188-2441

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### FOUNDATION FORUM

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*(Board Meeting Summary continued from p. 12)*

**Other:**

John Nichols suggested we have more frequent Board meetings, say monthly. In an effort to curtail costs, Bob Rubin suggested that the Executive Committee hold meetings on the off months and distribute minutes to the rest of the Board. Peter Chapman indicated that he would try to re-establish regular committee meetings with feedback provided at the Board meetings.

Jim Lairscey agreed to join John Nichols' committee on Geographical Membership Subdivision and Steve Fox agreed to e-mail John's memo on this committee to all of the Board members for their review prior to the next Board meeting.

Adele McKillop said that she had given a presentation at the Cost Engineers conference in Florida and that it was well received. She also noted that Vancouver has been selected as the site for the Winter Olympics in 2010 and that we should make a push for more Canadian use of DRBs. Peter Chapman suggested that we consider Vancouver as the site of the 2004 DRBF Annual Meeting.

The DRBF Regional Meeting held in Seattle on June 16 was attended by about 30 people, mostly users and some practitioners. Senior staff from the University of Washington, Port of Seattle and others participated on the panel. Larry Rogers reported that regional meetings such as this are helpful in advancing the use of DRBs and often lead to new members.

Larry Rogers also reported that Jim Donaldson recently made a presentation to a group with some 58 attendees, including some from the Corps of Engineers.

The next Board of Directors teleconference meeting will be held on September 12, 2003. □