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Dispute Review Boards: expensive or priceless?

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- Why me?

- Why you?



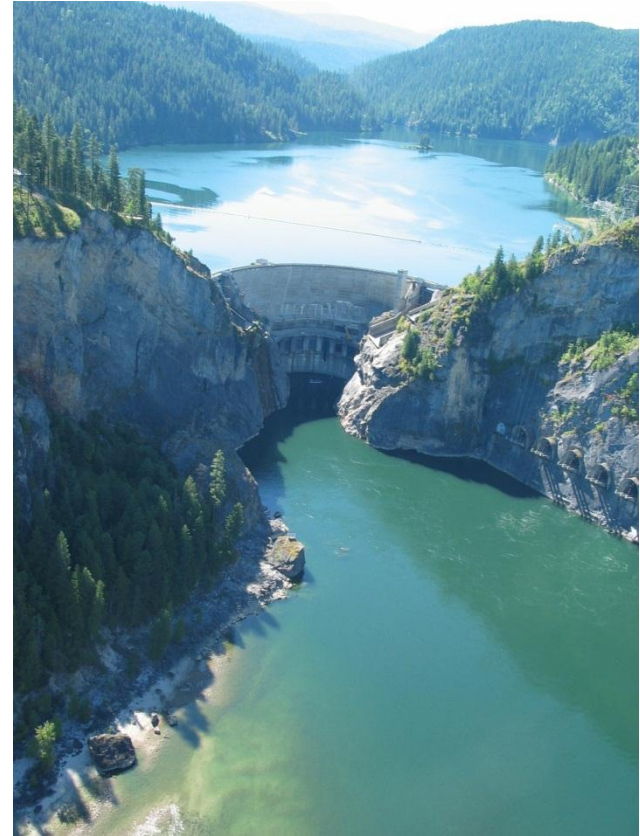
Overview

- global history
- what is a DRB?
- appointing DRB members
- costs and benefits
- Australian examples
- when to use a DRB
- concerns



History

- 1960: Boundary dam project in Washington first reported use of a DRB



History (cont.)

- Between 1975 and 2000 1,434 projects reported as using DRBs in the US with a 92% success rate
- The concept is an essential aspect of FIDIC contracts and multi-lateral development bank contracts



DRB panels for large projects

- Channel tunnel – 5 members
- Hong Kong airport – 6 members plus a convener
- London Olympics – 11 members



What is a DRB?

- creature of contract
- established when the contract is formed
- generally three independent eminent persons charged, by contract, with overseeing the operation of the project and assisting the parties with speedy, efficient resolution of difficulties



What is a DRB? (cont.)

- well placed to determine disputes referred to it because of familiarity with the project
- attend the site regularly (often quarterly)
- informal hearings – based on an exchange of position papers, not adversarial
- speedy determination – days or weeks, not months or years



Appointing DRB Members

- independent and impartial
- ongoing obligations of disclosure
- the right people with the right skill set
- available for the life of the project



Appointment mechanisms

- each party nominates one member and those two select the third
- owner puts forward five names and contractor picks three
- a panel is agreed and sub-panels convened to address particular disputes as they arise



Costs

- between 0.05% and 0.25% of the final contract price according to the Dispute Review Board Foundation
- retainer for each DRB Member plus travel costs plus reading and hearing time
- CRC construction innovation project team estimated an industry wide weighted average value of avoidable costs that end up in dispute of about 5.9% of contract price



Benefits

- analogous to insurance
- avoids contractors including a contingency for dispute resolution in price
- indication to bidders about the owner's approach to the project – proactive dispute management rather than reactive claims management



Benefits (cont.)

- demonstration of culture shift
- clear and strong leadership minimises the risk of disputation - owner creates an environment which allows the project team to demonstrate problem solving capabilities – harnessing professional pride in order to resolve issues promptly rather than require the service of the DRB



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