

Los Angeles Section

Monthly: Est. 1913

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"The most important thing in communication is to hear what isn't being said."

— Peter F. Drucker

PRESIDENT'S MESSAGE

By Neil D. Morrison, P.E.
President, Los Angeles Section, ASCE

On the 2005 National Conference

Calling all Civil Engineers within the Los Angeles Section and Southern California! This coming October 27, 28, and 29, 2005 we will have a chance to strut our stuff in front of a national and international audience of our peers, right here at the Wilshire Grand Hotel, Los Angeles! This gathering has been in the planning stages for over a year, and will be a little bit different this time around: the committee making this happen has convinced ASCE National to change its historical format for this year's conference. They persuaded National that this conference must be more meaningful and responsive to civil engineers' needs and education. The theme for this year's conference is "The Next Generation Infrastructure—Projects that Create the Future".

The conference begins on the afternoon of Thursday, October 27, with a Plenary Session, followed that evening by an Ice Breaker Reception. The reception gives us a chance to mingle and meet other civil engineers from across the country and around the world and exchange ideas, knowledge and experience.

The next day, Friday, October 28, there will be something new: a presentation by a California State Assemblyperson who intends to challenge us—members of the civil engineering profession—to step up to the plate and help lead our society (not ASCE) into the future.

Next will be a presentation on Civil Engineering—Past, Present and Future, and the challenges facing civil engineers. This will offer a big-picture perspective and something that we all can learn from.

ASCE 2005 National Conference
<http://www.asce.org/conferences/annual05/>

*"Next Generation Infrastructure:
Projects that Create the FUTURE!"*
October 27-29, 2005



There will be a Visionary Leaders Forum with such guests as Virginia Grebben of the Orange County Water District; Lester Snow of the California Department of Water Resources; Todd Kenner, president of PBS&J; Sunni McPeak, State Secretary of Business, Transportation & Housing; and an executive from a major shipping line.

During lunch on Friday, we'll hear from Lt. General Van Antwerp of the U.S. Army Corps of Engineers, who will share his insights on leadership and achievement.

Friday afternoon is packed with educational forums divided into three major areas—Water, Transportation, and Student/Younger Member Forum. The water and transportation forums will focus on leadership and the next generation of infrastructure, concentrating on issues such as planning, selling, funding, managing and delivery of leading edge projects. Some of the speakers include Joe Grindstaff, CA Department of Water Resources; Dennis Underwood, Metropolitan Water District; Daniel Cozad, Santa Ana Watershed Protection Agency; Gary Moore, City Engineer of Los Angeles; Norris Brandt, Irvine Ranch Water District; Craig Perkins, City of Santa Monica; Michael Drennan, Brown & Caldwell; a representative from either the Port of Los Angeles or Port of Long Beach, or both; a representative from a major railroad line; and Patricia Galloway, past president of ASCE National.

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Reminder:

Copy deadline for the September 2005 issue is August 1, 2005; copy deadline for October 2005 issue is September 1, 2005.



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The Basics of Disputes, Claims and Construction Law - Part 1

By
Tony Antich, P.E.
City Engineer
City of Santa Monica, California

This is the fourteenth in a series of articles dealing with keys to successful project management. The Project Manager should be knowledgeable in the area of construction law in order to be effective and protect the interest of the client or agency.

INTRODUCTION

Black's Law dictionary defines a contract as an agreement between two parties which creates an obligation to do or not to do a particular thing. That sounds simple enough. So what could possibly go wrong with the construction of a public works project? The answer to this question is "it depends". It depends on a series of facts and circumstances that will determine and assign credit or blame. Some projects proceed smoothly and the project manager rightly takes the credit. On the other hand, some projects do not proceed so smoothly and have disputes that need to be resolved. In this case also, the project manager takes the credit.

EDITORIAL

Miscellaneous Year End Matters

We are almost at the end of this fiscal year? The previous 10 months have been very challenging specifically in those issues dealing with the delivery of our newsletter. I believe I have addressed this several times in the past and most extensively during last month's editorial. In as much as I want to say your staff and myself are responsible, we are not. But we would not be fazed. We already began the process of examining a complete revamp of how we would deliver this newsletter to you month after month with an inclination towards electronic delivery. I would not spill the beans as of yet. However, rest assured that specific details are currently being worked out and I will go into details several months in advance if and when we change our systems.

I want to point out to you in this issue a very important piece of information: **this year's ASCE National Convention will be held here in Los Angeles.** Our section president talks about it in more detail. It has been awhile since our section hosted an ASCE National event. Please show the tremendous support of Los Angeles to ASCE by attending this high profile conference. It will be surely be worth your while.

I also would like to encourage you to check our revamped and highly expanded website at www.ascelasection.org. A lot of work has been put in by our webmaster to make it worth your time exploring the site's pages.

Finally, Tony Antich of the City of Santa Monica continues his series of articles on Project Management. The first of the three parts of an article entitled "The Basics of Disputes, Claims and Construction Law" is included here. The two parts of this series will be printed in future issues.

Enjoy this issue of our newsletter. I hope it is not late this time.

-Dr. Cris B. Liban, P.E.

COMMUNICATING WITH YOUR CONTRACTOR BEFORE A DISPUTE OR CLAIM

The project manager must address all issues early. Don't wait till the end of the project. Addressing issues early helps to maintain trust with the Contractor. Just as you want some certainty in life, the Contractor wants "black and white" certainty in their contract. Don't leave issues in the gray – whenever possible and appropriate answer with either yes or no. You may receive a threat of lawsuit or actually be sued. The cause of action can be numerous or few. Don't allow your ego to guide your decision.

When it is necessary to meet with the Contractor to resolve a dispute, you should keep the following tips in mind:

- Take meeting minutes which are objective, complete, and accurate.
- Be impartial in your dealings with the Contractor. It is important to reflect objectivity in your behavior and language. Remain calm and courteous at all times.
- Use creativity in resolving differences, whenever possible.
- Be willing to take time in the meeting, allowing enough time for each side to present information, discuss the situation and resolve the issue.
- Consider reviewing/discussing each separate claim component in turn, in order to demonstrate impartiality and good will.
- If a change order is required as a result of the resolution, state "Claim Settlement" on the change order, and itemize settlement amounts (but do not include the original claim requests).
- If the resolution of a Contractor's claim is clear-cut (e.g., 1/4" rock was used instead of the specified 3/4" rock) write a letter to the Contractor citing the specification requirement, what needs to be done to correct the situation, and a deadline for doing so.
- If possible, resist paying delay damages. If necessary, consider giving a no-cost time extension in lieu of delay/impact payments.

If the meeting does not produce a satisfactory resolution, schedule another meeting, including the City and the Contractor's or upper management, if appropriate.

TIPS TO AVOID DISPUTES AND CLAIMS

The following tips may be helpful in avoiding disputes and claims during the course of a project:

- The key to successful project delivery is the Contractor. Select the project's Contractor with care (use a competitive bidding process, prequalification, check references and license history, etc.). This is an extremely critical decision for the success of a project. Some believe that they must award to the lowest bidder. Let me speak to that myth. Cities in California are either "Chartered Cities" meaning they have greater latitude in decision making or they are "General Law Cities" which means they strictly follow the laws of the State of California. For example, the City of Santa Monica awards construction contracts based on its municipal code definition of "Best Bidder". In determining the best bidder, price is a consideration (but not the sole criteria) as well as eight other factors. On the other hand, General Law cities use the lowest responsible bidder rule. Recently, California lawmakers defined what a responsible bidder represents in Public Contract Code section 1103, which states that the responsible bidder is the lowest price without consideration of the prices on the additive or deductive items. In addition,

General Law cities can now also consider the quality, experience fitness, capacity, and the Contractor's attribute of trustworthiness.

- Allow a reasonable length of time for a constructability review, pre-construction activities, and completion of construction. These time periods will vary from project to project and the complexity and method of project delivery will indicate how much time is necessary.
- Prepare contract documents which are complete, accurate, and fair to both the City and the Contractor.
- Establish reasonable liquidated damages charges and consider incentive clauses based on specific measurable performance criteria. When establishing the dollar amount for liquidated damages you may want to consider the cost impact to the owner should the contract be delayed:
 - o Project Manager, Construction Manager, Resident Engineer, Inspector and other staff labor and benefits costs. Include overhead costs of support by other offices.
 - o Equipment costs not paid by the Contractor, such as transportation, computers, and phones.
 - o Financial loss to the City as a result of the project or facility not being available to the public.
 - o Loss of grant funding.
 - o Housing relocation.
- Respond to Contractors' "Request for Information" (also known as RFI), submittal reviews, change order requests, and other communications in a timely manner.
- Negotiate change orders fairly for both parties.
- Provide an adequate construction phasing plan.
- Avoid change orders that might impact critical path activities, if possible.
- Encourage open communication and include the Contractor in any information that will involve or impact construction activities.

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MITIGATION OF DISPUTES AND CLAIMS

It is no wonder contract disputes occur when you couple the owner's need to hold costs down with the Contractor's desire to maximize profits. All issues have at their base the concept that something has changed from the conditions on which the Contractor prepared the cost proposal. With all changes, the Contractor has the duty to:

- a. ascertain that the change was created at the direction of a party with the authority to change the contract;
- b. deliver timely notice that the direction is considered a change to the contract; and
- c. Notify the owner of the expectation to be paid for the change.

Effective claim mitigation planning is essential and includes suggestions such as:

- **READ YOUR CONTRACT DOCUMENTS OR
READ YOUR CONTRACT DOCUMENTS, OR
WHEN IN DOUBT, "READ YOUR CONTRACT DOCUMENTS"**
- Review both sides of the claim completely and impartially — consider adverse consequences for the Contractor and the City if the claim continues, as well as benefits for both in resolving the claim promptly.
- Seek counsel (as needed) from the Project Director, the City Engineer, an outside trade organization appropriate to the work being undertaken, the City Attorney, etc.
- Review the cost estimate of the Contractor and comparing it to one you have done independently.
- Verify the amount of contingency funds remaining and available for claims settlement prior to negotiating with the Contractor. Claims should be settled primarily on the basis of merit and actual costs.

MORE IN PART 2

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Younger Member Forum (YMF)

Everyone is welcome to attend our upcoming events!!

- ◆ SB/RC YMF General Meeting, 7/11/05, Riverside, CA
- ◆ LA YMF Board Meeting, 7/12/05, Alhambra, CA
- ◆ OC YMF Board Meeting, 7/19/05, Irvine, CA
- ◆ OC YMF Technical Speaker on Surveying, 7/23/05, TBD
- ◆ LA YMF Speaker Series, 7/26/05, TBD
- ◆ SB/RC YMF Speaker Series, TBD

Contact Greg Sommer at gsommer@ladpw.org to be added to the Younger Member e-mail distribution list and receive announcement on all upcoming YMF events, tours, and other activities.

Please visit our websites:

LA YMF - <http://www.asce-laymf.org/>

OC YMF - http://www.ascelasection.org/ymf_main.cfm?ID=9

President's Message *continued*

The Student/Younger Member Forum will address issues facing students as they pass from the classroom to the "real" world—issues such as professional licensing and staying involved.

A gala banquet will be held Friday evening, where we can all relax, enjoy a fine dinner, and network with fellow civil engineers and spouses. This event will include the induction of new Honorary Members, the highest honor ASCE bestows on its members. Music and dancing will round out the evening.

The fun continues on Saturday, October 29, with field trips to facilities and projects in the Southern California region that exhibit cutting edge technology and expertise. The tours will feature "Transportation" (visits to the Ports of Los Angeles and Long Beach, with presentations on the challenges of moving goods all over the country and the world); and "Water" (visits to sites in Los Angeles, Orange, Riverside and San Bernardino Counties, with focus on the development, treatment, quality and delivery of our water).

We'll travel by bus on these excursions, and will be served lunch on board while hearing from experts on Southern California's infrastructure and its role in the growth and prosperity of the region. You'll get a sense of what civil engineers accomplished in the past, and where current projects fit into the "big picture". History, perspectives, instructive destinations, calories—you'll get it all!

But you needn't be the only one in your family combining sheer enjoyment with valuable learning experiences. That's right, there will Spouse Tours, including a "day with the roses". On Friday, October 28, the Spouse tour begins with the Tournament of Roses Headquarters in Pasadena (The Wrigley Mansion), and continues with a tour of the Rose Bowl and lunch in the Rose Bowl Press Box. They'll also tour a float manufacturing facility to see what's in the works for next New Year's Rose Parade. On Saturday, spouses will visit the Getty Museum in Los Angeles, the home of one of the world's finest collections of art.

What a conference this is going to be! Your 2005 National Conference Committee and ASCE National have worked very hard to improve the format for this conference, to make it more concentrated and focused and meaningful, while providing some fun and opportunities for conversation among those attending. The entry fee is also being lowered (in fact, to enable more students to participate, their conference fee has been reduced to just \$50.00).

Better conference for less money? It's all about volume—the number of attendees is expected to rise because of the lower fee and better hotel room rates. Keep in mind that the Los Angeles Section of ASCE has the largest number of National-dues-paying members—over 7,000—in the world! So it should be simple for this Section to have the highest turnout of any ASCE National Conference, ever. I look forward to seeing all 7,000 of you at this conference!

We need more sponsors! Better conference for less money is also about sponsors! Sponsorships range from \$100 to \$20,000—we need all levels of sponsors, and we need them now. For more information on sponsorships, please contact me (contact information on the back of this newsletter), or Jim McDonald at RBF Consulting (949-472-3505), or Chuck Rendell at c.rendell@earthlink.net.

You may be hearing from me again about this outstanding conference. I urge you to take advantage of all that it will have to offer, right here in our own backyard!

Neil D. Morrison, P.E.
President

**ASCE's 2005
Member-Get-A-Member
Drive Depends on You!**

ASCE Los Angeles Section - International Committee
4th International Engineering and Construction Conference
July 28, 2006 (Friday)
at California State University, Fullerton, California

SPONSOR: ASCE Los Angeles Section - International Committee
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CONFERENCE THEME

*“Challenges in the completion of Civil Engineering Projects in a Global Setting-
Lessons Learned and Successes Accomplished”*

CALL FOR ABSTRACTS (GENERAL)

Abstracts are solicited on international and domestic engineering or affiliated scientific projects related to: *Engineering Analysis and Design; Project Management; Codes & Standards of Practice; Quality Control & Resource Constraints; Construction Engineering; Bidding & Contract Administration; Project Financing and Procurement; Risk Assessment and Management; Legal, Ethical and Cultural Issues; Environmental Impacts and Mitigation; Design/Build and/or Operate Projects, Scheduling and Project Delivery.* Limit: 600 Words or less.

DUE DATE FOR ABSTRACTS: AUGUST 15, 2005

Send abstracts via e-mail to: Mr. Tim Hancuff, P.E., Program Chairman, County Sanitation Districts of Los Angeles County, 1955 Workman Mill Road, Whittier, CA 90601. E-Mail: thancuff@lacsds.org, Ph: (562) 699-7411, Ext. 1614.

Authors will be notified of acceptance or otherwise of their abstracts by October 1, 2005. Full papers are not exceeding 10 pages (12 Point, Single Space) including figures, tables, etc., and are due by **March 15, 2006**. The papers should be submitted as an electronic file (MS Word) via E-Mail, on a diskette or CD-ROM. Conference proceedings will be prepared on a CD-ROM.

STUDENT PAPER CONTEST

Topic: Global Role of Engineers in Building a Peaceful World for Humanity in the 21st Century

CALL FOR CONTEST PAPERS: The ASCE-LA Section International Committee solicits papers for “Student Paper Contest” from engineering and affiliated science students on the topic: “GLOBAL ROLE OF ENGINEERS IN BUILDING A PEACEFUL WORLD FOR HUMANITY IN THE 21ST CENTURY.” Papers may be based on a generic thought process or any case study of an ongoing or completed (within the past one year) project or research/experimental work. The thrust of the paper should emphasize how his/her paper/project would contribute to build a peaceful world for humanity.

STUDENT ELIGIBILITY: The students should be currently registered at an accredited university/college at least for 6 semester units. A letter from the Dean, Department Chair or Major Professor attesting the student status must be submitted along with the paper. Work performed by the student as a part-time employee in an engineering company or laboratory may also be utilized as a basis for the paper.

PAPER GUIDELINES:

- ☛ Length of full paper shall not exceed three (3) 8.5”X11.0” pages, including figures, tables, etc.
- ☛ Use 12 point, single space, with 1.0 inch margin on all the 4 sides.
- ☛ Papers should be submitted as a word or text file (MS Word preferred) via E-Mail or on a diskette or CD-ROM, along with a hard copy.
- ☛ Attach a letter from the Dean, Department Chair or Major Professor attesting the student status.
- ☛ **Deadline for submitting full papers: January 31, 2006**
- ☛ **Address: Mr. Tim Hancuff, P.E., Program Chair, County Sanitation Districts of Los Angeles County, 1955 Workman Mill Road, Whittier, CA 90601. E-Mail: thancuff@lacsds.org, Phone: (562) 699-7411, Ext. 1614.**
- ☛ **The papers will be reviewed by a team of professionals and the winners will be announced by February 28, 2006.**

AWARDS FOR WINNERS: Total funds for all prizes in this competition are approximately \$2,000. In addition to a cash award, winners will receive certificates and the opportunity to present their papers at the conference. Papers not selected for an award may receive special recognition based on their merit.

The International Committee is always seeking ASCE members interested in taking active roles in the committee activities and also to serve as Session Chairs and Moderators for the conference. **For additional information, please contact Dr. C.T. Bathala, P.E., F. ASCE, General Conference Chairman, E-mail: ctbathala@hotmail.com, Ph: 949-724-2994, FAX: 724-2963.**

CONFERENCE SITE: California State University at Fullerton, 800 N. State College Blvd., Fullerton, California. For directions and map, please see the University’s Website: www.fullerton.edu.

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A Great Idea From the Life Members

The ASCE Life Members' Public Image Committee request that members take their (to be discarded) Civil Engineering magazines to their doctor's office or barber shop and merge them with the stack of magazines. We feel that this will be an effective way to make the general public more aware of what civil engineers do.

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