

## Guest Editorial

### The Importance of Contracts:

#### A Cautionary Tale

By Richard Simpson CWD

I would like to share an ordeal I had a few years ago in the hope that persons may benefit from my experience. This nightmarish experience occurred while fulfilling a contract to drill a 20-inch-diameter consolidated well to a depth of 300 feet.

During the drilling exercise a discrepancy arose between the consultant for the project and the contractor (me). We shared a difference of opinion regarding an adverse drilling condition that I had been experiencing.

The consultant, supervising the project on behalf of the government, insisted that the contractor did not encounter any such condition and was not entitled to any consideration for compensation. The contract however, clearly provided for such consideration should this condition be encountered.

In order to determine whether or not this "adverse physical condition" really existed, the parties (the owner, the consultant, and the contractor) agreed to a specific test. The terms were that should the results be in favor of the contractor, we would be fully compensated and the owner would be responsible for the cost of the test. However, should the test prove to be unfavorable for the contractor, we would have to absorb the cost of the test, and no further compensation would be considered.

The test was conducted and the results were in our favor. Nonetheless, the consultant refused to abide by the agreed terms. Instead he issued a change order, requesting additional tests. The

results of those tests were also in our favor. However, by now an enormous amount of time and money were lost and the owner had become quite agitated. What followed was even more bazaar. The consultant, having failed to discredit our claim, recommended to the owner that they terminate our contract for nonperformance, stating that the contractor failed to complete the job on time. He then served a termination order.

Our contract provided an avenue for resolving disputes, one of which was arbitration, so we decided to take our dispute to arbitration. I discussed my desire to go to arbitration with a colleague. His advice was, "never have just one arbitrator." This advice would later turn out to be immeasurable.

The arbitrators were decided upon and the arbitration proceedings convened. A two-member arbitrator panel sat in the presence of an attorney representing the owner, with their consultant on one hand, and myself with my attorney on the other. Arguments were heard and the proceeding lasted 10 ten days.

In the end we prevailed and the owner was ordered to pay the full cost of the arbitration and all legal cost, in addition to the outstanding balance with interest compounded.

In my opinion, all well drilling contracts should include an arbitration clause. As most contracts tend to favor one side, an arbitration clause allows both parties the opportunity to present their side of the story. Another important fact is that both parties can decide on the terms of settlement before the proceedings begin. In my case, it had been decided that the winner would take-all.