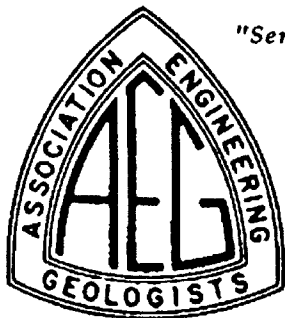


Association of Engineering Geologists

"Serving Professionals in Engineering, Environmental and Groundwater Geology Since 1957"



Southern California Section

NEWSLETTER - July 1997

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Deadline for submittals to the
August Newsletter:
July 25th

Next Meeting August 12th
at Stevens Steak House

Joint Dinner Meeting Tuesday July 15th with San Diego Association of Geologists

- Red Oak Steak House
305 Encinitas Blvd.
Encinitas, California
- Cost - \$15.00
Options: Tri-Tip or Chicken, barbecued Santa Maria style
- For reservations call Lowell Lindsay
at (619) 258-4911 or 258-4905 #103 by Mon. July 14th

Make reservations by Noon on the Monday before the Meeting

- 5:30 Social Hour & One-Half
- 7:00 Dinner
- 7:30 Announcements
- 7:45 Program

Program

**TOPIC Innovative Extraction Well Design
for Recovery of Dense Nonaqueous
Phase Liquids (DNAPLs)**

SPEAKER Michael A. Palmer
Senior Hydrogeologist
Hargis + Associates, Inc.
La Jolla, California

ROUTE to AEG/SDAG Encinitas Joint Meeting

Northbound: Interstate 5 -
Take Encinitas Exit East

Southbound: Interstate 5 -
Take Encinitas Exit East

Program Topic & Speaker

Innovative Extraction Well Design for Recovery of Dense Nonaqueous Phase Liquids (DNAPLs)

Michael A. Palmer
Hargis + Associates, Inc. La Jolla, California

The potential for downward migration of dense nonaqueous phase liquids (DNAPLs) into deeper portions of a saturated hydrogeologic unit has important implications for successful groundwater remediation. Typical DNAPLs include the chlorinated solvents, trichloroethene (TCE) and tetrachloroethene (PCE). Little information has been published regarding the design of extraction wells that allow DNAPL recovery without simultaneously creating a conduit for cross contamination by vertical migration through the wellbore. An extraction well design for DNAPL recovery has been developed and successfully implemented at a Superfund site located in the West Coast Groundwater Basin near Los Angeles, California.

The mud rotary drilling method was selected for well installation because the high density of the mud in the interval above the water table prevents the migration of DNAPL into the wellbore during construction. The bottom of the well screen was fitted with a section of blank steel casing to act as a sump for the accumulation of DNAPL. A cone-shaped cement basket, developed for the oil industry, was attached to the bottom of the screen to funnel DNAPL into the sump. Prior to setting the casing, a calculated volume of neat cement was tremied to the bottom of the borehole. The casing assembly described above was then quickly lowered into the borehole, displacing the cement and sealing the annulus around the sump to the base of the cement basket. The annulus above the open cement basket was completed with filter pack opposite the well screen and conventionally sealed to the ground surface.

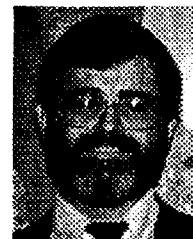
Following well development, monitoring of the well indicated an average DNAPL accumulation rate of less than 0.1 gallon per day (gpd) under static conditions. The average DNAPL recovery rate during pumping of groundwater increased to approximately 10 gpd, several orders of magnitude greater than the static accumulation rate. A 28-day pilot test of the well resulted in the recovery of approximately 300 gallons of DNAPL.

Michael A. Palmer is a Senior Hydrogeologist with Hargis + Associates, Inc. in La Jolla, California. He received his B.S. degree in Geology from the University of Michigan and his M.S. degree in Geology with an emphasis in Hydrogeology from San Diego State University. He is a Registered Geologist, Certified Hydrogeologist, and a Registered Environmental Assessor in the State of California. He has more than 15 years experience supervising and managing soil and groundwater contamination studies for both state and Federal Superfund projects.

THIS MONTH

July 1997

Kelly E. Rowe
Hydrogeologist



This month the AEG Southern California Section meeting will be jointly held with the San Diego Association of Geologists. This is the seventh consecutive annual joint meeting, traditionally held in July. As an alumnus of San Diego State University I always enjoy attending this joint meeting and renewing friendships. Members of the Inland Geological Society (IGS) have been meeting with AEG and SDAG in July over the last 3 or 4 years. I guess the meeting organizers forgot to include them this year. The meeting will be in a restaurant in Encinitas, the sleepy coastal beach town, also the furthest south we've been. The topic is on the issue of efficiently recovering DNAPLs, a particularly difficult problem at most sites as they accumulate below the groundwater table within fine-grained sediments. See you there.

Last month our section met jointly in Oxnard, for the first time, with the Coast Geological Society. Most Coast members live in the area northwest of the Los Angeles Area, primarily in the Ventura and Santa Barbara area. I have known this group to consist mainly of petroleum geologists, but as that market of work has declined there are certainly many members now that work in the environmental and geotechnical fields. Dave Ebersold reports there were over 135 people at this meeting, most of whom were members of the AEG Southern California Section. He said the down-to-earth volunteerism evident at the meeting was impressive. We should plan to pursue other successful joint meetings with this group in the future.

The content of this newsletter includes the Chairman's column, news from CCGO (California Council of Geoscience Organizations) and CELSOC (Consulting Engineers and Land Surveyors of California). CELSOC is interested in informing us and stir the interest in the public regarding the PECC (Professional Engineers in California Government) initiative. This initiative will be voted on in June 1998. This initiative will simply make the engineers in the many state agencies the providers of engineering design services for projects throughout the state. On the face of it this makes sense economically, however, looking more closely the non-competition for the design services will probably protect incompetent, non-competitive, non-creative engineers and bureaucrats, further delay the time projects are completed and escalate the costs of projects, if not simply by the delay of time to complete but also by the need to redo and redo the design and construction of projects. Pretty scary...Look for the slick advertisements on TV next year. In the meantime check out the content of PECC, aka "Competition Killer", on the following pages.

Chairman's Column
Dave Ebersold

I'm impressed! I'm really impressed!! Last month's joint meeting with Coast Geologic Society in Ventura was attended by over 135 people. The food at all CGS meetings is prepared by volunteers, served by volunteers, cleaned up by volunteers....did I make my point



Anyway, Don Kowalewsky gave a great talk on a couple of landslides in Malibu, there was a wonderful diversity of geologists present, lots of students were in attendance, and a great time seems to have been had by all. I'm sure that the free beer didn't hurt either.

Continued from Page 2

I have been busy spending time with my family over the past month. I think that the second child is easier, but the aggregate of having two is certainly harder. Anyway, as a result, I have not been as active in some areas as I would like but anticipate this to be short-lived. One of these areas is the Chairman's Column. As a result, this one will be brief, although not as brief as last month's.

Of utmost importance right now is the continuation of our legislative activities. The Professional Engineers in California Government (PECG) Initiative is scheduled for the June 2, 1998 Primary ballot and titled as follows: "Design and Engineering Services/Competitive Bidding." It does not have a number yet. I encourage each of you to review this initiative for yourselves; the text is printed in this newsletter. I think that you will agree that this initiative is highly destructive for a number of reasons and should, therefore, be vigorously opposed. To assist with this, I have contributed money to CELSOCs campaign against this initiative and encourage each of you to do the same.

Hope to see everyone at our joint meeting with SDAG in July.

CCGO Stuff...

CCGO Mini-Summary of June 22 Meeting

CALIFORNIA COUNCIL OF GEOSCIENCE ORGANIZATIONS ADOPTS BYLAWS

On June 22 the organizers of the California Council of Geoscience Organizations held their fifth meeting, this time in Sacramento. Major accomplishments included adoption of bylaws and a substantial portion of the group's strategic plan. CCGO's "Strategic Intentions" are as follows:

Proposed Legislation: Track proposed legislation and provide balanced information to lawmakers, regulatory agencies, and the public regarding the application of sound geologic principles in the arena of economic, environmental, and human impact issues.

Existing Legislation: Evaluate existing legislation and provide balanced information to lawmakers, regulatory agencies, and the public regarding the application of sound geologic principles in the arena of economic, environmental, and human impact issues.

Regulatory Peer Review: Evaluate the efficiency, fairness, and effectiveness of the present regulatory peer review process and develop and promote recommendations for improving the system.

Governmental Relations: Identify, establish good working relationships with, and seek cooperation with appropriate public entities.

Professional Practice: Work to improve the professional practice of geoscience in the state of California.

Public Outreach: Publicize the role of geosciences and earth scientists in public health, safety, and economic prosperity of the state of California.

At CCGO's next organizing meeting, on Saturday, August 9, in San Jose, we will begin developing methods to implement each strategic intent. We hope you or a representative of your geoscience organization can attend!

Betsy Mathieson CCGO Communications Volunteer Chairman, Association of Engineering Geologists San Francisco Section c/o Terratech, Inc. 1365 Vander Way San Jose, CA 95112

MISSION STATEMENT (proposed revision) The California Council of Geosciences Organizations will be the advocate for the use of sound geologic knowledge and professional practice in California statutes, regulations and public policies.

VISION STATEMENT The Council will be a leader of recognized integrity in advancing programs and legislation that take into consideration California's diverse geologic conditions, advocate knowledgeable use of resources and work to reduce the impact of geologic hazards

STRATEGIC INTENTS

* Track proposed legislation and provide balanced information to lawmakers, regulatory agencies, and the public regarding the application of sound geologic principals in the arena of economic, environmental, and human impact issues.

* Evaluate existing legislation and provide balanced information to lawmakers, regulatory agencies, and the public regarding the application of sound geologic principals in the arena of economic, environmental, and human impact issues.

* Evaluate the efficiency, fairness, and effectiveness of the present regulatory peer review process and develop and promote recommendations for improving the system.

* Identify and establish good working relationships and seek cooperation with all interested public stakeholders

* Work to improve the professional practice of geology in the state of California.

* Publicize the role of geology and professional earth scientists in public health, safety, and economic development of the state of California. Moving Forward

1) Secure Executive Director for organization Located in Sacramento Well Connected in the regulatory arena Respected by professional geologists Registered Geologist

2) Have facilitated brainstorming on methods to implement each strategic intent

3) Prioritize methods and tasks developed in item 2

4) Establish goals and timelines for action items under each strategy from the methods and tasks prioritized in item 3

Proposed Time Table

June, 1997: Approve by-laws, review strategies. Discuss what is needed for Executive Director and interview potential candidates.

July, 1997: Select Executive Director, obtain physical address, phone numbers, fax number, e-mail number (or use existing ones). Determine how to implement the strategies listed above with brainstorming session with members and Executive Director. Start planning CCGO November, 1997 meeting.

August, 1997: Prepare modest budget. Determine funding mechanisms and allocating costs to various groups. Mail announcement of group to all geological organizations in California.

September, 1997: Dissemination of information on legislation to be done using the WWW. Prepare CCGO Web page. Mailings to key legislators.

October, 1997: Building membership benefits: educational certification for California Educational Units, Downloading of environmental and engineering jobs from the Commerce Business Daily and the California Contracts Register.

November, 1997: CCGO annual meeting.

PECG Initiative: You Should Know About It!

The following on the PECG Initiative is excerpted from the Consulting Engineers and Land Surveyor of California (CELSOC) web site: www.celsoc.org.

Contributions to Fed Up! (organization opposing PECG Initiative) are needed.

PECG (Professional Engineers in California Government) is expected to raise several millions of dollars for a mass media campaign to pass Competition Killer. Unless the Fed Up! campaign responds with a similar mass media campaign, Competition Killer will pass. That is the reality of initiative campaigns in California. So the Fed Up! campaign needs all of the money it can raise to defeat Stacked Deck.

Please send your contributions to:

Fed Up! c/o CELSOC
1303 J Street, Suite 370
Sacramento, CA 95814
Phone (916)441-7991 / Fax (916) 441-6312
State I.D. #960380 IRS I.D. #68-0378296

Contributions of all sizes are welcome. Contributions to the Fed Up! campaign are not deductible as charitable contributions under federal tax law.

The Fed Up! Campaign Firm

The Fed Up! Coalition has hired the professional campaign firm of Woodward & McDowell (111 Anza Blvd., Suite 406 Burlingame, CA 94010, phone (415) 340-0470, fax (415) 340-1740). Woodward & McDowell specializes in initiative campaigns and has a remarkably successful record extending over three decades.

Warning on PECC/Competition Killer Issued

The California Board of Registration for Professional Engineers and Land Surveyors issued a public letter expressing in strong terms its harsh view of the Competition Killer initiative. The State Board, a majority of whom represent the public at large and are not registered by the Board, adopted its position by a unanimous vote. The Board adopted its position following considerable discussion at two separate Board meetings. The Board of Registration expressed its views in a letter addressed to Governor Pete Wilson. Here is the text of the letter:

"The Board of Registration for Professional Engineers and Land Surveyors (Board) is writing this letter to express our opposition to the Government Cost Savings and Taxpayer Protection Amendment proposed by the Professional Engineers in California Government. This proposed amendment, if enacted, would impact our Board operations. "The Board is mandated to protect the public health, safety and welfare by regulating the practice of engineering and land surveying. It carries out this mandate by examining engineers and land surveyors and enforcing its laws against the unscrupulous, negligent and incompetent licensees. The Board fulfills its mandate by recruiting and retaining professional engineers and land surveyors as consultants and expert witnesses for enforcement matters. These individuals must be representative of the engineering and land surveying population in terms of age, geographic location, area of expertise, gender, etc. They provide services throughout the year for specific, short term periods of time. Any constraint in terms of delay, while seeking an exemption, or requiring the use of only one subset of the Board's population, such as state engineers, will seriously impair our statutory duties.

"The proposed amendment would restrict our ability to fulfill our mandate by creating a barrier in the contracting process. Since the Board regulates engineering and land surveying performed in both public and private sectors, a potential delay or limitation in the already lengthy contract process would negatively impact the operations of the Board.

"We urge you to consider the implications of the proposed amendment and to act accordingly. We are available to answer your questions or to assist you at your discretion."

Competition Killer - The Actual Text

Perhaps the most irrefutable argument against the Competition Killer initiative is the actual text of the initiative, which is reprinted in its entirety below.

ote that the name which PECC gave the initiative and the first several paragraphs are all fluff, mere packaging. The real meat of the initiative are buried in: Subsection 3(b), "The Hook," which causes the initiative to impact local government and private projects, and Subsection 3(c), which requires a "Competition Killer" analysis of proposed projects by the State Controller.

Taken together "The Hook," and the "Competition Killer" sections would result in the vast majority of local agency and private projects, as well as state projects, being designed by the state bureaucracy.

Here is the complete text of Competition Killer:

"GOVERNMENT COST SAVINGS AND TAXPAYERS PROTECTION AMENDMENT

SECTION 1. TITLE

This measure shall be known and may be cited as the Government Cost Savings and Taxpayer Protection Amendment.

SECTION 2. PURPOSE AND INTENT

It is the intent of the people of the State of California in enacting this measure that engineering, architectural, and similar services provided by the state and certain other entities be furnished at the lowest cost to taxpayers, consistent with quality, health, safety, and the public interest; that contracts for such services be awarded through a competitive bidding process, free of undue political influence; and that contractors be held fully responsible for the performance of their contracts.

THEREFORE, THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 3. REQUIREMENTS FOR CONTRACTS FOR ENGINEERING, ARCHITECTURAL AND SIMILAR SERVICES

Article VII, section 12 is hereby added to the California Constitution to read:

(a) This section shall apply to contracts for engineering, architectural, landscape architectural, surveying, environmental, or engineering geology services awarded by the state of California or by any state agency to any public or private entity. As used in this section, "state agency" means every state office, officer, agency, department, division, bureau, board, and commission but does not include the University of California, the California State University and Colleges, and local public entities. "State agency" also includes a state agency acting jointly with another state agency or with a local public entity. As used in this section, "local public entity" means any city, county, city and county, including a chartered city or county, public or municipal corporation, school district, special district, authority, or other public entity formed for the local performance of governmental and proprietary functions within limited boundaries. "Local public entity" also includes two or more local public entities acting jointly.

(b) This section shall also apply to contracts for services specified in subsection (a) awarded by private entities or local public entities when the contract awarded by the public or private entity involves expenditure of state funds or involves a program, project, facility, or public work for which the state or any state agency has or will have ownership, liability, or responsibility for construction, operation, or maintenance. As used in this section, "state funds" means all money appropriated by the Legislature for expenditure by the state or a state agency and all money included in special funds that the state or a state agency controls.

(c) Prior to the award of any contract covered by this section, the Controller shall prepare and verify an analysis of the cost of performing the work using state civil service employees and the cost of the contract. In comparing costs, the cost of performing the work using state civil service employees shall include only the additional direct costs to the state to provide the same services as the contractor, and the cost of the contract shall include all anticipated contract costs and all costs to be incurred by the state, state agencies, and the contracting entity for the bidding, evaluation, and contract award process and for inspecting, supervising, verifying, monitoring, and overseeing the contract.

(d) The contract shall not be awarded if either of the following conditions is met: (1) the Controller's analysis concludes that state civil service employees can perform the work at less cost than the cost of the contract, unless the services are such an urgent nature that public interest, health, or safety requires award of the contract; or (2) the Controller or the contracting entity concludes that the contract would not be in the public interest, would have an adverse impact on public health or safety, or would result in lower quality work than if state civil service employees performed the services.

(e) Except for contracts for which a delay resulting from the competitive bidding process would endanger public health or safety, every contract, including amendments, covered by this section that exceeds fifty thousand dollars (\$50,000), adjusted annually to reflect changes in the appropriate consumer price index as determined by the Controller, shall be

awarded through a publicized competitive bidding process involving sealed bids. Each contract shall be awarded to the lowest qualified bidder. If the contract cost based on the lowest qualified bid exceeds the anticipated contract costs the Controller estimated pursuant to subsection (c), the Controller shall prepare and verify a revised analysis using the contract bid cost, and that revised analysis shall be used in applying subsection (d).

(f) For every contract covered by this section, the contractor shall assume full responsibility and liability for its performance of the contract and shall defend, indemnify, and hold the state, the contracting entity, and their agents and employees harmless from any legal action resulting from the performance of the contract. (g) This section shall not be applied in a manner that will result in the loss of federal funding to the contracting entity for contracts for services.

SECTION 4. SEVERABILITY

If any provision of this Amendment or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the Amendment which can be given effect without the invalid provision or application, and to this end the provisions of this Amendment are severable.

SECTION 5. APPLICABILITY OF CURRENT LAW

Nothing in this Amendment shall expand or restrict the state's constitutional authority, as determined by decisions of the California Supreme Court and California Courts of Appeal in effect on the effective date of this Amendment, to enter into contracts with private or public entities.

SECTION 6. RELATIONSHIP TO OTHER MEASURES

To the extent that any other measure on the same subject shall be on the ballot at the same election, it is the intent of the voters that this measure be deemed, to the maximum extent possible, not to be in conflict with such other measure, but rather that this measure should be harmonized with the other measure."

The "Competition Killer" Initiative

Who is behind Competition Killer initiative?

The Competition Killer initiative is sponsored by a state employees union, Professional Engineers in California Government (PECG). If Competition Killer passes, the State will have to hire thousands of additional permanent state employees. That would cause PECG's membership, dues revenue and political power to grow dramatically.

In 1996 PECG raised approximately \$2.1 million of its own members dues money qualifying Competition Killer for the ballot. Nearly all of the money was spent on paid signature gatherers. PECG raised all of these political funds through automatic monthly payroll deductions by union members. PECG submitted 1,201,754 gross signatures statewide and paid up to \$1.50 per signature. PECG is expected to spend several millions of dollars more on a mass media campaign in either the fall of 1997 or the spring of 1998 to pass the initiative.

What is the "Competition Killer" initiative?

The Competition Killer initiative is a proposed amendment to the California Constitution, sponsored by a state employees union. The Competition Killer initiative requires preparing and filing papers with the State Controller and obtaining the Controller's permission before procuring engineering, environmental, architectural and surveying consulting services. At present the State Controller has no expertise, no experience and no staff for evaluating proposals to procure those services.

Moreover, the initiative contains a "Competition Killer" clause (subsection 3c), making it unlikely that the Controller would give permission to procure design services from a consultant. If the Controller does not give permission, then the person needing design services could only obtain services from the state bureaucracy. The state bureaucracy is the only alternative recognized in the initiative.

The Competition Killer initiative bestows enormous powers to the State Controller, giving that office unprecedented powers to say "Go" or "No go" to all sorts of projects throughout California. The initiative makes the State Controller a de facto state "Design and Construction Czar."

Competition Killer would delay many, many needed projects, swell the state bureaucracy by thousands of employees and ultimately cost taxpayers and consumers billions of dollars each year.

What kinds of projects does Competition Killer impact?

Competition Killer expressly states that the initiative applies to projects sponsored by local governments, by private persons and by state agencies. Affected projects include schools, hospitals, transportation, housing, water treatment and water supply facilities, power and communication facilities, commercial buildings, bridges, environmental assessments, etc., etc. In sum, Competition Killer impacts just about any project that involves the services of an engineer, architect, land surveyor or environmental assessor.

Competition Killer includes a "Hook" clause (subsection 3b), which was deliberately written by PECG so that the initiative broadly applies to as many projects as possible.

Is Competition Killer certain to be on the ballot?

Yes. The Competition Killer initiative has officially qualified for the California ballot. No one, not even the state employee union sponsoring the initiative, PECG, can withdraw Competition Killer from the ballot or even amend it. There are increasing reports that there will be a special statewide election called for November 1997. If so, Competition Killer will appear on that ballot. If for some reason there is no special statewide election called for November 1997, Competition Killer will appear on the June 1998 ballot.

What are the impacts of Competition Killer?

Here are just some of the far reaching effects of Competition Killer which have been identified to date:

1. Add yet another layer of state bureaucracy and delay to the project approval process in California. Every time a project is delayed, whether it is a school, a hospital, a road improvement, a water treatment facility or a house, the added cost of the delay is passed on to taxpayers and consumers.

The total cost of delays caused by Competition Killer will be in the billions of dollars. No one knows how long the delays will be, because Competition Killer contains no time limit by which the State Controller must act.

2. Require the state to hire thousands of additional permanent state employees. These added state employees would be hired (1) by the State Controller to analyze contracts, and (2) by various state agencies (such as Caltrans) to do design work, which private engineering, architectural, surveying, and environmental consulting firms now perform for local government, businesses and state agencies.

3. Expand the membership, dues income and political power of PECG, the public employee union sponsoring Competition Killer.

4. Place a state bureaucratic monopoly in the State Constitution, where it will be very difficult and costly to ever amend or repeal.

5. Make the State Controller a state "Design Czar." The added workload to the Controller's office could be overwhelming. Local agencies alone enter into tens of thousands of design contracts every year, a huge proportion of which are subject to the initiative.

6. Local governments and private persons would lose control of the design, scope and timing of their projects. The state bureaucracy would take over control and would not be accountable to the local agencies and persons sponsoring the projects and paying for them.

7. Create a state monopoly which would dramatically reduce healthy competition among providers of design services in California.

8. Severely harm California's ability to compete in the worldwide marketplace for engineering and architectural services. This is a market sector in which historically California has been a world leader.

9. Hamper the ability of the State Board of Registration for Professional Engineers and Land Surveyors to protect the public's health and safety. See the Board's Letter on Competition Killer by State Board of Registration.

10. Replace consultants who carry errors and omissions insurance which protect their clients with state employees who have no such insurance.

11. The initiative requires design consultants to be liable for the state's mistakes. That is just fundamentally unfair. (Consultants are already liable for their own mistakes and regularly obtain professional liability insurance for their own mistakes. Consultants cannot obtain insurance covering the state's mistakes.)

Why is the initiative called "Competition Killer"?

The PECG initiative (subsection 3c) requires the State Controller to conduct an unusually biased "cost analysis." Only if a design consultant somehow wins the biased Competition Killer analysis, could a local agency or private person or state agency procure services from a consulting engineer, surveyor or architect.

Here is how the analysis is rigged. Under the initiative the Controller must compare:

a. All of the design consultant's costs, including taxes, rent, equipment, bookkeeping, utilities and other overhead plus all of the direct and indirect costs of the project sponsor related to the contract,

versus

b. Only some of the state's costs for doing the work using the state civil service employees, ignoring overhead such as rent, equipment, bookkeeping, utilities, ignoring the taxes which consultants pay which is lost when the state bureaucracy does the work and ignoring all costs incurred by the project sponsor related to the contract.

The Controller could only approve a proposed contract when "a" is somehow less than "b." Such a biased comparison makes it very unlikely that the Controller would approve proposed design contracts.

The Controller's cost analyses under the initiative are not only biased, they are very superficial and ignore the following important factors for project sponsors:

- a. How quickly a project is needed,
- b. The qualifications, experience, relative productivity and availability of consultants compared to state civil service employees,
- c. The need for expert specialists on a project.
- d. The cost to the state of having to continue to pay the salaries of civil service employees after a project is completed.

Will the Controller's cost analyses be timely?

The initiative does not specify any timelines by which the State Controller must complete its cost analyses. But all of the indications are that it could take a very long time indeed. Competition Killer will dramatically increase the workload at the State Controller's office and moreover impose a totally new type of workload on the office. At present the Controller's office has no expertise, no experience and no staff for evaluating proposals to procure design services.

Here is a glimmer of the Controller's workload increase: Local agencies alone enter into tens of thousands of design contracts every year, a huge proportion of which are subject to the initiative. California has 58 counties, 470 cities, 3,440 special districts, 1,002 K-12 school districts and 71 community college districts, all of which procure design services.

Add the Controller's duty to evaluate proposals by state agencies and the private sector, and one can only wonder how long the Controller's office would take to conduct its cost analyses. Meanwhile all of those local agencies, private persons and state agencies will have to hold up their projects and just wait...or turn over the projects to the state bureaucracy. Perhaps you can see how Competition Killer makes the State Controller a state "Design and Construction Czar."

Will the Controller have adequate information for the cost analyses?

It will be relatively rare that the Controller will have adequate information to conduct the cost analyses mandated by Competition Killer. The basic

problem is that the costs analyses will have to be done way in advance, before consultants have even been hired to study the scope and size of the project.

For example, say a city believes it needs a new bridge. Before the city can hire a consultant to study the matter, the city needs an analysis of design costs by and the permission of the State Controller. But at that stage no one knows what kind of bridge will be appropriate, how big the bridge should be, where to site the bridge or even whether a tunnel or some other solution would be more cost effective. Nevertheless, Competition Killer requires a cost analysis from the State Controller - a cost analysis likely based more on conjecture more than hard data.

Has PECG produced any evidence of a real world problem which Stacked Deck would solve?

No.

Will Competition Killer harm public safety?

Yes, Competition Killer would harm public safety in a number of ways. For example, the initiative would jeopardize public safety by delaying badly needed seismic retrofitting of California's bridges and other structures.

Competition Killer would also harm public safety by cutting off utilization of California's own seismic design consultants. California's consulting engineers are considered the best, most sophisticated seismic safety specialists in the world. Engineers in other countries come to California to learn of seismic design practices developed and refined here in California.

There is also a much broader, more pervasive way in which the PECG initiative jeopardizes public safety. By shifting design work from consultants to the state bureaucracy, the PECG initiative dramatically reduces incentives to do prompt, high quality work and avoid errors. These incentives are far higher for design consultants than they are for the state bureaucracy. Compare and contrast:

Sides of Issue: Consultant vs. State Bureaucracy

A. If a consultant does not perform properly, the consultant's client can terminate the contract. *State civil service employees do not sign contracts, which can be terminated. The only option if there is an excess number of state employees or if a particular state employee is performing poorly is to layoff or fire state employees. And that is very difficult, costly and time consuming to do.*

B. If a consultant's client is dissatisfied, the client can decide not to contract with that consultant in the future. *Once Competition Killer gives the State bureaucracy a virtual monopoly on design services, the public has no options.*

C. If a consultant is negligent, the client can sue the consultant. *It is very difficult to successfully sue the state when the state bureaucracy makes a mistake. Before suing the state an injured person must first go through a lengthy state administrative process which can last years. Even if the injured person eventually gets to court, the state bureaucracy is then protected from accountability by many statutory immunities that do not apply to consultants.*

D. If a consultant is negligent and injures a third party, the third party can sue the consultant. *For the same reasons cited above, it is very difficult for a third party to successfully sue the state when the state bureaucracy makes a mistake which causes an injury.*

E. Employees of consulting firms who make mistakes can be demoted or fired. *The state civil service system is a very complex system of statutes, regulations, collective bargaining agreements and bureaucratic procedures. It is a very difficult and complex to demote or fire incompetent employees and in practice demotions and firings are rare and only occur in extreme circumstances.*

F. To prosper and even to survive in a highly competitive marketplace a design consultant must maintain a reputation for excellent service. *A state bureaucracy in a monopolistic position which gains a reputation for poor service would suffer few consequences in the marketplace. Consumers would have nowhere else to go.*

G. Professional liability insurance companies provide their client design consultants with sophisticated training and advice on business practices which avoid errors and omissions. *State bureaucracies do not even carry errors and omissions insurance.*

H. If a consultant is incompetent, the state can revoke or suspend the consultant's professional license. *Even though the state bureaucracy employs thousands of engineers for years, the state licensing board rarely revokes or suspends a state employee's license. In fact, members of the State Board of Registration cannot recall a single instance.*

One likely reason for this is that design work performed by state agencies is buried in a state bureaucracy and therefore invisible. No one on the outside can be sure who did what.

What Laws on Consultant Selection Would Competition Killer Wipe Out?

The Competition Killer initiative is a constitutional amendment and as such would wipe out California's current procurement laws, which have existed for decades and have worked very well.

State and local public agencies in California must now follow a very competitive selection process mandated by law. It is virtually the same law in the other 49 states and the federal government. This process is contained in California Government Code sections 4525 to 4529.5.

For example, when Caltrans announces a Request for Proposals from engineering consultants, that announcement is circulated to hundreds of engineering firms. It is common for 30 or more engineering firms to prepare detailed proposals, submit those proposals to Caltrans and compete head to head for a single contract. It typically costs each firm thousands of dollars to prepare its proposal. Each firm must itself pay 100% of the cost of its proposal. For the 29 or so firms that lose the contract, that means they spent thousands of dollars and end up with nothing to show for it.

State civil service employees administer these California laws and select the winning proposal for state agency projects. These state employees follow very detailed state-adopted manuals on selecting design consultants. The firms which enter the competition are evaluated at many, many stages by state employees before a final firm is selected.

Furthermore, the selected firm must make regular, very detailed progress reports to the state. The consulting firm is not paid until after the firm complies with the state's contract provisions, provides the engineering plans the state needs, complies with state design standards and not until the state is satisfied with the quality of the consulting work performed.

At all times consulting firms are also subject to regular, detailed auditing by state employees.

California also has many laws, which require state testing and licensing of consulting engineers, surveyors and architects, and which prohibit fraud and deceit. The State Department of Consumer Affairs, the state licensing boards, local district attorneys and the state Attorney General's office are all charged with enforcing these laws.

Why did PECC choose a constitutional amendment

The answer is simple. If PECC's bureaucratic monopoly is locked in the Constitution rather than statute, it will be much harder for anyone to ever amend the initiative, no matter how harmful and costly Competition Killer is to California's citizens.

The true purpose of a constitution is to provide a strong, deeply respected framework for governance and decision making by elected representatives. PECC makes a mockery of that purpose by attempting to lock a state bureaucratic monopoly in the California Constitution.

When would Competition Killer take effect

If the initiative passes on June 2, 1998, the initiative will take full effect the very next day. That means that if PECC is successful, on June 3, 1998 pending and future design contracts in California involving private parties, local public agencies, regional agencies and state agencies will be put into immediate jeopardy.

Billions of dollars in projects will halt until the State bureaucracy can grow in size and decide how to implement the initiative. Stacked Deck contains no timelines by which the state bureaucracy must act.

Can Competition Killer be amended?

No one, not even PECC itself, can amend Competition Killer prior to the statewide vote on Competition Killer.

After the vote, if Competition Killer passes, Competition Killer could only be amended by the very difficult and costly process of passing another statewide ballot proposition.

What is the Fed Up! Coalition

Fed Up! is short for "Taxpayers Fed Up with More State Bureaucracy!" Fed Up! was formed for the sole purpose of defeating the Competition Killer initiative. Fed Up! is a large and ever growing coalition and includes local government, health care, school construction, business, taxpayer, tort reform, consumer, engineering, surveying, architectural and building organizations. 408-297-6969fax 408-297-7716.

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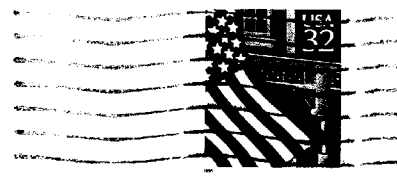
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