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BACKGROUND PAPER

Public Citizen Summary of Glamis Gold NAFTA Case

Glamis Gold, Ltd. is a Canadian corporation based in Vancouver and engaged in the exploration and extraction of precious metals in North and Central America. Through its U.S. subsidiaries, the Glamis firms can acquire claims for mining on U.S. federal lands free of cost and can then mine the land for profit without paying any royalties to the U.S. government or any other government under the 1872 Mining Law.¹ In 1994, Glamis acquired mining rights in a proposed open-pit, cyanide heap-leach gold mine to be located in the Imperial Valley in the California dessert. This type of mine is so environmentally dangerous that many nations (and the U.S. state of Montana) have banned cyanide heap-leach mining altogether. Giant discarded heaps of contaminated earth can swell as much as 40 percent and poison water resources in the area.² Backfilling requirements are costly, but so is the clean up and rehabilitation that often falls upon taxpayers once the mine is exploited and abandoned without remediation.

To proceed with the proposed mine, Glamis first needed permission from federal and state entities which reviewed the mine's impact on the environment and on the rights of the indigenous people of the area, the Quechan Indians. In 2001, after six years of study, the Interior Department formally denied the project on the basis that it was within a Native American spiritual pathway that extended 130 miles and that the proposed mining activities would impair the ability of the Native Americans to travel this pathway. In 2001, President Bush came into office and new officials took over at the Interior Department. After only a cursory review lasting a few short months, the new Interior Solicitor rescinded the prior Solicitor's legal opinion and reversed the denial of Glamis' Imperial Valley Project.

In response to the sudden federal government reversal in 2002, the California State Mining and Geology Board (CMGB) adopted an emergency regulation requiring the backfilling of *all* future open-pit mines in the state to achieve the approximate original contours of the land prior to mining. The emergency regulation also required that all mined material that is not used to backfill the pit must be removed so that no material would lay more than 25 feet above the original topography. In this way the state hoped to ameliorate the environmental damage of large-scale mines generally while addressing the specific need to preserve the land related to the Glamis claim for the cultural and religious practices of the Quechan Indians.

In 2003, then-Governor Gray Davis of California signed Senate Bill 22 which formalized the emergency regulation, with the caveat that such requirements would be limited to projects that are located within one mile of any Native American sacred site.³ Following the passage of the

bill, CMGB adopted the emergency regulations as final and made them applicable to any project that had been pending as of December 12, 2002.

Rather than pursuing a regulatory takings case (seeking compensation under U.S. law for a government action that terminated the value of private real property) against the California mining regulation in U.S. domestic courts where it would surely lose, Glamis chose to bypass U.S. courts in favor of a more corporate-friendly venue at the NAFTA tribunal. On December 9, 2003, Glamis Gold Ltd. filed a Notice of Arbitration⁴ for a NAFTA investor-state case in a United Nations arbitration body authorized by NAFTA to hear such cases raising claims using NAFTA Chapter 11 foreign investor protections to attack California's new mining law and the Interior Department's earlier decision. Specifically, Glamis alleged that it failed to receive the fair and equitable treatment from the federal and state governments as required by NAFTA Article 1105. Glamis also argued that the California backfilling requirement made its mining operation so costly as to be "uneconomical", thereby "expropriating" the investment in violation of Article 1110. Glamis initially demanded \$50 million in compensation.⁵

¹ Friends of the Earth, "Glamis Gold: A Case Study of Investing in Destruction," Briefing Paper, August 2003, at 2.

² California State Mining and Geology Board, Executive Officer's Report (Mining Board Report), April 10, 2003, at 4.

³ Office of the Governor of the State of California, "Governor Davis Signs Legislation to Stop Proposed Gold Mine Near 'Trail of Dreams' Sacred Site," Press Release, April 7, 2003.

⁴ See, Notice of Arbitration Under the Arbitration Rules of the United Nations Commission on International Trade Law and the North American Free Trade Agreement, *Glamis Gold Ltd. v. the Government of the United States*, Dec. 9, 2003.

⁵ For more information about this case, please see the NAFTA Investor-State Arbitrations on the U.S. Department of State website <http://www.state.gov/s/l/c3439.htm>. Especially useful is the submission by Sierra Club and Earthworks, Oct. 16, 2006.