

DECISION ON APPLICATION AND SUBMISSION BY QUECHAN INDIAN  
NATION

September 16, 2005

Glamis Gold, Ltd., Claimant

v.

The United States of America, Respondent

An Arbitration Under Chapter 11 of the North American Free Trade Agreement (NAFTA),  
in accordance with the United Nations Commission on International Trade Law  
(UNCITRAL) Arbitration Rules, and administered by the International Centre for  
Settlement of Investment Disputes (ICSID)

Michael K. Young, President

David D. Caron, Arbitrator

Donald L. Morgan, Arbitrator

**I. Procedural Background**

1. By letter dated February 24, 2005, to counsel for the Parties, Courtney Ann Coyle, Esquire, advised that her client the Quechan Indian Nation of Fort Yuma Arizona and California USA wished to participate in the above captioned matter as a non-disputing party. On March 9, 2005, Ms. Coyle provided a copy of the letter to Secretary of the Tribunal Eloise M. Obadia with a request that she distribute it to the Members of the Tribunal. Ms. Obadia did so on March 10, 2005.
2. By letter dated June 21, 2005, Tribunal President Michael K. Young advised Ms. Coyle that the Tribunal intended to consider her request pursuant to the principles articulated in the Free Trade Commission's Statement on non-disputing party participation. To that end his letter invited her to make application for leave to file a non-disputing party submission and called her attention to Section B of the Statement respecting procedures for making such application and procedures for submitting the submission itself. His letter further advised that the application and submission should be submitted by July 26, 2005.
3. By facsimile transmitted to the Tribunal on July 25, 2005, and dated July 22, 2005, Ms. Coyle requested leave to submit her application and submission in March 2006, after the Parties would have submitted their memorials.
4. By letter dated July 28, 2006, Tribunal President Michael K. Young advised Ms. Coyle that the Tribunal intended to allow participation by qualified non-parties but, in doing so, to also avoid disruption of the proceedings and to minimize any burden to the parties. His letter extended the time for her to submit an application and submission until August 19, 2005.

5. By correspondence dated August 19, 2005, Ms. Coyle submitted an application and submission to the Tribunal, with copies to counsel for the Parties.
6. By letter of August 26, 2005, to counsel for the Parties, Tribunal President Michael K. Young advised that they could submit by September 15, 2005, comments on whether the Tribunal should accept the application and submission that Ms. Coyle had made.
7. On September 15, 2005, the Claimant deferred to the views of the Tribunal on whether to accept the application and submission. The Claimant took issue with a number of factual and other aspects of the submission. On the same date the Respondent asked the Tribunal to accept the application and submission, stating that they qualified for acceptance under the Statement of the Free Trade Commission.

## **II. Applicable Law**

8. This arbitration is conducted under the UNCITRAL Arbitration Rules.
9. The Tribunal need not now decide whether the discretion to accept substantive materials from non-parties is within the discretion of the Tribunal under Article 15(1) of the UNCITRAL Rules. The Free Trade Commission's Statement on non-disputing party participation indicates that the three states in NAFTA accept such statements. More particularly, the parties in this proceeding do not object to such statements, at least where consideration of the material is in accordance with the Free Trade Commission's Statement.

## **III. Decision**

10. Upon review of the application and submission and consideration of the views of the Parties, the Tribunal is of the view that the submission satisfies the principles of the Free Trade Commission's Statement on non-disputing party participation.
11. The Tribunal believes that in allowing such participation, it is important simultaneously to avoid undue burden on the Parties and delay in the proceedings.
12. The Tribunal finds that acceptance of this application and submission would not present undue burden or cause delay.
13. The Tribunal thus concludes that the submission should be, and hereby is, accepted.
14. The Tribunal observes that the Statement of the Free Trade Commission on non-disputing party participation provides among other things that "[t]he granting of leave to file a non-disputing party submission does not require the tribunal to address that submission at any point in the arbitration. The granting of leave to file a non-disputing party submission does not entitle the non-disputing party that filed the submission to make further submissions in the arbitration."

15. The Tribunal further observes that its acceptance does not signify agreement or disagreement with the substance of the submission. The Tribunal notes that the Parties have further opportunity to comment on the submission, up to and including respectively the Memorial and the Counter Memorial.
16. A copy of this order shall be provided to the Quechan Indian Nation of Fort Yuma Arizona and California USA through their counsel.

Signed September 19, 2005

---

Michael K. Young

President of the Tribunal on behalf of the Tribunal

David D. Caron, Tribunal Member  
Donald L. Morgan, Tribunal Member