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.,

Claimant/Investor,

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA,

Respondent/Party.

Pursuant to Article 3 of the United Nations Commission on International Trade Law ("UNCITRAL") and Articles 1117 and 1120 of the North American Free Trade Agreement ("NAFTA"), the Claimant, Glamis Gold Ltd. ("Glamis") hereby initiates on its own behalf and on behalf of its enterprises (*see* Section C below) recourse to arbitration under the UNCITRAL Rules of Arbitration (Resolution 31/98 Adopted by the General Assembly on December 15, 1976).

A. DEMAND

Pursuant to Article 1120(1)(c) of NAFTA and Article 3(a) of UNCITRAL, the Claimant hereby demands that the dispute between it and the Respondent be referred to arbitration under the UNCITRAL Rules of Arbitration, as modified by written agreement of the parties.

Pursuant to Article 1119 of NAFTA, on July 21, 2003, the Investor served written notice of its intent to submit a claim to arbitration (the "Notice of Intent") on the Party which notice was, accordingly, more than ninety (90) days before the submission of this claim.

As detailed in Section F below, at least six (6) months have passed since the events giving rise to the Investor's claim as required by Section B of NAFTA Chapter 11 (Article 1120(1)).

As detailed in Section F below, no more than three (3) years have passed since the date on which the Investor and Enterprise first acquired, or should have acquired, knowledge of the Party's breach of the obligations provided in Section A of Chapter 11 of NAFTA, and knowledge that the Investor and Enterprise have incurred loss and damages by reason of, or arising out of, that breach (NAFTA Article 1117(2)).

Pursuant to Article 1118, Glamis met with the United States in an effort to seek an amicable settlement of this dispute. The United States declined to address the merits of the dispute thereby compelling this formal demand for arbitration.

B. CONSENT TO ARBITRATION

Pursuant to Article 1121 of NAFTA, Glamis and its enterprises consent to arbitration in accordance with the procedures set out in NAFTA. Glamis and its enterprises hereby waive their rights to initiate or continue before any administrative tribunal or court, or other dispute settlement procedures, any proceedings with respect to the measures outlined herein and alleged to be breaches of U.S. obligations under NAFTA, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under federal or state laws of the United States of America. Concurrently with the filing of this Notice of Arbitration, Glamis and each of its enterprises have submitted to the United States executed waivers in the form required by Article 1121.

C. NAMES AND ADDRESSES OF PARTIES

Claimant/Investor	**Enterprises**	**Respondent/Party**
Glamis Gold Ltd. 1500-1055 West George Street P. O. Box 11117 Vancouver, B.C. V6E 4N7 CANADA	Glamis Gold, Inc. 5190 Neil Road, Suite 310 Reno, NV 89502 Glamis Imperial Corporation 5190 Neil Road, Suite 310 Reno, NV 89502	United States Government Executive Director Office of the Legal Advisor U.S. Department of State Room 519 2201 C Street, NW Washington, DC 20520

D. ARBITRATION CLAUSE OR ARBITRATION AGREEMENT INVOKED

Claimant invokes Section B of Chapter 11 of NAFTA, and specifically Articles 1117, 1120 and 1122 as authority for the arbitration. Section B of Chapter 11 of NAFTA sets out the provisions agreed to concerning the settlement of disputes between a Party and an investor of another Party.

E. CONTRACT OUT OF OR IN RELATION TO WHICH THE DISPUTE ARISES

The dispute relates to the treatment accorded Glamis and its enterprises, Glamis Gold, Inc. and Glamis Imperial Corporation ("Glamis Imperial"), by the Government of the United States of America ("the U.S."), and the damages arising out of the U.S.'s breach of its obligations under Chapter 11 of NAFTA with respect to Glamis' investment in the U.S.

F. GENERAL NATURE OF THE CLAIM INVOLVED

Obligations Breached and Relevant Provisions

The Investor alleges that the United States has breached its obligations under Section A of Chapter 11 of NAFTA, including the following provisions:

(i) Article 1105 – Minimum Standard of Treatment; and
(ii) Article 1110 – Expropriation and Compensation.

The relevant provisions of the NAFTA include:

Article 1105 – Minimum Standard of Treatment

> *1. Each Party shall accord to investments of Investors of another Party treatment in accordance with International Law, including fair and equitable treatment and full protection and security.*

* * *

Article 1110 – Expropriation and Compensation.

1. *No Party may directly or indirectly nationalize or expropriate an investment of an Investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:*

   (a) *for a public purpose;*

   (b) *on a non-discriminatory basis;*

   (c) *in accordance with due process of law and Article 1105(1); and*

   (d) *on payment of compensation in accordance with Paragraphs 2 – 6.*

2. *Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation") and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value, including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.*

3. *Compensation shall be paid without delay and shall be fully realizable.*

* * *

Factual Background

The Investor, Glamis Gold Ltd., is a publicly held Canadian corporation incorporated in 1972 under the laws of the Province of British Columbia. In accordance with the laws of British Columbia, the majority of the directors of Glamis are Canadian citizens. Glamis, and its wholly-owned subsidiaries, are engaged in the exploration, development and extraction of precious metals principally in North and Central America. As such, it is an Investor of Canada, a Party to NAFTA.

1. The Enterprise, Glamis Gold, Inc., is a wholly-owned subsidiary of Glamis, incorporated under the laws of the State of Nevada.

2. The Enterprise, Glamis Imperial, is a wholly-owned subsidiary of Glamis Gold, Inc., and also a Nevada corporation. It is the owner of the rights in the mining claims and mill sites known as the Imperial Project.

The Investment

3. In 1987, Glamis Imperial (then operating under the name Glamis Gold Exploration, Inc.) first acquired interests in the subject mining claims located in Imperial County, California. In that same year, it contributed those interests to a joint venture, the Imperial

County Joint Venture, in which it held a 60 percent interest, and where the interests were combined with other nearby mining claims on federal lands located in Imperial Country, California. In 1994, Glamis Imperial bought out the interests of its joint venture partner and at all times thereafter has been the sole owner of the mining interests and mill sites known as the Imperial Project.

4. The Imperial Project consists of 100 percent interests in approximately 187 mining claims and 277 mill sites located on nearly 1,650 acres of federal public lands managed by the U.S. Department of the Interior, Bureau of Land Management ("BLM"). The Imperial Project is located in eastern Imperial County which is in the Southern California desert, east of San Diego. Glamis Imperial located and acquired these mining claims and mill sites in accordance with the General Mining Law, 30 U.S.C. § 22 *et seq*., and implementing BLM regulations. Valid unpatented mining claims provide the statutory right consistent with other laws and BLM regulations to go upon open public lands for the purpose of prospecting, exploration and extraction of valuable minerals. Mill sites consist of non-mineral land that may be used for purposes ancillary to mineral development. *See* 30 U.S.C. § 42. Such mineral claims are recognized under United States law as freely transferable property rights.

5. As noted above, the Imperial Project is located in the California desert within an area designated by BLM, as required by § 601 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1781), as the "California Desert Conservation Area." That act provided further however:

> Nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands . . . shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section.

43 U.S.C. § 1781(f). No BLM regulations – then or now – prohibited the gold mining operation sought by Glamis Imperial. Indeed, since about 1980, Glamis Gold, Inc., through a subsidiary, had profitably operated another open pit gold mine, the Picacho Mine, which was also located in Imperial County (about seven (7) miles from the Imperial Project site) within the same California Desert Conservation Area. Furthermore, the Imperial Project is located near two other open pit heap leach gold mines within the California Desert Conservation Area, the Mesquite gold mine (approximately eight (8) miles west) and the American Girl mine (approximately six (6) miles south).

6. In the early 1990s, Glamis was aware that the appropriate uses of public land in the California Desert Conservation Area remained the subject of further review and land use planning. Although it acquired the basic mineral extraction rights at issue here and pursued, with all appropriate BLM approvals, limited exploration, Glamis purposefully waited before making significant additional investment in the Imperial Project until conclusion of the land use planning process. The federal government's Congressionally-mandated land use planning culminated in a bill introduced in the Senate in 1993 and subsequently enacted in October 1994 known as the "California Desert Protection Act of

1994," Pub. L. 103-433, 108 Stat. 4471. In that Act, after carefully considering all of the cultural, wilderness and other values that had been raised in the decades-long land-use planning process, Congress expressly withdrew from any development, including for mineral extraction, hundreds of thousands of acres, including two nearby wilderness areas, Indian Pass Wilderness and Picacho Peak Wilderness. Again, however, Congress made clear that it had made the final decision as to which public lands would be off-limits to mining (or other uses) and warned in the statute itself:

> *No Buffer Zones* – The *Congress does not intend* for the *designation* of wilderness areas in section 102 of this title *to lead to* the creation of the *protective perimeters or buffer zones* around any such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from the areas within a wilderness area *shall not*, of itself, *preclude such activities or uses up to the boundary of the wilderness area*.

Pub. L. 103-433, § 103(d), 108 Stat. 4481 (1994) (emphasis added).

7. The Imperial Project lies well outside the closest wilderness area designated by the California Desert Protection Act. Accordingly, even after passage of the California Desert Protection Act, mining operations remained authorized for the multiple use lands comprising the Imperial Project subject to such mitigation measures as are technically and economically feasible, as provided in BLM's California Desert Conservation Area Plan and BLM regulations. *See* BLM, Calif. Desert Conservation Area Plan at Table 1 ("Location of mining claims is nondiscretionary. . . . BLM will review plans of operations for potential impacts on sensitive resources . . . . Mitigation, subject to technical and economic feasibility will be required.") (1980, as amended); *see also* 43 C.F.R. Subpart 3809 (1995).

8. Once assured that the Imperial Project remained comfortably outside of the wilderness areas designated by the California Desert Protection Act, Glamis Imperial (originally through an affiliated company) undertook the significant investment necessary to establish and begin gold mining operations. In December 1994, it prepared and filed the "plan of operation" required under BLM regulations to obtain approval to commence mining operations. It also filed the plan of operation with Imperial County under the California's Surface Mining and Reclamation Act of 1975, Public Resources Code §§ 2710 *et seq*. Glamis Imperial's plan of operation identified numerous, state-of-the-art mitigation and reclamation activities which, as amended through the permitting process, included backfill and reclamation of two of the three pits; *i.e.*, the extent of the reclamation that was both technically and economically feasible.

9. As required by its regulations and guidelines, BLM coordinated with the Imperial County Planning/Building Department ("ICPBD") (which was the lead agency within the State of California) in reviewing Glamis Imperial's plan of operation. On or about March 24, 1995, BLM published in the *Federal Register* notice of its intent to prepare an Environmental Impact Statement for the Imperial Project. BLM released (on behalf of itself and ICPBD), for review and comment, draft Environmental Impact Statements/Enviromental Impact Reports ("EIS/EIRs"), first in late 1996 and a second

expanded version in late 1997. In both these draft EIS/EIRs, the BLM and Imperial County recommended approval of the Imperial Project, with some additional mitigation and environmental conditions. These initial actions by BLM and Imperial County reaffirmed Glamis Imperial's view that the Imperial Project conformed to all existing and economically feasible reclamation requirements applicable to mining on federal public lands within the California Desert Conservation Area.

10. Prior to 1994, Glamis Imperial had invested less than $2 million in acquiring and developing the mineral rights encompassed by the Imperial Project. Subsequently, and in reliance on the exclusion of the Imperial Project from the designated wilderness areas, and its extensive experience in operating fully permitted and approved mines on federal public lands in this very same area, Glamis Imperial invested an additional $13 million (for a total as of December 12, 2002 of approximately $15 million) in the acquisition, exploration and development of the Imperial Project.

The Offending Measures

11. Applicable U.S. federal mining law and policy expressly encourages mineral exploration and extraction on federal public lands. Established mineral claimants have a right – provided by statute and implemented by regulation – to mine subject only to the condition that the operations comply with specific environmental statutes and provide such mitigation and reclamation as is economically feasible under existing regulations. As the applicable BLM regulations made clear at the time Glamis Imperial submitted its 1994 plan of operation:

> Under the mining laws a person has a *statutory right*, consistent with Departmental regulations, to go upon the open . . . Federal lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident thereto. This statutory right carries with it the responsibility to assure that operations include *adequate and reasonable measures to prevent unnecessary or undue degradation* of the Federal lands and to provide for reasonable reclamation.

43 C.F.R. § 3809.0-6 (1995) (emphasis added).

12. The definitions of "reclamation" and "unnecessary and undue degradation" (43 C.F.R. § 3809.0-5(j) and (k) (1995)) made clear that the mitigation and reclamation required to operate a mine on federal land is no "greater than" those *reasonable* steps that would be taken by a "prudent operator in usual, customary, and proficient operations of similar character." While the BLM regulations have subsequently changed, significantly, Glamis Imperial's plan of operation remains fully consistent even with the new regulations.

13. Despite Glamis Imperial's compliance with all applicable requirements for commencement of mining at the Imperial Project, the Department of Interior and the State of California have, through a series of measures detailed below, failed to approve the plan of operation and erected barriers that have effectively destroyed all economic value of Glamis Imperial's established mineral rights.

14. While the mining laws and regulations provides for review and cataloguing under the National Historic Preservation Act, 16 U.S.C. § 470f, of the impact a mining operation may have on historical and cultural resources, such impacts do not provide a basis for denial. *See* 45 Fed. Reg. 78,902, 78,905 (Nov. 26, 1980). Nonetheless, on October 19, 1999, the federal Advisory Council on Historic Preservation "recommend[ed] that Interior take whatever legal means available to deny approval for the project," and by this time the Interior Department under then-Secretary Bruce Babbitt had become undeniably hostile to approval of the project. In an unprecedented legal opinion dated December 27, 1999 (and contrary to settled prior interpretations of the Interior Department's authority under the Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.* ("FLPMA")), the Interior Solicitor concluded, with Secretary Babbitt's concurrence, that the "undue impairment" standard could justify denial of approval of a plan of operations even where there are no feasible (technically or economically) measures available to mitigate the alleged harm. In its Final EIS/EIR dated November 17, 2000, BLM ignored its own regulations and relied upon this opinion in reversing the conclusions and recommendations reached in the 1996 and 1997 draft EIS/EIRs. BLM instead recommended that Interior not approve the plan of operation for the Imperial Project.

15. On the eve of his departure from office, Secretary Babbitt held a press conference in Washington, D.C., and issued his Record of Decision, dated January 17, 2001, in which he formally denied approval of Glamis Imperial's Plan of Operation. The Secretary's Record of Decision stated in its rationale that the Imperial Project – albeit on federal not tribal land – was within a Native American "spiritual pathway" which ran for at least 130 miles in the California Desert area, and that tribal members believed the proposed mine would "impair the ability to travel, both physically and spiritually, along …" this "Trail of Dreams." Contrary to both law and regulation, this denial action was based solely on the purported impact of the Imperial Project on alleged cultural resources – resources not deemed by Congress significant enough to warrant withdrawal of these federal lands as a result of the land use planning that had culminated in the California Desert Protection Act of 1994. There was no suggestion by Interior that Glamis Imperial's plan failed to provide adequate reclamation of the project through revegetation, reshaping and mitigation of environmental harms to the extent that was economically and feasible using existing technology and methods. In fact, in 2002, using the same type of methods contemplated for the Imperial Project, Glamis Imperial's corporate affiliate successfully reclaimed its neighboring Picacho Mine (also in Imperial County) to the satisfaction of both BLM and the State of California.

16. The Department of Interior under current-Secretary Gale Norton has taken steps to reverse some of these illegal actions, but, to date has still has not approved Glamis Imperial's plan of operation nor compensated Glamis Imperial for the loss of its investment. On October 23, 2001, the new Interior Solicitor reconsidered and rescinded the prior Solicitor's legal opinion and recommended that Interior reconsider the January 17, 2001 decision denying Glamis Imperial's plan of operation. On November 23, 2001, the Secretary of Interior concurred and formally rescinded the prior Record of Decision denying the Imperial Project.

17. After the Secretary's rescission, the BLM completed its mineral examination to verify that as of November 2, 1998, Glamis Imperial had "valid existing rights" under the Mining Laws on the subject federal lands. BLM issued its final Mineral Report on September 27, 2002, confirming that Glamis Imperial held valid existing rights to the mining claims and the vast majority of the mill sites, and that Glamis Imperial could profitably produce from an open pit mine substantial gold reserves from the project as proposed. BLM also confirmed that it is not economically feasible to fully backfill all of the pits.

18. No sooner had Interior acted than opponents of the Imperial Project shifted focus to the State of California which in 2002 initiated a series of measures that individually and together have resulted in the expropriation of the Investor's investment in the Imperial Project. On September 30, 2002, in the course of vetoing certain legislation – Senate Bill ("SB") 1828 – California Governor Gray Davis stated: "I am particularly concerned about the proposed Glamis gold mine in Imperial County and I have directed my Secretary for Resources to pursue all possible legal and administrative remedies that will assist in stopping the development of that mine." On October 1, 2002, Governor Davis repeated the direction to the "Secretary for Resources to pursue all possible legal and administrative remedies that will assist in stopping the development of the Glamis gold mine . . . ," and he added that he "strongly oppose[d] the Glamis gold mine . . . ."

19. Pursuant to these directives from the California Governor, on November 14, 2002, the California State Mining & Geology Board ("California Mining Board"), a Board within the oversight and direction of the Secretary of Resources, placed on its agenda for consideration on December 12, 2002, emergency regulations adopting stringent and unprecedented mandates for open pit metallic mines, including gold. These interim regulations mandated – without exception – complete backfilling and site recontouring close to the original contours.

20. As expected, on December 12, 2002, the California Mining Board adopted an emergency regulation (§ 3704.1) (effective for 120 days) requiring "without exception" backfill of all pits and grading "to achieve the approximate original contours of the mined lands prior to mining activities." The Board's accompanying report expressly identified Glamis Imperial's pending plan of operation as the "emergency condition" justifying the regulation. Because mined overburden material expands (or "swells") by a factor of more than 30 percent, it is impossible to replace all such material back into metallic ore pits. Accordingly, to further assure that the Imperial Project could not proceed economically, the new California backfilling requirements mandate that all mined material that is not used to backfill the pit be graded (or removed) such that no material lies more than 25 feet above the original topography. Belying any rational justification for this extraordinary requirement, the recontouring obligation would actually increase dramatically the surface disturbance caused by mining operations – including covering of some of the alleged cultural resources the regulation is intended to protect.

21. Not content with just the administrative taking of Glamis Imperial's mineral property rights, on April 7, 2003, Governor Davis signed into law Senate Bill 22, which

established permanent backfill and grading requirements substantially equivalent to the emergency regulation, but limited to projects "located on, or [like the Imperial Project] within one mile of, any Native American sacred site, as defined . . . ." There was little doubt about the discriminatory and expropriatory purpose of this legislation, but Governor Davis nevertheless candidly proclaimed California's intent in his April 7, 2003 press release in which he stated that "the bill essentially stops the Glamis Gold Mine proposal in Imperial County." He added that the proposed mine "threatened to destroy a sacred site of the Quechan Indian Tribe's 'Trail of Dreams.'" Attached as Ex. A.

22. On April 10, 2003, the California Mining Board formally adopted the emergency regulations as final with only minor and inconsequential modification. These regulation only applied prospectively to mining operations or applications – like Glamis Imperial's – that remained pending on December 12, 2002. Glamis Imperial's plan of operation only remained "pending" on that date because of the illegal actions of the Department of Interior in failing to approve the plan in accordance with applicable law and regulation over the preceding several years.

23. The complete backfilling and site recontouring requirements mandated by the California measures adopted between December 12, 2002, and April 10, 2003, are extraordinary for metallic mineral mines in North America and the world. Because they are mandatory and non-discretionary, these requirements completely destroy the economic value of Glamis Imperial's significant investment in the mineral rights established – and validated by BLM – in the Imperial Project.

24. Prior to the adoption of the California backfilling mandates, the fair market value of the property interests owned by Glamis Imperial in the Imperial Project far exceeded the acquisition and development costs. Indeed, a discounted cash flow analysis prepared by BLM as part of the September 27, 2002 Mineral Report found the Imperial Project mining claims and mill sites to have a net present value of more than $61 million. To date, Glamis Imperial has been unlawfully prevented from mining the valuable and proven gold reserves contained in the Imperial Project. Moreover, Glamis Imperial has not received any compensation from the United States, including the State of California, for the taking of its valuable property rights in the mining claims and mill sites that comprise the Imperial Project.

Violations of Articles 1105 and 1110

25. Through the measures identified above, the United States has denied Glamis Imperial the minimum standard of treatment under international law (including full protection and security and fair and equitable treatment of its investment) guaranteed by Article 1105 and has expropriated Glamis Imperial's valuable mining property interests without providing prompt and effective compensation as guaranteed by Article 1110.

G. RELIEF SOUGHT AND DAMAGES CLAIMED

The Investor claims damages for the following:

1. A sum not less than U.S. $50 million in compensation for the damages caused by the United States' failure to accord Glamis the minimum standard of treatment and in expropriating its valuable mining property;

2. Costs associated with these proceedings, including all professional fees and disbursements;

3. Pre-award and post-award interest at a rate to be fixed by the Tribunal; and

4. Such further relief that counsel may advise and that the Tribunal may deem appropriate.

H. STATEMENT OF CLAIM

The investor will submit its memorial, including its statement of claim, pursuant to the briefing schedule established by the Tribunal pursuant to Article 22 of the UNCITRAL Rules of Arbitration.

I. APPOINTMENT OF ARBITRATORS

Pursuant to Article 1123 of NAFTA, the Investor and the Party have agreed on the number of arbitrators, which shall be three, and on the procedure for appointment. One arbitrator is to be appointed by each of the disputing parties and the third, which is the presiding arbitrator, shall be appointed by agreement of the disputing parties.

DATE OF ISSUE: December 9, 2003.

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/s/
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Press Release

OFFICE OF THE GOVERNOR

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FOR IMMEDIATE RELEASE
04/07/2003

GOVERNOR DAVIS SIGNS LEGISLATION TO STOP PROPOSED GOLD MINE NEAR "TRAIL OF DREAMS" SACRED SITE 4/7/2003

State Mining and Geology Board to also Adopt Statewide Regulations

SACRAMENTO

Governor Gray Davis today signed legislation that requires backfilling and restoration of a metallic mining site to pre-mining conditions if the proposed mine is near a sacred site. By requiring complete restoration of metallic mining sites, the bill essentially stops the Glamis Gold Mine proposal in Imperial County. The proposed mine threatened to destroy a sacred site of the Quechan Indian Tribe's "Trail of Dreams."

"Open-pit, cyanide gold mining cuts deep into the earth. This causes permanent scars on significant cultural and religious sites," Gov. Davis said. "This measure sends a message that California's sacred sites are more precious than gold."

The proposed Glamis Gold Mine would irreparably harm both ends of the Quechan's spiritual trail, the "Trail of Dreams." The Quechan Tribe, comprised of about 3,000 members, is the third largest land-based tribe in California. The tribe uses the site for religious, cultural and educational purposes.

SB 22, authored by Senator Byron Sher (D-Palo Alto), specifically addresses the controversial Glamis Gold Mine. Mining operators have been attempting to get a permit for an open-pit, cyanide gold mine on 1,500 acres of federal land. The reclamation and backfilling requirements of this legislation would make operating the Glamis Gold Mine cost prohibitive.

In addition to SB 22, the State Mining and Geology Board will require backfilling of all metallic mines in the future. This regulation will apply statewide, to new metal mines, which constitute only three percent of the industry.

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