

September 15, 2005

By Facsimile and E-mail

President Michael K. Young
Professor David D. Caron
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c/o Eloïse Obadia
Secretary of the Tribunal
International Centre for Settlement
of Investment Disputes
1818 H Street, N.W.
Washington, D.C. 20433

Re: *Glamis Gold Ltd. v. United States of America*

Dear Members of the Tribunal:

On behalf of respondent United States of America, and in accordance with Procedural Order No. 4 dated August 26, 2005, we respectfully submit that the Tribunal should grant the application for leave to file a non-disputing party submission, dated August 19, 2005, made by the Quechan Indian Nation.

Section B of the Statement of the NAFTA Free Trade Commission on Non-Disputing Party Participation (the "FTC Statement") provides, that in deciding whether to accept a submission of a non-disputing party:

[T]he Tribunal will consider, among other things, the extent to which:

- (a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
- (b) the non-disputing party submission would address matters within the scope of the dispute;
- (c) the non-disputing party has a significant interest in the arbitration; and

(d) there is a public interest in the subject-matter of the arbitration.¹

Consideration of these four factors supports acceptance of the Quechan Indian Nation's submission.

First, the Quechan Indian Nation offers a perspective, particular knowledge or insight that is different from that of the disputing parties. It addresses the issues in this case from the perspective of an American Indian Nation with historical, religious and cultural connections to the Imperial Project site. The Quechan Indian Nation represents that its viewpoints on the issues in this case differ from those of the disputing parties.² In particular, the Quechan Indian Nation has specific and unique expertise in the "cultural, social [and] religious value of the Indian Pass area" and can comment on the "severity of impacts . . . of the proposed mine to cultural resources, cultural landscape [and] context."³ Thus, its submission may assist the Tribunal in the determination of the issues related to the arbitration.

Second, the Quechan Indian Nation's submission addresses matters within the scope of this dispute. For example, it provides analysis of the legal framework at the federal and state levels designed to protect cultural resources and it discusses the specific cultural resource issues associated with the Imperial Project site. As is evident by the disputing parties' pleadings, cultural resource issues figure prominently in this case.

Third, it is clear from the content of its submission that the Quechan Indian Nation has a significant interest in the arbitration. The underlying facts of this case involve land that the Quechan Indian Nation considers sacred. The Quechan Indian Nation participated in the federal administrative permitting process for the Imperial Project, and it actively supported the California legislation and regulations that are the subject of Glamis's claim.

Finally, there is undoubtedly a public interest in this arbitration. Unlike a purely commercial arbitration, this case implicates core governmental functions. Glamis's claim implicates issues of government regulation, expropriation and State responsibility. Its challenge to the California legislation and regulations, in particular, implicate issues of considerable public interest.

¹ FTC Statement ¶ B(6), *available at* <http://www.state.gov/documents/organization/38791.pdf>.

² *See* Application for Leave to File a Non-Party Submission, Quechan Indian Nation at 3 (August 19, 2005).

³ *Id.* at 4.

Each of the FTC factors thus weighs in favor of granting leave to the Quechan Indian Nation to file a non-disputing party submission in this case. The United States respectfully submits, for the foregoing reasons, that the Tribunal should accept the submission.

Respectfully submitted,

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