In the Matter of Arbitration
Between:
GLAMIS GOLD, LTD.,

Claimant,

and

UNITED STATES OF AMERICA,

Respondent.

HEARING ON THE MERITS

Wednesday, August 15, 2007

The World Bank
1818 H Street, N.W
MC Building
Conference Room 13-121
Washington, D.C.

The hearing in the above-entitled matter came on, pursuant to notice, at 9:05 a.m. before:

MR. MICHAEL K. YOUNG, President

PROF. DAVID D. CARON, Arbitrator

MR. KENNETH D. HUBBARD, Arbitrator

Also Present:

MS. ELOÏSE OBADIA,
Secretary to the Tribunal

MS. LEAH D. HARHAY

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PRESIDENT YOUNG: Good morning. We are ready to commence the hearing again.

Today is, at least with respect to the morning session, not being simulcast in the adjoining room to the public, and just to remind the parties that, and that what we're discussing today, at least with respect to the cultural artifacts, is confidential.

Also, we will take our break 15 minutes early today, at 10:15 or earlier, if at the end of the day--end of the questioning we have--we are not yet at the 10:15 hour, whenever the two parties are done questioning this witness, which I understand to be the last witness, we'll be done; is that correct?

MR. GOURLEY: That's correct.

PRESIDENT YOUNG: Okay, thank you.

Mr. Gourley, you're calling your witness, which I presume, Ms. Menaker, you will want to ask a few questions, too, first? Thank you.

MS. MENAKER: Yes.

MR. GOURLEY: We are calling Dr. Cleland.
PRESIDENT YOUNG: Good morning, Dr. Cleland.

THE WITNESS: Good morning.

PRESIDENT YOUNG: We have been asking our witnesses to take an oath that I think is in front of you, if you would be kind enough to read that.

THE WITNESS: I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT YOUNG: Could you pull that microphone a bit closer and see if that--

MR. GOURLEY: It's essentially not on. The green light's not on.

THE WITNESS: The green light--the green light's on now. Okay.

PRESIDENT YOUNG: Thank you.

If you would read that again, please.

Thank you.

THE WITNESS: I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT YOUNG: Thank you very much.

MR. Gourley?

MR. GOURLEY: I cede to Ms. Menaker.

MS. MENAKER: Thank you.

DIRECT EXAMINATION

BY MS. MENAKER:

Q. Good morning, Dr. Cleland.

A. Good morning.
Q. Can you please state your name, your full name for the record.
A. James Harris Cleland.
Q. And could you briefly describe your educational background for the Tribunal.
A. Yes. I have a B.A. in anthropology from the University of Michigan, and M.A. and Ph.D. in anthropology from the University of Virginia.
Q. And can you briefly describe your professional qualifications.
A. Yes. I currently serve as Principal Archaeologist for the firm of Vida, Incorporated. I have approximately 30 years of archeological experience. I have worked on many projects that involve Section 106 and National Environmental Policy Act compliance.

Q. And as a factual witness in this proceeding, are you being compensated by the United States for the time you're spending testifying or for the time that you have spent preparing your witness statements or reviewing the work that you had previously done on the Imperial Project surveys?
A. No.
Q. And can you please describe for the Tribunal how you became involved in Glamis's Imperial Project.
A. Well, in the--I believe it was in the spring of 1997, my firm that I was with at that point, KEA Environmental, was connected by EMA Associates, and we
were asked if we would be interested in preparing a proposal on the Project, and we said, yes, we would. We did, and we were selected.

Q. So, you were selected to perform the cultural resource survey in 1997; is that correct?

A. Yes, that is correct.

Q. And did you--did you or your firm perform any additional survey work in relation to the Imperial Project?

A. Well, after we had finished the cultural resource report in late 1997, in the spring of 1998, we were asked to do some additional survey involving potential trail routes in the area of the mine in process.

Q. And is that the 1998 trails reconnaissance study that you're referring to?

A. Yes, it is.

Q. And what did--in your survey work, what did you conclude about the Imperial Project's potential impact on historic and cultural properties?

A. We identified a Historic District that was referred to as the Running Man/Indian Pass area of traditional cultural concern. It consisted of numerous cultural properties. We evaluated that district as eligible for the National Register both for its archeological informational potential, but also, and more importantly, really for the Native American traditional values that are represented at
And we also identified potential impacts to the Trail of Dreams, which is another cultural property, and those were, I guess, two of the key findings.

Q. Thank you.

PRESIDENT YOUNG: Mr. Gourley, your witness.

MR. GOURLEY: Thank you, Mr. President.

CROSS-EXAMINATION

BY MR. GOURLEY:

Q. Good morning, Dr. Cleland. I'm Alan Gourley, representing the Glamis Gold, Limited, company in this arbitration.

Let's start by looking at your supplemental declaration, the second declaration that you provided to the United States in March of 2007.

You have got a witness binder there. Hopefully those pages have not fallen out, although they look like they might have. At the back is--you will find your second declaration.

A. The final exhibit?

Q. Yeah, with a bunch of--

A. Supplemental declaration?

Q. With your indulgence.

(Pause.)
Q. If you'd take a look at Exhibits A, B, and C to that declaration--
A. Yes.
Q. --and identify each of those for the record, please.
A. Well, Exhibit A appears to be a figure out of our report, a trail map by Malcolm Rogers, date unknown.
Q. Okay.
A. And it was based on work that Lori Pendleton had done some years previous to that.
Q. Does anything in this map identify the Xam Kwatcan Trail or any connection between the trails that are depicted here in the Xam Kwatcan Trail network?
A. The question is, does the map identify anything about the Xam Kwatcan Trail?
Q. Correct.
A. The map does not reference the Xam Kwatcan Trail, no.
Q. If you take a look at Exhibit B, can you recall what that map--where it came from and what it depicts.
A. Well, this map is from a publication, "Hohokam and Patayan," and it's an appendix to that publication by Michael Waters, and it's a reproduction of a map that Malcolm Rogers originally put together.
Q. And did anything about this map or the book it was contained in associate the trails that are depicted here with the Xam Kwatcan Trail network?
A. I don't believe it uses those terms, but I believe that some of the trails here might be part of that network.
Q. And if you would look at Exhibit C, do you recall the origin of this map?
A. It's another map that was reproduced in our report for the Project, and it's based on a map we had received from or information we had received from the Imperial Valley College Museum.
Q. And anything on this map or the materials that you used to prepare this map or your group used to prepare this map, identify these trails as belonging to the Xam Kwatcan Trail network?
A. I don't recall whether any of the information—-it's possible that some of the site forms that were used in the compilation of this may have referenced that term—I don't really know.
Q. Okay. You don't remember?
A. I don't remember.
Q. And when you went to the Imperial Project for the first time, did you have any awareness of any of the trails there belonging to the Xam Kwatcan Trail network?
A. Any of the specific trails in the Project
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area before I started the Project?
Q. That's correct.
A. Well, I was aware of the Xam Kwatcan Trail and that it was in that general area, but I had no direct knowledge about the trails in that area prior to my starting that work.
Q. Now, if you look back at your supplemental declaration, paragraphs five through seven, if you would like to take a moment and read those to yourself to refresh your--the supplemental declaration which was right before Exhibit A there. You have put a lot of material into the record. I apologize.
A. And which paragraphs do you want me to look at?
Q. Five through seven.
(Witness reviews document.)
A. Yes.
Q. Now, is there anything in those three paragraphs of your supplemental declaration, Dr. Cleland, that references the Xam Kwatcan Trail or any connection between the Xam Kwatcan Trail network and the three maps that were Exhibits A, B, and C of your declaration?
A. Well, the declaration doesn't reference the Xam Kwatcan Trail.
Q. All right. Now, let's take a look at Exhibit 4, what we will call Cleland Exhibit 4, which is, sadly, at the beginning of the book.

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A. Tab 4?
Q. Yeah, please.
Are you familiar with a 1986 Woods study entitled: "Archaeology of Creation"?
A. Yes, I am.

Q. In fact, it was among the background materials you relied on in doing your work at the Imperial Project, wasn't it?
A. I believe so.
Q. Now, if you would take a look at map three, which is the next page in this exhibit--
A. Map three?
Q. You've gone one too many.
A. Okay.
Q. Do you see that map?
A. Yes, I do.
Q. And this is Dr. Woods's depiction of myth-related locales in that study?
A. Yes, that's correct.
Q. And do you see the trail that runs from Pilot Knob upwards towards Blythe and Avikwaame and is marked as seven?
A. Yes, I see that.
Q. And do you know whether that is the--Dr. Woods's depiction of a route of the Xam Kwatcan Trail?
A. Yes, and I think my declaration clarifies
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09:17:32 1 that Dr. Woods and his colleagues were examining the
2 very southern end of that. I don’t believe they were
3 trying to map in detail all the locations of the Xam
4 Kwatcan Trail further north.
5 Q. Let’s go to Exhibit 1 of this.
6 Now, you have stated, have you not,
7 Dr. Cleland, that nothing in the three paragraphs of
8 your declaration or the three maps that are associated
9 with it identified the trail segments at the Imperial
10 project with the Xam Kwatcan Trail network; is that
11 correct?
12 A. Would you repeat that question again.
13 Q. You have identified, have you not,
14 Dr. Cleland, that nothing in the three paragraphs of
15 your declaration, five through seven, and nothing in
16 the three Exhibits A through C, the maps, identify the
17 trail segments depicted on those maps as associated
18 with the Xam Kwatcan Trail; is that correct?
19 A. Yeah, I don’t have any information that any
20 of those sources specifically reference that term
21 Q. So, for the United States here to suggest
22 that Glamis had erroneously characterized the Woods

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09:18:51 1 map as the only existing map of the Xam Kwatcan Trail
2 at the time it made its initial investment in the
3 Imperial Project is an exaggeration of your
 supplemental declaration, which is cited as a reference for that point; isn't that correct?
A. Well, I don't really understand. I mean, you've given me one sentence possibly taken out of context, so that I haven't reviewed all of the Government's filings, so I'm not quite sure what you're trying to get from me here.
Q. I'm just trying to get from you as to whether your declaration--and we can broaden it--to whether the testimony you gave the Government supports the assertion made by the Government that Glamis had erroneously characterized the Woods map as the only existing map of the Xam Kwatcan Trail at the time of its initial investment.
Have you ever made such testimony in this case?
A. I really don't know whether Glamis characterized it as the only map, and I really don't know what the Government's response to that was. It's not something that I have any direct knowledge of.
Q. Thank you, Dr. Cleland.
A. Boma Johnson is an archaeologist who has studied the trail system and other archeological sites in Imperial County and eastern California deserts for a number of years.
Q. In fact, you've referred to them as generally regarded as an authority on the Xam Kwatcan Trail
network in the southwestern archeological community; is that correct?

A. I think that's fair to say, yes.

Q. And if you turn behind you, that map that's on the big board, is that a map that you obtained from Boma Johnson of the Xam Kwatcan Trail network?

A. Yes, it is.

Q. Okay. If we could have Exhibit 2--thank you. We can try to do it on the big one. You might have to stand up and point it here. What I'm trying to do is inform the Tribunal, if you look at the map, and there's a--the one on your far right, which is well east of the Colorado River.

A. Yes, there is one there to the east of the river.

Q. And is that part of the Xam Kwatcan Trail network?

A. I think Boma Johnson believes it is.

Q. Okay. Do you believe it is?

A. I don't have any basis for judging that. I have never looked at that part of the trail.

Q. All right. If you look at the part where below Blythe it splits into two segments, the eastern one, the western one, on the west side of the river.

A. Yes.

Q. And you see one segment where the word Xam is that's running along the river?

A. Yes.
Q. And one segment which is further west; is that correct?
A. Yes.
Q. And the one that runs along the river, was there a name for that segment?
A. Well, there is no name on the Boma Johnson map.

Q. But in the literature, is there a name?
A. My knowledge of the name of that is based on information that was provided by the Quechan during our consultation process on the Imperial Mine Project, and the Quechan referred to that trail as the Medicine Trail.
Q. Okay. Now, the western branch, is the western branch the Trail of Dreams?
A. The Quechan had a map that showed the western branch of--they didn't show all the detail that's on the Boma Johnson map. They showed two major trails that they had concerns about, one being the Trail of Dreams and the other one being the Medicine Trail, and the Medicine Trail was the one further east along the river corridor, and the western trail was the one they called the Trail of Dreams.
Q. Now, the Xam Kwatcan map and the Xam Kwatcan--well, let's strike that.

The Xam Kwatcan Trail network, what is its significance in the Quechan native culture?
A. Well, the Quechan--the Quechan Creation story
includes reference to the creation mountain, which is at the Avikwaame at the north, and they believe the various tribes of Yuman-speaking groups of the Colorado River were all created there and then descended the mountain and went to the various places that became their traditional territories. And that the Quechan themselves followed a series of trails which are referred to in the literature as the Xam Kwatan Trail, and they subsequently, after they became--came to their current territory, they used the trails both for physical pilgrimage back to the creation and also for spiritual journeys along the trails where they could go back through history and learn from their history to help address the problems that they face in their daily lives.

Q. Thank you.

Now, if you look at the Bona Johnson map and you follow that western branch down and it starts to break up into multiple trails; is that correct?

A. Yes, that's correct.

Q. And if you take the furthest west one that still heads down towards Pilot Knob at the base--

A. Yes.

Q. --is that where these trails are headed, the
idea being to go from Avikwaame to Pilot Knob?

A. Yes, that's correct.

Q. Now, that furthest west one that loops and then curls down back towards--I was going to try to point--

PRESIDENT YOUNG: We actually have a hand-held microphone if you're willing to hold that while you do this. Thank you so much.

THE WITNESS: Okay.

BY MR. GOURLEY:

Q. So, if you follow the western branch down and as it curls towards Pilot Knob--

A. Well, I mean, it branches in--there is at least three different routes that could go down to Pilot Knob.

And I must say that the map that the Quechan had was not at the scale that I could tell for sure which one of those they had indicated, based on their map, was the Trail of Dreams.

Q. But of that western branch of the Xam Kwatcan that comes down to Pilot Knob--

A. Well, Pilot Knob there--at this point at Pilot Knob there is two routes or possibly three, but one goes west of the Cargo Muchacho, and the other one goes east of the Cargo Muchacho Mountains.

Q. And the one that goes west of the Cargo Muchacho Mountains, is that roughly consistent with the Woods depiction in map three of the 1986 Woods

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study?

A. I don't know. I would have to look at the Woods map.

Q. Could we bring up Exhibit 4, map three, please.

A. Am I supposed to look at this?

Q. You can look at the big screen, if you like.

A. Okay.

Well, it looks like Woods has mapped it to the west of the Cargo Muchacho Mountains.

Q. So, it's at least consistent up through there?

A. I mean, it's somewhat consistent, yes.

Q. Thank you.

A. Are we done with this for now?

Q. For the moment, yes. Thank you.

A. Okay.

Q. Now, looking still at map three, the Woods depiction of at least one segment of the Xam Kwatcan, you notice that on this--

A. Could you refer me back to the--

Q. Oh, I'm sorry. It's Exhibit 4, the second page of Exhibit 4.

Now, do you see the various sites that he has marked as myth-related locales, the numbered items?

A. Yes.

Q. And if you looked at number nine, you can look at next page, that's identified as Picacho Peak?
A. Okay. It looks approximately correct.

Q. And did you understand that to be a sacred site to the Quechan Native Americans?

A. Yes, I do.

Q. Now, do you see on this map--can you tell on this map approximately where the Imperial Project was?

A. I honestly can't for sure.

Q. Well, let's--

A. But I would--I mean, it's northwest of...
20 would pass; is that correct?
21 A. Yes, we did cultural resource studies of the
22 North Baja route.

09:31:01 Q. And among those was--were ethnographic
2 contributions from Dr. Woods?
3 A. That's correct.
4 Q. And Boma Johnson was involved in that
5 project, was he not?
6 A. Yes, he was.
7 Q. And you wrote up a historic properties
8 treatment plan for that project; is that correct?
9 A. That is correct, yes.
10 Q. And you also prepared a document called, "A
11 View Across the Cultural Landscape of the Lower
12 Colorado Desert," which was the overall Cultural
13 Resource Study; is that correct?
14 A. Yes, I was one of the authors.
15 Q. Along with Rebecca Apple?
16 A. Yes, correct.
17 Q. Who worked in your firm?
18 A. That's correct.
19 Q. In the same firm that you do?
20 A. Yes.
21 Q. Now, when you undertook that project, were
22 you aware that the pipeline would be passing through
areas where the Xam Kwâtc'an Trail network also was passing?

A. Yeah. I knew that it would be in an area that would contain trails that may be part of the network, yes.

Q. And, in fact, you concluded in your report that many of the north-south trail segments that you did find and record as part of that analysis were probably associated with the Xam Kwâtc'an Trail network; isn't that right?

A. I'm not sure which report you're referring to.

Q. The 2003 Cultural Resource Study.

A. "The View Across the Cultural Landscape"?

Q. Correct.

A. Actually, I don't remember drawing that specific conclusion. Could you--I don't remember concluding that any of the trail segments that we specifically studied were part of the--clearly part of the Xam Kwâtc'an Trail, that we may have made that conclusion. I guess I'd have to--I'd like to be pointed to the specific place where we made that conclusion, if we did, indeed, do that.

Q. I will hand you a copy to see if that refreshes your recollection.

A. Okay.

MS. MENAKER: Is this in the witness binders?
MR. GOURLEY: No, it's not.

THE WITNESS: Okay. This is in the cultural context, discussing the various major trail systems.

BY MR. GOURLEY:

Q. I'm just asking you whether looking at that refreshes your recollection, Dr. Cleland.

A. Okay. Well, there is a statement here that says, "Many of the north-south trails recorded as part of the pipeline project are probably associated with the Xam Kwatcan trail network."

Q. Does that refresh your recollection on that point?

A. Yes.

Q. Thank you.

Now, during that process of doing the cultural resource survey and the ethnographic studies, were you involved with--did you engage in consultations with the various Native American groups that were--that would be affected by the route of the North Baja Pipeline?

A. Yes, we did consult with the Native Americans.

Q. And, in fact, didn't those groups indicate to you that the entire project area was part of what they considered their cultural landscape and should be analyzed as the whole, not in individual parts?

A. Yes, they expressed a concern for their--all the sites within their traditional tribal territory
and that they're all interconnected in some way.

Q. And that's the same—that's consistent with what the Quechan Native American Tribe told you during your survey of the Imperial Project Site; isn't that correct?

A. Yes, they have said that on numerous projects. They've also provided additional information that's relevant to both projects, too.

Q. Now, as part of the North Baja Pipeline project, didn't you nominate some trail segments and other identified features for registry on the National Historic Register?

A. We prepared a nomination form for one trail.

Q. Was that Trail 398?

A. That was Imperial 398, yes.

Q. And, in fact, it was one of the mitigation measures for the project to make that nomination; isn't that correct?

A. Yes, that's correct.

Q. And part of the reason for that mitigation project—mitigation was that the trail would bisect—the pipeline would bisect that trail; is that correct?

A. Well, at 398, the pipeline was totally in previous disturbed area.

Q. And in the—meaning that the segment—it didn't actually affect a current part of the segment?

A. Right. There was no extant part of the trail
Q. But there were--sorry.

There were extant segments on either side of that; is that correct?

A. I believe it was on either side. I'd have to look at the site form for sure, but I believe it was.

09:36:36 Q. Now, that trail occurred at approximately Mile Post 50--between Mile Post 50 and Mile Post 51; is that correct? Do you recall that?

A. No, I don't think so. I believe is between Mile Post 50 and 51. I believe that 398 is some distance; I would have to look at some maps to be sure, but that's my recollection.

Q. But 396 and 398 intersects it; isn't that correct?

A. I'm not sure that they do, no.

Q. Not in the Project area, but outside.

A. I don't have a recollection about whether they intersect.

Q. But 396 was also an important trail segment that you located and identified as part of the cultural resource survey; isn't that correct?

A. Yes, it was one of the more--it was one of the trails that we identified, yes.

And it was considered significant, and we did mitigation on that trail.

Q. But on that trail you obliterated--the
pipeline obliterated 50 meters of the trail; isn't that correct?
A. Yes, the pipeline did destroy 50 meters at a place that had been previously disturbed. We were following a corridor.
Q. Are you sure about that, Dr. Cleland?
A. I'm pretty sure, yes.
Q. Would it surprise you to know that your report says that the site was disturbed outside the Project area by a transmission line, but not within the Project area?
A. That's what I'm saying. The site had been previously disturbed outside the Project area, but we did disturb parts of the trail in the Project, yes.
Q. And among--some of the things that made these trail segments most significant was that they had various artifacts, cultural material associated with them isn't that correct?
A. Yeah, but there was a huge difference between 398 and 396 in terms of the amount of associated material. 398 had many, many associated features,
whereas--398 had very many associated features, whereas 396 had very few. No--in the areas that we studied, no features that appeared to have ceremonial
Q. And some of those ceremonial features were things like cairns, rock alignments, prayer circles?
A. Those kinds of things on 398, yes.
Q. Including spirit breaks?
A. I don't recall if there were spirit breaks on 398.
Q. With your indulgence.
(Pause.)
Q. If we looked at Exhibit 10, please, and you see this trail that runs right up to the Baja pipeline and stops?
A. Well, I see the photo, and it looks like it could be a trail. I wouldn't dispute that it's a trail, but I couldn't verify for sure that it's a trail based on the photograph alone.
Q. And how would you go about verifying it?
A. I would inspect it on the ground.
Q. Because you're looking to see that, in fact, it reached the subsurface strata and that the rocks had been moved in prehistorically, not currently.
A. Trail identification is difficult on the desert. There's game trails, there's trails created by off-road vehicles that are sometimes mistaken for prehistoric trails. I don't dispute that this is possibly 396. I don't know.
Q. Now, another part of the pipeline a little further up around Mile Post 28 involved the Palo Verde
Point and Palo Verde Peak; is that right?

A. Yes, that's correct.

Q. And there were--that was, in fact, one of the most significant cultural areas that the pipeline came to; is that right?

A. Yes.

Q. Now, in fact, based on Mr. Johnson's Boma Johnson's map, that Palo Verde Hills area is where the two segments of the Xam Kwatscan Trail come together?

A. Yeah, this map has them coming together a bit just to the north of Palo Verde Point.

Q. And Palo Verde Point is on the north or the south of the Palo Verde Hills?

A. My understanding, Palo Verde Point is the projection of Palo Verde Hills under the Colorado River flood plain.

Q. So, on the south end?

A. The Palo Verde Point would be south of where those--Boma depicts those trails coming together, yes.

Q. So, in essence, they're going around either side of Palo Verde Point; is that right?

A. Well, the way it's depicted on the map, I guess you could say that.

Q. Do you recall seeing significant--did you walk that area of the trail--

A. I walked part of that area with Boma actually. I know exactly where the trail that he considers part of the Xam Kwatscan is on the ground, at
least he showed it to me.

Q. And did you recall seeing other significant trail segments in that area?

A. Yes. There's other trails in that area that are significant, yes.

Q. Now, we have another picture, if you would look to the third picture in this group which was taken near that area.

A. Well, let's see. I think I'm looking at--I'm looking at a different picture, actually. Which one are we looking at?

Q. It's the third one.

A. The third one, okay.

I'm sorry, I would like to amend my previous comments. I'm not sure which trail I'm looking at here, but actually it looks familiar enough to say it's probably one of the trails that Boma thinks is part of the Xam Kwatcan Trail, yes.

Q. Now, going back to the picture you were looking at that you said was familiar to you, the one right before this in your book--

A. Yes.

Q. --do you recall what--this picture is--we
have heard testimony—you weren't—unfortunately

weren't able to be here with the rest of us since
Sunday, but we heard testimony that this picture was
taken standing on the Baja Pipeline looking to the
Palo Verde Hills.

Do you recognize that trail in the background
or that item in the background?
A. Yes, I do.
Q. Can you tell the Tribunal what that is.
A. That's what Boma Johnson refers to as a
summit path. It's a trail that has been cut straight
up a fairly steep hill. At the top of the hill, there
is a major cairn. The trail bifurcates and goes
around and creates a complete circle of the cairn.
And then from there, there is a very short
trail that marks a spot where you can view Palo Verde
Peak quite well from
Q. And was that considered a very sacred spot
for the Native Americans?
A. Well, you know, I don't know what Boma might
base that judgment on. Based on the archeological
information alone, I would say that it probably was,
yes, but I'm not aware of any specific ethnographic

references to that site.
Q. So, you're not aware of the ethnographic references that would tie that to the Xam Kwatcan Trail as a resting spot or one of the big houses?

A. The--Boma's--from my recollection of what Boma has told me, he thinks the big house, the resting house, was on Palo Verde Peak, not at this particular location, but I could be wrong about that.

We are talking about a location, by the way, that's quite some distance from the pipeline route.

Q. However, it is--the pipeline runs between it and the Xam Kwatcan Trail network, does it not?

A. Well, that's a little difficult because the trail that Boma represents as being part of the Xam Kwatcan Trail network terminates just prior to where it comes to the pipeline route; and, to my knowledge, I haven't seen anything on the other side of the pipe--it goes down into the flood plain there, according to what the Native Americans told me, and that there is no extent parts of the trail left north of there right between Blythe and through the valley up in the Palo Verde Valley.

Q. Right. There is no extant trails, but the trail network, as believed by the Native Americans, is that it runs from Pilot Knob to Avikwame.

A. Yes, that's correct.

Q. But, in fact, along that 100-mile stretch, there are numerous bisecting roads, power lines, and other disturbed features, so that there are large
8 segments are no longer available to see; is that correct?
9 A. That is correct, yes.
10 Q. Now, in your consultations with the Native Americans during the cultural resource survey, in fact, a number of the Native American tribes raised concerns with the Baja Pipeline; isn't that correct?
11 A. Yes. They had concerns for sites along the area, yes.
12 Q. And, in fact, the Mohave Tribe raised concerns with both the physical and spiritual aspects of their trail network being interrupted by the Baja Pipeline; isn't that correct?
13 A. That could be. I haven't reviewed that information recently.

09:48:46 Q. Do you recall whether the Mohave Tribe felt that severing the trails with mechanical equipment would have an adverse effect on the spiritual and geographical continuity of these important cultural resources?
6 A. That sounds like something they might have said.
8 Q. Now, do you recall that, in fact, the Mohave Tribe specifically requested boring under trail segments rather than plowing through them with the pipeline?
10 A. Yes, we did consider the potential possibility of boring under trails. We consulted with
the pipeline company about that, and we’ve actually witnessed bore pits that are necessary to bore under trails, and you need a really rather large pit on either side of the trail, and we felt the environmental degradation that would result from boring would be--would override any benefit of cutting--of not cutting through the trail.

So, we opted instead to avoid trails wherever possible.

Q. But, in fact, you couldn't avoid all the trails?
A. That's true, we could not avoid all the trail segments.

Q. And the mitigation that was adopted when you could not avoid trail segments was to record and map where those trail segments were and the features along them isn't that right?
A. That was part of the mitigation, yes.

Q. And that was, in fact, done, was it not?
A. Yes, that's true.

Q. And isn't it also true that the Quechan expressed objection to the Baja Pipeline in terms of the impact on their cultural landscape?
A. They expressed concerns about impacts to the cultural resources that are part of the entire landscape that they’re concerned about.

Q. Including to the continuity of the Xam Kwatcan Trail; isn't that correct?
That's possible. I'm not real--I haven't reviewed all the background information on the North Baja Pipeline in the last couple of years, so I'm not sure exactly what they said with regards to the Xam Kwatcan. I recollect rather clearly that they had concerns for trails.

Q. And didn't they also express the concern that they would rather have the Baja Pipeline located elsewhere?

A. Yes, they did.

Q. Now, are you aware that there, in June of 2007, a final EIS/EIR was published recommending as the preferred alternative a second parallel pipeline?

A. Did you say a draft environmental impact--

Q. A final.

A. A final? No, I'm not specifically aware of that. I haven't reviewed that document.

Q. Have you been involved at all with cultural resource surveying for that second parallel project?

A. Yes, we've conducted cultural resource survey for that project. We did not prepare the Environmental Impact Statement, however.

Q. And does it have the same--that would add another--strike that.

The original pipeline cuts a swath of at
09:52:22 1 least 40 feet across, something like that; is that right?
2
3      A. The original pipeline?
4      Q. Yes.
5      A. I believe it's wider in some areas than that.
6      Q. And that was for a 30-inch pipe?
7      A. I don't remember the exact diameter of the
8 pipe, but 30 could be correct.
9      Q. Are you aware that the second pipe is likely
10 to be 48 inches in diameter?
11      A. Yes, I know the second pipe is proposed to be
12 bigger.
13      Q. And is the swathe it cuts bigger as well?
14      A. Well, the swathe it cuts is going to overlap
15 the previous swathe, so actually the amount of
16 additional disturbance is less generally than the
17 original project.
18      Q. But it still expands--
19      A. It does expand the impact area, yes.
20      Q. And one of the ways that you mitigated the
21 cultural resources that had been identified in the
22 Project area was location of the pipeline so that when

09:53:32 1 it cut across a cultural resource site, it only
2 disturbed as few of the artifacts that had been found
3 as possible; isn't that right?
4      A. Yeah. There are several ways that you can
5 avoid in siting a pipeline and constructing a
pipeline. One is to bend the pipe. Another way is to
shrink the temporary work space to avoid impacts.

Q. And now that the pipeline expands, some of
those prior avoidances can no longer be avoided; isn't
that right?

A. Yeah, there are some places where there would
be additional impact to some sites.

Q. Dr. Cleland, what's a traditional cultural
property?

A. A traditional cultural property is a place
where traditional groups practice their traditional
culture.

Q. And isn't the under the National Register
Bulletin 38, "Guidelines for Evaluating and
Documenting Traditional Cultural Properties," isn't
the method for defining a cultural, traditional
cultural property through consultations with

knowledgeable members of the community?

A. Yes, that's true.

Q. And that was done at the Imperial Project,
wasn't it?

A. Yes, it was.

Q. And during that process, the Quechan
repeatedly indicated that it was the entire area from
Pilot Knob to Avikwaame that was their traditional
cultural property; isn't that correct?

A. Well, I think you have to understand that the
Quechan don't use the term "traditional cultural
They expressed deep concerns for a cultural landscape that extends from Pilot Knob to Avikwaame. But I might add, if I may, that they also expressed concerns for specific places within that landscape, so there's at least two levels of potential impact, two levels of traditional cultural properties, if you will, a regional level and a more specific localized area.

Q. And where does the term "area of traditional cultural concern" come from?

A. To my knowledge, the only use of that particular term was in the Imperial Mine Project.

Q. And did you make up that term?

A. I don't recall where, you know, the real genesis, you know, who suggested that term. The idea of the term is to get to that local level of concern.

Q. But in drawing the boundaries around the Imperial Project, you looked at the Running Man site to the south of the Project area, and the Indian Pass petroglyphs to the north of the project area, and simply drew lines around that; isn't that right?

A. Well, we did a pretty extensive study, actually. We did a record search to identify all the known sites within that area. We made an attempt to include all of the sites in that area, that localized area, that had recorded ceremonial features because...
that was the theme of the district that we were looking at. And we, of course, did the intensive survey of the mine and process area. We consulted with Native Americans, and we did transect surveys outside of the mining process there.

So, we had really quite extensive information for purposes of identifying the district.

Q. But the boundaries of the district for which you were to do your survey were drawn before you did the survey; is that right?

A. I don't think that is correct. What did you just say?

Q. The boundaries in which you were to do your survey were drawn before you actually did the survey; isn't that correct?

A. The on-the-ground survey was predetermined before we did our survey, and—but we were told we needed to do a very broadbrush literature review of sort of that entire region because of the Native American concerns for the region. They wanted to see something that was integrated that showed how all their sites fit together into something bigger.

Q. Now, there's been a suggestion that the motivation for drawing this circle around the Imperial Project was to save Glamis money.

Now, when Ms. Menaker was questioning you, you indicated that you made a proposal—your firm made
a proposal to undergo a project, this cultural survey, at the Imperial Project; is that right?

Q. And if you would—that proposal was in response to a statement of work; is that right?

A. Well, you know, I really don’t recall specifically, but if you have a statement of work here, I would be happy to review it.

Q. Funny you should mention that.

If you look at your initial declaration from September of 2006, and you see paragraph—

A. Which exhibit is that?

Q. It’s right after the numbered exhibits. You will see Cleland—you have to pass those—

A. Okay. Counter-Memorial—

Q. There you go.

A. Okay.

Q. And you look at paragraph six of your declaration, you see that it identifies Exhibit A as your scope of work?

A. Yes.

Q. Is that testimony truthful?
A. It's Exhibit A.

Yeah, I guess I did review this as I prepared my testimony.

Q. Okay. Now, we can pull this one up onto the screen, if you look over to task D on the second page. It's Exhibit 8.

You see task D there?

A. Yes.

Q. And you see where it says that part of that task is features—"Features associated with the trails and trail segments shall be analyzed in context of the trail system and the trails themselves to be placed within the context of the existing trail system of southeastern Imperial County, from Pilot Knob to Blythe and East Mesa to Yuma."

A. Yes, I see that.

Q. Now, did you ever talk to any Glamis representatives about saving them money by not undertaking such an analysis of integrating these trail segments with the broader trail segments throughout the region?

A. Well, I think we did. I mean, we tried to respond to that item in the statement of work through the compilation of the data on the previously recorded trails in the region. So, that's how we read that.

So, we never talked to Glamis about saving them money in that regard. We went ahead and did that.
Q. And part of that was to analyze the significance of those trails in the Project area with the existing trail system in southeastern Imperial County?

A. Could you repeat that?

Q. Isn't it true, Dr. Cleland, that part of this requirement of task D was to analyze the trail segments located within the Imperial Project system in terms of the existing trail system of southeastern Imperial County?

A. Yes, and I think we did that.

Q. And that--so, you weren't saving Glamis any money by looking at this in terms of the trail systems of southeastern Imperial County?

A. Right.

If I may, my understanding of the issue with expanding the scope beyond what was in the statement of work had to do with whether we would try to study a traditional cultural property that expanded and extended throughout not only Imperial County, but Riverside County and actually into Nevada as well.

So, that was the question as to whether we would try to apply the National Register Criteria in Bulletin 38 to a regional traditional cultural property of that magnitude.

Q. And Bulletin 38 requires you to consult with the knowledgeable members of the community?

A. Yes, and we did that.
Q. It does not require a pedestrian survey of the entire--

A. No, and I don't think anybody, even to save--even in the discussions of saving Glamis money that we were looking at a complete pedestrian survey of that entire area, no.

Q. And who did you speak with at Glamis about saving them money in this regard?

A. Well, I don't recall speaking to Glamis about that at all. I do recall a discussion following a meeting we had with the California SHPO, and I believe Glamis had a--I'm not sure that Glamis had a representative at that meeting or not, but I believe Dwight Carey was there from the EMA, and the issue was raised, well, if we were to study that, that would be a huge study.

Q. So, you have no personal knowledge of anyone approaching Glamis to save them money by restricting the area that would be reviewed for the pedestrian survey, do you?

A. Yeah. Once again, we weren't talking about a pedestrian survey when we were having those discussions, but I don't have any knowledge. I had very few direct dealings with Glamis. Most of that was done by other parties. So, I mean, Glamis attended various meetings that I was at, but I wasn't taking direction from Glamis or providing any kind of client interface with Glamis.
Q. So, you have no personal knowledge,

A. I don't have any direct knowledge of that, but my understanding is that Glamis was reviewing the documents that we were producing, and I was in close coordination with Dwight Carey, who was in fairly close coordination with Glamis. So, I believe that they were aware of the ATCC concept and the Historic District concept.

Q. Do you know whether Glamis had anyone on their payroll who was familiar with the ATCC concept or National Register Bulletin 38 or the appropriate process for identifying and analyzing the traditional cultural property?

A. To--

Q. Do you have any knowledge of anyone at Glamis who was aware of the ATCC concept, the National Register Bulletin 38, or how that bulletin instructs the identification and evaluation of traditional cultural properties?

A. Well, they didn't have a cultural resource
expert on staff, but they did have representatives
that were involved in a lot of the discussions, and I
don't recall specifically, you know, if they
represent, you know--which discussions the
representative was at and which he wasn't.

Q. And you don't know whether they, even if they
had heard this information, would know anything about
what it meant, whether it was appropriate or not, do
you?
A. I guess I don't have any specific knowledge
about how Glamis made its decisions.

Q. Now, at the Imperial Project, as you were
evaluating the various trail segments, there was
significant confusion, was there not, Dr. Cleland, as
to what parts of the segments were associated with the
Trail of Dreams or the Xam Kwatcan Trail?
A. There was some confusion in the minds of
myself and some of my staff as to which trails
were being referred to at first, yes, but I don't
think there was any confusion in the minds of the
Native Americans. They were quite specific about

where their concerns were.

Q. However, not very specific at the--while you
were doing your fieldwork?
A. Oh, no, they were very specific during the
fieldwork. They pointed to a trail on the ground and
said, "This is the Trail of Dreams."

Q. At what point in time was that?
A. It was during the fieldwork during the summer of 1997 at some point.

Q. And was that at the Running Man site?

A. Well, my recollection is--and we are talking about things that happened 10 years ago--but my recollection is it was both at the Running Man site, and then again it was at the trail that we called F-4, I believe, in the mining process area, and I think that they may have also made that--used that term with regards to the Trail 192-T.

Q. And--but you say in the summer when you did your fieldwork, which was between June and August of 1997; is that right?

A. Yes.

Q. And yet, in October 1997, there is a draft Cultural Resource Study in which you say you can't tell which of the two trails, 5359 or 5360, was associated with the Trail of Dreams; isn't that right?

A. I don't think that's exactly the words that were in the--in that document.

Q. Should we review them?

A. Sure.

Q. Let's take a look at Exhibit 11.

A. I'm not sure I have Exhibit 11. Can you help me?

Q. If you turn to the second page--

A. Page 295?

Q. --295 of the report, and you see that--we
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14 will highlight it up here, the fourth paragraph.
15 Would you read that first sentence into the
16 record for us, please.
17 A. "The exact routes of the Trail of Dreams and
18 the Medicine Trail have not been ascertained in the
19 field or on topographic maps."
20 Q. And if you go down to the bottom - actually,
21 why don't you read the whole paragraph into the
22 record.

10:11:39 1 A. Starting again at the top: "The exact routes
2 of the Trail of Dreams and the Medicine Trail have not
3 been ascertained in the field or on topographic maps.
4 The Quechan maintain a schematic map of the routes
5 that they have stated -- and have stated that the Trail
6 of Dreams passes through the Indian Pass - Running Man
7 ATCC. They have not indicated the Project would
8 affect the Medicine Trail, the route which is well to
9 the east. The two major trails converge at the
10 Running Man site. Rogers called one of these the
11 Black Mesa Trail which, according to Jay von Werlhof,
12 runs from Pilot Knob to Indian Pass. This trail
13 crosses the major spirit break at the Running Man site
14 and proceeds to Indian Pass and thus to the Colorado
15 River. The other trail, called by Rogers the Mohave
16 Trail, or the Mohave War Trail, Imperial CA Imperial
17 5360, runs from Yuma to Palo Verde near Blythe
18 according to von Werlhof personal communication 1997.
19 It crosses the Chocolate Mountains near State Route 78
and does not intersect the Project and mine process area at all. Both trials provide access to the Colorado River corridor; thus, either could qualify as the Trail of Dreams. The Black Mesa Trail, however, reaches the Colorado well south of Blythe. Logically, the trail called the 'Mohave Trail' by Rogers more closely fits the description of the adjoining--description of adjoining the Medicine Trail at Blythe. Clearly, more work is necessary in relating Quechan trails to extant trail segments and topographic features. The Quechan have stated that they could assist in doing this in the field."

Q. Thank you.

So, as of October 1997, there was still some confusion in the cultural resource survey team's minds as to which trails was associated with the Trail of Dreams; is that correct?

A. Well, I think the paragraph clearly says that the Indians said it was going through the mine process area, that some of--yes, our team was somewhat confused by that assertion in relation to some previous understandings about the trail system.

Q. Thank you.

MR. GOURLEY: Perhaps this is where you--I can keep going, but it's up to you, Mr. President.
PRESIDENT YOUNG: Thank you. Why don't we--we will break at this point and reconvene at 11--10:45. Thank you.

I would remind counsel again not to speak with the witness about the case during the break. Thank you.

(Brief recess.)

PRESIDENT YOUNG: We are ready to recommence the hearing.

Mr. Gourley.

MR. GOURLEY: Thank you, Mr. President.

BY MR. GOURLEY:

Q. Dr. Cleland, when we left, we were talking about the difficulty your team was facing in trying to ascertain which trial segments in the site were of concern to the Quechan Native Americans and associated with the Trail of Dreams segment of the Xam Kwatcan Trail network; is that right?

A. Right.

And if I may, I'd like to clarify that the first sentence of the paragraph that we just read, "The exact routes of the Trail of Dreams and the Medicine Trail have not been ascertained in the field or on topographic maps," that's referring to the entire routes of the trails, so I don't think there is any contradiction between that and my testimony, that the Indians had shown a place in the field where there...
was part of the Trail of Dreams.

Q. But you were still uncertain yourselves as to which one made sense, given the other information that you had; isn't that right?

A. We had some confusion about that issue as to how, if as had been previously discussed in the archeological literature, the trail through the mining process area went down to the Colorado River, that would have been inconsistent with what the Indians had said about it connecting with the Medicine Trail near Palo Verde. So, that was a concern of mine, yes.

Q. And during your fieldwork both in '97 and then the subsequent work you did in 1998, you didn't have any reason to believe that anyone from Glamis Gold had any knowledge about the special significance the Quechans Native Americans were attributing to these sail-trail segments, did you?

A. What was the time frame that you just mentioned?


A. Yes. I think Glamis knew that the Indians, that the Quechans in particular, had strong concerns about trails through their project area, so I'm not sure I understood the question correctly, then.

Q. Prior to the work you were doing in the field--

A. Oh, prior to our work.

No, I had no knowledge of what--what
Glamis--I mean, I think that there had already been public meetings and so on with the Quechan and other Native Americans having expressed concerns about the cultural resources in the area. My recollection is not real clear on the specifics of those concerns that were expressed in 1996, I believe, prior to the time that we came on board the Project.

Q. But was there any identification of a Trail of Dreams prior to your work in the field in 1997?
A. I don't know the answer to that.

Q. Now, in fact, as the--as you went through this process and looking at Boma Johnson's map today, either one of these trails, the Mohave War Trail or the Black Mesa Trail, could be part of the Xam Kwatcan Trail network; isn't that correct?
A. Yes. Both of them could be parts of it; and according to Boma's map, both probably are by his analysis.

Q. And you have no reason to doubt that analysis, do you?
A. No, I have no reason to doubt that there are significant trails in the locations that Boma's or general locations that Boma's mapped.

Q. Now, ultimately, you focused on three trail segments and undertook a study to identify that those trail segments were likely connected at one point in time; isn't that right?
A. Yes. I mean, I think we looked at, I think,
in the neighborhood if 10 or more trail segments in
the trail reconnaissance study.

Q. And one of those was the 5359 Black Mesa
Trail that appears at the Running Man site; is that
right?

A. Yes. One of them was 5359 at Running Man,
yes.

Q. And that trail--Running Man is about a mile
outside the Project site; isn't that correct?
A. Yes. I think it's near the ancillary
facilities area. My recollection on the distances
isn't good, I'm afraid.

Q. In fact, 5359 doesn't go into the project
area where the mining and rock piles would be; isn't
that right?
A. That's correct. The location where the
Imperial Valley College Museum had mapped, 5359 had it
veering to the west of the Project area.

Q. And it disappears into Indian Pass Road,
which is a preexisting road; isn't that right?
A. Yeah. I think the trail has maps did, yes.

Q. Did you find other segments of it?
A. Yes, we had found other segments that had
been mapped as 5359 west of Indian Pass and west of
the Project area, yes.

Q. And you ultimately concluded that that--those
segments which had been previously identified as part
of 5359 were probably not part; isn't that right?

A. Well, what we determined was that the trail that proceeds from Running Man up toward the mining process area has a high degree of integrity, has numerous ceremonial related features, and logically, probably connected up with the site that had been recorded as 192 north of the mining process area.

Q. But the site on the south--and we will get to the other segments, trust me.

A. Okay.

Q. The site, the segment to the south which was well-defined, had the cultural resources, that was all outside of the Project area, and it disappears into the Indian Pass Road; isn't that right?

A. I'd have to refresh my memory on the report as to exactly what happens to that trail and where we pick up other segments that might have been related to it.

Q. Now, on the north side, also outside of the Project area, there is this trail 192; is that right?

A. Yes, 192 is north, and it may extend into the Project area, too. I don't recall specifically how that had been previously mapped.

Q. Okay. But you don't know that it goes into the Project area?
Q. And that trail heads up towards Indian Pass following the--along Indian Pass Road?
A. Yes, that's correct.
Q. Now, within the Project area, the only segments--and these were multiple segments classified together as F-4; is that correct?
A. Yes, F-4 was, for sure--my recollection is F-4 was, for sure, you know, identified by the Quechan as being part of the Trail of Dreams.
Q. And that F-4 also starts outside of the Project area and has some segments within the northwest and western border of the Project area; isn't that right?
A. You have probably looked at the information more recently than I have, so probably, yes, it may extend outside the Project area.
Q. And it is--it, too, is running parallel and in the same general direction as the Indian Pass Road; isn't that right?
A. Yes, it parallels Indian Pass Road heading up towards the mine--toward Indian Pass.
Q. And elements of those segments had already been disturbed by tank tracks and tire marks; isn't that correct?
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10  A. Yes, that's probably true.
11  Q. Particularly those segments in the southern part of it which were within the Project area; isn't that right?
12  A. I don't have a clear recollection of the level of integrity of the site with and then outside the Project area.
13  Q. If we could look at Exhibit D to Dr. Cleland's first declaration.
14  A. Okay. And then what is--where is that coming from?
15  Q. Well, I'm sorry, take a look at the first page. Do you recognize these documents--this document from your declaration?
16  A. We are looking at Exhibit D?
17  Q. Yes.
18  A. Yes.
19  Q. And it is a primary record for the F-4 trail segment?
20  A. Yeah, I guess so, yes.
21  Q. Shall I read into the record what it says?
22  Q. I don't think it's necessary. The document is in the record.
23  A. Okay.
Q. These documents are the documents that, after
the field study is done, get filed with the county or
the local--
A. Yes, with the clearinghouse.

Q. And are kept confidential, therefore,
reviewed by anthropologists and archaeologists
studying the area; is that right?
A. Yes, and people with a need to know.

Q. Now, if you look at L7, that says there are
some tank tracks and tire tracks are present along the
southern part of this trail system and that's
referring to the F-4 trail segments; isn't that right?
A. Yeah, that's correct. I mean, we assessed
the overall integrity as very good.

Q. And if you would blow up the map and you see
a dashed line, which is the project boundary?
A. Yes, dash dot, yes.

Q. And you see what's marked as one part of F-4
barely reaches into that project boundary, and then
there are other segments, including some features that
extend down the western border along Indian Pass Road;
is that right?
A. Yes. I mean, I--there is--yeah, other
segments of it. I guess F-4--I mean, you're testing
my memory here of 10 years ago, but I believe that
those parallel dotted lines along the road are part of
F-4 as well as that one that sort of bends down to the
southeast a bit.
Q. Yeah. I have been assuming that, as well.

A. Okay.

Q. But all of that is on the--along the Indian Pass Road?

A. Yes.

Q. And did you understand that Glamis mitigation plan would have avoided those trail segments and those features?

A. I don't recall what mitigation plan they had.

Q. But in the North Baja Pipeline, the mitigation measure was, in fact, to create--restructure the site, the Project, so that it avoided site disturbance and maintained the trail segments; isn't that right?

A. Yeah, that's correct.

Q. Dr. Cleland, in your report you indicated that there was insufficient information at the time to recommend--this being your December 1997 report--there was insufficient information at the time to recommend the Running Man Indian Pass ATCC for National Historic Register; is that right?

A. I don't think so. I think we evaluated that ATCC as eligible for the register as an Historic District.
Q. As eligible?
A. Yes.
Q. But did you actually make a recommendation at that time?
A. Yeah, we recommended that it's eligible.
That's right.

MR. GOURLEY: Your indulgence for a moment.
(Pause.)

BY MR. GOURLEY:
Q. Your--it's your first declaration, Exhibit B, and go to pages 293 to 294.
A. Those pages refer to the Trail of Dreams rather than the ATCC, just to clarify.
Q. Correct. I understand.
Q. You're recommending here or you're asserting here that the evidence is not sufficient to assess the eligibility of the entire trail in accordance with National Register Bulletin 38; is that correct?
A. Yeah, the entire trail from one end to the other, yes.
Q. But the ATCC, as this Historic District, as you have referred to it, could be considered with all of its contributing features as National Historic Register-eligible; is that correct?
A. Yes, and with the Trail of Dreams as being--contributed into that eligibility in a very significant way.
Q. Did you look to determine whether any
elements at the site had already been or within the ATCC had been nominated for the National Historic Registry?

A. I'm not aware of any previous nominations, no.

Q. So, to your knowledge, the Running Man feature has not been placed on the National Historic Register, has it?

A. The Running Man?

Q. The Running Man geoglyph.

A. I don't know. I really don't.

Q. What about the Indian Pass petroglyphs?

A. I don't know if they're on the Registry, either.

Q. Okay. Now, at the time you were performing

the cultural resource survey, Dr. Cleland, and working with the Quechan Native Americans, was it your understanding that the BLM's approval of the Project was a nondiscretionary action?

A. You know, I had been told some aspects of how the BLM interfaces with the regulations and so on to implement the Mining Act of 1872. It's not an area that I have a lot of expertise in, though.

Q. But you conveyed the information, you'd been told, to the Quechan nation that this was a nondiscretionary action and would likely be approved provided Glamis Gold's project was consistent with Federal, State, and local laws?
A. Yeah, and that's what I had been told.

Q. In fact, you met with the Quechan nation representatives in September 10, 1997, and they approved a draft letter in which you asserted that and identified various mitigation measures that they could consider for--to address the impact of the Project on their cultural heritage; isn't that correct?

A. We had a meeting with them, and we reviewed a list of potential mitigation measures. My memory is a bit unclear about, you know, the degree they approved it. I know they had severe concerns about mitigation.

Q. Just to clarify--I don't want the record to be confused--I meant and hope you interpreted it this way, that they approved the issuance of the letter to them, not the mitigation measures.

A. That we would send them a letter? They approved that we could send them a letter? I suppose.

Q. I don't know. We could send them a letter regardless of whether they approved it, but we did review mitigation measures with them, yes.

Q. If you would turn to in the same document--it's actually the Baksh attachment to that document, so the easiest way to find it is look at the bottom numbers which are AG 003166, starts over at 3165.

MS. MENAKER: Counsel, where are you looking?

MR. GOURLEY: This is--remains Exhibit B to Dr. Cleland's first declaration.
THE WITNESS: Yes, I'm at the right place.

BY MR. GOURLEY:

Q. And you see on 3165, the first sentence identifies a meeting—

A. The bottom on September 10th?

Q. Correct.

A. Yes.

Q. And the purpose of the meeting was to allow Mr. Cachora and Mr. Anton to review a letter prepared by Dr. Baksh and the KEA archeological staff based on the September 9 meeting; is that right?

A. Yeah, that's what it says.

Q. If we could look at Exhibit 6, if you go back out of this and towards the front of your book, Dr. Cleland.

ARBITRATOR CARON: Could you just pause a moment? While I want to catch up to where you are.

MR. GOURLEY: Oh, absolutely. I apologize.

ARBITRATOR CARON: That's fine, thank you.

MR. GOURLEY: Thank you, Mr. Caron.


BY MR. GOURLEY:

Q. Is that the letter, Dr. Cleland, that is referred to in Mr. Baksh's report?

A. It appears to be. I mean, it has the right
Q. And if you would look at the third paragraph and read that into the record for us, please.
A. The third paragraph? The one that starts, "The proposed project"?
Q. Correct.
A. Yes.
"The proposed project is a nondiscretionary action. That is, the BLM cannot stop or prevent the project from being implemented, pursuant to the Mining Act, provided that compliance with other Federal, State, and local laws and regulations is fulfilled. As a consequence, there is a strong possibility that the mining, proposed mining project, may be approved."
Q. And, Dr. Cleland, that was your understanding at the time in September 1997?
A. Yeah, that was my understanding, but, you know, I have to say that I'm not at all an expert on the 1872 Mining Act. In fact, it's the only project I believe I have ever done that's come under the jurisdiction of that.
So, if I made an error in that statement, it was probably inadvertent.
Q. But you--no one said it is an error, actually. You got that information from BLM didn't you?
A. I don't know that I got it from BLM I might
well have gotten it from Dwight Carey. I mean, most of the correspondence and discussions that I had were with Dwight. He was the prime contractor for the EIS. He had discussions with BLM about those sorts of things and conveyed--conveyed that information to me. So, whether I heard it directly from BLM or from Dwight, I couldn't say at this point.

Q. You were working--you were being paid by Glamis, but you were working for BLM isn't that right?

A. Yeah. We were--

Q. Through Dwight?

A. Yes. The document we were preparing was a BLM--to be a BLM document, yes, the EIS.

Q. And you look at the fax header at the top, and that fax header shows it comes from or was received by El Centro BLM isn't that right?

A. I guess so. It says from KEA, and it has BLM on it, too, so it looks like it's possibly something I faxed to them.

MR. COURLEY: We have no further questions.

PRESIDENT YOUNG: Thank you.

Ms. Menaker, would you like to take a minute or two?

MS. MENAKER: I would, thank you.

(Pause.)

PRESIDENT YOUNG: Are you ready to proceed, Ms. Menaker?
Q. Dr. Cleland, you were just referring to a Dwight Carey. Can you tell us who he is, who he works for.
A. Well, at the time, Dwight was a principal with the firm EMA, Environmental Management Associates, I believe, and he was the prime contractor for the EIS.
Q. And when you say he was the prime contractor for the EIS, is it correct to say that it was Glamis's contractor for the EIS?
A. I don't fully-- am not fully aware of all the client relationships that might have existed. My understanding was a third party contract, in which case, the mining company provides the funding, is involved in selection of the contractor. But after the selection process is over, the contractor is to take direction from the BLM.
Q. Okay. Thank you.
MS. MENAKER: I'm just trying to locate an exhibit.
BY MS. MENAKER:
Q. If you could take a look at your supplemental declaration.
A. Do you-- can you help me? I know this has probably been prepared by the attorneys for Glamis,
Q. It's towards the back of the binder.
A. Okay. Thank you.

And which part would you like me to look at?

Q. If you just-- in paragraph four, you note that before KEA began its cultural resource inventory, it was aware that there were trails-- it was generally aware that there were trails in the vicinity of the Imperial Project area; is that correct?
A. Yes. I mean, Rogers had recorded trails in that area.

Q. And you don't need to look at this for my next question.

Is it correct to say that it's your understanding from your testimony that there is the Xam Kwatcan Trail network, but that certain portions of that trail network, and I think you mentioned in particular the Medicine Trail and the Trail of Dreams are particularly significant to the Quechan and are more important than other trails, maybe?
A. Yes. Those were the trails they spoke most strongly about during the Imperial proceedings.

Q. And is it also correct that when you spoke with the Quechan and that they expressed concerns about-- that the concerns they expressed were greater when you were talking about impacts to an extant segment of one of those trails or a trail that was
considered to them to be particularly sacred than would be their concerns were the impacts were to be to a portion of a sacred trail that had either been previously disturbed or to another trail that may not have had any ceremonial features associated with it or may not have had any particularly cultural significance to it?

A. Yes. They had indicated, for example, that--and actually, this is having to do with the North Baja conversations, but as an example, they indicated that if you could follow existing disturbance areas, it would be much preferable from their point of view than to impact some area that had already--that had not been impacted. So, they had made those statements, yes.

Q. Now, Dr. Cleland, I'd like you to just take another look at this map that you received from Boma Johnson, to glance at it?

A. Yes.

Q. And if you could also now take a look at this binder, towards the front of the binder, in Exhibit 3.

MR. GOURLEY: We would note to the Tribunal that this is not part of his cross--it wasn't part of his direct, either. She's introducing a new topic with this witness.
MS. MENAKER: I would note that it is in his witness binder, and they are--they have introduced the topic of the Baja pipeline and how that intersected with the trail network, although they chose not to introduce this map, although they did introduce it for many of the other witnesses. This is the map the Tribunal will recall where Dr. Sebastian interposed the route of the pipeline on top of Mr. Bona's map and then drew certain conclusions from that as to where the pipeline intersected with what she contended was the Xam Kwatcan network, and I would just like to ask Dr. Cleland just really two very short questions about this.

MR. GOURLEY: Mr. President, the direction and Procedural Order 11 was to produce rebuttal statements to any new information. Dr. Cleland was not offered--produced no rebuttal statement in response to Dr. Sebastian's last statement that we furnished on July 16, so any new information he might have to rebut those sections we have not had a chance to see before or hear before today.

ARBITRATOR CARON: Counsel, just to refresh my memory, you did ask a question of the expert in reference to the map on Exhibit 5.

MR. GOURLEY: Oh, absolutely, and she introduced that--

ARBITRATOR CARON: No, I mean to this expert.

MR. GOURLEY: In Exhibit 5?
ARBITRATOR CARON: Tab 5.

MR. GOURLEY: Tab 5, yes, but nothing to do with the Baja Pipeline.

ARBITRATOR CARON: Isn't the blue line the Baja Pipeline?

MR. GOURLEY: Yes, but the only thing we talked about with respect to Exhibit 5 was the location of Imperial Project to the yellow line, which is Woods's depiction of the Xam Kwatcan Trail, or that portion of the Xam Kwatcan Trail.

ARBITRATOR CARON: Thank you.

(Tribunal conferring.)

PRESIDENT YOUNG: Counselors, this exhibit has already been introduced in previous testimony, so it is usable, but cross does have to be limited to things--your redirect has to be limited to anything that was raised in the cross-examination, not to rebut any other witnesses, but used only in reference to the cross-examination that was conducted by--already conducted.

MS. MENAKER: So, to the extent that he clearly crossed on the route of the Baja Pipeline and crossed on its intersection with the Xam Kwatcan network, now, those questions when he was asking was based on Dr. Sebastian's report, and her underlying assumption for that report was this map.

Now, I can clearly--

PRESIDENT YOUNG: Counsel, the map is
introduced, so you are permitted—in a prior witness permitted to use the map, but you do have to restrict cross to anything related to—your redirect to anything related to his cross of this witness.

MS. MENAKER: Okay. So, what you’re saying I can use the map but just restrict it?

PRESIDENT YOUNG: Restrict it, yes.

MS. MENAKER: Thank you.

MR. GOURLEY: Because all we addressed was certain trail segments in the Palo Verde Hills at Mile Post 50.

MS. MENAKER: I understand, thank you.

BY MS. MENAKER:

Q. So, if you can take a look at that map and as counsel just indicated when he was questioning you on the intersection of the Baja Pipeline and how that may have impacted trails of a Xam Kwacan network, that information—

So, let me ask you, first, in your view, the route of the pipeline that is depicted on that map, is that and its intersection with the Xam Kwacan network, is that an accurate depiction, given Boma Johnson's map here?

MR. GOURLEY: And we believe that goes outside of the scope of our direct.

PRESIDENT YOUNG: Counsel, I will allow the question. We will take the objection under advisement.
THE WITNESS: Well, the question, if I could paraphrase it, is it an accurate portrayal of the impact of the North Baja Pipeline on the Xam Kwatcan network, and I guess I would have to say that the scale that it's produced, it seems to me to exaggerate the correspondence between the Xam Kwatcan network as Boma mapped it and the actual route of the pipeline.

One case in point is it appears that--to me that the pipeline route is mapped on the west side of Route 78 and actually is built--it's on the east side of 78, so--and Boma had mapped much of the trail over on the west side, so--and actually corresponding with the Route of 78, too, to some degree.

So, I think there are some problems with the registration of the various maps.

BY MS. MENAKER:

Q. Could those problems, perhaps, be attributed to the fact that Boma's map is drafted using a Magic Marker pen on a quite small-scaled map or large-scaled map?

A. Yeah. Part of that--that's part of the problem is that--I'm sure that Boma maintains much finer grain maps and that he marked up a larger scale
map for purposes of summarizing general locations rather than specific locations.

Q. Okay. So, in your view, when you referenced this, the map that Boma Johnson had given you, in your statement, do you think that it is helpful in showing the general location and perhaps directions of certain trails, but inadequate for precisely determining their precise location?

A. Yeah, I would never use this map for an impact assessment.

Q. I'm just getting another exhibit to look at. What I'm distributing is a copy of the historic properties treatment plan for the North Baja gas pipeline. This is in the record in our exhibits as 13 FA 144, and we can add it to the back of the Cleland exhibits here.

MR. GOURLEY: Where was this found in the record, I'm sorry?

MS. MENAKER: 13 FA Tab 144.

MR. GOURLEY: Thank you.

BY MS. MENAKER:

Q. And, Dr. Cleland, if you could please turn to page 16 of that report.

A. Yes.

Q. And under the label "Avoidance and Monitoring"--I would just give the Tribunal just a minute. Page 16.

And, Dr. Cleland, if you could just read for
A. "NBP has avoided direct impacts to cultural resources wherever possible. Particular attention was paid to avoiding resources associated with religious/spiritual activities, such as geoglyphs, petroglyphs, cleared circles, and rock rings. All of these features that were recorded during the survey and evaluation programs have been avoided. NBP has also rerouted to reduce impacts to significant Native American trails in several instances, and has proposed alternatives that reduce impacts to Palo Verde Point and in the vicinity of Pilot Knob, two areas of high cultural resource sensitivity."

Q. And, to the best of your knowledge, is that a correct statement?

A. Yes.

Q. To the best of your recollection, with your work on the North Baja Pipeline Project did that pipeline impact any extant segment of the sacred Xam Kwatcan Trail network?

A. To my knowledge, it did not impact extant segment of the network.

Q. Now, counsel asked you about some--an impact to a trail--

A. Actually, I want to amend that.

I believe my testimony has been that it did not impact any extant segments of the Trail of Dreams..."
or the Medicine Trail, and, you know, I think the record is unclear on exactly which trails out there are part of the Xam Kwatcan network.

So, I don't want to overstate any of the testimony that I have given.

Q. No. Thank you for that clarification.

A. I would like to be as precise as possible.

Q. Thank you.

Now, counsel questioned you about an impact to a trail that occurred near Mile Post 50, and that was described as a 50-meter segment of the trail that was impacted.

Is it your testimony that that segment—that that trail had already been impacted by a previous disturbance, particularly by a transmission line?

A. Yeah, there is a transmission line that's gone across the trail on that location, including Transmission Line Access Road.

Q. And to the best of your recollection, do you recall coming across or finding any archeological evidence when you were surveying the area on that trail segment that indicated that that trail was used for ceremonial use?

A. No. The associations on that trail were really pretty minor, very light scatter of artifacts, and no features that we could identify as a ceremonial significance.

Q. So, did you have any reason to believe that
that trail was of importance to the Quechan--of serious importance to the Quechan or any other Native American group?

A. Well, you know, I do think that that trail probably had significance to them. They're concerned about really all the trails, as they've said over and over again, but they do have different levels of concern, and I think that's a really important distinction for the Tribunal to understand.

Q. And was a strong level of concern indicated about this particular trail?

A. No. We had field visits all along the pipeline, and this particular trail was not cited as more significant than other trails that they have concerns about.

Q. You also testified about a trail near the Palo Verde site, where that was of significance or that you believed was significant to the Native Americans; is that correct?

A. Yes. As I said, you know, trails in general are significant to them. There was one trail that we mentioned in particular with regards to Boma Johnson depicting it as being part of the Xam Kwàtcan network.

Q. And did you find archeological features on that trail that also indicated or corroborated Boma
Q. Johnson's assessment that that trail was important?
A. Yes.
Q. And what were some of those ceremonial features, if you recall?
A. There were geoglyphs in particular, and he showed us some trail markers, as well.
Q. And is it the case that the pipeline at that point was rerouted and it was narrowed as to avoid any impact to that trail?
A. Yeah. The pipeline was restricted to the previously disturbed area within the Stallard Road there to avoid that trail and also to avoid other petroglyph features in the area.
Q. When Mr. Gourley was questioning you about the identification of the ATCC, the Area of Traditional Cultural Concern, you testified that although the Quechan had indicated a concern for the entire area of their traditional territory, they had also expressed a particularized concern about a smaller localized area; is that correct?
A. Yes, in the Imperial Mine, going back to the Imperial Mine, yes.
Q. Yes.
And in your report, "Where Trails Cross," you state that the Quechan had, indeed, told you that they had a name in their language for this smaller localized area, and--is that correct?
A. That is correct, yes.

Q. And can you tell me why did the Quechan express or what concerns did the Quechan express about this particular area, the area in which the Imperial Project was proposed to be located?

A. Well, they expressed several concerns. One had to do with the relationship, its relationship to the Trail of Dreams and the use of that trail through that area for pilgrimages, both spiritual and physical. But also the area was a teaching place.

There were several teaching places where Tribal members can learn traditional culture, and it was one of---it was the first in a series, and there was a concern that if you could no longer practice the learning that you would learn in that place, then that would mean that the other places would also be considerably reduced in value because the lessons learned in that place are relevant to lessons to be learned at other places.

Q. Now, Mr. Gourley asked you to read a paragraph from your October survey, draft survey report. Do you recall that?

A. I remember reading some paragraphs, yes.

Q. I'm sorry, there was a paragraph indicating that there were still some questions as to the precise locations of certain trails.

A. Yes.

MR. GOURLEY: I would object. I didn't
actually say there was confusion as to the precise location of trails. The segments are known.

MS. MENAKER: I stand corrected. That was inartfully worded.

BY MS. MENAKER:

Q. The--it was your testimony that the Quechan had identified certain trails segments, both 5359, which is within the ATCC but outside the immediate project area as the Trail of Dreams, and also F-4 that is the segment within the Project area as the Trail of Dreams, and then trail 192-T north of the Project area as Trail of Dreams; is that correct?

A. Yes, that's my recollection.

Q. And is it correct that in your October report, the draft of the report, you indicated that it was unclear as to whether 5359 at the Running Man site connected at one time to F-4 within the Imperial Project Site?

A. My October draft indicated there was unclarity on that? I would like to read what I said, then.

Q. Well, I would ask you to turn to--

DIRECTOR YOUNG: Counselor, if you could direct him to that particular part of the report which you're referring to.

MS. MENAKER: Yes, I will.

BY MS. MENAKER:

Q. It is Exhibit B attached to your first
declaration, and this is actually the December 1997
copy of "Where Trails Cross," so the one that came
after the October version.

Q. Yes.
By that I meant that the trail—the Quechan had identified part of 5359, archaeologically designated as 5359, as being part of the Trail of Dreams, and part of it they had not identified as being part of the Trail of Dreams.

Q. And was it because of this still somewhat open question that Glamis requested that KEA do an additional survey, the 1998 trails reconnaissance survey to definitively define the location of 5359?

MR. GOURLEY: I'll object. There has been no testimony here that Glamis requested a further study.

MS. MENAKER: That's fine.

MR. GOURLEY: You are leading the witness trying to get him to say that.

MS. MENAKER: I'm sure you haven't done that all week, but that's fine. I withdraw the question.

(Simultaneous conversation.)

MS. MENAKER: I withdraw the question.

BY MS. MENAKER:

Q. Did KEA do a study in 1998 to definitively determine the course of 5359?

A. Yes, we did.

Q. And--

A. And in relationship to other trails in that ATCC.
Q. Okay. And can you just briefly summarize what that study concluded.

A. Yes. First of all, we confirmed that the previous information that the trail designated 5359 at the Running Man does cross various ceremonial features, including the major spirit break, that at some point it does disappear. And the route that had been mapped by the Imperial County Museum as 5359 on the west side, we relocated that. We followed it out. It had very poor integrity and very few cultural associations with it.

However, we did—we quantified the number of associated features with trails associated with F-4 and 192 in mapping—doing GPS mapping, said meter mapping. We showed that there was a strong likelihood that those three trails designated by the Quechan as being part of the Trail of Dreams had a high likelihood of being originally connected, although there were some breaks.

Q. Okay.

MS. MENAKER: I have nothing further, thank you.

PRESIDENT YOUNG: Thank you.

MR. GOURLEY?

MR. GOURLEY: Thank you, Mr. President. Just a few further questions, Dr. Cleland.

RECROSS-EXAMINATION

BY MR. GOURLEY:
Q. Beginning with that last point, you're not testifying here today that there are not other elements, segments of the Trail of Dreams outside the Project area along the Xam Kwatcan Trail network on the west side of the west route of the Xam Kwatcan Trail network, are you?
A. No. There are other parts of the Trail of Dreams west of the Colorado River and west of the Medicine Trail.
Q. Including some up close to the Baja Pipeline; isn't that correct?
A. There could be, yes, but the Quechan never said, you know, any of these trails that the Baja Pipeline crossed is the Trail of Dreams.
Q. The ones that the pipeline actually crossed?
A. Yes, correct.
Q. Let's turn back to the exhibit that the--Ms. Menaker gave to you.
A. The treatment plan?
Q. Correct. I guess it would be Exhibit 12, and the--she focused your attention on page 16 and that first paragraph under "Avoidance and Monitoring," if you could go back to that paragraph.
A. Yes.
Q. And she had you read the entire paragraph. I will spare you repeating it, but if you would focus on the third sentence, which states, "All these features that were recorded during the survey and evaluation
A. Yes.

Q. And when you used the word "avoided" there, you meant that the swathe of the pipeline disturbance did not intersect those features; is that correct?

A. Yes.

Q. Okay. Now, you then state in the next sentence, "NBP," North Baja Pipeline, "has also rerouted to reduce impacts to significant Native American trails in several instances."

A. Yes.

Q. And when you say reduce impacts, you mean that there is still an impact by having a pipeline in the swathe cut nearby or breaking segments outside of the areas of cultural--

A. Yes, the pipeline did impact some trails.

MR. GOURLEY: One moment, Mr. President. (Pause.)

BY MR. GOURLEY:

Q. And focusing on that same document, if you turn back to page six, Mr. Cleland--Dr. Cleland. I apologize.

A. We are both from UVA, and everybody is a Mister there.

Q. With a lot of sirs. Yes, sir.

A. Well, Mr. Jefferson was not a doctor, so...
Q. And you see that group that's called the Native American Perspective?
A. Yes.
Q. And in the middle of that paragraph, referring to the Quechan Tribe's perspective on the Project, it states, "All sites are interrelated and cannot necessarily be evaluated individually. The whole is very much greater than the sum of its parts. To destroy any part is to weaken the whole."
Do you see that?
A. Is that in the first paragraph? Oh, yes, I see it, yes. And, I mean, that's accurate. That is their point of view.
Q. That is their point of view.
A. Yes.
Q. And, in fact, you did destroy--the North Baja Pipeline did destroy trail segments as it cut across the southern California Desert; isn't that correct?
A. That is correct, yes.
Q. Now, you mentioned a particular special name that the Quechan indicated was in or around the Imperial Project Site; is that right?
A. Yes.
it open still, the Exhibit B to your first declaration, and if you start at page 27 of the Baksh piece, and it's really at AG 003163 over to 64--oh, it's AG 003163 to 64.

Now, the paragraph that starts at the bottom of page 27 of this document, the 3163, and continues over, indicates that this special name is tied to the petroglyph at Picacho Peak; isn't that correct?

A. That's not my understanding. I'm not sure what you're referring to.

Q. All right. Let's back up a moment. Dr. Baksh, who was he and what was his role on this project?

A. Dr. Baksh is a cultural anthropologist who was retained by EMA and to--I believe his contract was with EMA--it was not with my firm--to conduct Native American consultation and ethnographic interviews.

Q. So, he was the source of the information about the ethnography of the area, the cultural concerns of the Quechan Native Americans at this site, right?

A. Well, he was one primary source, but in the course of our studies we received information directly from the Quechan, as well.

Q. Right.

And on this page, what it says is at the beginning at the top of page 28, in response to question by Dr. Cleland--that would be you--as to
whether the area has a name, Mr. Cachora responded
that the old people never mentioned the area, but that
it is tied in with the petroglyph area near Picacho.
A. Okay. That's not my--that's not my
recollection, but that's--
Q. That's what the document states.
A. --what Dr. Baksh has reported, yeah.
Q. Okay. Thank you.
And Dr. Baksh's primary role was to work with
the Cultural Committee of the Quechan Tribe; isn't
that correct?
A. Yeah, that was his role was to conduct
ethnographic interviews with the Quechan, including
the Cultural Committee and other Tribes.
MR. GOURLEY: Thank you, Dr. Cleland.

PRESIDENT YOUNG: Redirect? Re-direct?
MS. MENAKER: I think I have just one
question.
FURTHER REDIRECT EXAMINATION
BY MS. MENAKER:
Q. Dr. Cleland, you were just asked to look at
Dr. Baksh’s report on this topic of whether the
Quechan had indicated that it had a name for this
particular area, and I would just ask you to turn to
your report, which is Exhibit B on page 285.
And here on the third paragraph, you state,
"It is important to note that the Quechan have stated
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14 that there is a name for the ATCC in their language.
15 While they have held this name confidential, the
16 existence of a place name implies that the area is
17 conceived of as a special place with physical
18 manifestations."
19 To the best of your recollection, is this
20 information correct?
21 A. Yes, it is.
22 Q. Okay, thank you.

11:59:46 1 A. It's based on conversations that I had with
2 the Quechan.
3 Q. Thank you.
4 MR. GOURLEY: One question further,
5 Mr. President.
6 FURTHER CROSS-EXAMINATION
7 BY MR. GOURLEY:
8 Q. You don't mean to tell us, do you,
9 Dr. Cleland, that the straight-line drawing of the
10 ATCC around the Imperial Project corresponded directly
11 to the special name that the Quechan nation withheld
12 from you; is that correct?
13 A. No, thank you for that clarification. They
14 indicated the area between in the vicinity of Running
15 Man and Indian Pass is the name that--the place they
16 had a name for. They don't bound it. They don't have
17 boundaries like that.
18 Q. And, Dr. Baksh, the information he got
19 extended that, in fact, to Picacho; isn't that
20 correct?
21 A. That the area might extend all the way to
22 Picacho, with the same name. That seems to be what

12:00:48 1 his understanding was, yes.
2 MR. GOURLEY: Thank you.
3 PRESIDENT YOUNG: Ms. Menaker?
4 MS. MENAKER: No further questions.
5 PRESIDENT YOUNG: Bless you.
6 Professor Caron?
7 QUESTIONS BY THE TRIBUNAL
8 ARBITRATOR CARON: Thank you, Dr. Cleland.
9 You mentioned that it was important for the
10 Tribunal to understand that there is a regional sense
11 in which this whole area was special, and then within
12 it, there are specific local sites of particular
13 importance.
14 THE WITNESS: Yes.
15 ARBITRATOR CARON: Within the sense of local
16 sites, I guess I'm wondering, are there different
17 categories of importance. So, on the one hand, we
18 hear of the mountains at either end and Palo Verde
19 Point. Would this area that was just being mentioned
20 for which the name was not provided, is that an
21 intermediate area of concern or would they have that
22 as a concept?
THE WITNESS: I guess I would hesitate to go
to comparative, you know, ranking of sites along a
continuum. I think this probably--some sort of
continuum does exist, but exactly where on the
continuum, this particular location, I don't know that
we have that kind of quantitative.

But I would say this, that the concerns
expressed for this place were the strongest I'd ever
heard in my 30-year career in terms of an impact, a
project impact, so--and I have heard a lot of Native
American concerns for sites, and--but these were
the--I know there's other projects were concerns of
this more magnitude have been expressed, but in my
career, projects that I have worked on, this was the
highest level of concern ever expressed by Native
Americans for a location and for the impacts of a
project.

ARBITRATOR CARON: Thank you.

I guess I have just one other question, and
this is actually to both counsel. Either of you can
point me, and so excuse me for not--this may be very
clearly in the record, but a question was raised about

the scale of the map to be able to perceive its
relationship between the pipeline and the trail
segments, and the question is, since we have some
parts of the EIR preparatory studies concerning the
Baja Pipeline, do we have--do there exist large-scale
small-area maps that would track the pipeline and the trail segments? So, two questions, do we have, and do that exist?

MR. GOURLEY: The answer is I do not know that we do. There would be elements. Certainly the background information of the Baja Pipeline would show you where the pipeline goes. It won't—it will show you where trail segments are, but it won't relate it to Boma Johnson's map directly.

What I heard Dr. Cleland say was that Boma Johnson had higher scale maps. Boma Johnson had been a BLM employee. No such maps were ever produced to us, so I don't know if they exist in the BLM files or not.

MS. MENAKER: We are not aware of any such maps. We have, like as Dr. Cleland testified, the Quechan have shown him very rough maps, my understanding it was on plywood with paint saying here are the trails, but just to let them know in what general location they are. When a particular project is surveyed, they will get very precise locations like in the Imperial Project with F-4.

But as far as—this is the only map of which we are aware that maps—where someone has attempted to go out and map, you know, many, many parts of the trail network, but we don't have any anything that is more precise than this on this large of a scale.

ARBITRATOR CARON: Thank you.
ARBITRATOR HUBBARD: Dr. Cleland, just one question: When you were referring to the Project that you said caused greater concern for the Tribe than any that you had been involved in, you were referring to the Imperial Project?

THE WITNESS: Yes, the Imperial Project.

ARBITRATOR HUBBARD: Were there--would you say that the Baja Pipeline project raised similar concerns or as many concerns?

THE WITNESS: No, it did not. It raised some similar concerns. The part about the interconnected

nature of the sites, that's the same. So, they have a very close identification with the land and with their traditional territory and the resources in there, and that's always the starting point.

And then there were some other areas that they mentioned that we went close to, like the Palo Verde area and certainly Pilot Knob, but they never raised any concerns about a specific location along the Project in the same kind of degree that they did for the location at the mine site.

PRESIDENT YOUNG: Dr. Cleland, thank you for your presence today and your testimony. I wanted to follow up, I think, a little bit on Professor Caron's questions here and see if I can get something a little clearer in my mind.

With respect to the pipeline, your--does the pipeline cross trail segments or not?

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THE WITNESS: Yes. The pipeline does impact in a few locations trail segments.

PRESIDENT YOUNG: Thank you.

But I think I understood your testimony to be that they are not Trail of Dreams or Medicine Trail;

is that fair?

THE WITNESS: Yes, we had no indication that they are either Trail of Dreams or Medicine Trail.

PRESIDENT YOUNG: Does it come relatively near Trail of Dreams or Medicine Trail such as you have sort of--you can kind of visually observe disturbances from the pipeline itself or not?

THE WITNESS: Well, I think it's fair to say that the Trail of Dreams, in order to get from the Indian Pass vicinity to Palo Verde Point, would probably--the pipeline would probably have crossed it at some point, but it has been pointed out that there are breaks and disturbances. And since we tried hard to stay in areas like that, my working assumption is that we went across the Trail of Dreams at a point where it had already been previously disturbed, so there wasn't an impact to it.

And I must also say that the nature of the impacts of a pipeline are considerably different from the nature of impacts of a mine site. A mine site is operated 24 hours a day. Lots of noise, lots of, you know, waste stockpiles piling up and left there, a
12:08:37 1 deep hole in the ground left, you know, unreclaimed.
2    So, the pipeline it's required because of
3  FERC and other to do the best job they can to reclaim
4  the land and so on, so the nature of the impacts are
5  quite different, as well as the nature of the
6  resources that were impacted.
7    PRESIDENT YOUNG: Let me pick up on one part
8  of your answer to that that I'm also slightly curious
9  about.
10    Earlier in your testimony you talk about some
11  of these sites being no more significant--you don't
12  say no less significant, you used the term no more
13  significant than other sites. But what I'm trying to
14  get a sense of is, are the sites around the pipeline
15  of no more significance or less significance because
16  they are unimportant, or because they are already
17  disturbed? Could you get a sense of that from--I
18  mean, we recalled both in the testimony.
19    THE WITNESS: I think we have--right, I think
20  both factors play into that kind of assessment because
21  certainly, you know, we come close to Pilot Knob, I
22  mean, within a mile or so of Pilot Knob, and you know

12:09:57 1 that's very significant, but we come very close to
2  Palo Verde Point, too, and that's very significant.
3    So, I think it was the nature there, the
nature of the impacts of the Project where around Palo Verde Point we were going to be burying the line in alluvium, so it was going to be--that's one of the best places where you can reclaim the land, so, you know, very quickly that scar in that area is going to be gone. The scar across the desert is more long lasting, but it's still very different from the nature of the impact of a mine.

PRESIDENT YOUNG: Let me also follow up on a bit of testimonial evidence that counsel gave which I had not really heard before, but intrigued me. Running through your reports, your successive reports, there is some discussion about trying to reconcile the historical record with Boma Johnson's work and other archeological studies, as I understood what you're saying, with what the Quechan nation had been telling you.

I'm a little curious about the process of that, particularly if these were drawn on pieces of plywood and so forth. I mean, if you think a Magic Marker is inaccurate, I suspect painting on plywood is not overwhelmingly accurate.

How did you go through the process reconciling these historical records with what the Quechan nation had told you?

THE WITNESS: Right.

PRESIDENT YOUNG: And I don't mean it. Maybe they told you something quite different, and maybe
counsel is just deluding me here, but whatever, how did you communicate with them and how did that reconciliation process work?

THE WITNESS: Well, first of all, I want to start by saying that it's our--it's required under Federal regulations to report the information that's provided by the Native Americans. As you're well aware, I'm sure, there has been such a long history of relations between the U.S. Government and the dominant culture of Native Americans, that in the past very often Native American testimony has been ignored, and the Federal Government has made a concerted effort over the past two decades to try to rectify that situation, so the laws are, you know, very clear that the Native American point of view has to be taken into account. So, that's just a preface of the remarks.

But in terms of your actual question, we met many times with the Quechan. They, on many occasions, said that the Trail of Dreams goes through the mining process area. On at least one occasion, they were in the field, and they pointed to a place on the ground and said this is the Trail of Dreams.

So, that's mappable archaeologically, so we can identify specifically where that location is, and so that was the process we went through to get from the Board of the general routes to a specific location useful for an impact assessment.

PRESIDENT YOUNG: So, they actually went out
THE WITNESS: Well, we had Native American monitors out for the entire two months we were there.

PRESIDENT YOUNG: From the Quechan?

THE WITNESS: Yes, from the Quechan.

But in terms of times that they pointed to a place on the ground and said this is the Trail of Dreams, that would have been a more limited number. Maybe one or two. I don't have specific recollection.

PRESIDENT YOUNG: Okay. Thank you.

THE WITNESS: They were very clear as to it going through the mining process area on several occasions and not in the field as well.

PRESIDENT YOUNG: Thank you very much. We appreciate your presence here. You are excused, thank you.

THE WITNESS: Thank you.

(Witness steps down.)

PRESIDENT YOUNG: Counsel, I take it you have no more witnesses you want to call at this point, but rather want to start your summation, but would like to do that this afternoon; is that correct?

MR. GOURLEY: That's correct.

PRESIDENT YOUNG: Okay. So, we will adjourn, then, until 2:15. Thank you.

MR. GOURLEY: Thank you.

(Whereupon, at 12:15 p.m., the hearing was...
AFTERNOON SESSION

MR. McCRUM: Mr. President and Members of the Tribunal, we would be ready to start.

PRESIDENT YOUNG: Okay, thank you.

We will reconvene the hearing and turn the time over to Claimant. Claimant has two hours and 36 minutes.

MR. McCRUM: Thank you.

FACTUAL PRESENTATION BY CLAIMANT

MR. McCRUM: Mr. President, Members of the Tribunal, on behalf of Claimant, Glamis Gold, we would like to begin this presentation by expressing our appreciation for the opportunity we have had this week to appear before you for the time that you have put into addressing these issues in the evidentiary portion of our case.

That evidentiary phase has now concluded, as there will be no further live witnesses testifying for either the United States or Glamis regarding the contested factual issues in the case.

And there are a lot of contested factual issues in this case, but there is one thing that we agree on with the United States, and that is that this...
is a very important case. We share that view with the United States. As was the case with the Memorials, the witness testimony has underscored that the parties strongly disagree about the nature of the fundamental factual issues in this case, and part of the Tribunal's task will be to sort out these factual disagreements so that it can then, in turn, evaluate how the legal standards of Articles 1105 and 1110 apply. We will, of course, be discussing those parameters and their application to these facts as part of our closing remarks in September, as planned, and I suspect that you will be hearing a lot about those issues from the Respondent tomorrow. But, before we begin that next phase in September, we would like to review some of the problems in the way the Respondent has characterized and presented facts in the past in this case which, in turn, drive the way it characterizes and presents the law.

In short, the testimony that we have heard this week has cast into sharp relief a number of factual inaccuracies or, at a minimum, exaggerations that the United States has relied upon in the past to support its position. In Respondent's opening statement, Mr. Clodfelter argued that Glamis's only
motivation--indeed, the only possible motivation--for raising cultural resource issues in the context of other land development projects in the California Desert is to discredit the Quechan Tribe. This assertion is offensive to us; and, more importantly, it is wrong.

The Government's statements and misstatements regarding cultural resources were the lynchpin for the Interior Department's unlawful denial of Glamis's Plan of Operations on January 17, 2001, and they were the basis for California's discriminatory regulations and the statute aimed at targeting the Imperial Project, and they remained a substantial part of the Government's argument that Glamis lacked reasonable investment-backed expectations because of the cultural resources in the California Desert.

Yet, despite numerous other major land development projects on or in immediate proximity to the map route of the Xam Kwatcan Trail and the arbitrariness that the Government approvals have demonstrated, and despite the repeated instances of discrimination against the Imperial Project on the basis of cultural resource considerations, the Government would seek to foreclose this Tribunal from considering the cultural resource issues.

The fact is that the United States should have solved this controversy by affording Glamis Gold, Limited, reasonable compensation for its vested and
valuable property interests back in 2002 or 2003. The Government's refusal to do so then, and its continued refusal to do so today, notwithstanding the compensation requirements of NAFTA, is the reason the Quechan Tribe representatives regrettably have been subjected to expending their resources to monitor, submit briefs in this NAFTA proceeding. It is the Government's actions and inactions which are at the heart of this controversy.

The Government's factual exaggerations, however, are not limited to the cultural resource issues. They have pervaded the Counter-Memorial and the Rejoinder, and we expect they will be present in the presentation by the Government tomorrow, which will occur without the benefit of sworn, qualified expert witnesses. They affect the Government's discussion of the measures, the existing regulatory environment, the nature of Glamis's vested property rights, and the extent of the deprivation that Glamis has suffered. Our goal in this presentation this afternoon is just to highlight several examples of these exaggerations that we take issue with.

We greatly appreciate the interest and patience of the Tribunal during this long week. It is only Wednesday, but it seems much longer. We will be brief in this final presentation this afternoon and provide a more detailed presentation at the planned closing argument in mid September.
I would like to stand up at this point and go through our PowerPoint slides.

One of the fundamental issues in the background of this case, which Ms. Menaker acknowledged as a relevant issue from her perspective in the opening, concerns the reasonable expectations that Glamis may have had regarding mining in the California Desert Conservation Area. The expert reports and uncontested testimony of Mr. Tom Leshendok, a former BLM senior official, described the common practice of open-pit mining for gold and other minerals without complete backfilling in the California Desert Conservation Area and throughout California and throughout the basin and range, geologic province of the Western United States. The United States has failed to present a single Interior Department official to rebut any of these points.

The uncontested testimony of Kevin McArthur, Chief Executive Officer of Goldcorp/Glamis Gold, Limited, an individual responsible for over 9,000 employees, described his successful experiences operating the Picacho Mine at the base of the Picacho Peak, and the Rand Mine, both in the California Desert Conservation Area.

Those issues are largely uncontested.
regarding the nature of open-pit mining throughout the relevant region. That leads us into the reasonable expectations in the context of cultural resources. We turn to an example from the United States Counter-Memorial filed in September 2006 where the assertion was made at page 61 that sacred sites in the Imperial Project claims were "well documented long before Glamis located its mining claims." We believe that the sworn witness this week and the record of this case fails to support this assertion.

Dr. Cleland acknowledged just this morning that the 1986 Woods Report identified 16 Quechan Creation Myth-related sites, including Picacho Peak and Pilot Knob, but nothing within several miles of the Imperial Project Site.

The map that bears on this is the map three of the myth-related locales from the 1986 Woods Report, which was prepared under contract with the Bureau of Land Management in 1986 and was based on extensive Native American consultations which were referenced. The author of that report, Mr. Woods, has continued to be a consultant with the United States through 2002, as reflected in his role in the Baja Pipeline review. He characterized the Native American consultations that preceded this map as having been based on massive studies, consideration of all available ethnographic literature available at that
This particular map, to our knowledge and through the evidentiary phase of this proceeding, is the only known mapped route of the Xam Kwatcan Trail as of 1986, immediately, shortly before the time when Glamis proceeded with its investments in the California Desert for the Imperial Project.

This particular map shows that the Imperial Project lies a number of miles east of the known route of the Xam Kwatcan Trail. It is also the closest myth-related locale identified on this map in the context of the Imperial Project is Picacho Mine, several miles to the east. And at that particular site is where the Picacho Mine operated at the base of Picacho Peak without controversy, as Mr. McArthur has testified, because he was the mine manager of the Picacho Mine, which was the first mine, the first producing mine, that Glamis Gold, Limited, carried out. There are no other—there are 16 other Quechan myth-related locales identified through this region. No other are closer to the Imperial Project than this. Investments are made based on known available information. This is information that was associated or carried out pursuant to a BLM contract at a time right after the California Desert land-planning process had been carried out pursuant to direction of the U.S. Congress in the Federal Land Policy and Management Act of 1976.
Another map that bears on this, which has been discussed and presented with sworn testimony of witnesses this week is the map entitled "Native American Areas of Concern," which is based on a map prepared by BLM officials in the late 1970s pursuant to a congressional directive in the Federal Land Policy and Management Act of 1976. It was based upon consultation with Native American representatives. It identifies in dark gray areas of very high Native American concern and in light gray as areas of high concern. The Imperial Project, it is undisputed after
they were considered in the legislation that Congress enacted in 1974, which became the California Desert Protection Act.

We turn again to an assertion by the United States in this case on page 72 of the Counter-Memorial from September 2006. We have the assertion that no other CDCA, California Desert Conservation Area, mine had a significant impact upon Native American cultural and spiritual resources as did the proposed Imperial Project. The Imperial Project is the only mine in the CDCA that would have caused a significant adverse impact--even after mitigation measures were implemented--on historic cultural resources and native cultural resources.

This particular assertion, we believe, has been refuted by the testimony of Dr. Lynne Sebastian and, in particular, as an example by this map attachment 5-A of one of Dr. Sebastian’s report submissions, which reflect the documentation by Government-sponsored cultural resource surveys of extensive Native American trails and archeological sites in the heart of the Mesquite Mine area, which is approximately 10 miles away from the Imperial Project in Imperial County in the California Desert Conservation Area.

Some of these trails, as Dr. Sebastian testified, such as 1881, which you saw photographs of,
are quite lengthy, extending through this region quite lengthy identified on the ground, and were determined to be eligible for the National Register of Historic Places.

The particular trail feature in blue has been mentioned at length in these proceedings, runs through the mine area in question as well as through the new Mesquite Landfill that was approved by the BLM in 1996, was reaffirmed by BLM in 2002, and upon which ground breaking construction activities for one of the largest landfills in the United States has commenced this year in 2007.

As you have heard testimony from Kevin McArthur and Mr. Leshendok, this landfill will have a capacity of 100 years, will reach a height after this solid waste is placed on the desert landscape of up to 400 feet tall, covering four square miles, two to three miles in length, far larger than the proposed Imperial Project. And the Mesquite Mine itself is larger than the proposed Imperial Project.

As you also heard from Dr. Sebastian, all of this activity is occurring right on the immediate edge of the previously established Singer Geoglyphs Area of Critical Environmental Concern. In fact, the boundaries of the ACEC were adjusted to accommodate
this development activity.

Let's turn to another assertion made by the Respondent, page 72 of the Counter-Memorial from September 2006: "The Federal Government was able to minimize the impact of the Baja Pipeline by requiring changes to the proposed pipeline route to avoid all archeological features associated with the trails' and by ensuring that the route intersected trail segments 'at or very near to places on the trail that have already been disturbed.' Also, because the pipeline would be located primarily underground, BLM determined it would not leave no significant permanent visual impact or alterations to the landscape."

You have seen this week, sponsored by the sworn testimony of Dr. Lynne Sebastian, photographs of features that were left on the landscape of this pipeline that runs approximately 80 miles in length with a disturbance swath ranging from 40 to 80 feet wide.

You have heard the testimony of Mr. Leshendok, who has reviewed the EIS records concerning these various projects and has stated that the total area of disturbance is on the order of a thousand acres. The Imperial Project disturbance was on the order of 1,360 acres.

And you have also heard the testimony acknowledged this morning by Dr. Cleland that a second proposed pipeline route is planned to go through this
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region, based on a Final Environmental Impact Statement in 2007, with this new pipeline running generally along the same corridor.

We also think it is significant that the Baja Pipeline route was known to run through the region of the previously identified Xam Kwatcan network through the region, unlike the situation when the Imperial Project proceeded in an area that was not previously known to contain the Xam Kwatcan Trail.

We believe the sworn testimony that you have heard from Dr. Sebastian, based on her review of all available information, based on her site visits to the area, demonstrates that archeological features of Native American trails were not avoided. The pipeline runs through the Xam Kwatcan Trail network and truncates numerous trail features in areas where previous disturbance is not visible. The visible and direct impacts of this swathe of pipeline is permanent, and you have heard testimony to that effect.

Let's turn to another assertion that we heard about on the first day of this hearing, Sunday afternoon. In the Counter-Memorial, page 238, where we were discussing--where the issue was being addressed of the Quechan gold mineral exploration activity, the Respondent asserted in the Counter-Memorial: "While it is true that the Quechan commissioned a limited survey of the potential for
bulk gold mineralization on their reservation in the late 1980s, the only exploratory drilling involved in this survey was on the Stone Face prospect, an area in the northwest corner of the reservation, that had already been mined extensively."

Another assertion repeated in the Respondent's Rejoinder relating to this stated: "As an initial factual matter, the only place where the Quechan conducted exploratory drill testing was on the Stone Face prospect at the base of the Cargo Muchachos Mountains, an area that had been mined in the past. There is no inconsistency between the Tribe's decision to conduct limited drill testing in an area that had already been disturbed and its desire to protect cultural resources in the Imperial Project area.

You had heard the live testimony of Dan Purvance, Project Geologist, stating with respect to the Stone Face site, "I have taken photographs, I have visited the site several times, and I can swear there is no mining operation at that site."

We bring this up as an example because, as we saw Sunday afternoon, it illustrates the problem of reliance on technical information without a qualified witness sponsoring that information.

And now we will turn to the subject of the Glamis Imperial Project valuation and deprivation. We have statements in the Counter-Memorial, repeatedly in the Rejoinder, that Glamis's unpatented mining claims
Another statement: "In fact, given the price of gold, today Glamis's mining claims would be worth over $159 million."

Similar statement in the Rejoinder at page five.

These statements are based on the Navigant submission by Mr. Kaczmarek, which, in turn, relies upon the engineering report of Norwest. Each of these reports suffers from a critical flaw, as this week's testimony has identified. Norwest Report assumes an incorrect swell factor based on an assumption that 79 percent of the overburden at the site is alluvial gravel. The testimony of Mr. Purvance, the testimony of Mr. Guarnera, and the physical core samples belie this assumption.

The Norwest lead author, who was here before the Tribunal yesterday afternoon, admitted that such unconsolidated gravel would allow the 700-foot pit wall to slide, but not collapse.

Let's stay back on that one where we were.

Mr. Houser places reliance on some technical records that support a 15 percent swell factor in his view, but he recognizes that, if the material is, in
fact, conglomerate, the appropriate swell factor is 33 percent. And we have seen extensive evidence that a swell factor in the range of 30 to 40 percent has been recognized as typical at metallic mines by the National Research Council, among many others, including even the State Mining and Geology Board in the measures at issue in this case.

So, it would appear that Mr. Houser is unwilling to acknowledge what this material clearly was in the face of a WESTEC pit stability slope report as part of the Feasibility Study in 1996, which acknowledged that the pit wall would expose a 700-foot expanse of conglomerate material.

When we presented Mr. Houser with the conglomerate yesterday, the sample of the drill core, this is what Mr. Houser had to say: "All I can say is it's a heavy, tubular, cylindrical object right now I can't say much more about it right now."

When asked, "Did you make any request through your counsel to examine core samples that might be available to resolve this issue?" Mr. Houser acknowledged that he had made no such request.

It would appear that Mr. Houser wanted to be blind to the actual facts that were available to anyone that would be qualified and review the facts regarding the Glamis Imperial Project.

The Navigant litigation experts admitted candidly yesterday that they had never valued a
metallic mine deposit prior to their retention in this case. The Navigant Report presupposes, and
Mr. Kaczmarek has testified, that mining properties can be valued like any other asset, in his view.
This is not the case. Mr. Kaczmarek testified that his report was 100 percent in compliance with the CIMVal valuation standards. Those CIMVal valuation standards are even referenced and attached to one of the Navigant submissions in this record. However, those valuation standards require that a valuation of a mineral deposit be performed by a qualified valuator who must perform a site visit or engage a qualified expert to do so.
Mr. Kaczmarek conceded that he is not a qualified valuator. And despite his opportunity to visit the site, he declined to do so.
And then, remarkably, when Mr. Houser testified yesterday afternoon, he acknowledged that he had failed to make a site visit, as well as his colleagues at Norwest. No one visited the site.
Mr. Guarnera, by contrast, performed a site visit, not only to consider the materials at the site, but also as a double-check of the layout and an overall verification of the factual issues on which his report is based.
Mr. Guarnera, who is indisputably one of the world’s foremost metallic mine valuators has explained the importance of the site visit to the Tribunal.
yesterday. The question was asked of Mr. Guarnera:

"Did you and other members of the Behre Dolbear project team visit the Imperial Project Site to make a characterization of the rock material?"

He responded: "It was not only just to make the characterization of the rock material, but to see what the rock material looked like and certainly identified it right away as conglomerate. I walked down into the arroyos and saw the highly indurated conglomerate that was present. But, while we were there, we also looked at the entire site area to make sure that the site layout was quite appropriate, that everything was accounted for. That's part of the work we try to do, to try to check every aspect of the project to make sure that it is, in our opinion, correct."

I think this rather frivolous issue over whether a particular rock sample is conglomerate or gravel or consolidated gravel would have been avoided had a proper site visit been made by the Government experts in this case, as the valuation standards indicate must be done.

I think it is also worth noting that the CIMVal standards are not the only valuation standards for the Tribunal to look at. We have just today provided the Tribunal with a statement that is in a document on appraisal of property that is available from the U.S. Justice Department Web site, which
recognizes that mineral appraisal is a specialized complex subject that should be conducted by someone with specialized knowledge and training concerning a mineral property.

And we see, with the example of the swell factor issue, the wisdom of those requirements. This is not just a technicality to visit the site. This bears directly on the ability to perceive issues such as the swell factor issue, and not make misjudgments in valuation of a mineral property based on an issue such as that.

Another example of the need for the valuator to have knowledge of the mineralization and basic background in mining and geology is reflected by Navigant’s reliance on the Cerro Blanco project which was referenced in the last rebuttal filing of Navigant just a little more than a week ago, where Mr. Kaczmarek considered that very analogous situation to the Imperial Project in his latest expert rebuttal report without referencing any reliance on Norwest for having provided any type of characterization of that situation.

And yet, yesterday, Mr. Kaczmarek acknowledged that there were fundamental geologic distinctions between the Cerro Blanco project, which
was a deep vein ore deposit structure as compared to the Imperial Project which had been drilled by 400 drill holes, as you heard in testimony this week, and contained no such deep vein structure.

Mr. Kevin McArthur, the Chief Executive Officer of Goldcorp/Glamis Gold, Limited, an individual who testified as to his great experience operating metallic mines at various stages in his career as mining engineer, as mine manager, testified that the adoption of the California complete backfilling requirements in 2002 and 2003 destroyed the value of the Imperial Project. The United States asked not a single cross-examination question of Mr. McArthur.

Let's turn to the topic of the character of the California measures. In the Counter-Memorial at page 203, we have an assertion that Glamis's proposed Imperial Project was merely the most prominent and immediate example of the harm that open-pit metallic mining would cause to cultural resources and sites of significant religious, cultural, and historic importance. And yet, we have seen somewhat reluctantly Mr. Parrish acknowledge two days ago that, yes, indeed, the Glamis Imperial Project was the only project ever identified as the "emergency basis" for the SMGB regulations.

Let's look at the assertion of the Respondent
in the Counter-Memorial at page 206. We have assertions that the SMGB enacted the regulations because of the damage projects such as the proposed Imperial Project would cause to the environment, absent the regulations, and not for any reason particular to Glamis.

We see a further statement in the Counter-Memorial that the SMGB regulations do not arbitrarily single out a particular parcel of land for less favorable treatment than other parcels of land. Yet, the motive to stop Glamis was expressly stated by the SMGB's emergency rulemaking and in the Governor's September 30, 2006, directive to stop the Glamis Imperial Project. As Mr. Parrish testified and reluctantly acknowledged, no other project was ever identified as the basis for the emergency.

Mr. Parrish noted in his testimony late yesterday that the SMGB includes a statute-mandated position which would be the position of a mining engineer. Mr. Parrish was complete in one respect, and that is that the California Public Resources Code mandates that the expertise to be represented on the Board in particular requires that one member shall be a mining engineer with background and experience in minerals in California.

At the very time that the Board was being directed by the Governor through the Secretary of Resources to promulgate new reclamation requirements
for metallic mines, the most pertinent position on the Board, that of mining engineer, was vacant, because, from 2001 to 2005, the mining engineer position of the Board was unoccupied.

MS. MENAKER: This is not the evidence is not in the record at all. This wasn't presented during testimony.

MR. McCRUM: This particular reference--

MS. MENAKER: If you would wait for the Tribunal to rule on the objection, please.

PRESIDENT YOUNG: Do you have any response to that, Mr. McCrum?

MR. McCRUM: Yes. This particular record is contained on the Web site of the State of California concerning the State Mining and Geology Board, and we are presenting it as a publicly noticed official fact.

(Tribunal conferring.)

PRESIDENT YOUNG: Mr. McCrum, we are going to allow you to mention that and give Respondent an opportunity to respond to that tomorrow or Friday in your presentation.

MR. McCRUM: Thank you, Mr. President and Members of the Tribunal.

We were presented with this particular statement by Mr. Parrish yesterday afternoon, and we think it's important that the Tribunal consider these issues in light of the public reality that bears on them.
The additional statement was made that the Board is nonpartisan in nature. We note that the six out of the remaining eight Board Members at that time had been appointed by Governor Gray Davis, according to that public information.

Certainly, governmental action can be carried out in response to environmental concerns, concerns concerning the cultural resources protection, but governmental action needs to be carried out in the context of recognition of vested property rights, such as the property rights that were held by Glamis Gold, Limited, which have been recognized as valid existing property rights by a formal finding of the U.S. Department of the Interior Bureau of Land Management, dated September 27, 2002. That particular finding, that particular report, has never been rescinded by the Interior Department. There has been no one from the Interior Department to call into question any aspect of that Mineral Report which found the Glamis Mining claims to be valid and established in accordance with Federal law.

We have only outside consultants that have been hired in this litigation, with little or no background in mining, raising any question about the BLM Mineral Report that has verified the vested property rights associated with the Glamis mining claims immediately before the action taken by
California in the emergency rulemaking which was unquestionably targeted at Glamis to stop and permanently prevent the Glamis operations from proceeding; to impose cost-prohibitive unprecedented backfilling requirements on this operation, backfilling requirements which the Interior Department itself in the BLM Mineral Report acknowledged were not economically feasible; backfilling requirements which the Governor himself acknowledged were intended to impose cost-prohibitive requirements; backfilling requirements which other State documents the State of California acknowledged were intended to impose a permanent prohibition on the Glamis Imperial Project from proceeding; and backfilling results which--backfilling requirements which the Glamis Gold company headed by responsible, proficient experienced mining engineers, concluded could not be carried out in an economically feasible manner and concluded that the Project was sterilized and could not go forward; and a conclusion that has been verified by the marketplace in a period of booming gold investment, and yet you have heard the sworn testimony of the Glamis CEO, Kevin McArthur and Charles Jeannes, that, during this time, not a single offer has been made from a mining company or any mining investment.
interest to purchase the reported mineral resources at
the Glamis Imperial Project, and that is why Claimant,
Glamis Gold, comes before this Tribunal for fair
compensation for the destruction of its vested
property interests by the Government measures that had
been carried out with the intent to do just that.

And that concludes our presentation for this
afternoon.

PRESIDENT YOUNG: Thank you very much.
Do either of my colleagues have a question
you want to pose?

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR CARON: Mr. McCrum, I have--I'm
feeling out of balance here. I have a few questions,
if you could just try to help me a little bit.

MR. MCCRUM: Sure.

ARBITRATOR CARON: In the second section,
reasonable expectations regarding cultural resources,
and you point to the 1986 map prepared by Woods, and

the point to be made you are asserting is that one
could look at that map and have an expectation, not an
expectation, but to alert Glamis to the sensitivity of
the region. Am I accurate in that, roughly?

MR. MCCRUM: That's correct, Professor Caron.

It also is an indication of what BLM-the
type of information that was available to BLM when it
was carrying out its land-use planning activities.

ARBITRATOR CARON: The subsequent map. You
pointed to from BLM.

MR. McCRUM: Actually, the BLM map would have been from the late 1970s, and the Woods map would have been subsequent to it in 1986.

ARBITRATOR CARON: Excuse me.

MR. McCRUM: And all of that information was taken into account by BLM through its California land-use planning activities in the California Desert, leading to the congressional action in 1994.

ARBITRATOR CARON: When I look at the Woods map, there is a couple of things that strike me that--I don't think it's quite hand-drawn, but it's a rather simpler map, and the trail is rather even and symmetric, so I might have some doubts about what do I take away from the accuracy of that. And I just am not sure.

AM I correct that Indian Pass is not on this map?

MR. McCRUM: That's correct, Professor Caron. Perhaps it will help our discussion to look at the Woods map from 1986. Here is the Imperial Project, and here is the Xam Kwatcan Trail, which is several miles to the West of the Imperial Project.

ARBITRATOR CARON: Right. I'm just saying someone knowledgeable in the region trying to assess information from that, it's curious to me looking at that earlier BLM map you described that Indian Pass, which is an area of high concern, is not listed on the
The square above the Glamis Imperial Project, Indian Pass ACEC.

MR. GOURLEY: The ACEC didn't exist at the time of this.

ARBITRATOR CARON: The ACEC reflects an area of myth-related locale?

MR. GOURLEY: I don't think there is any evidence of that.

ARBITRATOR CARON: Okay.

MR. McCrum: Professor Caron, what this indicates is that this map is not necessarily conclusive as to the entire desert region, but this is the available information that Woods was able to obtain, based upon consideration of all ethnographic information—that's the way the report reads—and that this was the best available information at the time, and this is what BLM relied on, and this is what companies relied on. Companies relied on primarily the BLM action, the land management actions that were taken, and the congressional actions taken as well in response to the known information such as this.

BLM can only act based on known information, and investors carrying out development projects in the California Desert can only act on what's known, as well.

ARBITRATOR CARON: I totally understand that. I guess my question was, the way the trail is depicted, it seems to--since we know there is not a
continuous trail on the ground following that route,

that it is some sort of approximate depiction of the trail; is that correct?

MR. GOURLEY: Yes. It's a schematic. It is to scale, as you saw—it's 20 kilometers to roughly an inch, but it is a schematic—so, all it can tell you is a general approximation of where the trail is, and that's all it has been represented to do. And the Bona Johnson map is the same.

ARBITRATOR CARON: Okay.

Just a quick question on the Mesquite Mine, just to refresh my memory, so, on the 400-foot high eventual landfill, there was a statement at one point that the waste rock would be used to resurface the landfill area, something along that line. Perhaps you can refresh my memory there, but the related question is the last pit of the Mesquite Mine to be left unfilled.

MR. McCRUM: Professor Caron, my understanding is the Mesquite Mine remains a very large open pit today. It is not subject to complete backfilling, it never has been, and it is not planned to be filled. It is not subject to the California
And I believe that there is a Mesquite expansion that has been approved prior to 2002 which has yet to be carried out but can be carried out without compliance with the complete backfilling requirements because it would be a grandfathered property.

And we also have evidence in the record that there was a State lease issued on October 1, 2002, to authorize expanded open-pit mining in connection with the Mesquite Mine on State lands adjacent to that mine, and this is contained in the rebuttal report of Lynne Sebastian from July of 2007.

ARBITRATOR CARON: Thank you.

The next topic you move to is the pipeline, and you point to the statement from Dr. Sebastian's report that there are visual and direct impacts, and Dr. Cleland's response was, in part, that where there were direct impacts, that was in a different part of the trail network, so leave that to the side for a second.

But, he was saying that--one comment he made at the very end was a mine would have different visual impacts--in fact, also other impacts such as noise of operation--and that the waste pile is a visual impact that is different than a scar across the surface.

Do you have any--from the record, is there any comment responding to that?

MR. MCCRUM Yes, Professor Caron. I think
you for these questions and the opportunity to address them. This is very, very helpful.

If you look at one of the photographs that was associated with Lynne Sebastian's presentation here as well and is contained in her rebuttal report from July 2007, one of her photographs shows a previously identified Native American trail, 1881, which was identified as eligible for the National Register by the Government. This was a trail segment that heads directly to the new Mesquite Landfill area which is reflected by that low black silk fence, and off in the background you see the Mesquite Mine waste rock piles somewhat low on the horizon in the picture, and the landfill will rise roughly double the height of that rock material, and that rock material is, after all, natural to the desert.

ARBITRATOR CARON: I agree. That's not my question, though. I agree there is a question you can make by comparing the Mesquite Mine and Landfill again, but the question is comparing your statement of comparing the pipeline to the mine.

MR. McCRUM: Professor Caron, we would never insert that the visual impacts of the mine were exactly the same as the landfill. To us, the relevance of the--I'm sorry. Never assert that the visual impacts of the mine are exactly the same as the pipeline, but we think the pipeline is quite relevant because it is a major discretionary Government land
project that ran through the previously identified
known route of the Xam Kwatcan Trail.
And we think it's quite—we fully agree with
you and Dr. Sebastian, of course, that these trail
segments are not an isolated line. It's a braided
trail network. It doesn't—you can't map it according
to a precise line. But it would appear from the
Projected Xam Kwatcan route, according to Woods in
'86, that the pipeline generally followed that route,

that it appears consistent with the more recently
disclosed, more extensive map by Boma Johnson in
2000—well, we think roughly 2001 because Dr. Cleland
states that he had this map given to him—not this
map, but you understand what I mean—the
black-and-white map that this is based on in this
color depiction which shows the other development
sites. Dr. Cleland has stated in his declaration,
filed with the Rejoinder in March of 2006, that the
map that he was referring to in his declaration he had
in his possession as part of the Baja Pipeline review
in 2001, the Baja Pipeline route had not gone through
at that point.
So, they understood that this trail network
would be bisected by the route, by the proposed route,
of the pipeline in general, and that was known prior
to the BLM taking out—taking that action, and the
Federal Energy Regulatory Commission in the State of
California.
Unlike a mine which has to be only where the ore deposit is, where the rare old gold deposit is identified, there is discretion where you could put the pipeline. The pipeline could have been into the west moved in the sand dune hills area. It could have been moved, perhaps, into Arizona, as the Quechan proposed to be done. But this was a discretionary action to place the pipeline.

Therefore, we do think it's relevant that when you look at some of the photographs that Lynne Sebastian has presented and you see that 80-mile swathe running off into the distance and the SUV looking very small, that that is a permanent visual impact on the desert. It is not exactly like the mine, but it covers a thousand acres in total over that linear distance.

The second pipeline now projected to come through in 2007 is going to expand that further. I don't think we had a quantification on how much that would--much further that would be, but I would suggest that a fair inference would be that the total disturbance would exceed the 1,367 acres associated with the Imperial Project, and that's why we think the pipeline is relevant, because it could have been located in other places.
ARBITRATOR CARON: Could I ask a question on that, then. I do have the problem of scale on the Bona map, but--so we have heard that there was an alternative route to Arizona.

MR. McCRUM: Yes.

ARBITRATOR CARON: Maybe you could push my common sense for a moment, but it would make sense on this side that the trail is in a certain place for a reason, probably follows the most accessible part of the area on either side of Palo Verde Point, and that it was probably logical for the pipeline to follow--again, the scale problem is present to follow approximately, and could go in an entirely different direction. If you talk about tunneling, boring--maybe you could explain that.

MR. McCRUM: Professor Caron, I think that you and I must think a lot in some ways because I had the same logical thought myself. The trail route is where it is because it would run through the desert. It was a natural footpath. The pipeline has roughly followed the trail in the north-south dimension along the same general lines because it was the easiest, most cost-effective way to run the pipeline along that area.

Putting it in other areas probably would have been more expensive, and the Government chose not to reroute the pipeline to vastly different areas, and
let it go through what was generally identified to be
the known route to the Xam Kwatcan Trail.

I have been working on this case--I'm sorry.

ARBITRATOR CARON: But we would have to see
that at a different scale to know exactly what that
means. We have seen some photographs, but I am just--

MR. McCORM: Yes. We recognize that this map
is not--this map is not precise. These trail segments
are braided, as Dr. Sebastian has testified, but this
kind of a map of gives us the best indication of where
the apparent route goes.

We were quite amazed when this map was
produced upon our request on June 6th of 2007. We had
never seen it before in years of working on this
matter, and it was quite remarkable to us to find out
that the Government cultural resource experts
apparently had this back to 2001, prior to the 2002

Mesquite Mine expansion, prior to the Xam-pipeline
approval, and prior to other land development
activities in the area.

ARBITRATOR CARON: If I could go to the
valuation and deprivation, and I guess my question
here is a little--you have done a lot of education
about the swell factor, used a lot of your time to
talk about that issue, so let me just try to raise a
couple of questions.

So, a very simple question. First, do you
know the dollar difference between 23 percent and
35 percent in the valuation?

MR. McCROM: I don’t know offhand, Professor Caron. If Dr.—if Mr. Guarnera was here, he certainly would have known.

ARBITRATOR CARON: That’s fine.

MR. McCROM: It’s a substantial figure. It substantially affects the valuation.

ARBITRATOR CARON: You stated that as far as the CIMVal standards, you point out that it doesn’t meet a particular standard about qualified valuator, and related to that that the evaluator pay a site visit. By that do you mean or do you concede that it meets the other standards?

MR. McCROM: No, we certainly don’t concede that, and we do rely on the very detailed reports of Behre Dolbear, which have—

ARBITRATOR CARON: Which list other problems?

MR. McCROM: Which have listed other disagreements that they have with the Navigant Reports, and one of the most striking disagreements, of course, is Navigant reliance on a single spot price to project a 159 million-dollar valuation which—

ARBITRATOR CARON: That does not go so much—it goes to a mining practice, perhaps, but not to the—let me back off. I will strike that question.

Let me ask a different question. Mr. Houser, in looking at the conglomerate at several points, stated that he would need to know more about the
particular conglomerate because when it blasts, it breaks apart. And, to me, the implication was that it can break apart in different ways, that there is rocks, that there is smaller finer grained material that comes out of that blast, and the implication for

m: listening to that was that there might be some range of swell factor for the range of conglomerate. Is that--I know you're not an expert in this field, so I'm just asking for you, but--

MR. McCRUM: Well, Professor Caron, I have a geology degree at undergraduate school, and I did learn the difference between conglomerate and consolidated sand and gravel probably in the introduction to geology. I think that the best indication of this, the best response I can give you is to look at the Church Engineering Handbook that projects swell factors, and it does not support the interpretation offered by Mr. Houser yesterday. You look at that chart, and it provides different swell factors for many different rock types. There is only one for conglomerate. There is no suggestion that you apply different swell factor based on different conglomerate.

And if you saw those rock samples, as you did in the last few days, they are quite hard. They're like any other hardrock. In fact, the National Academy of Sciences report was entitled "Hardrock
Mining on Federal Lands," for a reason because gold mining is typically carried out in a hardrock environment, and the swell factor is typically in a range of 30 to 40 percent, as you've heard at length, and I think there is really no basis to place weight on this conglomerate versus sand and gravel issue. I think it was a clear error by Norwest, and which has been accepted by Navigant as well.

ARBITRATOR CARON: I'm not a geology major, but I took several geology courses. There are rocks and there are rocks. I'm not sure what that means.

The--on the character of the California measures, when I--at several points you have emphasized that the Glamis Mine is the only mine mentioned specifically in the emergency regulations. The response of Mr. Parrish is that the mine is the trigger, and that's a different thing than saying it's the only thing that the regulations did or could apply to.

And the part of the regulations as pointed to says basis for the emergency. If there is no basis for the emergency, there should be no emergency regulations. There should be a project that somehow justifies the issuance of emergency regulation. So, I understand you want to tie it back to the statement of
the Governor earlier in the message to the Senate, but independently looking at that one document. Perhaps you could comment.

MR. GOURLEY: I think it's very important to take a look at the way the process worked.

Yes, it's the--

ARBITRATOR CARON: I'm sorry, can you answer my question first about just the document itself and then you can broaden it out, if you would like.

MR. GOURLEY: The emergency that is listed is the Glamis Gold, and yet there is not a shred of evidence before the Board in this record that would show that Glamis Gold presented any of the safety or environmental issues at the Imperial Project that became the justification for the regulation.

So, it's one thing to say, ah, we see a problem presented by this mine that is about to be permitted, and so we have to act quickly. It's quite another when you say I see this mine, I have been told

to kill it, and now I have these health and safety issues reflected by other preexisting mines. I'm not going to regulate the preexisting mines, but I'm going to kill the one project that is pending approval.

ARBITRATOR CARON: I'm not sure that answers my question. I understand your point that it doesn't--we can go on. Okay, thank you.

I think that concludes my questions. Thank you very much.
MR. McCURM: Thanks for your questions.

PRESIDENT YOUNG: Thank you very much, Counsel. We will be adjourned until tomorrow morning at 9:00, at which point we will turn the time to Respondent. Thank you.

(Whereupon, at 3:25 p.m., the hearing was adjourned until 9:00 p.m. the following day.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

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