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Gold Firm Plans Suit Under NAFTA; Canadian mining company says California limits make its Imperial property worthless.

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Mining company **Glamis** Gold Ltd. is taking aim at tough California environmental laws by threatening to sue under an obscure provision of the North American Free Trade Agreement. **Glamis** says new California restrictions on open-pit mining have destroyed the value of its proposed gold mine in Imperial County. To build the mine, which has long been controversial, **Glamis** would excavate 1,571 square miles of federally protected desert in the state's southeast corner that includes religious and cultural sites sacred to the Quechan Indians.

**Glamis** filed an intent-to-sue notice last month under a provision of NAFTA that allows investors to sue foreign governments that take actions that are "tantamount to expropriation." The actual claim has to be filed within 90 days of the notice.

Charles Jeannes, the company's senior vice president and legal counsel, said that **Glamis** had spent close to \$15 million on the Imperial project and that the money could not be recovered because the mine would have a "negative cash flow" under the state's new rules.

He said the mine would have been worth as much as \$50 million.

"This is simply a claim process for receiving compensation for what's happening," Jeannes said. "We've always wanted to mine the project but with the recent actions by the state, that's just not possible."

Environmentalists contend that **Glamis** is using the threat of a NAFTA lawsuit to strong-arm the U.S. government. Whitney Painter, a spokeswoman for the Mineral Policy Center in Denver, said it was "no secret" that **Glamis** has been lobbying the Bush administration and Congress to compensate the company, which began planning the gold mine long before California adopted its rules.

"These are normal business risks," she said. "For a lot of other businesses in a lot of other realms, laws change in the middle of the process and the government doesn't buy them out."

**Glamis** notified the Interior Department of the intent-to-sue notice in a July 21 letter to Patricia Morrison, a deputy assistant Interior secretary. In the letter, **Glamis** attorney Timothy McCrum said the lack of progress of discussions with the U.S. government about "fair compensation" for the company had forced it to contemplate a NAFTA claim.

He said the company would explore a "negotiated resolution" of the dispute.

The **Glamis** case was sparked by tough measures California adopted in the last year, requiring the backfilling and flattening of mine waste piles at new open-pit metal mines, and the full restoration of any open-pit mine within one mile of a Native American sacred site.

**Glamis** has been at odds with California for years over the Imperial project, which state officials say would carve an 880-foot-deep open pit and leave 280-foot-high piles of waste rock strewn across the federally designated California Desert Conservation Area. In 2000, then-Interior Secretary Bruce Babbitt rejected the plan for the mine, saying it was inconsistent with the Desert Conservation Management Plan. The Bush administration rescinded that decision and hasn't made a final ruling.

John Wright, a spokesman for the Department of the Interior, said the agency was working with the State Department to respond to **Glamis'** intent notice.

He said he wasn't aware of any negotiations between the Department of the Interior and Congress about compensating **Glamis**.

California's aggressive environmental and public safety laws have put it at the forefront of the battle over NAFTA's Chapter 11 provision, which critics say is an egregious example of an international trade agreement encroaching on the ability of state and local governments to protect their citizens.

Critics say multinationals are using the provision to pressure governments to rescind costly environmental and public health laws or risk paying hefty fines.

**Glamis'** Reno subsidiary, **Glamis** Imperial Corp., is in charge of the Imperial project but the Canadian-incorporated parent filed the intent notice. Only foreign firms can sue for damages under the Chapter 11 provision.

"The trade agreement really supports this desire to have it both ways," said Anna Blackshaw, a consultant to the California Senate Select Committee on International Trade Policy and State Legislation.

But the U.S. government is pushing for similar provisions to be included in future trade pacts, including the proposed Free Trade Area of the Americas. Washington contends that U.S. firms need such protections to operate in countries where there is political instability and weak or corrupt courts.

If **Glamis** sues, its claim would be the second major Chapter 11 claim against a

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California environmental law.

The U.S. government is fighting a nearly \$1-billion NAFTA claim filed by Methanex Corp., a Canadian firm, that was triggered by the state's decision to phase out the use of methanol, a gasoline additive, because of health concerns.