

NAFTA/UNCITRAL ARBITRATION RULES PROCEEDING

----- x  
 In the Matter of Arbitration :  
 Between: :  
 GLAMIS GOLD, LTD. , :  
                   Clai mant, :  
                   and :  
 UNITED STATES OF AMERICA, :  
                   Respondent. :  
 ----- x Volume 2

HEARING ON THE MERITS

Monday, August 13, 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 8:59 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

Redacted Transcript, Day 2  
Assistant to the Tribunal

Court Reporter:

MR. DAVID A. KASDAN, RDR-CRR  
B&B Reporters  
529 14th Street, S. E.  
Washington, D. C. 20003  
(202) 544-1903

298

APPEARANCES:

On behalf of the Claimant:

MR. ALAN W. H. GOURLEY  
MR. R. TIMOTHY McCURUM  
MR. ALEX SCHAEFER  
MR. DAVID ROSS  
MS. SOBIA HAQUE  
MS. JESSICA HALL  
Crowell & Moring, L. L. P.  
1001 Pennsylvania Avenue, N. W.  
Washington, D. C. 20004-2595  
(202) 624-2500  
rmccrum@crowell.com

APPEARANCES: (Continued)

On behalf of the Respondent:

MR. RONALD J. BETTAUER  
Deputy Legal Adviser  
MR. MARK A. CLODFELTER  
Assistant Legal Adviser for International  
Claims and Investment Disputes  
MS. ANDREA J. MENAKER  
Chief, NAFTA Arbitration Division,  
Office of International Claims and  
Investment Disputes  
MR. KENNETH BENES  
MS. JENNIFER THORNTON  
MS. HEATHER VAN SLOOTEN  
MR. MARK FELDMAN  
MR. JEREMY SHARPE  
Attorney-Advisers, Office of  
International Claims and Investment  
Disputes  
Office of the Legal Adviser  
U. S. Department of State  
Suite 203, South Building  
2430 E Street, N. W.  
Washington, D. C. 20037-2800  
(202) 776-8443

C O N T E N T S

WITNESSES:	PAGE
LYNNE SEBASTIAN	
BEGINNING OF CONFIDENTIAL PORTION	304
Direct examination by Mr. McCrum	304
RUSSELL KALDENBERG	
Direct examination by Ms. Menaker	351
Cross-examination by Mr. McCrum	352
Redirect examination by Ms. Menaker	424
Recross-examination by Mr. McCrum	432
Questions from the Tribunal	437
ENDING OF CONFIDENTIAL PORTION	442
THOMAS LESHENDOK	
Direct examination by Mr. McCrum	443
Cross-examination by Ms. Menaker	479
Questions from the Tribunal	482
JOHN PARRISH	
Direct examination by Ms. Menaker	487
Cross-examination by Mr. McCrum	490
Redirect examination by Ms. Menaker	570
Recross-examination by Mr. McCrum	583
Further redirect by Ms. Menaker	593
Questions from the Tribunal	593

1 PROCEEDINGS

2 PRESIDENT YOUNG: Good morning. We will  
3 commence the proceedings, the second day of the  
4 hearings in Glamis Gold, Limited, versus the United  
5 States of America.

6 As we--before we turn to the very first  
7 issue, we have one slight rescheduling issue I'd like  
8 to announce. It's a minor issue, but want people to  
9 be attentive of it--attentive to it.

10 On Wednesday we will--we customarily will be  
11 taking our breaks 10:30 to 11:00. On Wednesday  
12 morning we will take the break from 10:00 to  
13 11:00--excuse me, 10:00 to 10:30 rather than 10:30 to  
14 11:00. And I have spoken with the parties and the  
15 Arbitrators, and they seem comfortable with that, so I  
16 appreciate that accommodation.

17 Before we turn to witnesses as well, we ask  
18 the parties if they have any questions or issues they  
19 would like to raise.

20 MS. MENAKER: We don't. Thank you.

21 MR. GOURLEY: Nor do we.

22 PRESIDENT YOUNG: Okay. Thank you very much.

Redacted Transcript, Day 2

2 then.

3 MR. GOURLEY: Thank you, Mr. President.

4 We call this morning our expert Dr. Lynne  
5 Sebastian.

6 LYNNE SEBASTIAN, CLAIMANT'S WITNESS, CALLED

7 PRESIDENT YOUNG: Dr. Sebastian, welcome.

8 I ask you to read the affirmation there.

9 THE WITNESS: Hello. Okay. I solemnly  
10 declare upon my honor and conscience--

11 THE REPORTER: I'm sorry, just a moment.

12 We're having some really bad technical difficulties  
13 with the sound system, so could we wait just a second  
14 until we figure it out.

15 PRESIDENT YOUNG: Yes. Thank you.

16 I'm sorry, Dr. Sebastian, if you would  
17 proceed to read that. Thank you.

18 THE WITNESS: I solemnly declare upon my  
19 honor and conscience that my statement will be in  
20 accordance with my sincere belief.

21 PRESIDENT YOUNG: Thank you very much.

22 I do note at this point that with respect to

303

09:02:28 1 Dr. Sebastian's testimony and the testimony of the  
2 next witness, this will be closed to the public, and  
3 so the television feed to the adjoining room will be  
4 turned off.

5 (End of open session.)

**Redacted Transcript, Day 2**

**(Original Content Removed Due to Confidentiality)**

**(Original Content Removed Due to Confidentiality)**

**Redacted Transcript, Day 2**

**442**

**(Original Content Removed Due to Confidentiality)**

**14 (End of confidential session.)**

**15**

**16**

**17**

**18**

**19**



20

21

22

443

12: 37: 14 1

OPEN SESSION

2 PRESIDENT YOUNG: Welcome, Mr. Leshendok. I  
3 wonder if you would read for us the witness statement  
4 there.

5 THE WITNESS: Good afternoon. I solemnly  
6 declare upon my honor and conscience that my statement  
7 will be in accordance with my sincere belief.

8 THOMAS LESHENDOK, CLAIMANT'S WITNESS, CALLED

9 PRESIDENT YOUNG: Thank you very much.  
10 Mr. McCrum

11 DIRECT EXAMINATION

12 BY MR. McCRUM

13 Q. Mr. Leshendok, can you please state your full  
14 name.

15 A. My name is Thomas Leshendok, and I live in  
16 Sparks, Nevada.

17 Q. And what was your position with the  
18 Department of Interior Bureau of Land Management from  
19 1983 to 2003?

20 A. At that time I was the Deputy State Director  
21 for Mineral Resources for the BLM in Nevada. Prior to  
22 that I held positions with the U. S. Geological Survey,

444

Redacted Transcript, Day 2

12: 37: 56 1 the Minerals Management Service, and the U. S.  
2 Environmental Protection Agency.

3 Q. Did you hold any positions of national  
4 responsibility with the Bureau of Land Management from  
5 1998 through 2001?

6 A. Yes. I was selected to be a member of the  
7 Department of Interior task force chaired by Bob  
8 Anderson, which was meant to revise and draft the 43  
9 CFR 3809 regulations for surface management of  
10 hardrock mining on the public lands.

11 Q. And have you concern consulting work for the  
12 U. S. Environmental Protection Agency and the Bureau of  
13 Land Management since your retirement from the BLM in  
14 2003?

15 A. In 2003, I did a management report on the  
16 various options for dealing with the financial crisis  
17 that occurred regarding reclamation bonding in Nevada  
18 for BLM, and in 2004, I did a report for the United  
19 States Environmental Protection Agency on the review  
20 on the uranium management regulations background.

21 Q. Have you received any particular awards or  
22 acknowledgements for your government service involving

445

12: 38: 59 1 mining regulation?

2 A. I was awarded the Department of Interior  
3 Meritorious Service Award by Secretary Gale Norton,  
4 and I was commended in the Congressional Record by  
5 Senator Harry Reed for that award and for my

6 management of the public lands in Nevada during that  
7 time.

8 Q. What academic degrees do you hold,  
9 Mr. Leshendok?

10 A. I have a Bachelor's degree in geology from  
11 the State University of New York at Binghamton, and I  
12 have taken engineering management graduate courses at  
13 George Washington University, as well as extensive  
14 short courses on mining and environmental issues  
15 through my career.

16 Q. You prepared a detailed report on the Glamis  
17 Imperial Project dated April 2006, which has been  
18 submitted in the record in this case; is that correct?

19 A. Yes, I did.

20 Q. And in your research on that report, did you  
21 form an opinion as to whether Glamis Gold, Limited,  
22 had an expectation of Federal and state regulatory

446

12:39:54 1 approvals for the Imperial Project and whether that  
2 expectation was reasonable?

3 A. Glamis Imperial Project, Glamis had a  
4 reasonable expectation of approval of the Project.  
5 Glamis--this was because it was consistent with the 43  
6 CFR 3809 regulations and because it was consistent  
7 with the practices of other open-pit gold mining  
8 operations in the California Desert Conservation Area  
9 with the application of appropriate economic and  
10 technically feasible mitigating measures. This was  
11 approved by the State. The measures were approved by

12 the State, by the agencies, and by BLM  
13 Q. You have stated in your expert report that  
14 the Imperial Project had been designed in accordance  
15 with the BLM 3809 regulations. Could you briefly  
16 describe the regulations in a general sense?

17 A. The regulations provide the permitting  
18 framework for mining on the public lands. It contains  
19 information required in the plans of information on  
20 reclamation. It requires performance standards and  
21 environmental standards. It requires information  
22 regarding regulations provide guidance on reclamation

447

12: 41: 07 1 bonding costs and procedures. It sets up an  
2 enforcement and inspection program and determines the  
3 guidance regarding the cooperation between the States  
4 and the Federal Government regarding mining of  
5 hardrock minerals on the public lands.

6 Q. And was the Imperial Project designed  
7 consistent with the 3809 regulations?

8 A. Yes, it was.

9 Q. In what way was it consistent?

10 A. The plan, the Reclamation Plan was good. It  
11 had all the content requirements. The performance  
12 standards were adequate according to the regulations.  
13 The reclamation bonding was proposed adequately. It  
14 met the full range of the responsibilities within the  
15 regulations as far as I was concerned.

16 Q. Were the mitigation measures consistent with  
17 other large open-pit metallic mines, in your

18 experience?

19 A. Yes, they were.

20 Q. Other than the Imperial Project, did Glami s  
21 have other experience complying with the BLM 3809  
22 regulations and the applicable California Surface

448

12: 42: 07 1 Mining and Reclamation Act of 1975 in California?

2 A. Glami s also operated the Picacho Mi ne and the  
3 Rand Mi ne in the California Desert Conservation Area.  
4 Glami s also operated other open-pit gold mines in the  
5 State of Nevada on public lands.

6 Q. The mines that you have referred to in  
7 California, in Nevada, are they in a particular  
8 geologic province?

9 A. Yes. All those mines are what's known as the  
10 basin and range geologic province which comprises  
11 areas of Arizona, California, Nevada, and Utah.

12 This area, this geologic Great Basin geologic  
13 province is considered a world-class gold and copper  
14 mining district.

15 Q. Let's look at Leshendok Hearing Exhibit 1.

16 Did you prepare or did you submit with your  
17 expert report a map of the basin and range geologic  
18 province?

19 A. Yes, I did.

20 Q. And is this that map up on the screen?

21 A. That is that map, yes, it is.

22 Q. And what do the numbers refer to there?

12: 43: 19 1 A. The numbers refer to major open-pit mines,  
2 primarily open-pit mines within the Great Basin  
3 geologic Province.

4 Q. And is the Imperial Project within that  
5 broader Great Basin?

6 A. Yes, it is.

7 Q. To clear the record, is the Imperial Project  
8 within that Great Basin geologic province?

9 A. Yes, it is.

10 Q. And what types of metallic mining is common  
11 in that area?

12 A. The predominant method of mining in that area  
13 is open-pit gold mining--is open-pit mining. That's  
14 the typical method used.

15 Q. And are there other mines beyond the gold  
16 that are carried out in that region? Are there mines  
17 besides gold mines?

18 A. Yes. There are a wide range of mines in that  
19 area.

20 The secondary probably produced area--first  
21 of all, the Province is the largest, third largest  
22 producer of gold in the world from all the mines. In

12: 44: 28 1 addition to that, it's a significant producer of  
2 copper. For example, Arizona by itself I think  
3 produces about 65 percent of the copper in the United

4 States. There's also major open pit copper mines in  
5 other states like Bingham Canyon in Utah, and the  
6 Robertson Project in Nevada. They are all open-pit,  
7 very large open-pit gold and copper mines.

8 Q. Let's take a look at Leshendok Hearing  
9 Exhibit Number 2. This is a map showing mines in  
10 California producing nonfuel minerals as of 1988.  
11 That was also submitted in your expert report, is that  
12 correct?

13 A. Yes, that's correct.

14 Q. And the California map, is it showing--is  
15 that confined to metallic mining?

16 A. The California map comes from a publication  
17 of the State of California which identifies about 955  
18 mines throughout the State. Most of those mines are  
19 aggregate mines. Only 24, according to the State  
20 report, are active gold mines, so there is a very  
21 small percentage of that total number of mines, which  
22 are only active gold mines.

451

12: 45: 51 1 Q. Is open-pit mining a common method of mining  
2 for aggregate operations?

3 A. Open-pit mining is probably the most typical  
4 method for mining aggregates and industrial minerals  
5 throughout the United States and in California.

6 Q. And are the 955 mines depicted on this map in  
7 1998, are they all subject to regulation under the  
8 California Surface Mining and Reclamation Act, as far  
9 as you understand?

- 10 A. Yes, yes, they are.
- 11 Q. And did you do particular research about  
12 mining methods employed in the California Desert  
13 Conservation Area over the past couple of decades?
- 14 A. Yes, I did.
- 15 Q. And what did you find there regarding common  
16 mining methods?
- 17 A. The most common mining method for aggregates  
18 and gold and industrial minerals is open-pit gold  
19 mining without complete backfilling.
- 20 Q. And in the California Desert Conservation  
21 Area, what were some of the gold mining operations  
22 that you reviewed?

452

12:47:10 1 A. There was a range of gold mining operations,  
2 open-pit gold mining operations in the California  
3 Desert Conservation Area. They ranged from Mesquite,  
4 which is a few miles to the northwest, which had a  
5 surface impact of about 4,000 acres to operations of  
6 less than a few hundred.

7 The Glamis Imperial Project was a mid-size  
8 operation within that range of mines. It affected  
9 approximately or proposed to affect approximately  
10 1,362 acres. That size was approximately the same  
11 size as Glamis's Rand operation and also the Castle  
12 Mountain operation in the California Desert.

13 Q. How would the Glamis Imperial Project compare  
14 to open-pit gold mines that you're familiar with in  
15 Nevada, from a size standpoint?



16 A. It's a mid-range operation. There are many  
17 larger open-pit mines in Nevada. Nevada is the State  
18 which has largest amount of gold production of all  
19 those--within all those states.

20 Q. In your research, did you evaluate whether  
21 Glamis Gold, Limited, had a good regulatory compliance  
22 record with regard to state and Federal regulations at

453

12: 48: 19 1 its Picacho and Rand mines and what did you find?

2 A. Glamis had a good compliance record.

3 In 1994, Imperial County sent letters to  
4 Glamis, indicating that the Picacho Mine was in  
5 substantial compliance with SMARA, the Surface Mining  
6 and Reclamation Act. There also was a BLM memo from  
7 the State office which indicated that Glamis was a  
8 good steward of the lands, and also participated in  
9 the responsibilities of managing mining with BLM as  
10 part of its cooperative process.

11 Q. Other than the 43 CFR 3809 regulations was  
12 there other Federal guidance that was applicable to  
13 mining in the California Desert Conservation Area?

14 A. The primary guidance other than the 43 CFR  
15 3809 regulations was the California Desert  
16 Conservation Area plan. That had a number of  
17 statements regarding--which was applicable to mining,  
18 the first of which was, of course, that the 43 CFR  
19 3809 regulations applied to that type of mining; and  
20 the second one of importance was that the--from the  
21 plan in the exhibit was that the Plan of Operations

22 was consistent with the mitigating measures to be

454

12: 49: 42 1 applied and mitigation had to have technically and  
2 reasonable aspects to it.

3 Q. Let's see if we can focus on Leshendok  
4 Hearing Exhibit 3, which is an excerpt from that  
5 California Desert Conservation Plan of 1980, and let's  
6 see if we can hone in on the specific guideline  
7 provided for mining in that area.

8 A. The--I would like to--yeah, I would like to  
9 phrase that pretty clearly rather than paraphrase it.

10 BLM--the guidance for Glamis and all the  
11 other operations in those classes of land use was that  
12 BLM will review plans of operation for potential  
13 impacts on sensitive resources identified in those  
14 lands. Mitigation would be subject to technical and  
15 economic feasibility, and that will be required.

16 Q. Are you familiar with the 1980 preamble to  
17 the 3809 BLM regulations that--as contained in the  
18 Federal Register?

19 A. Yes, I am.

20 Q. And does that preamble contain a provision  
21 that bears on how BLM considers cultural resources in  
22 the context of mine plan approvals?

455

12: 51: 07 1 A. The preamble is very specific regarding the

2 National Historic Preservation Act. The preamble goes  
3 on to explain that the National Historic Preservation  
4 Act cannot stop a mine plan. It can only deny it.

5 The way it reads is--

6 Q. Mr. Leshendok, do you want to rephrase--I'm  
7 sorry, what you just said, you said it could only--it  
8 cannot stop, but it can only deny it. Is that what  
9 you meant?

10 A. It couldn't delay it. Right. I'm sorry,  
11 that's what I meant.

12 Q. Let's--can you explain this preamble  
13 provision as it would apply to your experience with  
14 BLM practice?

15 A. The statement in the preamble that the  
16 National Historic Preservation Act can only delay a  
17 project, not stop it, is consistent with the BLM  
18 practices throughout the United States at that time.

19 Q. And was that practice consistent with your  
20 experience in the 1980s and 1990s?

21 A. Yes, it is.

22 Q. And is that consistent with your

456

12:52:17 1 understanding of BLM practice today?

2 A. Yes, it is.

3 Q. In your work on the 3809 task force, did you  
4 have occasion to coordinate with other BLM offices  
5 around the western states, including California?

6 A. Yes. We coordinated with all the BLM offices  
7 throughout the Western United States.

8                   We also had extensive coordination with the  
9 State Governments, the Western Governors Association,  
10 as well as the various representatives of the State  
11 agencies dealing with mining reclamation.

12       Q.     Turning back to the California Desert  
13 Conservation Area, was there a general pattern of  
14 managing and approving open-pit mining operations as  
15 it related to backfilling?

16       A.     Well, as it related to backfilling, there was  
17 a general pattern, and the pattern was either for  
18 partial backfilling, sequential backfilling, but no  
19 complete backfilling of open pits.

20             And, of course, these were appropriately  
21 mitigated for economic and technical reasons and  
22 approved by the various agencies.

457

12: 53: 34 1       Q.     Was the proposed Glamis Imperial Project  
2 consistent with those general patterns and practices?

3       A.     I believe it was--it is.

4       Q.     And what about the Picacho Mine operated by  
5 Glamis Gold?

6       A.     The Picacho Mine was also in compliance with  
7 the requirements of--yes, it is.

8       Q.     Was the Picacho Mine reclaimed to the  
9 satisfaction of the BLM and Imperial County  
10 implementing the California Surface Mining and  
11 Reclamation Act?

12       A.     Yes, it was.

13       Q.     And did the Picacho Mine obtain a final bond

14 release from the Imperial County acting under the  
15 California Surface Mining and Reclamation Act?

16 A. The Picacho Mine went through the complete  
17 process, and Imperial County finally released the bond  
18 in 2002, which completed the process of dealing with  
19 that mine, so essentially all the reclamation was  
20 completed, was completed properly, and then the  
21 agencies moved on with other things.

22 Q. And did the Glamis Gold receive any formal

458

12:54:43 1 recognition for its reclamation practices at the  
2 Picacho Mine?

3 A. Yes. I believe Glamis received state  
4 legislative resolution, state assembly resolution,  
5 which said that they were a very good operator,  
6 indicated that they had excellent landscaping, they  
7 had reduced the footprint of the mine, and carried on  
8 requirements which exceeded the normal requirements of  
9 operations at that time, and that included--some of  
10 those requirements included doing native revegetation  
11 and also concurrent reclamation. It was well-received  
12 by the California Assembly resolution.

13 Q. And were the Picacho reclamation practices  
14 proposed by Glamis Gold to be employed in connection  
15 with the Glamis Imperial Project?

16 A. The Glamis Imperial EIS/EIR, the  
17 environmental impact statement, environmental impact  
18 report specifically identified the reclamation  
19 practices at Picacho were to be used as a model for

20 Glami s, yes.

21 Q. Was the Pi cacho Mi ne completely backfilled?

22 A. The Pi cacho Mi ne was not completely

459

12: 55: 47 1 backfilled.

2 Q. And what about other open-pit gold mines that  
3 you reviewed in the California Desert Conservation  
4 Area?

5 A. All of those open-pit gold mines in the  
6 California Desert area that I reviewed were not  
7 completely backfilled.

8 Q. And what about other major open-pit gold or  
9 metallic mines in the Basin and range Province? Are  
10 you aware of any one that had been completely  
11 backfilled?

12 A. I'm not aware of any report of any open-pit  
13 gold mine in the Great Basin which has been completely  
14 backfilled.

15 We did a special report in Nevada for the  
16 State Director late in the 1990s to address those  
17 issues of backfilling, and we could not find one major  
18 gold mine that had been completely backfilled.

19 Q. Did BLM ever consider and analyze complete  
20 backfilling as an option for open pit metallic mines,  
21 including in the California Desert Conservation Area?

22 A. Backfilling was a significant issue for BLM

460

Redacted Transcript, Day 2

12:56:46 1 at the time, so backfilling was seriously considered  
2 in all the environmental analyses documents and all  
3 the permitting documents.

4 In all cases that I looked at, alternatives  
5 were considered, they were analyzed, they were run  
6 through a public comment, and decisions were made  
7 regarding whether or not backfill should be completed  
8 or not completed.

9 In all the cases that I saw and all the cases  
10 throughout the Great Basin, the final decision of that  
11 process was that the pits should not be backfilled,  
12 completely backfilled.

13 Q. Let's look at Leshendok hearing Exhibit 6.

14 PRESIDENT YOUNG: Mr. McCrum, it's 1:00. I  
15 wonder if this is a convenient place to break, having  
16 made that ringing statement by the witness. Perhaps  
17 that's a convenient place to break?

18 MR. McCRUM: That would be just fine.

19 PRESIDENT YOUNG: Thank you. We will  
20 reconvene at 2:15.

21 (Whereupon, at 12:57 p.m., the hearing was  
22 adjourned until 2:15 p.m., the same day.)

461

1 AFTERNOON SESSION

2 PRESIDENT YOUNG: We are ready to commence  
3 again.

4 And, Mr. McCrum, we turn the time back to  
5 you.

6 MR. McCRUM Thank you, Mr. President.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. McCRUM

9 Q. Mr. Leshendok, we have put up on the screen  
10 Leshendok hearing Exhibit 6, which is from the Glamis  
11 Memorial, and is containing excerpts from the Glamis  
12 Rand Environmental Impact Statement and Environmental  
13 Impact Report prepared by the BLM and the Kern County,  
14 California.

15 Are you familiar with this document?

16 A. Yes, I am.

17 Q. Was this one of the documents you reviewed as  
18 part of your expert report?

19 A. Yes, it is.

20 Q. And in the Rand project, was the complete  
21 backfilling alternative reviewed by BLM and Kern  
22 County?

462

14:16:06 1 A. Again, Rand was another project where BLM and  
2 the county reviewed all the alternatives for  
3 backfilling. They looked at several, including a  
4 maximum pit backfilling alternative, and they did  
5 reject it.

6 It's interesting to note that one of the  
7 reasons for that was regarding the potential loss of  
8 natural resources. They had a couple statements in  
9 the EIS regarding that which are pretty informative.  
10 They indicated that the economic burden of backfilling  
11 would place an unreasonable restriction on the



12 statutory right of the Federal Claimant to remove  
13 mineral resources, and they specifically said that the  
14 potential loss of resources would, "generate a taking  
15 under the U. S. Constitution for the loss of a property  
16 right of the mineral Claimant. "

17 Q. Is that part that you're referring to, is  
18 that reflected in the screen there, the excerpt on the  
19 screen now is--what is it indicating is the view of  
20 BLM and Kern County regarding maximum backfilling?

21 A. That's correct.

22 Q. Let's take a look at the next page of this

463

14: 17: 17 1 exhibit. And this is an additional finding made by  
2 BLM and Kern County.

3 And were the findings that were made by BLM  
4 and Kern County concerning the Rand project and the  
5 rejection of complete backfilling, was that abnormal  
6 or typical at the--as compared to other practices  
7 regarding other mines in the desert?

8 A. It was typical. It was the way the process  
9 occurred.

10 Q. And when this EIS is issued jointly by BLM  
11 and Kern County, are those assessments prepared in a  
12 cooperative manner between BLM and the State lead  
13 agency?

14 A. Yes. The county, as lead agency for SMARA,  
15 has agreements with BLM to produce a joint document.  
16 The statements in the final EIS/EIR are basically  
17 joint statements from BLM and the county.

18 Q. So was--

19 A. They were signed and approved by both.

20 Q. Okay. In this particular EIS we are looking  
21 at, what year was it issued by BLM and Kern County  
22 acting under SMARA?

464

14:18:48 1 A. This one was in April of 1995.

2 Q. And how does that time frame compare with the  
3 proposed Imperial Project Plan of Operations?

4 A. It's just immediately after the Plan of  
5 Operation was submitted by Glamis Imperial Gold.

6 Q. In the case of the Final EIS/EIR for the  
7 Imperial Project in 2000 regarding complete  
8 backfilling, did BLM make a determination about  
9 whether backfilling was economically feasible at the  
10 Imperial Project?

11 A. Again, BLM reviewed all the alternatives with  
12 the county and came to the determination that it was  
13 not economically feasible.

14 Q. And this was the Final Environmental Impact  
15 Statement for the Glamis Imperial Project in 2000 that  
16 you're referring to; is that correct?

17 A. That's correct.

18 Q. And have you reviewed the BLM Mineral Report  
19 issued in September 2002?

20 A. I've read the BLM Mineral Report in 2002.

21 Q. And does that Mineral Report involve the  
22 Imperial Project?

14: 20: 05 1 A. Yes, it does.

2 Q. And did BLM in that Mineral Report make a  
3 finding about whether backfilling was economically  
4 feasible at the Imperial Project?

5 A. BLM specifically analyzed--used economic  
6 analysis to look at the backfilling question. It took  
7 into account many factors, and their economic analysis  
8 was that the East Pit was not economic.

9 Q. Not economic to do what?

10 A. To completely backfill.

11 Q. Now, Mr. Leshendok, you have referred to your  
12 role in the Interior Department's rulemaking revisions  
13 to the 3809 regulations. Did that rulemaking include  
14 a presumption in favor of backfilling as part of  
15 the--as part of the proposal?

16 A. In the rulemaking process, the first draft,  
17 the draft regulations looked at a strong presumption  
18 of backfilling, even though most of it was still  
19 considered on a site-specific basis. That strong  
20 presumption of backfilling was reviewed. We looked at  
21 public comments. And, then based on the public  
22 comments and a 1999 National Research Council report,

14: 21: 28 1 decided to change the final regulations to make  
2 backfilling a site-specific--to require--to look at  
3 backfilling on a site-specific basis considering

4 economics, technical, and safety factors.

5           The 1990 report by the National Resource  
6 Council looked at Hardrock Mining across the United  
7 States and came to conclusions that the best method  
8 for dealing with backfilling was on a site-specific  
9 basis. They then said it was very advisable to take  
10 that practice of backfilling and apply it to the 3809  
11 regulations. BLM was required by Congress to take a  
12 look at that report, consider its recommendations, and  
13 that was a major factor in determining that the final  
14 2001 regulation should be made on a site-specific  
15 basis for backfilling.

16       Q. Did the proposal regarding backfilling that  
17 Interior was considering involve an absolute mandatory  
18 complete backfilling requirement?

19       A. It was one of the alternatives looked at, but  
20 we didn't come to that conclusion.

21       Q. And the presumption in favor of backfilling,  
22 you referred to the fact that there was a--was it a

467

14: 22: 45 1 scientific study that you were considering in that  
2 context?

3       A. The study was the National Research Council  
4 study which gave us a review of the backfilling across  
5 the U.S., and we used those recommendations as part of  
6 making the final regulation requirements.

7       Q. And the National Research Council is part of  
8 what body?

9       A. National Academy of Science.

10 Q. And is that an organization that is dominated  
11 by mining industry perspectives?

12 A. No, the Committee for the National Research  
13 Council for that report was made up of a wide variety  
14 of experts, and included people from academia. It  
15 included people from the environmental community, and  
16 it included people from industry. It was a  
17 wide-ranging group of folks, including state  
18 geologists and other experts who looked at the mining  
19 industry and made its recommendations.

20 Q. And did you have interactions with the  
21 National Academy of Sciences National Research Council  
22 as part of your work on the internal rulemaking?

468

14:23:50 1 A. Yes. As a matter of fact, we took them on a  
2 field trip of western U.S. and took the Chairman and  
3 the Co-chairman around to take a look at the various  
4 practices throughout Nevada as might apply to the  
5 regulations.

6 Q. And were there other places visited beyond  
7 Nevada?

8 A. Yes. Well, the surface--the task force  
9 looked at operations throughout the Western United  
10 States, including California, Nevada, and other  
11 states.

12 The National Research Council also looked at  
13 operations throughout the U.S.

14 Q. And did the scope of that report concern the  
15 adequacy of Federal and state regulation?

16 A. Yes. That was one of the requirements  
17 Congress laid on them. That's when the Congress  
18 requirements laid on them.

19 Q. In your report, did you find any past history  
20 prior to the December 2002 California regulations here  
21 of regulatory agencies in the United States applying  
22 complete mandatory backfilling requirements to

469

14: 24: 56 1 metallic ore mines?

2 A. I could find no such regulatory requirement  
3 anywhere in the United States.

4 Q. Now do the mandatory backfilling requirements  
5 adopted by California in 2002 and 2003 apply to  
6 open-pit metallic mines exclusively or do they apply  
7 to other open-pit operations as well?

8 A. They apply--the state regulations, the new  
9 state regulations applied to metallic mines and gold  
10 mines only.

11 Q. So, referring back to your--to the map of  
12 California operations we referred to earlier, and we  
13 have it on the board behind you, how many of the  
14 900-some operations in the State, roughly what order  
15 of magnitude or percentage would be affected by the  
16 metallic mine--

17 A. Again, the State report indicated there were  
18 24 of the 955 sites which were gold operations. Only  
19 eight of those, I believe, were lode operations. The  
20 other were placer operations. So, whatever eight of  
21 955 is a very small percentage.

22 Q. Now, as part of your review, have you become

470

14:26:19 1 familiar with the concept of the California Surface  
2 Mining and Reclamation Act to return land to a usable  
3 condition?

4 A. I reviewed how that is applied to mining  
5 operations in the California Desert and in the  
6 counties, yes.

7 Q. And as you understand it, has that  
8 requirement been construed to require complete  
9 backfilling in the past prior to 2002?

10 A. No. No operations were required to be  
11 completely backfilled.

12 Q. And are the nonmetallic mines in California  
13 today subject to complete backfilling requirements?

14 A. I could find no nonmetallic mines which are  
15 completely backfilled.

16 Q. In your rebuttal statement, you have included  
17 an example of a--of the U. S. Borax mine involving  
18 extraction for boron. Is that project located in the  
19 California Desert Conservation Area?

20 A. The U. S. Borax/boron project is probably the  
21 largest open-pit in California. It is included in the  
22 California Desert in--yes, it is.

471

14:27:38 1 Q. And can you give us some idea of the

2 magnitude of that open pit as compared to the Imperial  
3 Project gold mining proposal.

4 A. It's a very big project. I believe that  
5 there was an expansion of the mine plan approved in  
6 2004.

7 The pit, the resulting pit from the approval  
8 in 2004 by Kern County would be for a pit that's 1.5  
9 by 1.5 miles wide and up to 1,250 feet deep. It would  
10 contain overburden piles of between 500 and 600 feet.  
11 I think an estimate of the total amount of actual  
12 waste rock to be placed on the surface is pretty close  
13 to 2 billion tons.

14 But also have extensive tailings ponds  
15 associated with the operation as well as large  
16 overburden piles.

17 Q. How does five to 600 feet high of overburden  
18 piles compare with the proposed Glamis Imperial  
19 Project?

20 A. Much higher, much more volume.

21 Q. And based on your review of the U. S.  
22 Borax/boron open pit approved in 2004, will that mine

472

14:28:51 1 be subject to complete backfilling requirements?

2 A. That mine is not subject to complete  
3 backfilling requirements. It will not be completely  
4 backfilled.

5 Q. And based on your review of the U. S.  
6 Borax/boron operations as approved in 2004, will that  
7 mine be subject to having the overburden piles graded



8 down to a height of 25 feet above the natural contour  
9 from the five to 600 feet?

10 A. Not in the SMARA application that I reviewed,  
11 no.

12 Q. Did your initial report include a review of  
13 the proposed Mesquite regional landfill?

14 A. I took a look at the Mesquite regional  
15 landfill. Again, that's going to be a facility that's  
16 probably the largest regional landfill in the United  
17 States. It's very large, several thousand acres. It  
18 will move like 20,000 tons of municipal waste a day  
19 for over a hundred years.

20 There will be again, the total height of the  
21 stacked landfill will also be very high.

22 One interesting point regarding that landfill

473

14: 30: 00 1 was that overburden and heap-leach material from the  
2 adjoining Mesquite Mine would be used in the  
3 construction of the landfill and used for daily and  
4 final cover that included heap-leach material where  
5 cyanide had been used in the process. The cyanide was  
6 rinsed and neutralized according to state and Federal  
7 standards.

8 The EIS for that landfill specified that they  
9 could see no environmental problems, and there would  
10 be no environmental threat from the use of that  
11 overburden and that heap-leach material rinsed for  
12 cyanide in the landfill for over a hundred years.

13 Q. In your initial report, did you also review

14 the North Baja Pipeline project which was approved by  
15 BLM and the California State Lands Department--

16 A. Yes. Again, the North Baja Pipeline Project  
17 would probably create about a thousand acres of  
18 surface disturbance. What it is, is they put a six to  
19 12-foot deep trench in an 80-foot swath for 80 miles  
20 through Imperial County in the California Desert.  
21 They then put the natural gas pipeline within that  
22 trench and they'd reclaim it and mitigate it.

474

14:31:13 1 It--yes.

2 Q. Did your review of the EIS/EIR documentation  
3 indicate that Native American groups opposed the 2002  
4 Baja Pipeline approval?

5 A. There was great opposition among the Quechan  
6 and the Native American groups. I believe that  
7 Quechan specifically stated that the impacts from that  
8 project could not be mitigated.

9 Also, Native American organizations took  
10 strong exception to the proposal. They indicated that  
11 it would infringe on their sacred sites and include  
12 destruction of trails and geoglyphs and petroglyphs.

13 And one Native American organization actually  
14 called it diabolical and prayed that the Project would  
15 not be completed because it was going to desecrate  
16 their sacred land, and they were going to fight it to  
17 the end. There was strong opposition to that.

18 Q. Looking at Leshendok hearing Exhibit 7, is  
19 that an excerpt from your expert report as originally

20 submitted in this case in May of 2006?

21 A. Yes, it is.

22 Q. Was the Baja Pipeline nonetheless constructed

475

14:32:20 1 after these comments were made?

2 A. Yes, it was constructed.

3 Q. And is it your understanding that an  
4 additional pipeline route is planned to be constructed  
5 adjacent to the original route?

6 A. It's my understanding that there was a recent  
7 environmental document just completed in 2007, which  
8 indicated that there would be another pipeline built  
9 adjacent to the existing pipeline.

10 Q. Mr. Leshendok, in your rebuttal statement,  
11 you reviewed the current efforts of the Golden Queen  
12 Mining Company to pursue the Soledad Mine in  
13 compliance with California's 2003 mandatory  
14 backfilling requirements. What have you learned about  
15 that proposal?

16 A. The Golden Queen Soledad Mountain proposal  
17 would be both a gold mine and an aggregate mine. The  
18 SMARA application which was submitted in April of this  
19 year indicated that the site--the site would be  
20 extensive, and that the aggregates used in the Project  
21 would not be backfilled into the pit.

22 It also indicated that the pads, the waste

476

Redacted Transcript, Day 2

14: 33: 38 1 rock and the pads from the overburden from the  
2 operation that made the pads for the aggregate  
3 material to be sold will also not be backfilled in the  
4 operation.

5 This gives the operator a significant cost  
6 incentive in dealing with the operation. It is  
7 totally different type of project than the other gold  
8 mines in the California Desert.

9 Q. Are you saying that the waste rock piles  
10 generated from the gold mining would then be sold for  
11 aggregate?

12 A. Yeah, that was the proposal. The proposal  
13 was that the gold would be--the mine would be operated  
14 for seven years, and the aggregate from the mine would  
15 be mined and sold for 30 years, according to the SMARA  
16 proposal.

17 Q. And whatever aggregate is sold, would it have  
18 to then be backfilled?

19 A. No. That's the--no, it would not.

20 Q. Now, the Government has contended in this  
21 case that Glamis ought to reengineer its Imperial  
22 Project in a manner similar to the Golden Queen

477

14: 34: 42 1 project.

2 Is that model available to Glamis Imperial--

3 A. Well, the Golden Queen Project is--

4 MS. MENAKER: Objection. There's--I think  
5 that's a mischaracterization of what the United States

6 has said on this point.

7 PRESIDENT YOUNG: Mr. McCrum, perhaps you  
8 could rephrase the question.

9 MR. McCRUM: Certainly.

10 BY MR. McCRUM:

11 Q. Is the option of selling aggregate from waste  
12 rock piles in order to avoid backfilling costs that  
13 Golden Queen is apparently pursuing, is that an option  
14 available to the Glamis Imperial Project as you  
15 understand the property position of the Glamis  
16 Imperial Project on Federal lands?

17 A. The property position of the Golden Queen  
18 Soledad Mountain Mine is primarily on private lands.  
19 There is only a small portion of the Project which is  
20 on public lands. It's mainly private.

21 What that means is they can deal with the  
22 aggregates without going through the Federal agencies.

478

14:35:41 1 Glamis Imperial Project was 100 percent  
2 totally on public lands. The Glamis Imperial Project,  
3 Glamis did not have a property right to access the  
4 Federal aggregates on their mine site.

5 Q. And is the Glamis Imperial Project subject to  
6 an administrative withdrawal at this time?

7 A. The Glamis Imperial Project was withdrawn,  
8 yes.

9 Q. And is that withdrawal subject to valid  
10 existing rights?

11 A. It was subject--yes, I believe it was subject

12 to valid existing rights.

13 Q. And what are the valid existing rights that  
14 BLM has recognized in the 2002 Mineral Report for the  
15 Imperial Project? Are they unpatented mining claim  
16 rights or are they rights to sell aggregate?

17 A. They are the rights to mine unpatented mining  
18 claims. They do not have a right to access the  
19 Federal aggregate, the Federal waste rock material.

20 Q. Thank you, Mr. Leshendok.

21 That will conclude our direct testimony.

22 PRESIDENT YOUNG: Thank you.

479

14: 36: 47 1 Ms. Menaker, would you like a minute or two?

2 MS. MENAKER: Yes, thank you.

3 (Pause.)

4 PRESIDENT YOUNG: Please proceed.

5 CROSS- EXAMINATION

6 BY MS. MENAKER:

7 Q. Good afternoon, Mr. Leshendok.

8 A. How are you?

9 Q. Fine, thank you.

10 You testified that you reviewed the  
11 reclamation plans for several open-pit metallic mines  
12 that were approved before the SMGB enacted it's what  
13 we are calling the backfilling regulation in 2002; is  
14 that correct?

15 A. That's correct.

16 Q. And is it correct that you looked at the  
17 Imperial County findings for the Picacho Mine in 1991?

18 A. Yes, I did.  
19 Q. And is it also correct that you looked at  
20 Kern County's finding for the Rand Mine in 1995?  
21 A. I visited Kern County and looked at their  
22 active lists of mining operations, and I reviewed

480

14:38:11 1 several projects within Kern County, yes, I did.  
2 Q. Thank you.  
3 And is it also correct to say that you looked  
4 at the mitigation measures that were imposed by the  
5 counties at the Briggs, the Mesquite, and the Castle  
6 Mountain Mines?  
7 A. I looked at the mitigation measures for those  
8 mines.  
9 Q. So, in each of those cases, for Picacho, for  
10 Rand, Briggs, Mesquite, Castle Mountain, and the Borax  
11 Mine that we were also just discussing, you looked at  
12 the findings of the counties and the local lead  
13 agencies; is that correct?  
14 A. Yes, I did.  
15 Q. In your report, do you ever discuss findings  
16 that were made by the California Office of Mine  
17 Reclamation regarding whether the mitigation measures  
18 were SMARA-compliant?  
19 A. I went to the direct lead agencies involved  
20 with permitting. The counties are the lead agencies.  
21 They're the ones that are responsible for making the  
22 decisions. I looked at their environmental documents.

14: 39: 06 1 I looked at their findings.

2 I don't recall that much more information  
3 that came from the State review. I looked at the  
4 information from the direct agency that permitted the  
5 operations.

6 Q. Okay. And are you aware of any local lead  
7 agency in California approving a Reclamation Plan for  
8 a metallic open-pit mine that does not include  
9 complete backfilling and regrading subsequent to the  
10 enactment of the SMGB's 2002 regulation?

11 A. Well, I visited several counties in the  
12 California Desert. I visited Kern County, San  
13 Bernardino, Inyo, Imperial, and I asked all the mine  
14 planners in those operations besides the list they had  
15 at the present time, could they recall were there any  
16 gold and metallic mines that had been completely  
17 backfilled. They could not identify to me one.

18 Q. But since the SMGB enacted its 2002  
19 regulation requiring the complete backfilling for  
20 open-pit metallic mines, are you aware of any open-pit  
21 metallic mines in California for which a lead agency  
22 has approved a Reclamation Plan that has not required

14: 40: 20 1 complete backfilling?

2 A. Well, the expansion of the boron pit to that  
3 size and that depth was made in 2004.



4 Q. The Borax Mine?  
5 A. The Borax Mine.  
6 Q. And is the Borax Mine an open-pit metallic  
7 mine?  
8 A. It is a huge open pit. It's not a metallic  
9 mine, it's a nonmetallic mine.  
10 Q. Thank you.

11 PRESIDENT YOUNG: Mr. McCrum?  
12 MR. McCRUM: No further questions.  
13 PRESIDENT YOUNG: Thank you.  
14 Professor Caron?

15 QUESTIONS FROM THE TRIBUNAL

16 ARBITRATOR CARON: Mr. Leshendok, I just have  
17 a rather simple question. But Mr. McCrum at one point  
18 took you back to the 2002 BLM Mineral Report on the  
19 Imperial Project.

20 THE WITNESS: Yes, sir.

21 ARBITRATOR CARON: And pointed to the  
22 question of backfilling and the economic feasibility

483

14: 41: 08 1 of backfilling.

2 THE WITNESS: Yes, sir.

3 ARBITRATOR CARON: The conclusion in that  
4 report.

5 And I think your response, and this is my  
6 recollection, was that it's--there were complicated  
7 formula, I think is what you said.

8 I'm just wondering, and I may be  
9 misrecollecting here, but would you expand on how

10 these mineral examiners reached their conclusion? Is  
11 it--is there a set of guidelines they operate by?

12 THE WITNESS: Yes, sir, there is a very  
13 strong set of guidelines. The BLM has a  
14 responsibility dealing with validity of mining claims  
15 on the public lands, and part of that is to have  
16 certified mineral examiners, people who have been  
17 trained, people who have the education, to look at the  
18 various alternatives of mining and come to conclusions  
19 regarding the validity of the claims and the economics  
20 of these claims.

21 In this particular case, I don't recall if  
22 they did with specific economic analysis they did,

484

14:42:02 1 whether they did a DCF or what their--excuse me,  
2 discounted cash flow or what their analysis was, but  
3 my understanding is they did do a comprehensive  
4 economic analysis to come to the conclusion that the  
5 East Pit was not economic. These were BLM certified  
6 mineral examiners who prepared the report.

7 ARBITRATOR CARON: So, I just want to say on  
8 this, so from what you just said, there are several  
9 different ways, there is a DCF and there's some other  
10 way--

11 THE WITNESS: We are getting into an issue of  
12 mineral evaluation, and that's a pretty complex issue  
13 in terms of how you value minerals. There are several  
14 ways of doing it. There is comparative market sales,  
15 there's discounted cash flows, and there's other type

16 of analyses. BLM would use whatever tools it had to  
17 make those conclusions.

18 I really don't know what the specific  
19 analysis used in the 2000 report was, but I'm pretty  
20 confident that BLM did use some strenuous economic  
21 analysis to come to that conclusion.

22 ARBITRATOR CARON: Thank you.

485

14: 43: 02 1 PRESIDENT YOUNG: Mr. Hubbard?

2 ARBITRATOR HUBBARD: No questions.

3 PRESIDENT YOUNG: Mr. Leshendok, thank you  
4 very much.

5 (Witness steps down.)

6 PRESIDENT YOUNG: Mr. McCrum, your next  
7 witness?

8 MR. McCRUM: Yes. Our next witness is John  
9 Parrish from the State of California.

10 PRESIDENT YOUNG: It is my understanding,  
11 Mr. Parrish, that you have a beeper that you are  
12 required to keep on, and we would be delighted to have  
13 you do that, if your job requires that. I don't want  
14 that to be considered license to anyone else to have  
15 their cell phones on.

16 THE WITNESS: I turned it down to just  
17 vibrate, but if I jump, it may be because of counsel,  
18 but it may be because of my beeper. I apologize in  
19 advance if something happens.

20 PRESIDENT YOUNG: We certainly understand.

21 JOHN PARRISH, RESPONDENT'S WITNESS, CALLED

PRESIDENT YOUNG: Mr. Parrish, would you be

486

14: 43: 48 1 kind enough to read the witness affirmation there.

2 THE WITNESS: Yes. I do solemnly declare  
3 upon my honor and conscience that my statement will be  
4 in accordance with my sincere belief.

5 PRESIDENT YOUNG: Thank you very much.

6 Mr. McCrum, your witness.

7 MR. GOURLEY: Mr. President, I think there  
8 has been some confusion about which statement to read.  
9 He just read the expert statement and not the witness  
10 statement. I'm sure in the end it will be the same.

11 PRESIDENT YOUNG: Oh, I beg your pardon. He  
12 is certainly listed as an expert, and that generated  
13 the confusion. And he may, indeed, be an expert, but  
14 we'll have him testify as both, but perhaps if you  
15 read the other one.

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

19 PRESIDENT YOUNG: Ms. Menaker, would you like  
20 to proceed with some initial questions--would you like  
21 to open with some initial questions?

22 MS. MENAKER: I would, with just a couple of

487

14: 44: 45 1 questions, please.

Redacted Transcript, Day 2  
PRESIDENT YOUNG: Please.

DIRECT EXAMINATION

BY MS. MENAKER:

Q. Mr. Parrish, good afternoon.

A. Good afternoon.

Q. Can you please state your full name for the  
record.

A. Yes, John Parrish.

Q. Okay. And what is your educational  
background?

A. I have a Bachelor's, a Master's and a Ph.D.  
in geology and a Master's of Business Administration  
in finance.

Q. And what is your current position?

A. Currently, I'm California State Geologist and  
Chief of the California Geological Survey.

Q. And what position did you hold immediately  
prior to that?

A. I was Executive Officer for the State Mining  
and Geology Board.

Q. And from what dates did you hold that

488

14: 45: 29 1 position?

A. Mid-1994 through April 2005.

Q. Okay. And how many members serve on the  
State Mining and Geology Board?

A. There are nine positions on the Board.

Q. And how are those individuals chosen to serve  
on the Board?

8 A. They are selected as appointments by the  
9 Governor. They are vetted by the Senate and then  
10 confirmed by the Senate.

11 Q. And may the Governor remove those persons  
12 from the Board?

13 A. No, he may not.

14 Q. Okay. And can you explain the relationship  
15 between the California Resources Agency, the  
16 California Department of Conservation, the State  
17 Mining and Geology Board, and the California counties  
18 who serve as local lead agencies.

19 A. The Resources Agency in California is an  
20 umbrella agency that has a number of departments  
21 underneath it, and the Department of Conservation is  
22 one of those departments. That Department administers

489

14: 46: 34 1 the Surface Mining and Reclamation Act.

2 The Board is an autonomous body which is  
3 within the Department of Conservation, and the Board  
4 and the Department each have certain roles within the  
5 Surface Mining and Reclamation Act. Primarily, the  
6 Act is enforced by a local lead agency, such as cities  
7 and counties, with the State overview and the Board  
8 overseeing the entire operation.

9 Q. And can you briefly describe what your  
10 responsibilities were as Executive Officer of the  
11 California State Mining and Geology Board when you  
12 were in that position.

13 A. The Executive Officer of the Board is the

14 Chief Executive and chief cook and bottle washer for  
15 the Board in that it--he is the principal liaison  
16 between the Board and the Department, other State  
17 agencies, cities and counties, and is the principal  
18 enforcer of the Board's policies.

19 Q. And did you hold the position as Executive  
20 Officer of the Board at the time when the Board  
21 adopted the 2002 regulation?

22 A. Yes, I did.

490

14:47:51 1 Q. And what were your responsibilities with  
2 respect to the adoption of the regulation at that  
3 time?

4 A. The Executive Officer's responsibilities are  
5 to ensure that the material is provided to the Board.  
6 All the evidence gets before the Board, that proper  
7 hearings are held and that proper filings are made  
8 with the State agencies.

9 Q. Thank you.

10 PRESIDENT YOUNG: Thank you.

11 Mr. McCrum

12 CROSS-EXAMINATION

13 BY MR. McCRUM

14 Q. Good afternoon, Dr. Parrish.

15 A. Good evening. Good afternoon I guess.

16 Q. I have to speak into the microphone and try  
17 to talk with you at the same time, so please excuse me  
18 if I turn my back sometimes.

19 A. Understandable.

20 Q. Dr. Parrish, you do have degrees in geology;  
21 is that correct?  
22 A. That's correct.

491

14: 48: 39 1 Q. And you do not have degrees in mining  
2 engineering, do you?  
3 A. No, I do not.  
4 Q. And are you a Registered Engineer in  
5 California?  
6 A. No, I'm not.  
7 Q. Or anywhere else?  
8 A. No.  
9 Q. You did have some work in the private sector  
10 prior to your work in California; is that correct?  
11 A. That's correct.  
12 Q. And did that involve oil and gas activity?  
13 A. That's correct.  
14 Q. With Tenneco Oil Company?  
15 A. Yes.  
16 Q. And Santa Fe Energy Resources?  
17 A. Yes.  
18 Q. Have you worked in the mining industry prior  
19 to your work for the State?  
20 A. No.  
21 Q. And was the oil and gas activity in the State  
22 of California?

492



Redacted Transcript, Day 2

14: 49: 20 1 A. It was oil and gas activity internationally  
2 as well as within the United States, and some in  
3 California.

4 Q. Some of your work was in California?

5 A. Yes, it was.

6 Q. Okay. Are you familiar with the Dictionary  
7 of Geologic Terms from the American Geological  
8 Institute?

9 A. Probably one of the versions, yes.

10 Q. I'm going to hand you a copy of that  
11 dictionary, and I wonder if you could read the  
12 definition of conglomerate.

13 A. "Conglomerate: A coarse-grained clastic  
14 sedimentary rock composed of rounded to subangular  
15 fragments larger than two millimeters in diameter,  
16 gravels, pebbles, cobbles, boulders, set in a fine  
17 grained matrix of sand or silt and commonly cemented  
18 by calcium carbonate, iron oxide, silica, or hardened  
19 clay. The consolidated equivalent"--

20 MS. MENAKER: Members of the Tribunal, before  
21 the witness goes any further, I would like to object  
22 as this line of questioning seems well beyond the

493

14: 50: 35 1 scope of the witness's witness statements. The  
2 witness's statements were directed solely towards his  
3 responsibilities as Executive Officer of the State  
4 Mining and Geology Board when the regulation at issue  
5 was adopted, and not in his role as a geologist, which

6 he is currently serving.

7 PRESIDENT YOUNG: Mr. McCrum?

8 MR. McCRUM: Yes, Mr. President. This  
9 witness is one the few witnesses, I think the only  
10 witness that is being presented by the United States  
11 here who has a geology degree, and there is a  
12 fundamental issue in this case regarding swell factor.  
13 Swell factor is one of the issues that Dr. Parrish  
14 considered at the SMGB Board, and I want to probe him  
15 regarding some geologic issues.

16 MS. MENAKER: Excuse me. That's--first  
17 that's not correct. We have Norwest Corporation,  
18 Mr. Con Houser who is scheduled to testify, who has  
19 testified in his written expert reports specifically  
20 on this issue of the swell factor. Mr. Parrish has  
21 not testified on any of those issues, nor has he  
22 examined those issues in his role as either the

494

14: 51: 43 1 California State Geologist in the past few years or in  
2 his role as the Executive Officer of the SMGB Board.  
3 Just because he happens to have a degree in geology  
4 does not mean that counsel can now examine him on any  
5 geological issues on which they may have an interest.

6 MR. McCRUM: Mr. President, Mr. Conrad  
7 Houser, who is the expert here to testify on behalf of  
8 Norwest, has no geology degree. He has a degree in  
9 civil engineering, so we do not have the opportunity  
10 to probe anyone with a geology degree on behalf of the  
11 United States concerning issues central to this case,

12 including the swell factor issue that was addressed  
13 within the actual findings of the State Mining and  
14 Geology Board.

15 MS. MENAKER: Whether or not Glamis believes  
16 that Mr. Houser is competent to testify on the issues  
17 on which he testified is an issue for them to examine  
18 during their cross-examination. They can make those  
19 points if they don't think that he is qualified to  
20 testify on the issues within the scope of his report.  
21 We believe he is very qualified to testify on those  
22 issues, but they cannot convert a fact witness into an

495

14: 52: 50 1 expert witness on a solely independent issue just  
2 because they think that this person has the  
3 educational background to opine on issues on which he  
4 has not opined on during the course of this  
5 arbitration.

6 MR. McCRUM: The only thing further I would  
7 add, Mr. President, is that this line of questioning  
8 would take about five minutes.

9 MS. MENAKER: That's irrelevant, from our  
10 point of view.

11 (Tribunal conferring.)

12 PRESIDENT YOUNG: We are going to sustain the  
13 objection and ask that the questions be confined to  
14 what is in the declaration and the Reply declaration  
15 considering that this is a fact witness who is  
16 apparently testifying not in his position as currently  
17 as the State Geologist, but as a member of the

18 Executive Board, and if you can confine the structure  
19 of the questions in that direction.

20 MR. McCRUM: We will certainly respect your  
21 ruling, Mr. President, Members of the Tribunal. I  
22 would hope that you keep in mind that Mr. Parrish is a

496

14:57:47 1 fact witness regarding other engineering or technical  
2 issues that may be contained within his statements in  
3 this case.

4 PRESIDENT YOUNG: And we certainly understand  
5 that, and if it is with respect to the decisions made  
6 as when he was Executive Director of the Board, that's  
7 fine.

8 MR. McCRUM: And I would hope that the last  
9 several minutes would be allocated to the Respondent  
10 as time is of the essence in this area.

11 MS. MENAKER: Absolutely not since our  
12 objection was sustained. If anything, it should  
13 either--I'm fine not allocating it to Claimant, but it  
14 certainly shouldn't be allocated against us.

15 PRESIDENT YOUNG: We will take that out of  
16 the Tribunal's time, which so far has not used up its  
17 allocated time.

18 MR. McCRUM: Thank you.

19 BY MR. McCRUM:

20 Q. Dr. Parrish, the California Surface Mining  
21 and Reclamation Act was adopted in 1975; is that  
22 correct?

14: 58: 44 1 A. Yes, that's correct.

2 Q. And the provision in the Act requiring land  
3 to be reclaimed to a "usable condition" was part of  
4 the Act back in 1975; is that correct?

5 A. Yes, that's correct.

6 Q. And during the first 25-plus years under the  
7 California Surface Mining and Reclamation Act, there  
8 were no mandatory regulations under SMARA requiring  
9 complete backfilling; is that correct?

10 A. That's correct.

11 Q. The SMARA general standard to return land to  
12 a usable condition applies to metallic and nonmetallic  
13 mines; is that correct?

14 A. It applies to all surface mines in the State,  
15 both metallic and nonmetallic.

16 Q. Thank you.

17 Would you agree that open-pit mining or  
18 surface mining has been a common method of mining  
19 aggregates in industrial nonmetallic minerals in  
20 California over the past few decades?

21 A. Yes.

22 Q. And, Dr. Parrish, we have mounted on a Board

15: 00: 01 1 behind you a map of mines and mineral producers active  
2 in California as of 1997 to '98. Are you familiar  
3 with that map?

4 A. Yes, that's one of the survey's maps.

5 Q. And would you agree that the vast majority of  
6 mines regulated under SMARA in the State are  
7 nonmetallic mines?

8 A. Yes, that's correct.

9 Q. And those mines are not subject to complete  
10 backfilling regulatory requirements today; is that  
11 correct?

12 A. That's correct, regulatory requirements.  
13 They may be required by local authorities.

14 Q. In other words, backfilling--some level of  
15 backfilling may be imposed on a site-specific basis;  
16 is that right?

17 A. Yes, that's correct.

18 Q. And are you familiar with the U.S.  
19 Borax/boron operation that Mr. Leshendok described?

20 A. In general terms, yes.

21 Q. Would you agree that that open pit is much  
22 larger than the proposed Glamis Imperial Project?

499

15:01:18 1 A. Yes, it is.

2 Q. Would you agree that the overburden piles  
3 associated with that mine are much larger than those  
4 that would have been associated with the Glamis  
5 Imperial Project?

6 A. I'm not really familiar with the size of the  
7 overburden piles except what I've heard testified  
8 earlier, so, if that's true, then, yes, they would be  
9 larger, but I have no firsthand knowledge of any of

10 that.

11 Q. And the nonmetallic mines in California, they  
12 include a wide variety of nonmetallic minerals that  
13 are produced; is that correct?

14 A. That's correct.

15 Q. Ranging from sand, gravel, limestone, clay;  
16 is that correct?

17 A. That's correct.

18 Q. And are some of those open pits associated  
19 with those operations as large or larger than the  
20 Glamis Imperial Project proposed pit?

21 A. I think some are probably about the same  
22 size, most a lot smaller.

500

15:02:36 1 Q. How about the boron pit? Have you been to  
2 that site?

3 A. Yes, I have.

4 Q. And based on being to that--based on your  
5 visit at that site, do you think that that pit is  
6 larger or smaller than the Glamis Imperial Project?

7 A. Well, I was never out to see the Glamis  
8 Imperial Project. I was at the boron site in the late  
9 nineties, and, yes, it's quite a large site.

10 Q. Turning to 2002, did you become aware of  
11 legislation proposed in the California legislature  
12 referred to as S.B. 1828 that would have provided  
13 Native American groups an ability to deny a wide  
14 variety of public and private projects in the State?

15 A. I was aware of that piece of legislation,

16 yes.

17 Q. And are you aware that Governor Gray Davis  
18 vetoed that legislation on or about September 30 or  
19 October 1, 2002?

20 A. I'm aware that he vetoed it. I don't know  
21 the exact date.

22 Q. And was there a parallel bill at that time

501

15:04:06 1 referred to as S. B. 483 that would have imposed  
2 complete backfilling requirements on some mines?

3 A. Yes, I believe there was.

4 Q. And did Governor Gray Davis make a public  
5 statement in connection with that legislation,  
6 S. B. 483?

7 A. He may have.

8 Q. Let me refer you to Parrish Hearing Exhibit  
9 Number 4.

10 Dr. Parrish, I'm going to hand you a copy of  
11 the statement that I'm referring to that is on the  
12 screen, and that is Governor Gray Davis's veto message  
13 on September 30, 2002, regarding S. B. 1828. And I  
14 will refer you to the second page in particular, his  
15 statement that, "I am particularly concerned about the  
16 proposed Glamis Gold Mine in Imperial County, and I  
17 have directed my Secretary of Resources to pursue all  
18 possible legal and administrative remedies that will  
19 assist in stopping the development of that mine."

20 Were you aware of that public statement prior  
21 to today?



22 A. No. This is the first time I have seen this

502

15:05:49 1 document.

2 Q. Were you aware of the Governor's public  
3 statement regarding his opposition to the Glamis  
4 Imperial Project?

5 A. You know, I honestly don't recall whether I  
6 was or not at that time. This was not a high-profile  
7 issue before the Board. Governors make a lot of  
8 statements, vetoes, messages, acceptance messages. I  
9 wasn't paying attention to this one.

10 Q. Can you describe the relationship between the  
11 State Mining and Geology Board and the Secretary of  
12 Resources.

13 A. There is no connection between the Mining and  
14 Geology Board and the Secretary of Resources.

15 Q. And the State Mining and Geology Board and  
16 the Department of Conservation?

17 A. Well, the State Mining and Geology Board is  
18 statutorily in the Department, but the Board has  
19 autonomous jurisdictions and, in fact, the Director of  
20 the Department is specifically forbidden to override  
21 any decision of the Board.

22 Q. I want to think back to the fall of 2002,

503

15:07:05 1 when the SMGB proceeded with the emergency rulemaking

2 to establish mandatory backfilling regulations.

3 Can you recall that?

4 A. Yes, um-hum.

5 Q. And do you recall the emergency rulemaking?

6 A. Oh, yes.

7 Q. Their emergency proposal?

8 A. Yes.

9 Q. And what was the identified reason for the  
10 emergency in the SMGB proposal?

11 A. The Board had been approached to see if it  
12 had an action within its authority that it could take  
13 to ensure that future metallic mines in the state  
14 would be reclaimed in accordance with the requirements  
15 of the Surface Mining and Reclamation Act, and the  
16 Board was asked to consider this in light of the fact  
17 that there had been a number of large metallic mines  
18 in the state that had not been reclaimed, according to  
19 the Act, and, in fact, were in an unreclaimed  
20 condition.

21 Q. Dr. Parrish, sitting here today, you recall  
22 what was the sole identified reason for the emergency

504

15:08:30 1 identified in the emergency rulemaking notice issued  
2 by the State Mining and Geology Board?

3 A. The triggering mechanism was the Imperial  
4 project, which was at that time believed to be on the  
5 verge of being approved by the Imperial County.

6 Q. Was it also believed to be eligible for  
7 approval by the Interior Department at that time?

8 A. It may have been. The issue with the Board  
9 was whether it would be approved under SMARA for  
10 mining.

11 Q. Let's refer to Glamis--I'm sorry, Parrish  
12 hearing Exhibit 6, which is the finding of emergency  
13 condition by the State Mining and Geology Board.

14 Now, Dr. Parrish, you at this time were the  
15 Executive Director of the State Mining and Geology  
16 Board; is that correct?

17 A. Yes, that's correct.

18 Q. And you had been appointed by Governor Gray  
19 Davis; is that correct?

20 A. No, that's not correct.

21 Q. What Governor appointed you?

22 A. No Governor appointed me.

505

15:09:41 1 Q. The Board itself is appointed by the  
2 Governor, the Board members; is that correct?

3 A. By Governors, yes, not necessarily by  
4 Mr. Davis.

5 Q. And as you testified, the Board members are  
6 appointed by the Governor; correct?

7 A. That's correct.

8 Q. Let's look at the finding of emergency  
9 condition by the State Mining and Geology Board. It  
10 states that, "The factual basis for such finding is  
11 that there is currently pending with the Bureau of  
12 Land Management an application for approval of a plan  
13 of operations for a large open-pit gold mine, the

14 Glamis Imperial Project, along with a requested  
15 approval of a joint EIS/EIR for the operation. There  
16 is, also, currently pending with the County of  
17 Imperial, an application for a Reclamation Plan  
18 approval for the mining operation, as well as the  
19 potential certification of the joint EIS/EIR for that  
20 Reclamation Plan, and other County of Imperial  
21 approvals for the mining operation. "

22 Do you see any other mining operation

506

15:10:52 1 identified in that finding besides the Glamis Imperial  
2 Project?

3 A. Not in that paragraph, no.

4 Q. And does this refresh your recollection that  
5 there was part of the rationale was that there was  
6 pending with the BLM an application for approval of  
7 the mine as well?

8 A. That was a factual finding. The Board's  
9 concern was the actual permitting. The Board has no  
10 jurisdiction over what the Federal Government wants to  
11 approve or not, but it does have a say in what the  
12 permitting would be, so the Board's concern was the  
13 county's permitting process.

14 Q. Do you believe that somewhere else in this  
15 document there is a reference to another pending mine  
16 project that is the basis for the emergency finding?

17 A. Yes. The Board indicated in one of  
18 these--this is only page four of nine--the reason for  
19 the emergency regulation was that there may be other

20 unknown mines that are in the permitting stage that  
21 are at that time unknown to the Board.

22 Q. Dr. Parrish, you made a specific or the State

507

15: 12: 18 1 Mining and Geology Board made a specific finding of  
2 emergency condition; is that correct?

3 A. That's correct.

4 Q. And we are looking at the finding of  
5 emergency condition in the official documentation of  
6 the State Mining and Geology Board; is that correct?

7 A. That whole paragraph, not just the  
8 highlighted part, yes.

9 Q. On the section that is in front of you, do  
10 you see any other mine project referred to that is the  
11 basis for the emergency finding?

12 A. No, not named.

13 Q. Let's look at Exhibit 5, Parrish Exhibit 5.

14 This, Dr. Parrish, is an E-mail exchange that  
15 has been produced in this case dated October 15, 2002,  
16 which is roughly two weeks after Governor Gray Davis  
17 issued his directive to stop the Glamis Imperial  
18 Project. And the subject is S.B. 483 and the  
19 emergency Mining Board rules.

20 Do you see that?

21 A. Yes, I'm reading it, um-hmm.

22 Q. And in this E-mail exchange among State

508

Redacted Transcript, Day 2

15:14:06 1 officials produced in this case between Jeff Shelito  
2 and Rick Thalhammer--I'm sorry, the middle paragraph  
3 on this page, it states that, "I thought Allison  
4 Harvey and I were working with the Resources  
5 Agency/DOC on informal and collegial basis to help  
6 stop work on the Glamis Mine, something that has been  
7 significantly complicated by Governor's veto of S.B.  
8 1828. I recall sending you the text of S.B. 483 and  
9 asking for your informal opinion as to whether its  
10 contents should be adopted as emergency regs by the  
11 Mining Board before you had ever heard from Resources  
12 Agencies or DOC. "

13           Is it your testimony here today that the  
14 State Mining and Geology Board just happened to come  
15 up with the idea of pursuing emergency regulations in  
16 the fall of 2002 without any connection whatsoever to  
17 the pending legislation?

18       A.    The State Mining and Geology Board was asked  
19 by the Secretary of Resources to consider regulatory  
20 action, if that was within our jurisdiction.

21       Q.    And the Secretary of Resources letter that is  
22 referred to in your declaration is dated October 17,

509

15:15:41 1 2002, two days after this E-mail exchange; is that  
2 right?

3       A.    I believe the letter is dated October 17. If  
4 you say so. I don't have it in front of me.

5       Q.    Let's refer to your declaration, paragraph

6 seven. Keep the exhibit up on the screen, but your  
7 declaration paragraph seven, which I will hand you.

8 I'm going to hand you a binder of your  
9 declaration, your first declaration in this case, and  
10 I refer you to paragraph seven, where you state, "On  
11 October 17, 2002, California Resources Agency  
12 Secretary Mary Nichols sent a letter to SMGB Chairman  
13 Alan Jones, expressing an urgent concern regarding the  
14 environmental impacts associated with open-pit  
15 metallic mines."

16 Is that correct?

17 A. That is correct.

18 Q. And two days prior to that letter, this  
19 E-mail exchange occurs referring to the effort by  
20 California officials in the legislature--California  
21 staff in the legislature and in the other agencies of  
22 the State urging that the text of S.B. 483 be adopted

510

15:17:39 1 as emergency regulations by the Mining Board, does it  
2 not?

3 A. That's what it says there.

4 Q. And it also says in the top of this exhibit,  
5 in the first highlighted section, "If this matter ever  
6 winds up in litigation, which seems a reasonable  
7 possibility, I don't want my informal opinions  
8 discussed in open Court; that would never be helpful."

9 Do you see that?

10 A. Yes, I do.

11 Q. And looking to the bottom of this exhibit,

12 the E-mail exchange says: "So, where are we at on the  
13 legal feasibility of the State Mining and Geology  
14 Board adopting emergency regs that would (at least for  
15 120 days) mirror the substance of S. B. 483,  
16 legislation recently signed by the Governor?"

17 Do you see that?

18 A. Yes, I do.

19 Q. Now, S. B. 483 was a bill pending in 2002 that  
20 would have imposed complete backfilling requirements  
21 on metallic mines; is that correct?

22 A. I believe it was, yes.

511

15: 18: 53 1 Q. And S. B. 483 was specifically aimed at  
2 Class L BLM lands; do you recall that?

3 A. No, I don't recall that detail on it.

4 Q. But you do recall that S. B. 483 would have  
5 proposed complete backfilling requirements on metallic  
6 mines?

7 A. I think I remember that, yes.

8 Q. And you have testified that for the past  
9 25-plus years under SMARA there had been no regulatory  
10 requirements in the State to have complete backfilling  
11 regulatory requirements for any category of mines; is  
12 that right?

13 A. That's correct.

14 Q. So, the S. B. 483 legislation is pending and  
15 signed by Governor Davis in a statement in which he  
16 expresses his opposition to the Glamis Imperial  
17 Project, but that legislation did not take effect, did



18 it?

19 A. No, it did not.

20 Q. And the reason it did not was because it was  
21 tied together with the pending S.B. 1828 bill; is that  
22 correct?

512

15:20:01 1 A. That's correct.

2 Q. And the pending S.B. 1828 bill would have  
3 imposed essentially a Native American veto authority  
4 over a wide variety of development projects in the  
5 State; is that your understanding?

6 A. No, I don't know it in that detail. You say  
7 a wide variety in the State. I'm not aware that it  
8 was that broad.

9 Q. Are you aware that S.B. 1828 applied to  
10 beyond mining and affected land development of all  
11 types in the State?

12 A. I think it might have.

13 I--no, I couldn't quote you on it, no.

14 Q. And you're aware that Governor Davis vetoed  
15 S.B. 1828?

16 A. Yes.

17 Q. And looking at Parrish Exhibit--Parrish  
18 Exhibit 4, if we could again, and that's September 30,  
19 2002, statement, veto statement by Governor Davis, he  
20 states at the end of the second page, "I'm  
21 particularly concerned about the proposed Glamis Gold  
22 Mine in Imperial County, and I have directed my

15: 21: 30 1 Secretary of Resources to pursue all possible legal  
2 and administrative remedies that will assist in  
3 stopping the development of that mine. "

4           Is it your testimony that it was a mere  
5 coincidence that the Glamis Imperial Mine is singled  
6 out by Governor Davis in this message on September 30  
7 and then several weeks later the SMGB's Board's  
8 emergency rulemaking identifies the Glamis Imperial  
9 Project as the emergency?

10       A.    The background leading up to that we are not  
11 privy to. All I know is that the Board received a  
12 letter from the Secretary of Resources, asking the  
13 Board to take some action within its authority,  
14 including regulatory action, if it could, to address  
15 metallic mines which were not in compliance with the  
16 State Mining Act.

17           So, all of this is background. I have never  
18 seen these documents before. We did not act  
19 specifically with regard to Glamis on the Board at  
20 that time. The request was to look into these issues.

21           Glamis was provided as the triggering  
22 mechanism for the State's concern.

15: 22: 57 1       Q.    Dr. Parrish, I'm going to hand you a full  
2 copy of Parrish Exhibit 6 beyond the excerpt that's  
3 been before you.

4 A. Okay.

5 Q. And I would like you to read--well, I would  
6 like you to review the section on the finding of the  
7 emergency condition in its entirety, and tell me if  
8 the finding made by the State Mining and Geology Board  
9 refers to any other mine other than the Glamis  
10 Imperial Project. I'm not asking you to tell me what  
11 was in your mind at that time. I'm asking you to say  
12 whether any other mine is identified by the finding of  
13 emergency condition.

14 A. Do you want me to read that out loud into the  
15 record or do you want me just to read it?

16 Q. I would simple you to simply answer the  
17 question of whether in the finding of emergency  
18 condition of the State Mining and Geology Board for  
19 the December 12, 2002, meeting, is there any other  
20 mine mentioned as their basis for the finding of the  
21 emergency condition.

22 A. There is, in a nonspecific manner, in the

515

15:24:14 1 last paragraph.

2 Q. Can you tell me what specific mines are  
3 referenced in this section of the finding of emergency  
4 condition.

5 A. The specific mine that is mentioned in the  
6 first paragraph or the second paragraph is the Glamis  
7 Imperial Project. No mine is mentioned. The Glamis  
8 Imperial Project, which is a pending project.

9 The last paragraph indicates that there may

10 be other unknown mines that are currently pending that  
11 the Board would wish to have this imposed on.

12 Q. And are any of the other potential unknown  
13 mines specified in the finding of emergency condition?

14 A. No. If they were unknown, they couldn't be  
15 specified.

16 Q. And therefore they're not specified; correct?

17 A. That's correct.

18 Q. And sitting here today, are you aware of any  
19 other mine that was--had gone through the full EIS/EIR  
20 process and was awaiting a pending approval action at  
21 the time this emergency finding was made?

22 A. I'm not aware of any.

516

15:25:30 1 Q. Now, let's turn to Parrish Exhibit 13--we  
2 will turn to Parrish 13 in a minute, Dr. Parrish, but  
3 I want to ask you, as Executive Director of the State  
4 Mining and Geology Board, how did you learn of the  
5 pending Glamis Imperial Project as a basis for the  
6 finding on the emergency condition?

7 A. It was probably presented in testimony or in  
8 materials that were provided by either the Department  
9 of Conservation or the Resources Agency as the basis  
10 for their action, their request from the Board to  
11 review regulations.

12 Q. And your testimony is you don't recall  
13 specifically how you learned of this?

14 A. No, but that was the triggering mechanism as  
15 to why the agency was asking us to consider it. I'm

16 sure they probably provided something.

17 Q. Turning to Parrish Exhibit 13, this is the  
18 Final Statement of Reasons for the State Mining and  
19 Geology Board regulations, and I want to first go to  
20 page 2 of this document.

21 And this is one of the technical findings  
22 made by the State Mining and Geology Board that

517

15:27:28 1 states, "When consolidated rock material is excavated  
2 from a pit, the volume of rock material expands in the  
3 order of 30 to 40 percent (swell factor)."

4 Do you see that?

5 A. Yes, I do.

6 Q. Did you believe that to be an accurate  
7 finding in the Final Statement of Reasons?

8 A. This is not a--this is not a finding in the  
9 Final Statement of Reasons. The Final Statement of  
10 Reasons is an explanation as to why a particular  
11 regulation is being promulgated in the body of the  
12 work. It's not a finding. It's an explanation of why  
13 3704.1(c) was included in the regulatory process.

14 Q. Dr. Parrish, the statement is made here that,  
15 "When consolidated rock material is excavated from a  
16 pit, the volume of the rock material expands in the  
17 order of 30 percent to 40 percent (swell factor),  
18 depending on the material's compensation and the  
19 degree of disaggregation."

20 Did you believe that statement to be correct  
21 when it was included in the Final Statement of

22 Reasons?

518

15: 28: 46 1 A. Yes, I did.

2 Q. Do you believe it to be correct, sitting here  
3 today?

4 A. Yes, I do.

5 Q. Turning to the next page of the Final  
6 Statement of Reasons--one more question. Dr. Parrish,  
7 do you consider a 30 to 40 percent swell factor to be  
8 an inflated number?

9 MS. MENAKER: Objection. This goes beyond  
10 the scope of his testimony in the record. If he's  
11 asking as a geologist does he--what he thinks general  
12 swell factors are, as Dr. Parrish tried to explain,  
13 this isn't a specific finding here, but rather is an  
14 explanation in order to explain why this particular  
15 regulation subsection is mentioned here.

16 MR. McCRUM: Mr. President, if I may respond,  
17 the finding is included in the Final Statement of  
18 Reasons as a justification for the State Mining and  
19 Geology Board's actions.

20 MS. MENAKER: We have no objection to his  
21 asking about this statement here, but not as to  
22 whether--just more particular questions as he then

519

15: 30: 01 1 went to do as to what swell factors are generally

2 speaking or in particular with respect to a particular  
3 project, and this is not referring to that at all.

4 PRESIDENT YOUNG: I'm sorry, Ms. Menaker, I  
5 may have misunderstood, but I thought he was  
6 asking--let's go back here for a second--whether he  
7 considered that accurate or not.

8 MS. MENAKER: And the witness answered that.

9 PRESIDENT YOUNG: So I think he's asking it  
10 again, if I'm not mistaken.

11 MR. McCRUM: That's correct. I rephrased the  
12 question slightly, Mr. President.

13 (Tribunal conferring.)

14 PRESIDENT YOUNG: We are going to allow the  
15 question, but we do remind counsel that we are looking  
16 at his role, his statement with respect to his role in  
17 the promulgation of this.

18 MR. McCRUM: Thank you.

19 BY MR. McCRUM:

20 Q. Dr. Parrish, when the statement was made in  
21 the Final Statement of Reasons that, when consolidated  
22 rock material is excavated from a pit, the volume of

520

15:32:07 1 the rock material expands in the order of 30 to  
2 40 percent (swell factor), did you consider that  
3 characterization to be an inflated swell factor as a  
4 general matter?

5 A. No, because the remainder of the sentence  
6 says, depending on the material's compensation and  
7 degree of disaggregation, so no, I didn't believe it

8 was an inflated factor.

9 Q. Is it fair to say that's a general typical  
10 swell factor, as you understand it?

11 A. Well, it can only be typical of certain types  
12 of rocks. I don't know that it's typical of all  
13 rocks.

14 PRESIDENT YOUNG: Mr. McCrum, we are going  
15 to--I'm looking down here at my Court Reporter who is  
16 looks increasingly unhealthy as we proceed, so we are  
17 going to take our healthy break now, if that's all  
18 right.

19 MR. McCRUM: Thank you.

20 PRESIDENT YOUNG: We will reconvene at 4:05.

21 And I do remind counsel again not to confer  
22 with the witness on matters relating to the testimony.

521

15:33:15 1 Thank you.

2 (Brief recess.)

3 PRESIDENT YOUNG: Okay. We are ready to  
4 proceed again.

5 Mr. McCrum, we will turn the time back over  
6 to you.

7 MR. McCRUM: Very well, thank you.

8 BY MR. McCRUM:

9 Q. Dr. Parrish, I want to refer to Parrish  
10 Exhibit 4, which is on the screen. This is Governor  
11 Gray Davis's veto message for Senate Bill 1828, dated  
12 September 30, 2002, produced by the United States as a  
13 document in this NAFTA litigation.



Redacted Transcript, Day 2

14 I'm going to refer you to the second page of  
15 this exhibit where Governor Gray Davis states: "I'm  
16 particularly concerned about the proposed Glamis Gold  
17 Mine in Imperial County, and I have direct my  
18 Secretary of Resources to pursue possible legal and  
19 administrative remedies that will assist in stopping  
20 the development of that mine."

21 Do you see that?

22 A. Yes, I do.

522

16:05:38 1 Q. And do you have any reason to dispute the  
2 accuracy of this statement by Governor Davis on  
3 September 30, 2002?

4 A. No. I have not seen the document. I don't  
5 dispute the content.

6 Q. Very well.

7 Let's turn to Parrish Exhibit 5.

8 This is an E-mail exchange concerning S. B.  
9 483. It was produced by the United States as a  
10 document in this NAFTA case, begins bearing the date  
11 10/15/02, continues on different E-mail exchanges down  
12 below.

13 We get to the bottom. The re: line is  
14 "Emergency Mining Board Rules" and S. B. 483.

15 When we turn down to the bottom of this  
16 document, the question in the E-mail is: "So, where  
17 are we at on the legal feasibility of the State Mining  
18 Board adopting emergency regs that would (at least for  
19 120 days) mirror the substance of S. B. 483 (Sher)

20 legislation recently signed by the Governor?"

21 And it goes on and states: "Alison Harvey,

22 Senator Burton's Chief of Staff, and I both suggested

523

16:07:07 1 last week to the Resources Secretary that the Davis  
2 administration push these emergency regs to give us  
3 time to enact trailer bill legislation early next year  
4 for S. B. 483. "

5 Do you see that?

6 A. Yes, I do.

7 Q. Do you dispute the accuracy of these  
8 statements in this document?

9 A. I have never seen documents before, so I have  
10 nothing to base any dispute on. No, I don't dispute  
11 it.

12 Q. Very well.

13 In this last E-mail exchange that we have  
14 just referred to at the bottom of page one of the  
15 exhibit bears the date October 11, '02. It's the  
16 bottom of the first page of Parrish Exhibit 05. So,  
17 this communication concerning the legal feasibility of  
18 the State Mining Board adopting emergency regs bears  
19 the date of October 11, 2002.

20 A. Yes.

21 Q. Do you dispute that?

22 A. No.

524

Redacted Transcript, Day 2

16:08:04 1 Q. According to your declaration, four days  
2 later, Secretary of Resources sent a letter to the  
3 State Mining and Geology Board, urging the adoption of  
4 backfilling regulations for metallic mines; is that  
5 right?

6 A. That's correct.

7 Q. I think I misspoke a little bit. I said four  
8 days later. Your letter bears the date of October 17,  
9 so it would have been six or seven days later?

10 A. Yes, six or seven days, yes.

11 Q. And then the State Mining and Geology Board  
12 acted after that Secretary of Resources letter; is  
13 that correct?

14 A. That's correct.

15 Q. And then, in the State Mining and Geology  
16 Board emergency rulemaking finding for the  
17 December 12, 2002, meeting--we have been through this  
18 ground before, I trust we don't have to do it  
19 again--the only mine specified as the finding of the  
20 emergency condition is the pending Glamis Imperial  
21 Project; is that correct?

22 A. Subject to my previous answer, yes.

525

16:09:13 1 Q. And your previous answer is the only proposed  
2 mine identified is the Glamis Imperial Project; is  
3 that correct?

4 A. The proposed project, yes, was the Imperial,  
5 yes.

6 Q. Was the Glamis Imperial Project a proposed  
7 open-pit gold mine?

8 A. Yes, it was.

9 Q. Now let's turn to Parrish Exhibit 7.

10 This is a document produced by the United  
11 States to us in this case from the Senate Natural  
12 Resources and Wildlife Committee on pending bill S. B.  
13 22, bearing the date of January 14, 2002, roughly one  
14 month after the State Mining and Geology Board  
15 emergency finding.

16 Were you aware that pending legislation S. B.  
17 22 was pending in the legislature while you were  
18 proceeding with your rulemaking?

19 A. Yes, I believe we were.

20 Q. And this document, the Senate Natural  
21 Resources and Wildlife Committee document, Parrish  
22 Exhibit 07, at page 2 of that document states: "These

526

16:10:26 1 changes to statute are urgently needed to stop the  
2 Glamis Imperial Mining Project in Imperial County  
3 proposed by Glamis Gold, Limited, a Canadian-based  
4 company. "

5 Do you see any other mine referred to in this  
6 exhibit?

7 A. This is the first time I have seen this  
8 exhibit, so I don't know. I would have to--

9 Q. Why don't you take a minute or two and take  
10 as long as you would like and review Parrish Exhibit 7  
11 and see if any other mine is referred to other than

12 the Glamis Gold project.

13 (Witness reviews document.)

14 A. No, I don't see any other mines mentioned.

15 Q. Thank you.

16 Let's look at the bottom of that same

17 page--we were looking at the second page of Parrish

18 Exhibit 7--and do you see the statement, "The author

19 believes the backfilling requirements established by

20 S. B. 483 make the Glamis Imperial Project infeasible"?

21 A. I see that, yes.

22 Q. Do you have any reason to dispute the

527

16:12:00 1 accuracy of that statement in this document?

2 A. I have no knowledge of the document, so I  
3 have no reason to dispute the contents of it.

4 Q. Thank you.

5 Let's turn to the next page of this exhibit.

6 The highlighted portion in the middle of the page

7 states: "The provisions of S. B. 483 that address the

8 Glamis Imperial Project were originally drafted by

9 legal staff of the Department of Conservation at the

10 request of the Resources Agency. "

11 Do you see that?

12 A. Yes, I do.

13 Q. Is the Department of Conservation part of the

14 California legislature, as you understand the State

15 Government?

16 A. No, it is not.

17 Q. Is the Resources Agency part of the

18 legislature, as you understand it?  
19 A. No, it is not.  
20 Q. Let's turn to Parrish Exhibit 10.  
21 This is a Governor of Office of Research and  
22 Planning Confidential Enrolled Bill Report to the

528

16:13:11 1 California Governor that has been produced by the  
2 United States in this case to us. It bears the date  
3 of 3/25/03 at the bottom of the first page of the  
4 exhibit, March 25, '03.  
5 Let's look at the highlighted portions on  
6 that document, and there are references to the Glamis  
7 Gold Mine, are there not?  
8 A. Yes, there are.  
9 Q. And under the recommendation and supporting  
10 arguments, it states: "Signed passage of this measure  
11 would permanently prevent approval of the Glamis Gold  
12 Mine project and any other metallic projects that  
13 present an immediate threat to sacred sites located in  
14 areas of special concern."  
15 Do you see that statement?  
16 A. Yes, I do.  
17 Q. Is there any other mine other than the Glamis  
18 Gold Mine referenced?  
19 A. This is the first time I have seen this  
20 document, so I don't know.  
21 Q. On this page that we are looking at, do you  
22 see mention of any other mine?

16: 14: 12 1 A. No, I don't.

2 Q. Any other proposed mine.

3 Were you aware that there were concerns about

4 Native American cultural resources issues raised in

5 connection with the Glamis Imperial Project?

6 A. Yes, I was.

7 Q. Let's turn to the next page of this exhibit.

8 This is Parrish Exhibit 10, the second page, and the

9 first highlighted paragraph states: "Governor Davis

10 signed S. B. 483 into law, knowing that he would also

11 be vetoing S. B. 1828. The signing message for S. B.

12 483 expressed the Governor's opposition to the Glamis

13 Gold Mine proposal and urged the Secretary of

14 Resources to pursue emergency legislation along with

15 administrative remedies to protect the Quechan Tribe's

16 sacred trails."

17 Do you see that?

18 A. Yes, I do.

19 Q. Do you have any reason to dispute that

20 characterization of what was going on in the State

21 Government at that time?

22 A. I can't comment on what was going on in the

16: 15: 24 1 Governor's Office at that time, I was not privy to any

2 of that.

3 Q. But, sitting here today, you have no reason

4 to dispute these characterizations, do you?

5 A. I can neither dispute nor confirm them. I  
6 have not seen the document before. It's a Governor's  
7 confidential memo.

8 Q. And then the next paragraph of that same page  
9 says: "Despite the Governor's veto of S.B. 1828 and  
10 the subsequent lack of implementation of S.B. 483, the  
11 State has so far prevented the approval of the Glamis  
12 Gold Mine through the passage of emergency  
13 regulations."

14 Do you see that?

15 A. Yes, I do.

16 Q. Does that accurately characterize what was  
17 going on at that time?

18 A. I don't know. I wouldn't classify the  
19 Board's regulations as an act of the State to prevent  
20 Glamis's project from proceeding.

21 Q. Well, apparently the Governor's Office of  
22 Planning and Research viewed it that way, wouldn't you

531

16:16:25 1 say?

2 A. I would have to ask the Governor's Office of  
3 Planning and Research.

4 Q. We would, too.

5 Would you, sitting here today, do you have  
6 any reason to dispute these two statements?

7 A. Again, I have never seen the document, so I  
8 don't dispute or condone them, confirm them.

9 Q. In the second sentence of the middle



10 paragraph near the bottom, it states: "Passed by the  
11 State Mining and Geology Board on December 12, 2002,  
12 the emergency regulation," passing over the citation,  
13 "specifies that approval of any open-pit mine may only  
14 be granted if the Reclamation Plan includes full  
15 restoration of the site to its original contours."

16 Is that referring to the emergency rule that  
17 your Board promulgated?

18 A. If they're talking about the December 12th  
19 regulation, that would be the emergency regulation.

20 Q. Is it clear to you that that is this  
21 reference to the December 12 emergency regulation is,  
22 in fact, the emergency regulations that your Board put

532

16:17:35 1 into place?

2 A. Yes, it is.

3 It's also technically incorrect in its  
4 interpretation.

5 Q. What is technically incorrect about it?

6 A. It says that the Reclamation Plan includes  
7 full restoration of the site to its original contours.  
8 That's not what the regulation requires.

9 Q. The emergency regulation that you issued  
10 requires complete backfilling and site regrading down  
11 to 25 feet; is that correct?

12 A. I believe so, yes.

13 Q. Let's turn to the next page of that exhibit,  
14 the confidential Enrolled Bill Report to the Governor.

15 Do you see the last highlighted section that

16 says: "This bill targets a specific project that  
17 would otherwise be allowed to go forward under current  
18 law"?

19 A. Yes, I do.

20 Q. Sitting here today, do you have any reason to  
21 dispute that characterization?

22 A. Again, I have not seen the document before.

533

16:18:47 1 I trust it at its face value.

2 Q. Thank you.

3 Let's take a look at the next exhibit,  
4 Parrish Exhibit 11. This is another Enrolled Bill  
5 Memorandum to the Governor dated April 4, 2003, and it  
6 states under the heading "Fiscal impact creates a  
7 mandate; however, because this bill would only affect  
8 one mine, the proposed Glamis Gold Mine in Imperial  
9 County, any reimbursable costs are estimated to be  
10 minor."

11 Do you see that?

12 A. Yes, I do.

13 Q. Sitting here today, do you have any reason to  
14 dispute the accuracy of that characterization?

15 A. I have no basis to support it or confirm it.  
16 I have never seen the document before. Nor have I--am  
17 I familiar with any of the financial and economic  
18 issues here.

19 Q. Thank you.

20 "Background Information," the last heading on  
21 this Exhibit Parrish 11, states: "This bill is

22 consistent with the Governor's signing message on S. B.

534

16:20:01 1 483 last year where he stated his strong opposition to  
2 the proposed Glamis Gold Mine in Imperial County and  
3 directed the Secretary of Resources to pursue all  
4 remedies that will assist in stopping the development  
5 of the mine in Imperial County."

6 Do you see that?

7 A. Yes, I do.

8 Q. And do you have any reason to dispute the  
9 accuracy of that characterization in this Enrolled  
10 Bill Memorandum to the Governor?

11 A. No, I don't.

12 Q. Did you attend the press release held by  
13 Governor Gray Davis on April 7, 2003?

14 A. No, I didn't.

15 Q. I refer you to Parrish Exhibit 2. This  
16 public statement by the Office of the Governor of  
17 California states: Governor Davis signs legislation  
18 to stop proposed gold mine near Trail of Dreams sacred  
19 site."

20 Had you seen this statement before?

21 A. This is the Governor's press release.

22 No, I have not seen this one. I don't

535

16:21:12 1 believe so, no.

2 Q. Let's look at the first highlighted statement  
3 by Governor Davis: "By requiring complete restoration  
4 of metallic mining sites, the bill, S.B. 22,  
5 essentially stops the Glamis Gold Mine proposal in  
6 Imperial County."

7 Do you have any reason to dispute that  
8 characterization?

9 A. Well, I don't know whether it did stop or  
10 not. I have no basis to say whether it did or not. I  
11 don't dispute the words that are here, but the  
12 characterization it stopped the mine I have no  
13 knowledge of.

14 Q. Let's look at the second highlighted sentence  
15 from the bottom. It states: "The reclamation and  
16 backfilling requirements of this legislation would  
17 make operating the Glamis Gold Mine cost-prohibitive."

18 Do you see that?

19 A. Yes, I do.

20 Q. Have you seen that statement before?

21 A. Well, maybe in some of the other documents we  
22 have been through. I'm not familiar with this one.

536

16:22:16 1 Q. All right. Are you aware of any retraction  
2 or rescission of that statement by the Office of the  
3 Governor of California?

4 A. No, I'm not.

5 Q. And then the last sentence here, it says:  
6 "In addition to S.B. 22, the State Mining and Geology  
7 Board will require backfilling of all metallic mines

8 in the future. This regulation will apply statewide  
9 to new metal mines which constitute only 3 percent of  
10 the industry.

11 Would that be a reference to the rulemaking  
12 that you were carrying out while this legislation was  
13 pending?

14 A. Certainly sounds like it.

15 Q. And would you agree with the characterization  
16 that new metal mines constitute only 3 percent of the  
17 mining industry in California?

18 A. I never calculated it out, but I wouldn't  
19 dispute that it's a low figure like that.

20 Q. And three days after this press release by  
21 Governor Gray Davis on April 10, 2003, the State  
22 Mining and Geology Board regulations became final; is

537

16:23:21 1 that correct?

2 A. No, that's not technically correct.

3 Q. When did the regulations become final?

4 A. The regulations, the permanent regulations,  
5 become final upon filing with the Secretary of State.  
6 I think the Board acted to adopt them on the tenth.

7 Q. Of April?

8 A. Of April, at its public hearing.

9 Q. So, the Board acted to adopt the final  
10 regulations on April 10, 2003; is that correct?

11 A. I believe so.

12 Q. Now, let's turn to the Final Statement of  
13 Reasons of the State Mining and Geology Board, which

14 is Parrish Exhibit 13. And turn to page four of that  
15 document, where there is a heading, "Identification of  
16 Technical/Theoretical/Empirical Study, Reports or  
17 Documents Upon Which the SMGB Has Relied."

18 Do you see that?

19 A. Yes, I do.

20 Q. And this is contained in the Final Statement  
21 of Reasons for the State Mining and Geology Board  
22 backfilling regulation; is that correct?

538

16:24:42 1 A. That's correct.

2 Q. And the statement in the Final Statement of  
3 Reasons says that no technical, theoretical, empirical  
4 studies, reports or documents were prepared or relied  
5 upon by the SMGB in its consideration of this  
6 rulemaking.

7 Is that correct?

8 A. That is correct.

9 Q. And this document you have seen before, I  
10 trust?

11 A. Yes, I have.

12 Q. Because you were the Executive Director of  
13 the State Mining and Geology Board?

14 A. That's correct.

15 Q. So, this Final Statement of Reasons was  
16 prepared under your supervision?

17 A. Yes, it was.

18 Q. Let's look at the next page of this Final  
19 Statement of Reasons.

20                   We have a discussion of comments submitted on  
21 the rulemaking; is that correct?  
22       A.    Yes.

539

16: 25: 31 1       Q.    And Commentator 10, Mr. Jurg Heuberger,  
2    Planning Director, Imperial County, and the  
3    characterization says: "The commentator states, if  
4    there is no scientific analysis to show that cyanide  
5    leaching causes significant adverse environmental  
6    impacts to desert washes, its habitat and impacts to  
7    wildlife, then what's the problem?"

8                   Do you recall that comment from Imperial  
9    County opposing the SMGB statement of backfilling  
10 regulations?

11       A.    Yes, I do.

12       Q.    In response to the comment states: "The  
13 regulation does not address cyanide heap-leaching as a  
14 process in mining. However, the commentator may wish  
15 to write to the U.S. program coordinator, Mineral  
16 Policy Center."

17                   Is that correct?

18       A.    That's correct.

19       Q.    The Mineral Policy Center is an environmental  
20 advocacy antimining organization; is that correct?

21       A.    I don't know that.

22       Q.    Was it your idea to refer the commentator to

540

Redacted Transcript, Day 2

16: 26: 31 1 the Mineral Policy Center for information?

2 A. Yes. The Mineral Policy Center had submitted  
3 information regarding heap leach mining to the Board;  
4 and, therefore, I was referring them to the people who  
5 submitted that information to the Board, since he was  
6 saying there was no scientific evidence submitted, and  
7 referred him to that organization.

8 Q. Did you consider the Mineral Policy Center to  
9 be a neutral objective source of scientific  
10 information?

11 A. We didn't consider it either way, neutral or  
12 biased, one way or the other. It was simply an  
13 organization that submitted comments for the  
14 administrative record for the Board to consider.

15 Q. Are you aware that the Mineral Policy Center  
16 has reorganized and changed its name to "Earthworks"  
17 and filed amicus submissions in this case opposing the  
18 position of Glamis Gold, Limited?

19 A. No, I'm not.

20 Q. Are you aware that the organization has  
21 reorganized and changed its name to "Earthworks"?

22 A. No, I wasn't, no.

541

16: 27: 35 1 Q. Dr. Parrish, were you aware that the National  
2 Academy of Sciences/National Research Council had  
3 prepared a report entitled "Hardrock Mining on Federal  
4 Lands" in 1999?

5 A. Yes, I was.



6 Q. Let's turn to Parrish Exhibit 3.

7 Does this title look familiar, "Hardrock  
8 Mining on Federal Lands"?

9 A. Yes.

10 Q. National Research Council, National Academy  
11 Press, Washington, D. C. ?

12 A. Yes.

13 Q. And turning to the first page of this  
14 exhibit, it characterizes the National Academy of  
15 Sciences as a private nonprofit self-perpetuating  
16 society of distinguished scholars engaged in  
17 scientific and engineering research.

18 Do you see that?

19 A. Yes, I do.

20 Q. Would you agree with that characterization of  
21 the National Academy of Sciences?

22 A. More or less, yes.

542

16: 28: 36 1 Q. Would you consider it a source of neutral  
2 information on the subject of environmental regulation  
3 of hardrock mining on Federal lands?

4 A. Yes, I would give them the benefit of the  
5 doubt they are neutral on most issues.

6 Q. Let's turn to the next page of this exhibit.

7 Were you aware that this exhibit report of  
8 the National Academy of Sciences/National Research  
9 Council in 1999 was prepared at the request by  
10 Congress to assess the adequacy of the regulatory  
11 framework for hardrock mining on Federal lands?

12 A. Yes.

13 Q. And turning to the second paragraph, were you  
14 aware that the charge to the Committee had three major  
15 components, the first being to identify Federal and  
16 State statutes and regulations applicable to  
17 environmental protection of Federal lands in  
18 connection with mining activities? Were you aware of  
19 that?

20 A. Yes, I was.

21 Q. And were you aware that this report assessed  
22 the adequacy of statutes and regulations to prevent

543

16: 29: 50 1 unnecessary or undue degradation of the Federal lands?

2 A. Yes.

3 Q. Let's turn to the next page of this exhibit,  
4 which includes page five of the National Academy of  
5 Sciences' s recommendation.

6 Do you see the second sentence that says from  
7 the top, "The overall structure of Federal and State  
8 laws and regulations that provide mining-related  
9 environmental protection is complicated but generally  
10 effective"?

11 A. Yes, I do.

12 Q. Were you aware that the National Academy of  
13 Sciences/National Research Council had made this  
14 finding in the 1999 report at the time the SMGB acted  
15 with its rulemaking?

16 A. I probably was since I did read the report.

17 Q. And turning to the second highlighted

18 paragraph, do you see the statement that "Federal land  
19 managing agency's regulatory standards for mining  
20 should continue to focus on clear statement of  
21 management goals rather than on defining inflexible  
22 technically prescriptive standards"? Were you aware

544

16:31:05 1 of that recommendation?

2 A. I see that, yes.

3 Q. And the sentence after that states: Simple  
4 one-size-fits-all solutions are impractical because  
5 mining confronts too great an assortment of  
6 site-specific technical, environmental and social  
7 conditions. Each proposed mining operation should be  
8 examined on its own merits. For example, if  
9 backfilling of mines is to be considered, it should be  
10 determined on a case-by-case basis, as was concluded  
11 by the Committee on Surface Mining and Reclamation  
12 (COSMAR) Report (NRC, 1979). "

13 Were you aware of that conclusion of the  
14 National Academy of Sciences/National Research Council  
15 in their 1999 report?

16 A. Yes, I was.

17 Q. Would you agree that the adoption of a  
18 mandatory complete backfilling requirement is a  
19 technically prescriptive standard?

20 A. Yes, it is.

21 Q. And would you agree that a site regrading  
22 requirement to have all overburden and mine waste

16: 32: 18 1 piles graded down to 25 feet as a technically  
2 prescriptive standard?

3 A. Yes, it is.

4 Q. And would you agree that the adoption of such  
5 standards, without exception, precludes the ability to  
6 evaluate the merits of backfilling on a case-by-case  
7 basis?

8 A. No, I don't. Not under SMARA.

9 Q. Do your regulations, as adopted, allow  
10 variances from the complete backfilling requirements?

11 A. Yes. For metallic mines, there is a  
12 requirement that, if material is not available to  
13 backfill, the mine does not have to be backfilled.

14 Q. So, in other words, if the material has been  
15 removed and taken away from the site, then it doesn't  
16 have to be backfilled?

17 A. That's correct.

18 Q. Is that the only variance?

19 A. Yes, it is.

20 Q. So, in other words, if the waste rock would  
21 be sold as aggregate, that might be a way to get rid  
22 of the waste product?

16: 33: 27 1 A. That's correct.

2 Q. And then the pit would not be backfilled; is  
3 that correct?

4 A. That is correct.

5 Q. Beyond that, the 25-foot regrading  
6 requirement applies; is that correct? Site regrading  
7 restriction.

8 A. Yes. Material left on the surface should be  
9 contoured to no higher than 25 feet above the  
10 surrounding original topography.

11 Q. Do you see--would you agree that the SMGB  
12 regulations setting prescriptive standards for  
13 backfilling and site regrading contradict the  
14 conclusions and recommendations of the National  
15 Academy of Science/National Research Council?

16 A. Well, they may conflict with their  
17 recommendations, but the California State Mining laws  
18 are for California. These are recommendations that  
19 are one-size-fits-all. These are general broadbrush  
20 recommendations that the Council came up with. The  
21 Board had these materials before it when it made these  
22 considerations.

547

16: 34: 37 1 Q. But the SMGB Board did not refer commentators  
2 to this organization or report for further  
3 information, did it?

4 A. I don't believe it did, no.

5 Q. What is your understanding of the 1979 report  
6 of the National Research Council?

7 A. I'm not familiar with it.

8 Q. You're not aware that, in 1979, the National  
9 Research Council, at the request of the U.S. Congress,

10 evaluated the feasibility of backfilling noncoal  
11 minerals such as metallic mines?

12 A. I'm not familiar with that document, no.

13 Q. Would you agree that the National Academy of  
14 Sciences/National Research Council recommended that  
15 backfilling be considered on a case-by-case basis  
16 because there was a potential for the degradation of  
17 groundwater quality if backfilled material was leached  
18 or chemically transformed as a result of geochemical  
19 conditions in the backfilled pit?

20 A. Yes.

21 Q. So, in other words, the National Academy of  
22 Sciences recognized that backfilling of metallic open

548

16:36:12 1 pits was not always the best thing to do, from an  
2 environmental perspective?

3 A. From a water quality perspective.

4 Q. Backfilling could actually harm and make more  
5 severe any water quality problems that might exist?

6 A. That's what their conclusion was, yes.

7 Q. Let's turn to Parrish Exhibit 15, if we  
8 could.

9 Dr. Parrish, without any technical studies  
10 that were relied upon by the SMGB Board, how was the  
11 level of 25 feet selected for the amount that site  
12 regrading--as the limitation for site regrading?

13 A. It was--I believe that was a recommendation  
14 from the Department of Conservation's Office of Mine  
15 Reclamation because they have reclamation experts who

16 work for them, and 25 feet was sort of a compromise  
17 between what could be done out there feasibly without  
18 interfering with the natural environment.

19 Q. But did you rely on studies to provide a  
20 basis for that 25-foot restriction?

21 A. No.

22 Q. Turning to Parrish Exhibit 15, these are the

549

16:37:54 1 comments of the California Mining Association, or part  
2 of the comments of the California Mining Association,  
3 at the December 12, 2002, SMGB meeting, and this  
4 comment submission includes sections of the Castle  
5 Mountain Project Final EIS/EIR.

6 Do you recall this submission by the  
7 California Mining Association on the SMGB rulemaking?

8 A. I don't doubt they submitted this. I don't  
9 recall it right off.

10 Q. Was the California Mining Association the  
11 primary trade association representing the metallic  
12 mining industry in the State of California at the time  
13 of this rulemaking?

14 A. I believe that's how they presented  
15 themselves, yes.

16 Q. Is there any other organization that you  
17 would identify that might be considered more of a  
18 spokesman for the metallic mining industry as it  
19 existed at the time?

20 A. No, there were several mining associations  
21 that were there, and I think CMA was one that had most

Redacted Transcript, Day 2  
22 of the metallic mines, or represented them

550

16: 39: 08 1 Q. Turning to this exhibit at the third  
2 page--under the third page of this exhibit, under  
3 heading six, it states: "In conjunction with the  
4 passage of SMCRA, Congress also directed that an  
5 investigation be completed on reclamation of noncoal  
6 mines, including the potential for backfilling. A  
7 report entitled 'Surface Mining of Noncoal Minerals'  
8 was prepared by the National Research Council. The  
9 difference between open-pit metal mining and surface  
10 coal mining with respect to backfilling is illustrated  
11 from the following study.

12 Now, this is a reference to the 1979 NRC,  
13 National Research Council, Report; would you agree?

14 A. I will take your word for it that it is. I'm  
15 not familiar with the 1979 report.

16 Q. So, Dr. Parrish, I take it, then, you didn't  
17 study this particular submission by the California  
18 Mining Association?

19 A. No, I wouldn't make that assumption. I think  
20 it was probably read. It was about four or five years  
21 ago.

22 All submissions that came in were read and

551

16: 40: 37 1 provided to the Board.



2 Q. Now, this particular submission, although  
3 it's a detachment to the California Mining  
4 Association, these are not representations of the  
5 Mining Association but rather excerpts from a joint  
6 Federal Environmental Impact Statement/Environmental  
7 Impact Report; is that your understanding?

8 A. That's what it says up here, yes, um-hmm.

9 Q. From the Castle Mountain Final Environmental  
10 Impact Statement/Environmental Impact Report?

11 A. Yes.

12 Q. And looking at the highlighted section on the  
13 page that we were referring to and quoting this  
14 Federal/State document is quoting from the 1979 report  
15 of the National Research Council, it states: "Indeed,  
16 the very size of a large open pit would make  
17 restoration by backfilling or even reshaping an  
18 enormous economic burden of uncertain benefit, and  
19 inactive open pits could be reactivated if economic  
20 conditions became favorable. Thus, in practical  
21 terms, reclamation of open pits is limited to planning  
22 for the placement of waste rock dumps or rock dumps

552

16:41:39 1 and tailings ponds that will remain when the mining  
2 operation is closed. Principles of landscape design  
3 can be applied at little additional cost in placing  
4 these materials in a manner that achieves beneficial  
5 post-mining land use. "

6 Do you see that?

7 A. Yes, I do.

8 Q. And this is a--this particular 1979 report,  
9 you have testified, you are not familiar with; is that  
10 right?

11 A. I'm not familiar with it, no.

12 Q. Is it fair to say that, based on this excerpt  
13 in this joint Federal EIS on the Golden--I'm sorry, on  
14 the Castle Mountain project, that the National  
15 Research Council had the view in 1979 that beneficial  
16 post-mining land uses could be achieved at metallic  
17 mine sites without complete backfilling?

18 MS. MENAKER: Objection. How can the witness  
19 testify as to what was in the mind of the National  
20 Research Council in 1979?

21 MR. McCRUM: I will rephrase the question.

22 BY MR. McCRUM:

553

16: 43: 12 1 Q. Looking at this comment submission, which is  
2 an excerpt of a Federal joint EIS submitted into your  
3 rulemaking record, would you agree that this quoted  
4 provision from the 1979 National Research Council  
5 report expresses a view that principles of landscape  
6 design could be applied at little additional cost in  
7 placing these materials in a manner that achieves  
8 beneficial post-mining land use?

9 A. I would agree that that was their conclusion  
10 and recommendation.

11 Q. Thank you.

12 Let's turn to the next page of this  
13 submission, which is from the Castle Mountain joint

14 Federal Environmental Impact Statement/Environmental  
15 Impact Report. At the top of the highlighted section,  
16 there is a provision that says: "Once an open pit has  
17 been mined, it is generally not possible to replace  
18 all of the material excavated from the pit or to  
19 restore the land surface to its former condition due  
20 to physical constraints. Broken rock occupies a much  
21 greater volume than solid rock. As a result of this  
22 expansion or 'swell factor,' all of the rock that has

554

16: 44: 30 1 been broken and removed from the pit during mining  
2 will not fit back into the pit. As explained by the  
3 NRC, waste and tailings resulting from mining and  
4 processing expand an average of about 30 to  
5 40 percent, and very few mines can take out enough ore  
6 to leave space in the mine workings to backfill all  
7 waste and tailings. Thus, even if the huge cost of  
8 backfilling were incurred, waste and tailings would  
9 still remain on the surface at many mines (NRC,  
10 1979). "

11 In my review of this provision, does that  
12 refresh any recollections on your part regarding these  
13 findings that were submitted to the SMGB?

14 A. You mean with regards to the 30 to  
15 40 percent?

16 Q. Well, with regard to any aspect of it.

17 A. I do not remember this particular document.  
18 There were a lot of documents. I'm not saying that I  
19 didn't read it at the time, but I just don't recall

20 this one.

21 Q. Let's look at the bottom of the excerpt here.  
22 In its evaluation of open-pit mining and

555

16:45:40 1 backfilling, the NRC reported on backfilling costs as  
2 follows: "The assumption of backfilling to original  
3 contour leads to some of the highest estimates of  
4 reclamation costs ranging from 55 million to  
5 3.2 billion for individual metal mines (NRC, 1979)."

6 Were you aware of those cost projections that  
7 might be associated with your rulemaking when it was  
8 pending in 2002?

9 A. I don't recall this document, no. I'm not  
10 aware that there were any kinds of projections like  
11 that.

12 Q. Now, turning to the top of this page, the  
13 finding by the National Research Council that waste  
14 material expands an average of about 30 to 40 percent,  
15 that finding at least would be consistent with the  
16 finding made in your Final Statement of Reasons by the  
17 SMGB, wouldn't it?

18 A. It's consistent with information that was  
19 provided to the Board during testimony, yes.

20 Q. And turning to the next page, there is an  
21 actual calculation of the swell factor at the Castle  
22 Mountain Project, and it calculates a particular swell

556

Redacted Transcript, Day 2

16: 46: 53 1 factor for that project as the average swell factor at  
2 being 36 percent.

3 Do you see that?

4 It's a little hard to see.

5 A. Yes, I see it.

6 Q. In the yellow highlighted section, in the  
7 second-to-last line, it says "average swell factor  
8 36 percent. "

9 A. Yes, I see that.

10 Q. Let's take a look back at Parrish Exhibit 3.  
11 This is the Hardrock Mining on Federal Lands Report  
12 from 1999 that you testified you were familiar with;  
13 is that correct?

14 A. Yes, I read it. I don't know how familiar I  
15 am after four years.

16 Q. Sure.

17 And let's turn to the last page of this  
18 exhibit and see the discussion of backfilling in the  
19 1999 report to Congress.

20 Now, Dr. Parrish, this section in the 1999  
21 report is one of the primary sections in the report  
22 addressing backfilling.

557

16: 48: 19 1 A. Um-hmm.

2 Q. And it expressly cites and quotes the 1979  
3 report by the National Research Council as follows,  
4 and it says: "The provision of restoring--that the  
5 type of reclamation used for coal mine lands is

6 generally not technically feasible for noncoal  
7 minerals or has limited value because it's  
8 impractical, inappropriate or economically unsound. "

9 Do you see that?

10 A. Yes, I do.

11 Q. And the next quotation from the 1979 National  
12 Research Council Report states: "Further, to restore  
13 the original contour where massive ore bodies had been  
14 mined by the open-pit method could incur costs roughly  
15 equal to the original cost of mining. "

16 Do you see that?

17 A. Yes, I do.

18 Q. Now, these quotations are from the 1979  
19 National Research Council Report that you said you  
20 were not familiar with, but yet they're quoted quite  
21 prominently in the 1999 report; is that correct?

22 A. Yes, they are.

558

16:49:30 1 Q. And yet, your rulemaking in 2002 imposed  
2 complete backfilling requirements without reliance on  
3 any scientific study; is that right?

4 A. For metallic mines, yes.

5 Q. Now, let's return to the nonmetallic mines.  
6 Those mines in California are still regulated under  
7 the Surface Mining and Reclamation Act; correct?

8 A. That's correct.

9 Q. And they are subject to the same general  
10 standard of returning land to a "usable condition"; is  
11 that right?

- 12 A. That's correct.
- 13 Q. And we talked about earlier how open-pit  
14 mining is a common method of mining nonmetallic  
15 aggregates and industrial minerals; is that correct?
- 16 A. That's correct.
- 17 Q. And those mines can leave open pits larger  
18 than the metallic mine pit associated with the  
19 proposed Imperial Project; is that correct?
- 20 A. Larger in what dimension?
- 21 Q. Depth as well as width.
- 22 A. Probably not depth; but, certainly, laterally

559

16: 50: 44 1 it could be larger.

- 2 Q. Have you had a chance to review the rebuttal  
3 report of Thomas Leshendok filed in this case,  
4 indicating the depth of the U.S. Borax boron mine as  
5 approved in 2004?
- 6 A. I may have read it. I don't recall the  
7 specifics.
- 8 Q. Does a nonmetallic mine that is as large as  
9 the U.S. Borax Boron Pit that was described by  
10 Mr. Leshendok earlier today, if that is left in an  
11 open state, can that prevent--can that present some  
12 safety issues with regard to that open pit?
- 13 A. You are talking about the U.S. Borax Mine  
14 specifically?
- 15 Q. Yes.
- 16 A. I'm not trying to dodge you. I'm really not  
17 familiar with what the Reclamation Plan or the end

18 uses are that were decided on that. Obviously, the  
19 SMARA requires that there be no dangers to the public  
20 left upon completion of reclamation, so I would assume  
21 that that's in their plan, that the lands would not be  
22 present a danger to them or the environment.

560

16:52:13 1 Q. The nonmetallic open pits in California have  
2 no requirement to backfill them; correct?

3 A. That's correct.

4 Q. And thus, those open pits can be and have  
5 been left in a state where the open pit is not  
6 backfilled; correct?

7 A. Some have, yes.

8 Q. Referring to Mr. Leshendok's rebuttal  
9 statement filed in this case in July 2007 as well as  
10 his testimony here today, he described the U.S. Borax  
11 open pit as approved in 2004 as stretching 1.5-by-1.5  
12 miles wide and will be 1,250 feet deep.

13 And do you think that that pit will be mostly  
14 backfilled?

15 A. Again, I have not read the Reclamation Plan.  
16 I don't know what the requirements were for that. If  
17 it is, it is; if it isn't, it isn't. It's not an  
18 issue that I am familiar with or an issue that came  
19 before the Board.

20 Q. Did the SMGB prepare any technical studies  
21 justifying imposing complete backfilling on metallic  
22 mines as opposed to nonmetallic mines in the State of



16: 53: 49 1 California?

2 A. No, it prepared no technical studies.

3 Q. Thank you, Dr. Parrish.

4 MR. McCRUM If I could just pause for a few  
5 minutes and then I will see if I have any further  
6 questions.

7 (Pause.)

8 MR. McCRUM Just a few more questions for  
9 Dr. Parrish.

10 BY MR. McCRUM

11 Q. Dr. Parrish, I would like to turn to the  
12 declaration you submitted in this case, the first  
13 declaration.

14 Do you have that?

15 A. I think I do here. I saved it. That's it  
16 right here.

17 Q. This is--we are referring to the first  
18 declaration of Dr. Parrish submitted in this case, and  
19 it's dated September 16, 2006.

20 I would like to turn to page four, paragraph  
21 11, and it is stated here that there were considered  
22 by the--you refer here to three particular mines as

16: 55: 58 1 justifying or supporting the SMGB's rulemaking, and  
2 they include the Jamestown Mine measuring 2,700 feet  
3 long and 500 feet deep, and the McLaughlin Mine

4 containing acid water, and the Royal Mountain King  
5 Mine containing a pit 500 feet wide by 400 feet deep.

6 Do you see that?

7 A. Yes, I do.

8 Q. Now, are the dimensions of these metallic  
9 mines larger or smaller than the U.S. Borax boron mine  
10 that we have just been describing?

11 A. The dimensions are smaller.

12 Q. Now, from a standpoint--part of the SMGB's  
13 concern is safety with regard to these open pits; is  
14 that correct?

15 A. That's correct.

16 Q. Now, would a nonmetallic mine that's  
17 1,200 feet deep present a higher safety risk than a  
18 metallic mine that is several--400 to 500 feet deep?

19 A. I think you would be just as dead if you fell  
20 1,200 feet as if you fell 500 feet.

21 Q. Thank you, Dr. Parrish.

22 So, the safety considerations are, in fact,

563

16:57:23 1 quite similar for the metallic versus nonmetallic  
2 mines; correct?

3 A. In some instances, yes.

4 Q. And when we are talking about the future use  
5 of an open pit, it might be 1,200 feet deep, 1.5  
6 miles-by-1.5 miles wide, would that present similar  
7 issues to the future usable condition as the metallic  
8 mine circumstance?

9 A. It depends what the end use of that

10 particular mine were to be.

11 Q. Okay. And referring to the McLaughlin Mine  
12 you had described here, you say that the pit contained  
13 acid water.

14 Are you aware whether the waste rock  
15 generated that mine was potentially acid-generated?

16 A. The waste rock--

17 Q. At the McLaughlin Mine.

18 A. At the McLaughlin Mine.

19 That's not what was generating the acid in  
20 the pit at the time, but the waste rock was the same  
21 as the materials generating it in the walls and floor  
22 of the mine.

564

16:58:39 1 Q. Okay. So, if I understood you correctly, the  
2 waste rock was acid-generating?

3 A. Yes.

4 Q. And the walls in the pit were  
5 acid-generating?

6 A. Waste rock had the potential to be  
7 acid-generating, yes.

8 Q. And there was--according to your statement,  
9 the pit contained some acid water; is that correct?

10 A. That's correct.

11 Q. Now, if you have a pit with some acid water  
12 in it, and you were to backfill millions of tons of  
13 acid-generating waste rock, wouldn't that pose the  
14 risk of further contamination of the groundwater that  
15 the National Research Council was concerned about in

16 its 1999 report?

17 A. Certainly could.

18 Q. So, in other words, taking acid-generating  
19 waste rock, putting it into a pit with acid water had  
20 a potential to harm water quality greater than what it  
21 otherwise would have been; right?

22 A. Yes, that's the potential.

565

16: 59: 46 1 Q. And that is, in fact, one of the reasons why  
2 the National Academy of Sciences recommended in 1999  
3 to consider the feasibility of backfilling on a  
4 case-by-case basis, isn't it?

5 A. It may have been.

6 Q. Now, in the California Desert region in  
7 Imperial County--and in particular let's turn to the  
8 Glamis Rand Mine and Glamis Picacho Mine--are you  
9 aware of any circumstances involving acid water in  
10 those open pits?

11 A. No, I'm not.

12 Q. Did you have any information on that type of  
13 a variation in geographic conditions that the SMGB  
14 Board considered?

15 A. Yes.

16 Q. And the Glamis Picacho Mine is just several  
17 miles away from the Glamis Imperial Mine; is that  
18 correct?

19 A. I believe so, yes.

20 Q. So, if there was not an acid water issue  
21 presented at the Glamis Picacho Mine, would you have

22 any reason to expect that the Glamis Imperial Mine

566

17:01:02 1 would have posed acid-water threats?

2 A. I'm not familiar with the Reclamation Plan of  
3 the Glamis Mine and where the water tables were  
4 situated in that particular area. So, I would say, on  
5 a climatic basis, no, I would expect there not to be  
6 enough rainfall to collect. I don't know where the  
7 water tables were there.

8 Q. Sitting here--well, are you aware that  
9 Environmental Impact Statements certainly by the 1990s  
10 in every case assessed the potential for acid  
11 generation of waste rock and metallic mines?

12 A. I'm sorry?

13 Q. Were you aware that it was a conventional  
14 standard practice in an Environmental Impact Statement  
15 to assess the acid-generating potential of the waste  
16 rock of metallic mines by the 1990s?

17 A. It should have been, yes.

18 Q. And were you aware that, in fact, that was  
19 the standard practice certainly by the 1990s in the  
20 United States?

21 A. I didn't know that it was in the United  
22 States, but I wouldn't doubt it was that in

567

17:02:08 1 California.

2 Q. Do you think that the potential for acid  
3 generation was the factor that the National Research  
4 Council would have considered in its report in 1999?

5 A. I would think so.

6 Q. And were you aware that the Environmental  
7 Impact Statement at the Glamis Imperial Mine, in fact,  
8 considered the potential for acid generation found  
9 that it did not exist?

10 A. I'm not specifically aware of it, but I would  
11 expect that to have been considered in the  
12 environmental review that was done.

13 Q. Are you aware that, in the Final  
14 Environmental Impact Statement/Environmental Impact  
15 Report on the Glamis Imperial project issued by  
16 Imperial County in the BLM in 2000 that Imperial  
17 County identified an environmentally superior  
18 alternative among the action alternatives considered?

19 A. No, I'm not.

20 Q. So, you're not aware that Imperial County  
21 selected the Glamis Imperial Project proposed action  
22 without complete backfilling as the environmentally

568

17:03:27 1 superior alternative for reclamation at that site as  
2 opposed to the complete backfilling alternative?

3 A. Well, I'm not aware that the Imperial County  
4 approved the Reclamation Plan. It may have been in  
5 the proposed plan, but I'm not aware that Imperial  
6 County actually approved that plan.

7 Q. Are you familiar with the selection of an

8 environmentally superior alternative under the  
9 California Environmental Quality Act?

10 A. I'm familiar with CEQA, yes.

11 Q. And that that is a terminology unique to CEQA  
12 as opposed to the national environmental policy  
13 process at the Federal level?

14 A. I didn't know it was unique to CEQA, but yes.

15 Q. Did you consider the Glamis Imperial Project  
16 Environmental Impact Statement in 2000 as part of your  
17 rulemaking record in the SMGB Board?

18 A. We considered the end use, yes, in that as  
19 part of our record.

20 Q. Did you evaluate the full Environmental  
21 Impact Statement and environmental record at the  
22 Glamis Imperial Project?

569

17:04:37 1 A. No, we did not.

2 Q. And yet the Glamis Imperial Project was  
3 identified as the basis for the finding of an  
4 emergency condition; is that correct?

5 A. That was the trigger, yes. The emergency  
6 condition already existed. This was the trigger.

7 Q. If material extracted from an open pit is  
8 removed from the site--sold as aggregate, for  
9 example--how would that improve the condition of the  
10 open pit from a safety standpoint?

11 A. It might not.

12 MR. GOURLEY: Your indulgence.

13 (Pause.)

- 14 BY MR. McCRUM
- 15 Q. Dr. Parrish, from an end-use standpoint, how
- 16 does an open pit in an area such as Imperial County,
- 17 where the Glamis Imperial Project was located, how
- 18 does that differ from a large open aggregate pit?
- 19 A. From an end-use standpoint?
- 20 Q. Yes.
- 21 A. I would say they're probably about the same.
- 22 Q. Thank you, Dr. Parrish.

570

- 17:07:10 1 MR. McCRUM That will conclude our
- 2 cross-examination.
- 3 PRESIDENT YOUNG: Thank you.
- 4 Ms. Menaker.
- 5 REDIRECT EXAMINATION
- 6 BY MS. MENAKER:
- 7 Q. Dr. Parrish, Mr. McCrum asked you to look at
- 8 a number of documents pertaining to Enrolled Bill
- 9 Reports and things of that nature, and I just want to
- 10 ask you a few questions in that regard.
- 11 Is the SMGB part of the Governor's Office?
- 12 A. No, it is not.
- 13 Q. Is it part of the Senate Natural Resources
- 14 and Wildlife Committee?
- 15 A. No, it is not.
- 16 Q. Is it part of the Senate Rules Committee?
- 17 A. No, it's not.
- 18 Q. Is it part of the Department of Finance?
- 19 A. No, it isn't.



20 Q. Is it part of the Governor's Office of

21 Planning and Research?

22 A. No.

571

17:08:05 1 Q. Would the SMGB ordinarily be privy to

2 documents created by those offices?

3 A. Certainly not.

4 Q. Now, on the issue, when the SMGB promulgated

5 the regulations, what evidence did the Board rely on

6 in doing that?

7 A. The Board received considerable testimony

8 from, well, the mining industry; it received testimony

9 from the Department of Conservation's Office of Mine

10 Reclamation; it received testimony from several

11 experts in the field; and there were a number of

12 organizations that provided information to the Board.

13 Q. And what did that testimony reveal?

14 A. Well, the testimony revealed that there had

15 been--there was a litany of metallic mines in the

16 State which had not been reclaimed, according to the

17 basic tenet of the surface mining and reclamation, and

18 they were, in effect, in violation of that Act; and

19 that, although there was nothing that could be done

20 retrospectively, the issue that came before the Board

21 was how would the Board ensure that there would not be

22 another one of a dozen or so of these large pits that

572

Redacted Transcript, Day 2

17:09:40 1 were not reclaimed according to the basic requirements  
2 of the Act.

3 Q. And is it the case that the local lead  
4 agencies had approved the reclamation plans for many  
5 of these open-pit metallic mines that the Board was  
6 now examining?

7 A. Yes, that's correct.

8 Q. Now, Mr. McCrum pointed your attention to the  
9 Final Statement of Reasons, and there is a paragraph  
10 there that's labeled--

11 PRESIDENT YOUNG: Ms. Menaker, could you give  
12 us an exhibit number, please.

13 MS. MENAKER: Yes, I apologize.

14 It's Exhibit 13, page four, and that's  
15 labeled "Identification of  
16 Technical/Theoretical/Empirical Study Reports or  
17 Documents Upon Which the SMGB Has Relied."

18 BY MS. MENAKER:

19 Q. And let me ask you first: Does this language  
20 appear in every Final Statement of Reasons in  
21 California?

22 A. Yes, it does. It's part of the standard form

573

17:11:02 1 that's set out by the Office of Administrative Law and  
2 is a series of questions and topics that need to be  
3 responded to, and it's one that, regardless of who is  
4 making the rules, one responds to that question.

5 BY MS. MENAKER:

6 Q. And when the Board was considering adopting  
7 the regulation, did it consider all of the evidence  
8 that was presented to it?

9 A. Yes, it considered all of the evidence that  
10 came in.

11 Q. Did any of that evidence include any  
12 technical or scientific reports or studies?

13 A. Yes, it did.

14 Q. And the Board considered that evidence?

15 A. Yes, it did.

16 Q. Did the Board rely on that evidence?

17 A. No, it did not.

18 Q. And can you explain for the Tribunal what  
19 that means, why it says here that, even though the  
20 Board had before it technical and scientific reports  
21 and studies which had been submitted to it which it  
22 considered, this nevertheless says that these no

574

17:12:09 1 technical, theoretical or empirical studies reports or  
2 documents were prepared or relied upon by the SMGB in  
3 its consideration of the rulemaking?

4 A. Yes. Boards and Commissions typically get a  
5 lot of information. Some of that information is  
6 pertinent to the decision; some is not pertinent.

7 A number of the scientific and technical  
8 studies that came in were not pertinent to what was  
9 under discussion at the Board. The Board's  
10 consideration was the basic tenet of SMARA, is that  
11 the lands shall be reclaimed to a condition which is

12 readily adaptable to an alternate use. None of the  
13 previous mines which were given in the example had  
14 been reclaimed to that standard; and, in fact, they  
15 were, in essence, unreclaimed.

16 The technical standards of backfilling in the  
17 scientific studies and so forth were not what the  
18 Board's objective was. It was to ensure there would  
19 be no future mines that would be left in an  
20 unreclaimed condition.

21 Q. When reaching its conclusion or when  
22 considering the regulation, did the Board ever refuse

575

17:13:26 1 to hear scientific or technical evidence?

2 A. No, never.

3 Q. Did Glamis participate in the rulemaking  
4 process?

5 A. Yes, it did.

6 Q. In what manner?

7 A. It made presentations before the Board a  
8 couple of times at least, and it may have submitted  
9 information to the Board.

10 Q. To the best of your recollection, did Glamis  
11 ever provide the SMGB with scientific or technical  
12 studies?

13 A. To my recollection, no, it didn't, but I'm  
14 not certain it didn't do that indirectly.

15 Q. If it had, would those scientific or  
16 technical studies have been accepted and considered by  
17 the Board?

18 A. Oh, definitely.

19 Q. Now, you testified, I believe, that one  
20 environmental problem that could occur with  
21 backfilling is water contamination, if there is acid  
22 rock; is that correct?

576

17:14:30 1 A. The contamination could be more concentrated,  
2 yes.

3 Q. Are you aware of any other environmental  
4 problems that can result from backfilling?

5 A. No.

6 Q. And Mr. McCrum pointed you to--strike that.  
7 Given that the backfilling can sometimes  
8 exacerbate water quality problems if there is acid in  
9 the rock, why did the Board nevertheless adopt this  
10 complete backfilling requirement?

11 A. Well, you have to look at what SMARA says.  
12 The Board takes a look at the entire body of  
13 legislation.

14 Public Resources Code 2711 says--and 2712 say  
15 that Reclamation Plans are required, and they should  
16 take into account the variety of climate, geology,  
17 topography, cultural features and so forth throughout  
18 the State so that reclamation plans are site-specific.

19 So, prior to conducting a mining operation,  
20 the operator is going to have to determine whether  
21 there is going to be--because in this case water  
22 problems, water table, climatological

17: 16: 12 1 problems--whether there is going to be a chemical  
2 problem on the site, and must present then in the  
3 Reclamation Plan how that will be dealt with or  
4 mitigated.

5           So, when the Board says these metallic mines  
6 must be backfilled, it's not retrospective; it's  
7 prospective to future operations. SMARA already  
8 requires, if there is going to be a problem with water  
9 and acid problems at that site, that it be determined  
10 prior to mining, and mitigation methods or engineering  
11 methods be determined as to how to handle that  
12 situation.

13       Q.    So, is it your testimony that the regulation  
14 requires that backfilling be engineered to meet all of  
15 the requirements under the applicable regional Water  
16 Quality Control Board's Water Quality Control Plan?

17           MR. McCRUM:  Objection.  The witness has  
18 testified that he is not an engineer.

19           MS. MENAKER:  Well, I would ask the witness.

20           BY MS. MENAKER:

21       Q.    You are, of course, familiar with the SMGB  
22 regulation, are you not?

17: 17: 24 1       A.    Yes, I am.

2       Q.    And is it the case that the regulations  
3 require that all backfilling be done in a manner in

4 order to comply with the State water quality  
5 standards?

6 A. Yes, it does. The Board's regulations  
7 require that all other agencies' regulations be  
8 honored in these issues. And certainly water quality  
9 is a big one, and the regulation provides that, in the  
10 design of the Reclamation Plan, the water quality  
11 standards applicable in California should be applied.

12 Q. Now, when the Board promulgated the  
13 regulation requiring complete backfilling, did it take  
14 any exception to these general rules? In other words,  
15 did it exempt mines from these water quality standards  
16 in order so that they could comply with the new  
17 backfilling regulation?

18 A. No, it did not.

19 Q. So, is it correct to say, then, that the  
20 water quality problems that Mr. McCrum addressed in  
21 connection or that he pointed you to the NAS/NRC  
22 statements that suggested that backfilling could

579

17: 18: 37 1 result with water quality problems, in your view, is  
2 this a problem with the SMGB's regulation a problem  
3 that could occur?

4 A. No, it is not. The water quality problem  
5 will exist because of the host rock being exposed to  
6 the water in the area. We have three mines, three or  
7 four mines, in northern California which are not  
8 backfilled metallic mines, and they all have filled  
9 with acid or arsenic-type water. Backfilling would

10 not have prevented that from occurring. The mines in  
11 southern California, which do not have particular  
12 climatic water problems or in the water table, don't  
13 have an acid or some kind of chemical cocktail problem  
14 because there is no water there.

15 So, the issue is not backfilling being an  
16 environmental problem. The issue is if you are going  
17 to excavate a metallic mine in a particular climate or  
18 a particular area, you must take into account the  
19 environmental effects the climate will have on the  
20 mine site itself.

21 Q. Now, Mr. McCrum asked you about nonmetallic  
22 mines. Why was it that the SMGB promulgated these

580

17: 20: 05 1 regulations to apply to open-pit metallic mines but  
2 not to apply to open-pit nonmetallic mines?

3 A. Well, there were two reasons. First is that  
4 the Board was specifically tasked to look at open-pit  
5 metallic mines. It was not asked to look at other  
6 types of mines.

7 But the second reason is, from a practical  
8 standpoint--and reclamation needs to be practically  
9 applied--is that large open-pit mines have millions of  
10 tons of waste material piled up next to the mine. An  
11 aggregate mine, in effect, the entire mined material  
12 is product and has been exported from the site. To  
13 require an aggregate mine to be rebackfilled would  
14 require digging a hole someplace else to cart the  
15 material in to backfill the original mine. It's sort



16 of defeating the original purpose.

17           So, the Board considered very narrowly its  
18 charge to look only at metallic mines, but the  
19 practical aspect was, in a metallic mine, the material  
20 is available, readily available, adjacent to the site,  
21 to the pits to be used.

22       Q.   Mr. McCrum also asked you about the end uses

581

17: 21: 31 1 for various mines.

2           In your experience, is there a typical end  
3 use for an open-pit aggregate mine in California?

4       A.   Many of the mines, because of their location,  
5 are reclaimed to a useful end use, and-- I may  
6 elaborate a little bit.

7           Aggregate, which is sand and gravel, in  
8 California, the largest sector of sand and gravel is  
9 construction grade sand and gravel, and it is used in  
10 the construction of highways, roads, buildings,  
11 whatever.

12           Because it is a high bulk density, low unit  
13 value commodity, those mines are encouraged to be  
14 close to where they are consumed. It's also just an  
15 economic factor of that.

16           So, many aggregate mines are close in to  
17 civilization where those projects or the products are  
18 used.

19           As the civilization grows out and surrounds  
20 these mines and these mines become exhausted, the land  
21 value increases substantially and, therefore, it is

22 economical to backfill those often as landfills and

582

17:22:55 1 build structures on top.

2           So, this is why, for instance, the City of  
3 Irwindale has 17 mining pits there, and I believe they  
4 are all being or to be backfilled, and there is a lot  
5 of landfill material going in there from Los Angeles.  
6 This is the same with many of the aggregate mines.

7       Q.   Now, Mr. Parrish, was it--when the Board  
8 promulgated its regulations, was it the Board's  
9 intention to prevent the Imperial Project from ever  
10 going forward?

11       A.   No. The Board had no intention or actions  
12 specific to either Glamis as a corporation or, in  
13 particular, an animus toward the Imperial Project.  
14 The Board was charged with seeing that all future  
15 metallic mines in the State would be  
16 complete--reclaimed in compliance with the basic  
17 tenets of the Surface Mining and Reclamation Act, and  
18 that was they needed to be reclaimed to a condition  
19 which was readily adaptable to a beneficial second  
20 use.

21           And based on the track record of what was  
22 presented to the Board, none of the large metallic

583

17:24:26 1 mines were in compliance with SMARA and were, in

2 effect, unreclaimed.

3 Q. Mr. Parrish, was it your or the Board's view  
4 that the Board's regulation would make all open-pit  
5 metallic mining in California economically infeasible  
6 for the--forever?

7 A. No. The Board did not believe that, and the  
8 Board did not take economic aspects. That was not the  
9 Board's intention at all.

10 Q. Thank you.

11 PRESIDENT YOUNG: Mr. McCrum, do you have  
12 redirect--recross?

13 MR. McCRUM: Just a few questions.

14 RECCROSS- EXAMINATION

15 BY MR. McCRUM

16 Q. Let's turn to Parrish Exhibit 13. Parrish  
17 Exhibit 13 is the Final Statement of Reasons of the  
18 SMGB, the State Mining and Geology Board that we have  
19 reviewed before.

20 Let's turn to the third page of that exhibit,  
21 and the heading "Identification of Technical,  
22 Theoretical, Empirical Study Reports or Documents Upon

584

17:25:44 1 Which the SMGB has Relied. "

2 Dr. Parrish, is it your testimony that the  
3 State Mining and Geology Board would have been  
4 precluded from issuing a contract study to some type  
5 of independent engineering consulting firm to do a  
6 study of technical issues associated with the matter  
7 of backfilling open-pit metallic mines?

8 A. No. The Board could have commissioned a  
9 study, had it felt it was necessary.

10 Q. And if the Board had commissioned such a  
11 study and perhaps spent several hundred thousand  
12 dollars on a study by a firm with engineering and  
13 mining and environmental expertise, would the Board  
14 have considered that--would the Board have relied on  
15 that study in taking action?

16 A. Well, this is a very hypothetical question  
17 because the Board did not find there was any need to  
18 commission or study or solicit for scientific or  
19 empirical reports on this because that was not the  
20 focus of what the Board was asked to do here.

21 Q. But you did testify that the State Mining and  
22 Geology Board would have had the authority to

585

17:27:07 1 commission an independent engineering environmental  
2 study; is that correct?

3 A. That's correct.

4 Q. And if you did commission such a study, would  
5 you have relied upon it in taking action thereafter?

6 A. I think the Board would have considered the  
7 study. Whether it determined to rely on it in its  
8 decision-making process would have been something the  
9 Board would have to decide on.

10 Q. And if the Board in its discretion chose to  
11 rely on such a commissioned study, it would have had  
12 the authority to do so; is that right?

13 A. Yes, it would.

14 Q. And if the Board chose to rely on such an  
15 independently commissioned engineering study, would it  
16 then have identified that as a technical, theoretical,  
17 empirical study, report, or document upon which the  
18 SMGB has relied?

19 A. It would have.

20 Q. Thank you.

21 Ms. Menaker asked you if Glamis Gold had  
22 submitted any technical reports to your attention; do

586

17:28:06 1 you recall that?

2 A. Yes, I do.

3 Q. And we reviewed already in your testimony  
4 today that technical information on the infeasibility  
5 of backfilling was submitted by the California Mining  
6 Association, including substantial excerpts of a joint  
7 Federal Environmental Impact Statement, including  
8 extensive excerpts of the 1979 National Research  
9 Council Report. Do you recall that?

10 A. Yes, I do.

11 Q. And, in fact, you had no recollection of the  
12 1979 National Research Council Report; isn't that  
13 correct?

14 A. That's correct.

15 Q. And were you aware that Glamis Gold, Limited,  
16 was a member of the California Mining Association at  
17 the time of this rulemaking action?

18 A. I don't know whether I was aware of that fact  
19 or not. I might have been. There was something like

20 30 members or something like that in the Association.

21 Q. Let's turn to Parrish Exhibit 3. This is the  
22 1999 Hardrock Mining on Federal Lands report by the

587

17:29:12 1 National Research Council that you testified that you  
2 were familiar with; is that right?

3 A. Yes, I testified. Yes, I read it. I don't  
4 know how familiar I am still with it.

5 Q. Let's turn to the last page of this exhibit.  
6 And we'll look to the second page on the last page,  
7 the highlighted phrase. Ms. Menaker just asked you 10  
8 minutes ago whether you were aware of any other  
9 negative environmental effects associated with  
10 complete backfilling other than the degradation of  
11 groundwater quality potential that it created, and you  
12 said you were not aware of any such other negative  
13 environmental impacts; is that right?

14 A. That's correct.

15 Q. Looking at the first bullet in the  
16 highlighted phrase here, does it not indicate that the  
17 negative environmental impacts that backfilling may  
18 cause such as delayed reclamation and habitat  
19 development. Do you see that?

20 A. Yes, I do.

21 Q. So the National Research Council held the  
22 view that there were additional negative environmental

588

Redacted Transcript, Day 2

17: 30: 13 1 impacts that backfilling may cause; is that correct?

2 A. That's what they have concluded there, yes.

3 SMARA addresses that.

4 Q. You have referred to the fact that in many  
5 cases involving nonmetallic minerals or aggregates in  
6 industrial minerals, substantial mineral material is  
7 removed; correct?

8 A. Yes.

9 Q. Isn't it also true that in mining nonmetallic  
10 industrial minerals, it is also necessary often to  
11 remove overburden to get to that nonmetallic mineral  
12 deposit?

13 A. Yes.

14 Q. And therefore that the overburden material  
15 can be quite substantial in cases involving  
16 nonmechanic mines; is that right?

17 A. In some cases it could be, yes.

18 Q. Such as the U. S. Borax/boron mine, for  
19 example?

20 A. Yes, I think so.

21 Q. How are you able to make the assertion that  
22 open-pit mines with substantial overburden piles in

589

17: 31: 30 1 the nonmetallic sector do not violate the SMARA usable  
2 conditions standard, but that metallic mines that are  
3 left with open pits, such as in Imperial County in the  
4 California Desert, do somehow violate the same  
5 existing returning the land to a usable condition

6 standard?

7 MS. MENAKER: Objection. He's  
8 mischaracterizing the testimony. Yes, the witness  
9 never made the assertion that over open-pit mines with  
10 substantial overburden piles in the nonmetallic sector  
11 do not violate the SMARA usable condition standard,  
12 but that metallic mines that are left with open pits,  
13 such as in Imperial County in the California Desert,  
14 do somehow violate the same existing standard of  
15 returning the land to a usable condition.

16 PRESIDENT YOUNG: Why don't you rephrase the  
17 question.

18 BY MR. McCRUM

19 Q. Dr. Parrish, you stated that the SMGB Board  
20 somehow made a determination without scientific study  
21 that metallic mines were violating a general SMARA  
22 standard to return land to a usable condition; is that

590

17: 32: 48 1 correct?

2 A. That's correct.

3 Q. And you have made no such finding regarding  
4 nonmetallic mines; is that correct?

5 A. That issue was not placed before the Board.  
6 The Board had a narrow issue to address unreclaimed  
7 metallic mines.

8 Q. And who narrowly framed the issue for you?

9 A. The Secretary of Resources in petitioning the  
10 Board to consider a problem they identified as the  
11 nonreclamation of a series of very large metallic



12 mines.

13 Q. But your State Mining and Geology Board  
14 didn't report to the Secretary of Resources, did it?

15 A. No, it doesn't.

16 Q. According to your testimony. So, you weren't  
17 bound to follow the narrow suggestion made by the  
18 Secretary of Resources, were you?

19 A. Let me elaborate here, if I may. Many times  
20 during the year, a half a dozen or so times during the  
21 year, the Board is approached by various principals,  
22 individual citizens, mining industry, businesses. All

591

17:33:58 1 of them have an issue with a particular regulation or  
2 a particular situation. They ask the Board to review  
3 its regulations and either promulgate a new regulation  
4 or throw one out that's no longer useful.

5 The Board, in its review, stays very close to  
6 what the petitioning individual desires. It's not the  
7 Board's position to go off and broadly do something.  
8 It sticks very close to what the petitioner's request  
9 was. In this case, it was the Secretary of Resources  
10 petitioning the Board on a specific issue, and the  
11 Board evaluated the issue on a narrow basis.

12 Q. So, the Secretary of Resources framed the  
13 issue as backfilling of metallic mines, and that's the  
14 mission you carried out; is that correct?

15 A. No, it asked the Board to consider what was  
16 in its authority to ensure that mines, future mines,  
17 were reclaimed in accordance with the law. It

18 suggested that if the Board had regulatory authority  
19 that it should also consider that.

20 Q. In your declarations in this case, you have  
21 provided rationales for why the usable condition  
22 requirement should not be applied to nonmetallic

592

17:35:31 1 mines; is that right?

2 A. No, I don't believe I did.

3 Q. You provided rationales for why it would not  
4 be appropriate, in your view, to carry out complete  
5 backfilling requirements in the nonmetallic sector,  
6 have you not?

7 A. Yes, that's correct, but that does not  
8 signify that there cannot be an end use for that site  
9 that is readily adaptable to an alternate use. If an  
10 operator does not have the resources to backfill  
11 because they can remove from the metallic mine area,  
12 that does not exonerate that individual or that mine  
13 from having end use, which is still readily adaptable  
14 for an alternate use.

15 Q. And the justifications that you've offered in  
16 your declarations to support distinctions between how  
17 metallic mines should be backfilled versus nonmetallic  
18 mines are not based upon any technical studies in the  
19 SMGB record; is that correct?

20 A. That's correct.

21 Q. And the metallic mines that you have referred  
22 to, three in particular in your declaration, the Board

17: 36: 56 1 did not have any technical studies that it relied on  
2 concerning those particular mines to determine whether  
3 complete backfilling was an appropriate reclamation  
4 requirement for those mines; is that correct?

5 A. That's correct.

6 MR. McCRUM: That will conclude our  
7 questioning.

8 PRESIDENT YOUNG: Ms. Menaker?

9 FURTHER REDIRECT EXAMINATION

10 BY MS. MENAKER:

11 Q. Mr. Parrish, did the issue of the Borax  
12 expansion in 2004 ever come before the SMGB?

13 A. No, not at all.

14 MS. MENAKER: Thank you.

15 PRESIDENT YOUNG: Mr. McCrum?

16 MR. McCRUM: Let us pause for one moment.

17 (Pause.)

18 MR. McCRUM: No further questions.

19 PRESIDENT YOUNG: Thank you.

20 QUESTIONS FROM THE TRIBUNAL

21 ARBITRATOR CARON: Dr. Parrish, just a quick  
22 question to make sure I understand this.

17: 38: 16 1 When you explained, when you elaborated on  
2 the autonomous nature of the SMGB, were you saying  
3 that it is not autonomous as the topics it considers,

4 or were you saying that as a practical matter, the

5 Board tended to follow the request given to it?

6 THE WITNESS: No. The Board is autonomous in

7 the actions that it takes. It could reject or refuse

8 to consider a petition that came in.

9 ARBITRATOR CARON: Could it have broadened  
10 the petition?

11 THE WITNESS: Beg your pardon?

12 ARBITRATOR CARON: Could it have decided to  
13 broaden the petition?

14 THE WITNESS: If, during testimony it was  
15 deemed necessary to broaden the scope of what the  
16 Board was looking at doing, yes, it could have  
17 broadened it. It's generally not done because most of  
18 the focus is rather narrow on specific topics.

19 I might add that the State Mining and Geology  
20 Board has authority under four separate Acts, only one  
21 of which is the mining and geology--Surface Mining and  
22 Geology Act. So, it receives petitions on these other

595

17: 39: 30 1 acts as well, and it does so year in and year out.

2 So, it usually does not broaden the scope of  
3 the petition unless there is testimony or evidence  
4 submitted that has an impact which would lead the  
5 Board to broaden, and then it might broaden the scope  
6 of its considerations.

7 ARBITRATOR CARON: Can I just ask this: Is a  
8 record kept of the hearings that were held?

9 THE WITNESS: Yes, it is.

10 ARBITRATOR CARON: Is that a public document?

11 THE WITNESS: Yes, it is.

12 ARBITRATOR CARON: Did you refer to that to  
13 refresh your memory?

14 THE WITNESS: On some pieces of it, yes, I  
15 did.

16 ARBITRATOR CARON: Thank you.

17 PRESIDENT YOUNG: Dr. Parrish, I have just  
18 couple of questions, I'm going to ask if I may to try  
19 to clear up things that confused me just a tad.

20 Let me follow up with Professor Caron's line  
21 of questioning see if I can get just a little better  
22 sense of how the Board functions.

596

17: 40: 25 1 You indicated that you received petitions and  
2 you respond to those. Do you ever do anything-- does  
3 the Board ever sit back and do something sua sponte?  
4 In other words, that is to say it looks at the mining  
5 situation and says you know, we really need to add  
6 some more regulations and we're going to deliberate  
7 and add these regulations. We are going to take  
8 testimony, but not in response to a specific request  
9 by a specific individual or Government entity?

10 THE WITNESS: It never did during my 11 years  
11 as Executive Officer there.

12 The Board is a forum for redress and public  
13 comment. If it receives testimony or just comments  
14 that there is a problem in the mining community or  
15 something else, it will relay those comments through

16 the Executive Officer to the Director of the  
17 Department, and say we are getting comments. There is  
18 an area that may need some attention. You have the  
19 Office of Mine Reclamation authority. You may want to  
20 look into this, but generally we do not promulgate  
21 just because they do nothing else to do.

22 PRESIDENT YOUNG: So you have regulatory

597

17: 41: 30 1 authority, but you really kind of only speak when you  
2 are spoken to?

3 THE WITNESS: That's correct.

4 PRESIDENT YOUNG: It's not an agency that  
5 regulates something but just reacts basically?

6 THE WITNESS: That's correct.

7 PRESIDENT YOUNG: Okay. Second question, I'm  
8 just a country lawyer, and this may be a legal  
9 question that we will ask counsel.

10 THE WITNESS: You are ahead of me, then.

11 PRESIDENT YOUNG: But I'm a little--I want a  
12 little clarification on your reliance on technical  
13 reports. You say you consider but don't rely.

14 Now, the other thing I thought I heard  
15 Ms. Menaker ask you is, that statement seems to go  
16 into every administrative regulation issued by every  
17 agency in the State of California. Did it go in every  
18 one of your regulations? What I'm trying to find out  
19 is whether you actually really don't rely on anything  
20 or whether this is just legal to make you legally  
21 bulletproof when you get sued.

THE WITNESS: No. The question that is asked

598

17:42:24 1 is part of the form, did you rely on any technical  
2 reports because all of this has to go public. And if  
3 you say yes, we relied on our informing state policy  
4 on these reports, they need to be attached so the  
5 public can see exactly what was relied upon.

6 The Board on other regulations in other areas  
7 outside of this has relied on technical reports other  
8 times, and those have been attached.

9 PRESIDENT YOUNG: So, in your 11 years there  
10 were cases when you actually considered and relied  
11 upon a report and that was attached to it, but on this  
12 particular occasion you didn't.

13 THE WITNESS: On this particular one we did  
14 not, no.

15 PRESIDENT YOUNG: A couple of other  
16 questions.

17 During your 11 years there, were there other  
18 emergency regulations that you promulgated? Can you  
19 give me a couple of examples of other emergency  
20 regulations you may have promulgated?

21 THE WITNESS: Yes.

22 PRESIDENT YOUNG: And what was the nature of

599

17:43:17 1 the request and what did you do? If you just have a

Redacted Transcript, Day 2

2 couple of stories.

3 THE WITNESS: As a matter of practice,  
4 the--every mine in California pays an annual mining  
5 fee to the Department. The fees are based on the  
6 Department's budget and on the volume of material  
7 produced.

8 The Board is in charge of setting those fees.

9 Because of timing, when the reports of those  
10 production comes in and when the governor's budget  
11 ever gets signed or handled, there is usually very a  
12 short window of space for the Department to get  
13 notification out to mine operators, and the Board,  
14 under Public Resources Code Section 2207 has emergency  
15 authority to adopt fee schedules for the Department.

16 So, this is a case where it did, on a regular  
17 basis, adopt fee schedules until we fortunately had  
18 the legislation changed to allow us to do it on both  
19 ways.

20 PRESIDENT YOUNG: Did you have other  
21 regulation that is actually, besides setting fees  
22 actually specifically affected the operation of mines?

600

17: 44: 26 1 THE WITNESS: I don't recall us doing any  
2 others by the emergency method.

3 PRESIDENT YOUNG: By any other emergency  
4 regulation.

5 Was it unusual to ask to do an emergency  
6 legislation by another arm of the Government?

7 THE WITNESS: No, no. It was not common, but



8 it was not unusual.

9 PRESIDENT YOUNG: What kinds of requests  
10 would you have gotten, for example?

11 THE WITNESS: Sometimes the request would be  
12 from a lead agency that did not want a mining  
13 application to go through in its area, it was a Nimbee  
14 community there. They would come to the Board and ask  
15 that the Board adopt an emergency regulation that  
16 required different noise abatements or something like  
17 that, and the Board would review it and say it's not  
18 within our jurisdiction to do this, and we don't see  
19 that that's a particular emergency. There's other  
20 ways that those things are handled.

21 PRESIDENT YOUNG: So you would occasionally  
22 get requests that would actually ask you to sort of

601

17: 45: 25 1 take some action with respect to a specific pending  
2 application.

3 THE WITNESS: Yes.

4 PRESIDENT YOUNG: But in the majority or all  
5 other cases you declined to act in those? Is that  
6 what I'm hearing you saying?

7 THE WITNESS: That's correct. Usually,  
8 because we didn't see it as an emergency situation or  
9 it was not within our authority to promulgate some  
10 type of action that way.

11 PRESIDENT YOUNG: Thank you Mr. Hubbard.

12 ARBITRATOR HUBBARD: Dr. Parrish, I just have  
13 one question: Do you recall, were there any other

14 inquiries made to you before this request from the  
15 Executive to consider a change in the existing  
16 regulations?

17 THE WITNESS: For backfilling?

18 ARBITRATOR HUBBARD: Yes.

19 THE WITNESS: No.

20 ARBITRATOR HUBBARD: So, this was the first  
21 time that this matter had been brought to your Board?

22 THE WITNESS: Yes, yes.

602

17: 46: 18 1 I might add, the Board was--the reason why it  
2 seems like it should have been higher on the radar  
3 scope or so, it really wasn't very high on our radar  
4 scope at the time. The Board was very busy having  
5 just assumed authority from one county who was not  
6 administering the State law and was going in to assume  
7 authority from another county.

8 So, the Board was really absorbed with a  
9 number of other topics, and what was going on with the  
10 Glamis Imperial Project was not on its radar scope at  
11 all. It hadn't been introduced to the Board at all.

12 ARBITRATOR CARON: Dr. Parrish, could you  
13 describe over the 11 years the character of the Board  
14 in terms of its members. Would you characterize it as  
15 bipartisan, expert, representative of various sectors?  
16 Or was it more political, changing quickly, if you  
17 could--

18 THE WITNESS: Sure. The Board has been  
19 around since 1885, and it's composed of nine members.

20 All of them have statutorily required professional  
21 expertise. Some are geologists, some are mining  
22 engineers, some of seismologists, land planners,

603

17:47:48 1 government representatives, the list goes on, the host  
2 of landscape architects and so forth. They are  
3 all--it's a part-time Board. They are all volunteers,  
4 and they are all nominated by the Governor.

5 They have four-year set terms, but the terms  
6 are all staggered so that about each year two of the  
7 members' terms expire and they can either be  
8 reappointed by the sitting Governor or two new people  
9 appointed on there.

10 So, this is a part-time operation. They're  
11 full-time professionals in their field, and it is a  
12 professional Board. It's nonpolitical. Board members  
13 belong to every major political party, and some belong  
14 to no political parties. They do not come with  
15 agendas to achieve. They come with experience to  
16 implement and guide.

17 So, these are people who are volunteering  
18 their time in a professional manner.

19 PRESIDENT YOUNG: Dr. Parrish, we appreciate  
20 your time very much. Unless there are no more  
21 questions, we appreciate your time very much.

22 THE WITNESS: Thank you.

604

Redacted Transcript, Day 2

17: 49: 00 1 (Witness steps down.)  
2 PRESIDENT YOUNG: Mr. McCrum, who is your  
3 next witness?  
4 MR. McCRUM: Our next witness is the Bernard  
5 Guarnera. I would request that we start tomorrow.  
6 PRESIDENT YOUNG: Do you want to start and  
7 then go through the qualifications or would you prefer  
8 to start tomorrow?  
9 MR. McCRUM: I prefer to start tomorrow if  
10 it's permissible with you rather than get into it for  
11 ten minutes.  
12 PRESIDENT YOUNG: Okay. We will adjourn  
13 until 9:00 tomorrow morning.  
14 MR. McCRUM: Thank you.  
15 (Whereupon, at 5:49 p.m., the hearing was  
16 adjourned until 9:00 a.m. the following day.)  
17  
18  
19  
20  
21  
22

605

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

Redacted Transcript, Day 2  
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.

---

DAVID A. KASDAN