

## **“Availability of Bonds to Meet Federal Requirements for Mining, Oil and Gas Projects”**

House Committee on Resources, Subcommittee on Energy and Mineral Resources

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### **Introduction**

Thank you for the opportunity to present written and oral testimony regarding the impact of the surety industry crisis on the U.S. minerals industry. My name is Charles Jeannes, Senior Vice President Administration and General Counsel of Glamis Gold Ltd. A synopsis of my background and qualifications are included in the Disclosure Form submitted to the Subcommittee with my written testimony.

This testimony is presented on behalf of Glamis Gold Ltd., an intermediate gold mining company headquartered in Reno, Nevada. Glamis is involved in the exploration for, development and mining of precious metals – primarily gold – at operations located in the United States and Central America. We operate the Marigold Mine in Nevada which is presently undergoing a significant expansion, the Rand Mine in southeastern California and our newest mine, San Martin in Honduras. Glamis has two advanced stage development projects in Mexico and Guatemala and is also engaged in active closure and reclamation activities at two mines in Nevada that have reached the end of their productive lives.

Although a small company in terms of gold production relative to some of its peers in Nevada – Glamis will produce approximately 260,000 ounces this year – the company has a long history of successful and responsible operations in the United States, having been in continuous operation for more than 20 years. Glamis was one of the pioneers of heap leaching technology so prevalent in the gold industry today, and we are very proud of our environmentally sound operating mines and our innovative and award-winning reclamation practices at the closed operations. In fact, Glamis had the distinction of becoming one of the few companies to take a mine “cradle to grave” when it successfully completed closure and reclamation activities at its Picacho heap leach gold mine in California earlier this year. Following over twenty years of exploration, mining and related operations, Glamis completed all requisite reclamation and was granted the full return of all of its bonds from the State of California and the Bureau of Land Management.

Unfortunately, the continued benefits of Glamis’ success to its shareholders, employees and the communities in which it operates in the United States are threatened by the present crisis in the surety industry. Despite an exhaustive effort undertaken during the first half of this year, we have been unable to obtain surety bonds either for the replacement of existing bonds at the Rand mine in California or the issuance of new bonds in connection with the expansion of the Marigold mine in Nevada. This problem has significantly increased the up-front cost of development and mining for our company, as it doubtless has for others in the U.S. minerals industry.

### **Discussion**

Bonding for closure and reclamation of mining operations is required by both state and federal agencies, and Glamis Gold both recognizes and endorses the policy of requiring appropriate financial assurances to provide for necessary reclamation efforts. With respect to hard rock operations on federal lands, the requirements are contained in the new 43 CFR 3809 regulations, the bonding portion of which was adopted on June 15, 2001 (66 FR 32571; 43 CFR Part 3809, §§.500 - .599).

The problems being experienced today in attempting to secure bonding for mining operations have been the subject of continuing review and discussion, including by the National Mining Association's Surety Bond Working Group and the Department of the Interior Bonding Task Force. Witnesses with more direct involvement in those efforts are better able to describe the details of the causes of the bonding problem, but they can be generally classified as resulting both from the financial problems in the insurance and surety industries worldwide as well as the current regulatory regime for mining on federal lands.

Problems associated with the surety industry itself include extraordinary losses and a resulting lack of capital to fund reinsurance. This situation has been caused by many factors, most directly as a result of the events of September 11 as well as losses incurred in connection with the Enron and K-Mart bankruptcies.

Regulatory issues that have contributed to the inability to obtain surety bonding include the extremely long term of risk exposure throughout a mine's operational and closure phases, burdensome bond release standards that delay or deter a principal's seeking bond release in a timely manner, regulatory policies that result in overstating the cost of the appropriate surety exposure, and changing policies that create new reclamation obligations as a part of an existing financial assurance. Even though the historical loss experience for mine reclamation bonding has been less than overall surety industry averages, each of these problems increases the potential length and amount of exposure to an insurance company, making reclamation bonds an undesirable risk.

The combination of these problems has made it impossible for Glamis to acquire surety bonds to secure its reclamation requirements. Glamis is currently permitting a significant expansion at its Marigold Mine in Nevada, operated and owned two-thirds by Glamis and one-third by Barrick Gold Corporation. This is a \$55 million capital project that will nearly triple the mine's annual production, extend the mine life to twelve years and provide significant economic benefit to north-central Nevada. While reclamation bond calculations have not yet been made, Glamis anticipates new bonding requirements to be in the range of \$10 million, in addition to the existing \$7 million in bonding already in place for the existing Marigold operations. A thorough review of the surety market by Glamis' insurance broker, Marsh, resulted in not a single company willing to even review the file to consider a quote.

As mentioned above, Glamis has been in continuous and for the most part, profitable operations for over twenty years. The Company has current assets of over \$60 million, including \$45 million in cash in the bank and zero short-term or long-term debt. In other words, the balance sheet is completely clean. In addition, the company's ongoing low-cost operations are generating significant earnings and cash flow and are projected to continue to do so well into the future, even at gold prices below current levels. From an operations and reclamation liability standpoint, Glamis' record is pristine, with no history of environmental problems and no long-term liabilities. In fact, the company has received awards and been commended for its innovative desert mine reclamation efforts at the Picacho mine by the California state legislature.

Despite this record, Glamis is unable to obtain surety bonding in the current regulatory and market

environment. Its only options in connection with the Marigold expansion will be to put up cash or equivalents in the amount of 100% of the required bond amount, or to attempt to enter into a banking credit facility that provides for the issuance of letters of credit for bonding. Glamis is fortunate to have the financial capacity to meet its bonding requirements in this fashion. However, many existing companies and nearly all start-up businesses would lack the ability to cash bond in the absence of surety bonding. We are equally fortunate that the Marigold expansion project has relatively robust economics and its rate of return to the company remains acceptable even when the up front cash for bonding is included. But for many projects, the up front cash investment required for bonding in the absence of a surety alternative may well render an otherwise viable project uneconomic.

The negative impacts resulting to the U.S. minerals industry from the surety bonding crisis described above are significant. First, the additional capital required for cash bonding will render certain new projects uneconomic, meaning those projects will not get developed and the local, state and national economies will forego the benefits derived from capital investment, employment and tax revenues. Likewise, the absence of surety bond renewals could cause certain existing projects to be prematurely shut down if the operators are unable to secure alternative financial assurance. Additionally, even for those projects and companies that can absorb the additional cost of bonding, devoting scarce capital to sit in an account as a bond-equivalent will reduce the amount of funds otherwise available for exploration and discovery of new deposits and related economic development. Finally, the need for cash bonding will severely hamper start-up companies and other small businesses. New and small businesses will find it very difficult to finance substantial cash bonds in addition to the regular costs of exploration and development. Hard rock exploration and mining is already a high risk venture for investors – this additional capital requirement will make it even more so.

These new and additional impediments mineral development are contrary to the policy of the United States to promote the development of mineral resources on public lands, and will ultimately threaten the nation's supply of domestic minerals. While the problem and possible solutions are made more complex by the events of September 11 and difficulties in the insurance industry world wide, there are certain regulatory changes that could be taken to help alleviate the problem. Others will testify in more detail on these suggestions, but from Glamis' standpoint the reinstatement of some form of self-bonding (also known as a corporate guaranty) that was eliminated in the new 3809 regulations would be of substantial and immediate assistance.

Self-bonding essentially provides for a guaranty of reclamation obligations by the operator or its parent company, which guaranty is secured by the assets and cash-generating capacity of the entire company. This means of securing at least a portion of a company's bonding obligation was allowed by the Bureau of Land Management prior to the recent 3809 revisions and continues to be an allowed method of financial assurance under SMCRA. The State of Nevada continues to allow self-bonding for reclamation plans within its purview, and is currently examining and revising its financial tests to assure that self-bonding is permitted only for those companies that have the financial wherewithal to meet their ultimate obligations.

For companies that meet strict criteria to test financial well-being, based on audited financial statements, both presently and on a continuing basis subject to active periodic review, self-bonding of at least a portion of the total bonding requirement should be considered as a viable alternative to otherwise unavailable surety bonds.

## **Conclusion**

Glamis Gold Ltd. looks forward to participating in a collaborative effort among the public and private sectors to find appropriate regulatory and market solutions to the surety bonding problems. We appreciate the opportunity to testify before the Subcommittee and will be happy to answer any questions.

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