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June 6, 2014

COUNCIL RESOLUTION: 14-05

Instruction to the Secretariat of the Commission for Environmental Cooperation regarding submission SEM-11-002 (*Sumidero Canyon II*) in connection with the assertions that Mexico is failing to effectively enforce Articles 28, sections X, XI and XIII; 47 *bis,* section II, paragraph h); 50; 64; 65; 111 *bis*; 155; 156 and 170 of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA); 17 and 17 *bis,* paragraph G), section II, of the Regulation to LGEEPA respecting Air Pollution Prevention and Control (*Reglamento de la LGEEPA en Materia de Prevención y Control de la Contaminación de la Atmósfera*—RPPCA); 18 of the Regulation to LGEEPA respecting the Pollutant Release and Transfer Register (*Reglamento de la LGEEPA en Materia del Registro de Emisiones y Transferencia de Contaminantes*—RRETC); 80; 81; 88, section XIII, and 94 of the Regulation to LGEEPA respecting Protected Natural Areas—*Reglamento de la LGEEPA en Materia de Áreas Naturales Protegidas* (RANP); section 5.4.2 of Mexican Official Standard (*Norma Oficial Mexicana*) NOM-025-SSA1-1993; and NOM-081-SEMARNAT-1994

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

ACKNOWLEDGING the important role of the Secretariat, as the administrator of the Submissions on Enforcement Matters (SEM) process, in facilitating information-sharing among members of the public and their governments on matters concerning the effective enforcement of environmental law;

AFFIRMING that one of the objectives of the NAAEC, as indicated in Article 1, is the promotion of transparency;

CONSIDERING the revised submission filed on 11 June 2012 by the "Comité Pro-Mejoras de la Ribera Cahuaré" (the "Submitter"), represented by Fernando Guillermo Velázquez Pérez, Raúl Amparo Guerrero Borraz, María Alejandra Aldama Pérez and Angélica Espinosa Interiano, and the response provided by the Government of Mexico on 27 November 2012;

HAVING REVIEWED the 15 November 2013 Notification by the Secretariat recommending the development of a factual record with respect to certain assertions made by the Submitter;

REAFFIRMING that Article 14(3)(a) of the NAAEC provides that "the Party shall advise the Secretariat…whether the matter is the subject of a pending judicial or administrative proceeding, in which case the Secretariat shall proceed no further";

MINDFUL that pursuant to Article 14(1) of the NAAEC and Guideline 1.1 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the "Guidelines"), a factual record should be prepared on assertions that a Party is failing to effectively enforce an environmental law; and

TAKING INTO ACCOUNT Guideline 10.4, which requires the Council to provide its reason(s) for factual record instructions in writing to be placed in the SEM Registry.

HEREBY UNANIMOUSLY DECIDES:

TO INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15(4) of the NAAEC and the Guidelines, regarding the assertions that Mexico is failing to effectively enforce its environmental law, exclusively in connection with the following:

a) Article 155 of the LGEEPA and NOM-081-SEMARNAT-1994 in connection with noise emissions derived from the operation of the company "Cales y Morteros del Grijalva," S.A. de C.V., pursuant to the Article 15(1) Notification;

b) Article 80 of the RANP, exclusively in connection with the definition of acceptable rates, limits of change or carrying capacities of the Sumidero Canyon National Park related to the use and enjoyment of natural resources within the same;

c) The *chapeau* of Article 81 of the RANP, exclusively in connection with the extent to which the productive activities of the company, "Cales y Morteros del Grijalva," S.A. de C.V., generate benefits for the local inhabitants and whether these are compatible with the ANP declaration, the ANP management program, land-use programs, NOMs and other applicable legal instruments.

TO FURTHER DIRECT the Secretariat:

a) to post the Council's reasons for its vote in the SEM Registry;

b) to conclude the preparation of the draft factual record as provided in Guideline 19.5, and submit it to the Council in accordance with Article 15(5) of the NAAEC;

c) to provide the Council with its overall work plan for gathering the relevant facts, to keep the Council informed of any future changes or adjustments to such plan,

and to promptly contact the Council in connection with any clarification required with respect to the scope of the factual record hereby authorized.

APPROVED BY THE COUNCIL:

Dan McDougall
Government of Canada

Enrique Lendo Fuentes
Government of the United Mexican States

Jane Nishida
Government of the United States of America