

Instituto de Derecho Ambiental, A.C. - SEM-97-007 (LAKE CHAPALA) - SEM-03-003 (LAGO DE CHAPALA II)

Questions:

	Yes	No	I don't know
Did the Citizen Submission procedure seem to be useful?	x		
Were you satisfied with the CEC's handling of your petition?	x		
Did the CEC's resolution of your petition seem technically and legally appropriate?		x	
Did the CEC's resolution seem just?		x	
Did the CEC's response time seem appropriate?		x	
How much time did the procedure take (in months)?	96		
How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)?	\$480,000.00		
	(two years of research and to build the case)		

1. When and how did you learn about the citizen submission process?

Since the signature and entry into force of NAFTA, the chairwoman of IDEA has been an environmental law researcher at *Universidad de Guadalajara*, and as such is up to date in environmental laws and treaties. Environmental Law Alliance Worldwide (ELAW) also offered a space to discuss access to justice topics and mechanisms that led us to approach the citizen submission mechanisms under NAFTA.

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

At first, IDEA A.C. was practically composed of the time dedicated by Dr. Raquel Gutiérrez Nájera, researcher at *Universidad de Guadalajara*. As the organization grew and became more specialized, it entered into an agreement so that her research would contribute to strengthening cases in the public interest. Thus, our alliance with *Universidad de Guadalajara* researchers has been a key element to building and documenting cases with the CEC, especially our first case (Chapala I, the basis for Chapala II). Raquel Gutiérrez was directly responsible for the case, which I discussed with friends at ELAW and members of the organization's Technical Secretariat, such as Jennifer Gleason, Mark Chernaik, Mercedes Lu, Bern Johnson, John Bonine, Glen Miller and Cris Wold. All of them provided legal, scientific and technical contributions and expertise regarding Lake Chapala and its basin.

3. Did you know about the “Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]” (the “Guidelines”) published in the CEC booklet “Bringing the Facts to Light”? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

When the Chapala I case (1977) was built, it provided the basis for the following cases, when the CEC publication did not exist. However, for the other cases, it has been a tool used especially by the younger attorneys at IDEA to build cases. It is also a document used in environmental law. I think that it has useful information, but is specialized for attorneys. In my opinion, Bringing the Facts to Light would have facilitated the building of the case and contains useful and necessary information for such purpose.

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

No.

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

IDEA A.C. is an organization dedicated primarily to environmental litigation in the public interest. The NAAEC represented an opportunity to improve laws and work on environmental policy in Mexico, with respect to collective and/or common rights. In effect, the absence of legal mechanisms to protect collective and/or common environmental assets in Mexico gave way to the citizen complaint and the NAAEC. In fact, those were the only remedies available, and since the citizen complaint is ineffective, we only used the Agreement as a means of access. The NAAEC citizen submission system let us shed light of systematic and serious violations against ecosystems of collective interest that had no defenders and influence the Mexican government to pay more attention to these highly issues complex of national relevance, such as the case of Chapala and the Lerma-Santiago basin.

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

The expected result was the factual record, which I characterized, when explaining the organizations presenting these submissions in Mexico, as a “diagnostic recommendation” to improve environmental law and policy in Mexico. It is hard to explain that this is not a recommendation, with no penalties or conclusions, but rather a sort of diagnostic of the issue and problem of systematic violations and compliance failures. In particular, I believe that the factual record should constitute an environmental recommendation and set the foundation for compliance and enforcement (a sort of international trilateral ombudsman). Perhaps the CEC should

evolve into this role and be revitalized as a trilateral authority on environmental issues of common concern.

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

The process did contribute to and have an effect on water policy and basin issues in Mexico. Due to the analysis of the Chapala I and II case, we discussed a Lerma-Chapala-Santiago-Pacific Basin Act that was approved by Congress but vetoed by President Fox on his last day in office. The National Water Act was amended, and in fact IDEA consulted on the 2004 amendments. We worked to have the CNA open its council to NGOs, environmental representatives and the municipalities located in the basin. IDEA also coordinated efforts to have Chapala named a Ramsar site, etc. Without a doubt, the Chapala case has contributed to improving environmental law in Mexico, although its implementation still remains. In effect, the reform that sought a water revolution in Mexico was very poorly undertaken, since the CNA only changed from Regions to Basins and continues to operate the same without a vision of sustainability.

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

In particular, I think that the process strengthened existing knowledge of the application of environmental laws in Mexico. In the case of Chapala I, it contributed to understanding the guidelines applied by the CEC itself in the process.

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

The remedy we used was the citizen complaint. With the 1996 amendments to LGEEPA, this remedy is no longer binding in Mexico, and we exhausted all legal remedies available. So we approached the CEC, since the citizen complaint in Mexico has ceased to be at least an instrument of mediation to protect collective environmental assets.

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

The government's response offered a glimpse of what it thought about the issue raised. Moreover, it was useful to create awareness of the effect on public policy, the law and enforcement in Mexico.

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

I had no communication, although I think it would have been of use. However, we were invited to forums and discussions on Chapala and my contributions were well received. We worked on a Lerma-Chapala Sustainability Program with Secretary Víctor Lichtinger that unfortunately was left behind and not followed up on with Secretary Elvira, even though it was a well-developed document prepared by consensus.

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

I think that this is a core area of improvement for the CEC with respect to factual records. We submitted the Chapala case in 2003, and it was decided to open a factual record two years ago and it is not yet concluded! We are talking about a case that has been going on for 8 years.

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

It appears to me that this case may be emblematic for the CEC to implement models to follow up on factual records. I think that in this case that CEC's involvement with the submitters and authorities may contribute to opening up areas of improvement and to help resolve the issues raised that still pose problems today. IDEA would hope that after releasing the factual record there could be discussion groups to implement policies, programs, responsibilities and budgets.

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

For IDEA, the cost of participating in the submission was the salary of the person responsible for building the submission, paid by Universidad de Guadalajara over two years. A McArthur Grant was also available during two years, along with CEC support to attend the Ministers' meetings.

However, the results achieved to date seem to be relevant and important, and the cost exceeded the benefits, e.g. it was not easy to amend the National Waters Act and open up the Basin Councils.

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

In the preparation of the technical and legal aspects of Chapala I, I received a lot of feedback from the ELAW alliance, which was with me throughout the process. I was also invited to the University of Nevada to present the case, by Professor John Miller, and at

the Public Interest Conference at the University of Oregon. Living Lakes, through Marion Hammler and the entire networks of experts, also provided feedback on Chapala II.

In conclusion, for the case of Lake Chapala and its basin, international support was very important and relevant.

16. Approximately how much time went into the preparation of your submission?

I was working intensively on the case in research projects for two years, to build and document the case. I continue to study the case today.

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

Yes. It apprised the Ministers of the serious contamination of the Lerma-Chapala-Santiago-Pacific basin.

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

I think so, especially given the times and how factual records have been ruled on, perhaps the CEC should make recommendations and/or take on the role of trilateral environmental ombudsman. Likewise, as regards the follow-up of factual records, I think the policy impact, legislative improvement, and particularly the resolution of serious problems of systematic violations should be analyzed.

19. Do you have any other comment or recommendations regarding the citizen submission process?

It seems that, despite the times and the nature and impact of the submission process, this is an important instrument for wide-ranging environmental issues of collective or common concern, going beyond reparation of damages.