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Observaciones sobre la propuesta del Plan Operativo de la CCA para 2008

#### Área de Información Ambiental

1. Existe un desfase entre el planteamiento de la problemática del futuro sustentable del continente de América del Norte, y el marco de información y conocimiento ambiental que propone producir la CCA para tal fin.
2. Lo que se pretende -por ahora- es la producción de información básica, que resulta insuficiente para tratar las situaciones complejas de la sustentabilidad.
3. Tal es el caso de la información cartográfica ambiental. El plan anuncia la entrega de nuevas capas de información cartográfica para el año próximo, pero estas capas están constituidas por información cartográfica tradicional, misma que resulta efectivamente indispensable para un atlas ambiental, mas en su parte introductoria; siendo insuficiente para los fines generales de la obra. Es posible que la información a la cual me refiero se incluya en una fase posterior del proyecto, pero esto no se puede evaluar sin contar con las descripciones del proyecto específico del Atlas Ambiental. No queda aún clara la idea general de la obra.
4. Los otros logros plasmados para el 2008 están dentro de las metas para el período 2008-2010. Quizás sería conveniente dar prioridad al establecimiento de un Sistema de Monitoreo del Cambio del Suelo, colocándolo después del proyecto del libro informativo; resaltando, en particular, la importancia de los cambios en las superficies aptas para la producción de alimentos.

Guadalajara, México, noviembre 23 de 2007

# Carlos Yruretagoyena

Estimada gente:

Leyendo su documento me quedo con la idea de que se encuentran todos uds (secretario-jpac y consejales) en un punto del camino de su actuar como miembros de la cce, que merece reflexion y analisis. Los tiempos cambian y las situaciones de conflicto ambiental, disputas entre acusados y acusadores; estilos de gobiernos y de los gobernantes tambien cambian. Su hacer se ve influenciado por razones que ya hoy en dia no son las que le dieron a la CCA vida. No hay esa robusta participación ciudadana y quizas tambien ese consejal o consejo esta ahora mas acostumbrado a tomar acciones y no tanto a dar consejo.

Aquel triangulo que funciono entre gobiernos-ciudadanos y consejales ya no esta igual en balance y fuerzas, de ello se suscitan quizas los conflictos del actuar y de la responsabilidad de todos los actores por que se cambio algo que si funcionaba.

Quizas el caso mas facil de analizar lo encuentren en la cocef, por sugerencias de alguien se elimino la participación ciudadana de ese organismo, ya no hay un grupo ciudadano de consejeros y por ello el banco (natbank) y la cocef son ahora "otra mas estructura de financiamiento de proyectos" el ciudadano ya no opina ni mucho menos se entera o vigila, eso causara sin duda friccion y quizas conflictos de intereses y de un actuar profesional de los miembros que quedara corto por el solo hecho de que nosotros los ciudadanos, los que pagamos impuestos y de donde se les paga para su funcion ya no tenemos nada que decir ni nada que vigilar.

Por eso este conflicto ahora es solo de uds. no pidan consejo a sus ciudadanos dado que ya no lo han tomado en cuenta. O bien decidan meter la carreta de la cca en reversa y retomar el verdadero rumbo que fue "un ambiente sano apoyado por una ciudadanía informada y participativa dentro de una sociedad productiva y sustentable" compartida respetuosamente y con equidad entre nuestras tres naciones.

Les deseo mucha suerte y espero que ahora no sea el consejo el blanco que esta en la mira de gobernadores poco sensibles ( el primer blanco fueron los proyectos ambientales) ahora quizas siguen uds.

Gracias.

## Jeanny Romero

In response to the Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) solicitation for public comments regarding the perception of an inherent conflict of interest in the NAAEC, I present the following views for consideration. I hope this serves to encourage the public, as myself, to keep informed and actively enrolled (as opposed to passive observers) in JPAC efforts to improve the CEC functioning. First of all, allow me to congratulate Mr. Gustavo Carvajal for his final report, and for revealing in a very clear manner (reachable, even for those who are not familiar with the legal basis and the importance of Articles 14 and 15 of the NAAEC) what the problem is and how this could be solved.

This doesn't mean in any way that it is the only alternative, but it obviously opens the window for further discussion within the JPAC itself. Taking Mr. Carvajal's final report as a background, as well as a personal research paper presented at McGill University, and by lately attending to the JPAC Regular Session held in Puebla, Mexico, I am in the position to state (from a general public standing point of view) that there is, indeed, an obvious conflict of interest within the NAAEC, in particular, with the Council's responsibilities and the achievements of the Agreement's goals. Puebla was a proof of the lack of impartiality between the Council's functions and the Parties' domestic agendas. The Council is not listening to the public and to JPAC's work and opinions.

This inherent conflict of interest translates into frustration, lack of confidence on the system, and lack of enforcement where clear enforcement is needed. In my humble opinion, JPAC should strongly consider to present all relevant documents and opinions presented in this matter to the Council. The Council, from its part, has an evident obligation of revising these opinions, and acting accordingly. The Council shall bear in mind this very simple reasoning, which is that the inherent conflict of interest within the NAAEC resides in that the Parties and the Council functions lie on the same physical person. In a practical sense, it is completely understandable that they cannot disassociate their functions; the Parties' views will inevitably come out at any time. In other words, it is almost impossible to take off one jacket and wear another one 'on top':

I see this more as a 'disguise' than an actual change of roles. In my opinion, the following elements should be taken into consideration:

1. The Report's argument in relation to Article 10(1)(d).
2. The importance of Council's independence from Parties (Article 9(5)(c)).
3. The elaboration of guidelines to which the Council shall refer when deciding whether the Secretariat shall prepare a factual record or not (Article 15(2)).
4. The comparative legal analysis of useful international models and institutions to improve (as opposed to dramatically change) the current scheme.

5. The importance of reasoned denials from the Council (special attention to the last paragraph of the Report's recommendations in this respect) in order to help future submitters. It is extremely important to keep attention on accessibility and transparency.

## Jon Plaut

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To JPAC

My comment is a general, but important one, I think. While the study of the problem evidenced by "parties" vs "Council" may be at the heart of the continued misunderstanding of whether the Council is made up of the three separate parties which necessarily have three separate views and political courses, or represents one unified interest, the use of the term "conflict of interest" is unfortunate, since it suggests wrong doing and thus engenders defensiveness.

I would suggest scrubbing the document to substitute a term like "leadership and administrative confusion" for "conflict of interest" and then submitting it to Council for discussion with them in a structured conversation at the next annual meeting.

If agreement can be reached as to the problem, then perhaps JPAC can work with the Council in framing a guidance document for the Council and the public to avoid any suggestion of alteration of the Agreement, which might be extremely harmful and controversial.

# United States Council for International Business

## **Ms. Carla Sbert**

Interim JPAC Liaison Officer  
Commission for Environmental Cooperation of North America  
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Bureau 200  
Montreal, Quebec, Canada  
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Dear Ms. Sbert:

The United States Council for International Business (USCIB) is pleased to offer the following comments in response to the JPAC request for comments on the perception of an inherent conflict of interest in the North American Agreement on Environmental Cooperation (NAAEC).

USCIB is a multi-sectoral business association comprised of over 300 leading U.S. companies and associations. USCIB promotes international trade and investment as the U.S. affiliate of the International Chamber of Commerce (IOE), the International Organization of Employers (IOE), and the Business and Industry Advisory Committee to the OECD (BIAC).

As a general comment, USCIB does not support the premise of the report prepared for the JPAC, namely that an inherent conflict of interest exists within the NAAEC. The term "conflict of interest" refers to a situation when someone has competing professional or personal obligations or financial interests that make it difficult to fulfill his duties fairly. In this instance, the claim is that the Parties' national interests are in inherent conflict with the interests of the CEC, a view that USCIB does not share.

The agreement clearly delineates the respective roles and responsibilities of the Parties as signatories to the agreement and as actors in the institutions of the Commission for Environmental Cooperation (CEC). The Parties have both individual obligations, such as ensuring effective enforcement of their laws, and joint obligations with the other Parties in the Council, such as approving the program and budget for the CEC.

The simple fact that each Party has individual and joint obligations does not create a situation of inherent conflict of interest. Further, the report confuses the situation by treating the Parties and the Council as distinct entities, when in fact they are one and the same. The Council is comprised of the three Parties. Decisions by the Council are made either by consensus among the Parties or, where required, by Party vote, with two-thirds majority required. In either case, there is no difference between the Council and the Parties.

The report prepared for JPAC focuses on the Parties obligations related to citizen submissions under Article 14-15 of the NAAEC as an example of the alleged conflict of interest. Once again,

USC1B does not find that the evidence provided in the report for JPAC supports the claim of an inherent conflict of interest. The role of the Parties is clear and well established, as are the roles of the Secretariat.

The process is clearly not without tension, as the Secretariat must assess claims made against the very Parties that make up its governing council, but that tension does not rise to the level of conflict of interest. At a minimum, the two-thirds voting required to advance or publish a factual record removes the ability of a Party to individually block a submission against itself.

In closing, USCIB finds that the report prepared for the JPAC has not established an inherent conflict of interest in the NAAEC and therefore recommends that the JPAC should not accept the report or any of its conclusions.

I hope these comments are helpful. Please feel free to contact me with any questions.

Best regards