
Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submitters: Fundación Lerma-Chapala-Santiago-Pacífico, A.C.
Sociedad Amigos del Lago de Chapala, A.C.
Instituto de Derecho Ambiental, A.C.
Residents of the community of Juanacatlán, Jalisco State
Comité Pro-Defensa de Arcediano, A.C.
Amigos de la Barranca, A.C.
Ciudadanos por el Medio Ambiente, A.C.
Amcresp, A.C.
Red Ciudadana, A.C.

Represented by: Raquel Gutiérrez Nájera
Yolanda García del Ángel

Party: United Mexican States

Date of this plan: 9 July 2008

Submission no.: SEM-03-003 (*Lake Chapala II*)

I. Background

On May 23, 2003 the Submitters listed above filed a submission before the Secretariat of the Commission for Environmental Cooperation (CEC) pursuant to article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The Submitters assert that Mexico is failing to effectively enforce its environmental law with respect to the management of water resources in the Lerma-Chapala-Santiago-Pacífico watershed, resulting in serious environmental degradation and water imbalance of the watershed as well as the risk that Lake Chapala and the habitat it provides for migratory birds could disappear. Likewise, the Submitters assert that Mexico is failing to guarantee effective citizen participation in environmental policymaking with regard to decisions about the watershed. The Submitters further affirm that the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales—Semarnat*) is failing to effectively enforce Article 133 of the General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*) by failing to conduct ongoing, systematic monitoring of water quality in the Santiago River. They further assert that Semarnat is failing to apply LGEEPA Article 88 criteria for the sustainable use of water and aquatic ecosystems by permitting the construction of the Arcediano Dam on the Santiago River.

The Submitters maintain that the National Water Commission (*Comisión Nacional del Agua—CNA*) is delegating decisions on water use and distribution in the area to the watershed council (*consejo de cuenca*) and hence is failing to effectively enforce the provisions of the National Water Law (*Ley de Aguas Nacionales—LAN*) which invest the CNA with the authority and responsibility to make the relevant decisions.

In March 2004, Mexico filed a response to the submission in which it stated that it is monitoring the Santiago River through the National Water Quality Monitoring Network (*Red Nacional de Monitoreo de la Calidad del Agua*) and that it has a comprehensive cleanup program for the entire

watershed. Mexico alleges that the submission overstates the geographical magnitude of the problem because the facts mentioned are concentrated primarily in the areas of Lake Chapala, Arcediano and Juanacatlán, including the part corresponding to the Santiago and Verde Rivers. This territory comprises only the Lerma-Chapala portion of the entire basin (Lerma subregion) and not the Santiago and Pacífico subregions, such that the problem is limited to the part of the watershed comprised within the state of Jalisco. Concerning the Arcediano dam project, Mexico also asserts that the environmental impact assessment took sustainable water use criteria into account. Mexico states that it is enforcing the water-related laws through the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente—Profepa*) and the CNA. Concerning the watershed councils, Mexico notes that they do not make decisions of a legal nature on behalf of the authorities.

After reviewing the submission in light of Mexico's response, the Secretariat notified the Council that the development of a factual record is warranted. The Secretariat found that the submission raises central questions on the Mexican government's effective enforcement of the environmental laws on the operation of the Lerma-Chapala watershed council, on whether the watershed council's decisions are given authoritative effect without formal action by the National Water Commission, and on what measures have been adopted to restore the balance of the Santiago River ecosystem based on the monitoring of the river's water quality. With respect to the geographical magnitude of the problem, the Secretariat considered – as alleged by Mexico in its response – that the factual record would focus on those areas of the watershed that include Lake Chapala, Arcediano, Juanacatlán, the Santiago River and the Verde River, including consideration of the Arcediano Dam project as appropriate, along with general information regarding the entire watershed as necessary and relevant.

On 30 May 2008, the Council, by means of Resolution 08-01, unanimously decided to instruct the Secretariat to develop a factual record with respect to Submission SEM-03-003 (*Lake Chapala II*). The Council requested the Secretariat to limit the factual record to the area containing the Arcediano dam, within the Lerma-Chapala watershed (Lerma subregion) in the State of Jalisco.

The Council directed the Secretariat to provide the Parties with an overall work plan for gathering relevant facts and to provide the Parties with an opportunity to comment on the plan. The Council also directed the Secretariat that in preparing the factual record, it may include any relevant facts that existed before the entry into force of the NAAEC on 1 January 1994.

Under Article 15(4) of the NAAEC, in developing a factual record, “the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information: (a) that is publicly available; (b) submitted by interested nongovernmental organizations or persons; (c) submitted by the Joint Public Advisory Committee (JPAC); or (d) developed by the Secretariat or by independent experts.”

II. Overall Scope of the Fact Finding

To prepare the factual record, the Secretariat will gather and develop factual information relevant to the alleged failure to effectively enforce LGEEPA articles 1, 2, 5, 18, 78, 79, 80, 83, 88, 89, 133, 157, 161, 162, 163, 164, 165, 167, 168, 169 and 3 of its Environmental Impact Regulations (*Reglamento en Materia de Impacto Ambiental—REIA*); 1, 2, 3, 4, 7 and 9 of the National Water Law (*Ley de Aguas Nacionales—LAN*) and article 2 of its Regulations (*RLAN*), as well as article 44 of the Internal Regulations of the Ministry of the Environment and Natural Resources

(*Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales*). The Secretariat will gather information with regards to the assertions made in the submission, taking into account the area containing the Arcediano dam, within the Lerma-Chapala watershed (Lerma subregion) in the State of Jalisco.

Overall Plan

The execution of the overall plan, prepared in accordance with Council Resolution 08-01, will begin as of July 21, 2008. All other dates mentioned are best estimates. The overall work plan is as follows:

- Through public notices or direct requests for information, the Secretariat will invite the Submitters; JPAC members; members of the involved region; the general public; and municipal, state and federal government officials to submit information relevant to the scope of fact-finding outlined above. The Secretariat will explain the scope of the fact finding, providing sufficient information to enable interested nongovernmental organizations or persons or the JPAC to provide relevant information to the Secretariat (section 15.2 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*). **[July-October 2008]**
- The Secretariat will request information relevant to the factual record from municipal, state and federal government authorities of Mexico, as appropriate, and shall consider any information furnished by a Party (NAAEC Articles 15(4) and 21(1)(a)). **[July-October 2008]**
- The Secretariat will hold meetings with the parties interested in submitting information related to relevant facts. **[September through December 2008]**
- The Secretariat will gather relevant technical, scientific or other information that is publicly available, including from existing databases, public files, information centers, libraries, research centers and academic institutions. **[July through December 2008]**
- The Secretariat, as appropriate, will develop, through independent experts, technical, scientific or other information relevant to the factual record. **[October 2008 through January 2009]**
- The Secretariat, as appropriate, will collect relevant technical, scientific or other information for the preparation of the factual record, from interested nongovernmental organizations or persons, the JPAC or independent experts. **[August 2008 through January 2009]**
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed. **[January through April 2009]**
- The Secretariat will submit a draft factual record to Council, and any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5). **[End of April 2009]**
- As provided by Article 15(6), the Secretariat will incorporate, as appropriate, any such comments in the final factual record and submit it to Council. **[July 2009]**

- The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, according to Article 15(7).

III. Additional Information

The submission, the Party's response, the Secretariat's determinations, the Council Resolution, and a summary of these are available in the Registry on Citizen Submissions on the CEC home page <www.cec.org>, or upon request to the Secretariat at the following address:

Secretariat of the CEC
Submissions on Enforcement
Matters Unit (SEM Unit)
393 St-Jacques St. West
Suite 200
Montreal, QC H2Y 1N9
Canada

CEC / Mexico Liaison Office:
Atención: Unidad sobre Peticiones
Ciudadanas (UPC)
Progreso núm. 3,
Viveros de Coyoacán
México, D.F. 04110
México