

Secretariat of the Commission for Environmental Cooperation

REQUEST FOR INFORMATION **for Development a Factual Record** **Submission SEM-03-003 (*Lago de Chapala II*)** **4 September 2008**

I. The factual record process

The Commission for Environmental Cooperation of North America (CEC) is an international organization created under the North American Agreement on Environmental Cooperation (NAAEC) by Canada, Mexico and the United States. The CEC operates through three organs: a Council, made up of the highest-level environmental official in each member country; a Joint Public Advisory Committee (JPAC), composed of five citizens from each country; and a Secretariat located in Montreal.

Article 14 of the NAAEC allows residents in North America to inform the Secretariat, in a submission, that any member country (hereinafter, a Party) is failing to effectively enforce its environmental law. This initiates a process of review of the submission, in which the Council may instruct the Secretariat to prepare a factual record in connection with the submission. A factual record seeks to provide detailed information to allow interested persons to assess whether a Party has effectively enforced its environmental law with respect to the matter raised in the submission.

Under Articles 15(4) and 21(1)(a) of the NAAEC, in developing a factual record, the Secretariat shall consider any information furnished by a Party and may ask a Party to provide additional information. The Secretariat also may consider any information that is publicly available; provided by the JPAC, the Submitters or other interested persons or non-governmental organizations; or developed by the Secretariat or independent experts.

On 30 May 2008, the Council unanimously decided in Resolution 08-01 to instruct the Secretariat to prepare a factual record with respect to submission SEM-03-003 (*Lago de Chapala II*), the Council decided unanimously to instruct the Secretariat to develop a factual record, in accordance with Articles 14 and 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC (Guidelines)*. The Secretariat now requests relevant information relating to the matters to be addressed in the factual record. The following sections provide the submission's background and describe the type of information sought.

II. Submission SEM-03-003 (*Lago de Chapala II*) and Council Resolution-08-01.

On 23 May 2003, the Secretariat received a submission in accordance with NAAEC Articles 14 and 15. The Submitters assert that Mexico is failing to effectively enforce its

environmental laws with respect to the management of water resources in the Lerma-Chapala-Santiago-Pacífico hydrological basin, which they assert has caused serious environmental impairment and a water imbalance in the basin, as well as the risk of disappearance of Lake Chapala and the habitat of migratory birds that inhabit it. The Submitters further assert that Mexico is not effectively guaranteeing citizen participation in environmental policy, with respect to the determinations regarding the basin.

The Submitters state that the Secretariat of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat) is failing to effectively enforce Article 133 of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA) by not carrying out the systematic and permanent monitoring of water quality in the Santiago River, asserting that Semarnat fails to apply criteria for the sustainable use of water and aquatic ecosystems in accordance with Article 88 of the LGEEPA, by allowing the construction of the Arcediano dam on the Santiago River.

The Submitters also assert that the National Water Commission (*Comisión Nacional del Agua*—CNA) is delegating decision-making authority with respect to water use and distribution in the region to the basin council, thereby failing to effectively enforce the provisions of the National Waters Act (*Ley de Aguas Nacionales*—LAN) which confer such decision-making authority and responsibility upon it.

On 19 December 2003, the Secretariat determined that the submission met the requirements of NAAEC Article 14(1) and requested the response of the party involved (Mexico) under Article 14(2).

Mexico submitted its response on 30 March 2004, asserting that it does monitor 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 sanitation program throughout the basin. Mexico asserts that the submission overstates the territorial aspect, as the facts claimed are concentrated in the Lago de Chapala, Arcediano and Juanacatlán zone, including the corresponding part of the Santiago and Verde Rivers, which encompasses only the Lerma-Chapala basin (Lerma subregion) and not the Santiago and Pacífico sub regions, and the problem is limited accordingly to the part of the basin in the State of Jalisco. As regards the Arcediano dam project, Mexico asserts that the environmental impact assessment did consider sustainable water use criteria, and further notes that enforcement of water law is handled by the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) and the CNA. With respect to basin councils, Mexico stresses that such council do not make legal decisions in the name of the authorities.

On 18 May 2005, the Secretariat informed that CEC Council that in light of Mexico's response, the preparation of a factual record was warranted.

On 30 May 2008, in Resolution 08-01, the Council unanimously decided to instruct the Secretariat to develop a factual record with respect to the matters raised in submission SEM-03-003 (*Lago de Chapala II*), in accordance with Article 15 of the NAAEC and the Guidelines. The Council requested that the Secretariat limit the factual record to the area including the Arcediano dam in the Lerma-Chapala basin (Lerma subregion) in the

State of Jalisco.

The Council ordered the Secretariat to provide the Parties with its overall plan to collect relevant facts and to provide the opportunity to present their respective comments. The Council further instructed that, in developing the factual record, the Secretariat should take account of the considerations set forth in Council Resolution 08-01, including the possibility of incorporating pertinent facts from before the 1 January 2004 entry into force of the NAAEC.

Under Article 15(4) of the NAAEC, in preparing 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 non-governmental organizations or persons; (c) submitted by the Joint Public Advisory Committee; or (d) developed by the Secretariat or by independent experts.

III. Request for information

Given the instructions received through Council Resolution 08-01, the Secretariat notes that the scope of the factual record is limited to the area of influence of the Arcediano dam project in the Lerma-Chapala basin (Lerma subregion). Therefore, the information to be considered to the development of this factual record should relate to the zones of Lago de Chapala, Arcediano, Juanacatlán and the corresponding part of the Santiago and Verde Rivers. The Secretariat of the CEC requests:

- i) With respect to the assertions in the submission on the area of influence of the dam, information on the alleged violations of LGEEPA Articles 1, 2, 5, 18, 78, 79, 80, 83, 88, 89, 133, 157, 161, 162, 163, 164, 165, 167, 168, 169 and 170 and Article 3 of the Environmental Impact Regulations thereunder; LAN Articles 1, 2, 3, 4, 7 and 9 and Article 2 of its Regulation; and Article 44 of the Semarnat Internal Regulations;
- ii) With respect to the assertion that the CNA is delegating water distribution decision-making authority to the basin council, information on the operation of the basin council in the Arcediano dam area of influence and how the council’s rulings have or may have the effect of acts of the authority;
- iii) With respect to the alleged failure to enforce citizen participation mechanisms in the decision-making process, information on the forms of participation available to the public to take part in the planning of basin resource management and the zones at issue, and how such participation is considered in the drafting and implementation of water quality policies;
- iv) With respect to the alleged environmental impairment and water imbalance in the Lerma-Chapala basin (Lerma subregion) and the alleged lack of effective monitoring of water quality, information on the adoption of appropriate measures with respect to or deriving from such monitoring in the area of influence of the Arcediano dam;

- v) Information on the alleged failure to effectively enforce criteria for the sustainable use of water and ecosystems, in the authorization of the environmental impact assessment for the Arcediano dam project.

IV. Examples of relevant information

1. Information on the management, enforcement, protection, preservation, use and quality of water in the Lerma-Chapala basin (Lerma sub region) and specifically in the zones that may be influenced by the Arcediano dam project (Lake Chapala, Arcediano, Juanacatlán and part of the Santiago and Verde Rivers).
2. Information on the environmental impairment and water imbalance of Lake Chapala and its migratory bird habitat, as well as that of the Lerma-Chapala basin (Lerma subregion), in particular, Arcediano, Juanacatlán and part of the Santiago and Verde Rivers.
3. Information on the operation of a basin council in the area in question, as to whether its rulings have or may have the effect of official rulings of the authority.
4. Information on the means of citizen participation available with respect to water planning and how such participation was considered in the drafting and implementation of water distribution policies and rulings.
5. Information on the operation of the National Water Quality Monitoring Network, specifically its operation in the basin in question and any measures taken with respect to such monitoring.
6. Information on any water quality monitoring in the basin, and any measures taken with respect to such monitoring.
7. Information on the operation of wastewater treatment plants and projects to build new treatment plants or other public investment projects directly or indirectly affecting basin water quality.
8. Information on the environmental impact assessment procedure for the Arcediano dam, additional to the response from Mexico, including the environmental impact statement, additional or supplemental information requests, information on any public consultation or technical opinion involving the project, filings with and rulings by the respective authority, and/or the environmental impact or land-use change ruling.
9. Current status of the Arcediano dam project, in particular the alleged absence of sustainable water management criteria, the alleged failure to assess the environmental impact of the project with respect to restoring the ecological balance and sustainable use of Santiago River waters and the rest of the basin, and the project's environmental impact on ecosystems during site preparation, construction, reservoir filling and operation of the Arcediano dam.

10. Information on the adoption of a comprehensive vision with respect to the natural resources in the Lerma-Chapala-Santiago-Pacífico basin in national planning (*e.g.*, National Hydraulic Program and National Development Plan), and on the conservation and restoration of ecosystem integrity, human health protection and sustainable development in the basin.
11. Information on the plans drafted by municipal, state and federal authorities for the restoration of the Santiago River and the rest of the zone at issue (Juanacatlán, Lago de Chapala).
12. Information on the establishment of and compliance with any environmental conditions in the national water concessions issued for the construction of the Arcediano dam and the components thereof (rerouting, cofferdams, curtaining, etc.) and associated works (access roads, camps, etc.).
13. Information on compliance with the conditions included in the environmental impact ruling for the construction of the Arcediano dam with respect to the adoption of measures to protect migratory bird species endangered by the project.
14. Information on the forms of citizen participation available throughout the environmental impact assessment procedure for the Arcediano dam project and the consideration given to such participation upon authorizing the project.
15. Any other technical, scientific or other information that may be relevant for the development of this factual record.

V. Additional background information

The submission, Mexico's response, the Secretariat's determinations, the Council Resolution, the overall plan to develop the factual record and other information are available in the Registry and Public Files in the Citizen Submissions on Enforcement Matters section of the CEC website at <<http://www.cec.org>>. These documents may also be requested from the Secretariat.

VI. Where to send information

Relevant information for the development of the factual record, including information to be submitted electronically, may be sent to the Secretariat until **31 December 2008**, at either of the following addresses:

CEC Secretariat
Citizen Submissions Unit (CMU)
393 rue St-Jacques Ouest, bureau
200
Montreal QC H2Y 1N9
Canada
Tel. (514) 350-4300

CEC Mexico Liaison Office
Attention: Citizen Submissions
Unit (CMU)
Progreso Núm. 3
Viveros de Coyoacán
México, D.F., 04110, México
Tel. (55) 5659-5021

Please refer to submission SEM-03-003 (*Lago de Chapala II*) in your correspondence.

Should you have any questions or comments, or if you wish to submit information electronically, please contact Paolo Solano at <rblandon@cec.org>.