

[UNOFFICIAL TRANSLATION]

To: NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION

FUNDACIÓN LERMA-CHAPALA-SANTIAGO-PACIFICO A.C., SOCIEDAD AMIGOS DEL LAGO DE CHAPALA A.C., INSTITUTO DE DERECHO AMBIENTAL, A. C., VECINOS DE LA COMUNIDAD DE JUANACATLÁN, JAL., COMITE PRO-DEFENSA DE ARCEDIANO A.C., AMIGOS DE LA BARRANCA, A.C., CIUDADANOS POR EL MEDIO AMBIENTE, A.C., AMCRESP, A.C., and RED CIUDADANA, A.C., identified by attached certified copies of the charters of each of the undersigned civic associations, domiciled for the purposes of receiving notices of all kinds at Misión de San Felipe Módulo 13 Departamento 10, Colonia Residencial Guadalupe, C.P. 45040, city of Zapopan, Jalisco, Mexico, and authorizing Attorneys Raquel Gutiérrez Nájera and/or Yolanda García del Ángel, jointly and severally, to receive them on our behalf, we attest as follows:

That we hereby, invoking Articles 14, 15, 45.2(a), (b), and (c), and 45.3 as well as any other relevant and applicable articles of the North American Agreement on Environmental Cooperation signed by the Government of the United Mexican States, the Government of Canada, and the Government of the United States of America in December 1993, which took effect in January 1994:

Denounce the failure to effectively enforce the National Waters Act (*Ley de Aguas Nacionales*), the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*), the Regulation to the General Ecological Balance and Environmental Protection Act respecting Environmental Impact (*Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Impacto Ambiental*), the Regulation to the National Waters Act, and the Internal Regulation of the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales—Semarnat*), which provisions refer to the management, protection, preservation, use, and quality of water in Mexico, in the case of the Lerma-Chapala-Santiago-Pacífico watershed, the consequence of which failure to enforce is the severe environmental degradation and water imbalance of the watershed as well as the risk that Lake Chapala and the migratory bird habitat it provides could disappear. In conformity to the specific stipulations of Articles 14 and 15 of the Agreement, we state as follows:

- I. **Reason for the submission:** Failure to effectively enforce the aforementioned environmental laws in the case of the Lerma-Chapala-Santiago-Pacífico watershed (Hydrological Region XII).
- II. **Authorities responsible for the failure to effectively enforce the environmental laws:** The Ministry of Environment and Natural Resources (Semarnat), and the National Water Commission (*Comisión Nacional del Agua—CNA*), a deconcentrated body thereof.
- III. **Object of the submission:** To request that the Commission for Environmental Cooperation allow this submission and address the matters to which it refers, since it coincides with the following objectives set out in Article 1 of the North American Agreement on Environmental Cooperation:

- f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
- g) enhance compliance with, and enforcement of, environmental laws and regulations.

IV. Background and facts

IV.I. Background

- 1.- Submission filed with the CEC by Instituto de Derecho Ambiental A.C. in 1997, which is on file with the CEC.
- 2.- Request of 29 June 2001, to the attention of members of the Joint Public Advisory Committee of the CEC in Guadalajara, Jalisco, denouncing the severe problem affecting Lake Chapala and the Lerma-Santiago-Pacífico watershed.
- 3.- Response dated 9 July 2001 signed by Liette Vasseur, President of JPAC, to Janine Ferretti, Executive Director, Commission for Environmental Cooperation, in which JPAC recommends that the Secretariat prepare a factual record or any other appropriate form of communication in regard to measures that may be taken to restore these resources (Appendix I).
- 4.- Citizen complaint filed by the Fundación in 2001 with Profepa (Appendix II).

IV.II. Facts:

A). In re the development of environmental laws, regulations, procedures, policies and practices:

In this section we present the environmental policy documents and the actions taken with the participation of civil society with a view to granting long-term legal protection to the Lerma-Chapala-Santiago-Pacífico Hydrological Region in order to guarantee the sustainability of the water and of Lake Chapala in the central and western zone of the country.

- 1.- There is a decree dating from 3 January 1934 declaring a Forest Protection Zone for the upper portion of the Lerma River watershed (Appendix III).
- 2.- The Executive Branch issued a decree declaring a Forest Protection Zone for various mountains located in Guadalajara, Jalisco, which was published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) on 7 December 1934 (encompassing the environs of the Santiago River and including the river channel itself (Appendix IV).
- 3.- Subsequently, the CNA has noted the existence of various decrees establishing a perpetual ban on groundwater pumping in the zones of Silao, Irapuato, and Salamanca, Guanajuato (1957 and 1958); the municipalities of Morelia and Charo, Michoacán (1964); Querétaro, state of Querétaro; San José Iturbide, Dr. Mora, and San Luis de la Paz, Guanajuato, four municipalities of the states of Guanajuato and Querétaro (1964); the zone of the El Rosario-El Mezquite Irrigation District, Jalisco, (1970); various municipalities of the state of Jalisco (1987); the valleys of Querétaro

and San Juan del Río, Querétaro, (1958); the Bajío Region, Celaya Zone (1952), and La Caldera en Abasolo spring, Guanajuato, (1949).¹

4.- Further to the problems relating to the low water level and degradation of Lake Chapala, the following legal instruments were adopted:

- Coordination agreement between the Federal Executive Branch and the executive branches of the states of Guanajuato, Jalisco, México, Michoacán, and Querétaro to implement a water use and water treatment planning program for the Lerma-Chapala watershed, signed 13 April 1989 (Appendix V).
- Coordination agreement constituting an advisory council for assessment and monitoring of the commitments undertaken in the coordination agreement between the Federal Executive Branch and the executive branches of the states of Guanajuato, Jalisco, México, Michoacán, and Querétaro to implement a water use and water treatment planning program for the Lerma-Chapala watershed, signed 1 September 1989 (Appendix VI).
- Coordination agreement between the Federal Executive Branch and the executive branches of the states of Guanajuato, Jalisco, México, Michoacán, and Querétaro to implement a special coordination program on availability, apportionment, and use of nationally owned surface waters contained within the Lerma-Chapala watershed, signed August 1991 (Appendix VII).
- Coordination agreement between the Federal Executive Branch, acting by its Ministry of the Treasury and Public Credit (*Secretaría de Hacienda y Crédito Público*), Ministry of Social Development (*Secretaría de Desarrollo Social*), Ministry of Auditing and Control (*Secretaría de Contraloría General de la Federación*), Ministry of Agriculture and Water Resources (*Secretaría de Agricultura and Recursos Hidráulicos*), Ministry of Health (*Secretaría de Salud*), Ministry of Fisheries (*Secretaría de Pesca*), Federal Electricity Commission (*Comisión Federal de Electricidad*), Petróleos Mexicanos, and the executive branches of the states of Guanajuato, Jalisco, México, Michoacán, and Querétaro, for the purpose of implementing a special coordination program governing the use, exploitation, and enjoyment of the groundwater of the Lerma-Chapala watershed, develop the second phase of the watershed cleanup program, plan water usage, and take measures for the promotion of fishing and aquaculture, clean water, efficient water use, and watershed management, signed 28 January 1993 (Appendix VIII).

5.- Subsequently, Semarnat published its "Chapala Work Program 2000," of which the results and evaluation are unknown.

6.- In 2001, facing public criticism by civic organizations concerning the critical status of Lake Chapala, which is now at its lowest levels in history, the Senate of the Republic held a forum on the problems affecting the watershed and the lake. At this forum, Semarnat proposed a sustainability program for the Lerma-Chapala watershed, of which a number of organizations including the undersigned obtained copies, but of which we have heard nothing since (December 2001, Semarnat, Appendix IX).

¹ Technical studies for regulation of the Lerma-Chapala watershed, pp. 37–38.

7.- The following year, we were invited to a consultation in a letter of 16 July 2002 from Regina Barba concerning a technical study for regulation of the Lerma-Chapala watershed; at this meeting, we and others discussed the type of appropriate legal instrument and noted that we were being consulted on technical studies for declaration of the regulated zone of the Lerma-Chapala watershed, a situation that was ultimately accepted by the CNA itself, and this declaration too remained pending (Appendix X).

8.- Recently, the Federal Executive Branch, by decree, declared a protected natural area having the character of a wildlife protection area for the area known as Ciénegas del Lerma, located in the municipalities of Lerma, Santiago Tianguistenco, Almoloya del Río, Calpulhuac, San Mateo Atenco, Metepec, and Texcalyacac, state of México, with a total area of 3,023-95-74.005 hectares (Appendix XI).

12.- Also further to the Ajijic Forum, Dr. Gutiérrez, President of IDEA A.C. and member of the Fundación, proposed a Regulatory Law to Article 27 of the Constitution for restoration and reserve of the waters of the Lerma-Chapala-Santiago-Pacífico watershed, a proposal for which the report was approved by the Senate of the Republic in the LVIII Legislature on 3 December 2002 (Appendix XII).

13.- That year, a resolution was issued indicating the boundaries of the 188 aquifers of the United Mexican States, the results of studies done to determine mean annual water availability, and corresponding locator maps; DOF, 31 January 2003 (Appendix XIII).

14.- It should be clarified as well that a protected natural area with the character of an ecological conservation zone was declared for Barranca de Oblatos-Huentitán, located in the municipality of Guadalajara, Jalisco, on 12 June 1997 (presented 5 June 1997) (Appendix XIV).

15.- Public announcement by the national director of the CNA concerning construction of the Arcediano Dam on the Santiago River in the channel of the river of the same name (Arcediano appendix), contradicting the conservation, preservation, and restoration policy for the watershed (Appendix XV).

B). Concerning compliance with, and enforcement of, environmental law:

The facts discussed below concern legal action taken by Fundación Cuenca Lerma-Chapala-Santiago Pacífico in relation to the apportionment of surface water from the watershed, the deterioration of Lake Chapala, and alerting the authorities to the loss of migratory bird habitat, with a view to ascertaining what measures the authorities took and challenging those measures through the appropriate legal channels.

1.- In a letter dated 26 November 2001, the Fundación filed an action in revocation of the resolutions adopted at the LVI Meeting of the Monitoring Group of the Lerma-Chapala Watershed Council in the city Querétaro on 6 November 2001, arguing that the resulting water apportionment violated the water apportionment agreements and that the decision was not made in accordance with the National Waters Act and its regulation (Appendix XVI).

2.- Under file no. BOO.E.09.08/0050092 of 16 January 2002, the CNA ruled on the action in revocation filed by Manuel Villagómez Rodríguez in his capacity as President of the Fundación Cuenca Lerma-Chapala-Santiago-Pacífico A.C. against the resolutions adopted at the LVI Meeting of the Monitoring Group of the Lerma-Chapala Watershed

Council in the city Querétaro on 6 November 2001, holding that the action was invalid because the Watershed Council is not “a water-related authority” but merely a coordinating body, and that authority for the purposes of the National Waters Act is vested in the CNA (Appendix XVII).

3.- Subsequently, in a letter of 11 February 2002, the Fundación requested from the Regional Office (Gerencia Regional), headquartered in Guadalajara, Jalisco, the following:

Certified copy of the resolution whereby the CNA found applicable the agreements of the LVI meeting of the Monitoring Group of the Lerma-Chapala Watershed Council, issued in the city of Querétaro, state of Querétaro, as well as the date and medium of publication (Appendix XVIII), in order to be able to take cognizance of the act of authority.

4.- Response to this request by the CNA, reproduced as follows:

“In regard to the request for a certified copy of the RESOLUTION OF THE LVI MEETING OF THE MONITORING AND ASSESSMENT GROUP OF THE LERMA CHAPALA WATERSHED COUNCIL, dated 6 November 2001, pursuant to the provisions of Article - ----- of the Federal Administrative Procedure Act, certified copy is hereby issued to Manuel Villagomez Rodríguez of the RESOLUTION OF THE LVI MEETING OF THE MONITORING AND ASSESSMENT GROUP OF THE LERMA CHAPALA WATERSHED COUNCIL, dated 6 November 2001, upon payment of fees as prescribed by the Federal Administrative Fees Act (*Ley Federal de Derechos*).

As regards publication of this resolution, be it noted that this was done in bulletin number 11 of the Monitoring and Assessment Group of the Lerma Chapala Watershed Council, a copy of which is annexed to the said document” (Appendix IXX).

5.- Subsequently, on 14 November 2002, a meeting of the Watershed Council was held concerning apportionment of surface waters in the city of Metepec, state of México, in which we participated and presented a brief for discussion and guidance on the interpretation of the resolution and the Waters Act (*Ley de Aguas*) in preparation for making a decision (Appendix XX).

6.- Since the quantities of water that would be allowed to flow toward Chapala remained pending after that meeting, on 10 January 2003 the Fundación requested the following information from the Regional Office of the Lerma Chapala System (Appendix XXI):

- I. Watershed Council minutes for the session held 14 November 2002 in the city of Metepec, state of México.
- II. Resolution by the CNA concerning the apportionment of water availability in the Lerma-Santiago-Pacífico watershed of which Lake Chapala forms a part, mentioning quantities and reservoirs from which water will be taken for the various water uses in the watershed.
- III. Legal action filed against the government of the state of Jalisco concerning its request to transfer water from the watershed to Lake Chapala, a point on the agenda of the Watershed Council meeting held 14 November 2002 for which a response remained pending from the CNA in its capacity as the decentralized body of Semarnat in charge of water management in Mexico.

7.- To this request, the CNA responded under file no. ST001 00493 of 28 January 2003 as follows:

"In regard to your letter to the undersigned dated the tenth of this month and requesting the minutes of the Watershed Council meeting of 14 November 2002 in Metepec, state of México, as well as the published and unpublished resolutions concerning the apportionment of water availability in the Lerma Santiago Pacifico watershed, and the dispute filed against the government of the state of Jalisco:

"Concerning point I, a copy of the minutes of the LXV session of the Monitoring and Assessment Group of the Lerma-Chapala Watershed Council is attached.

Concerning points I and III, attached is bulletin no. 12 (official publication of the Watershed Council) containing information on precipitation, the status of the water reserves, the water uses recorded in the 2001-2001 [sic] cycle, the surface water policy for the 2002-2003 cycle, the amount of surface runoff, the volumes assigned, and the minutes of the session held at the Lerma, Chapala, Pacifico Regional Office of the CNA, which reported to the government of the state of Jalisco, represented by Felipe Tito Lugo Arias, the volumes and dates of the transfer of 280 million cubic meters from the reservoirs of Jalisco, México state, and Guanajuato, detailing both the volumes and the dates of transfer."

8.- Subsequently, in view of the severity of the problem affecting Lake Chapala, the Fundación wrote a letter to the President of the Republic dated 19 July 2002, to which replies were received from both the Regional Office of the CNA and the Assistant Attorney for Natural Resources, Office of the Federal Attorney for Environmental Protection (Profepa). The relevant fact to be derived from both letters is the absence of a clear sensitivity to a known public problem, to wit, the crisis and the environmental deterioration affecting Chapala as a consequence of mismanagement of the Lerma-Chapala and Santiago-Pacifico watershed (Appendix XXII).

9.- The failure by the environmental authorities of Mexico to exercise their powers, particularly the power to enforce the National Waters Act, is so striking that on October 4 the Fundación asked whether the development of golf courses, soccer fields, and tree plantations on land within the Lake Chapala watershed had been authorized and the CNA only responded that it had not, but never exercised its authority to verify serious facts that are in the public domain (is there a water authority in Mexico?) (Appendix XXIII).

9.- The situation became so serious that local newspapers including *El Público* and *Ocho Columnas* extensively reported on the dire wintering conditions for the white pelican, a migratory bird from Canada and the United States that winters on Lake Chapala. The CNA, Semarnat, and Profepa turned a deaf ear to these reports, taking no urgent action or measure in response (Appendix XXIV). Photographs are annexed.

10.- Copy of the citizen complaint filed 7 March 2001 by the Fundación with the Profepa officer in the state of Jalisco, and copy of the allegations pursuant to Article 197; all that is missing is the officer's recommendation on the facts presented (see Appendix II).

11.- Various representations have been made and official complaints filed by residents of Juanacatlán, Jalisco with the environmental authorities concerning the severe degradation of the Santiago River, citing the bad quality of water caused by municipal,

industrial, and all manner of other discharges, and the impacts of the situation on the health of Juanacatlán residents (Appendix XXV, complaints and photos of Juanacatlán, Jalisco).

V. Failures to enforce the environmental law: side agreement and Mexican law

V.I. The following provisions of the North American Agreement on Environmental Cooperation between the governments of the United Mexican States, Canada, and the United States of America are not being enforced:

Governmental measures to enforce laws and regulations; Articles 1(a), (b), (f), (g), (h), (i), (j); 5.1(b), (j), (l); 5.2; 6.1; 6.2; 6.3; 7; 8; 9.

V.II. Mexican environmental law that is not being enforced

- General Ecological Balance and Environmental Protection Act (LGEEPA) Articles 1; 2; 5 paragraphs III, IV, XVI, XI, XIX; 18; 78; 79 paragraphs I, III; 80 paragraphs I, VII; 83; 88 paragraphs I, II, III; 89; 133; 157; 161-170.
- Article 3 paragraphs III, IV, V, VI, VII, VIII, IX of the Regulation to the General Ecological Balance and Environmental Protection Act respecting Environmental Impact.
- National Waters Act Articles 1; 2; 3 paragraphs IV, V; 4; 7 paragraphs II, IV, VIII; 9 paragraphs I, XIII.
- Article 2 paragraphs IV, V, VIII, XII, XIV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV of the Regulation to the National Waters Act.
- Article 44 of the Internal Regulation of the Ministry of the Environment and Natural Resources.

In the case at hand, the authorities failed to enforce the above-cited LGEEPA provisions in a timely manner in two respects. First, they failed to enforce the provisions guaranteeing effective civic participation in Mexican environmental policy and joint responsibility of citizens for environmental protection, as required by the following legal provisions:

- A) The "Object" section of the LGEEPA specifies that the provisions of the act are intended to support the public good and the societal interest, and that their object is to lay the foundations for:

...

IV. The sustainable enjoyment, preservation and, as applicable, restoration of soil, water, and other natural resources so that the provision of economic benefits and the activities of society remain compatible with the preservation of ecosystems.

V. Providing for the joint responsibility of persons, as individuals and as groups, in the preservation and restoration of ecological balance and environmental protection.

...

Clearly, one relevant aspect of the LGEEPA in this connection is that of civic participation in the planning of environmental policy programs and instruments, to such an extent that one principle of the LGEEPA, stated in Article 15, holds that authorities and citizens are jointly responsible for environment protection, not to

mention the chapter of the LGEEPA governing civic participation in environmental matters.

The authorities failed to enforce the above-mentioned provisions to the detriment of a society that is interested and involved in the case of the Lerma-Chapala and Santiago-Pacífico watershed, as is evident from all the activities in which organized society has participated in a highly proactive spirit, always striving to point out the problem, but even further, to make proposals for solving it. In illustration of this, civic groups have participated in all the forums relating to watershed issues, the meetings of the Watershed Council, consultations on the various watershed conservation, preservation, and restoration programs proposed by the authority, which never went beyond “good intentions” and whose innumerable drafts are now in the archives of the Minister of the Environment or the general and regional directors of the National Water Commission. This is evident from the events, programs, and proposals in which civil society has effectively participated with the sole aim of helping to save one of Mexico’s most polluted watersheds, a watershed that supplies water directly or indirectly to the entire population of the central part of the country. Thus, there has been a failure to effectively enforce the environmental law by providing for effective public participation in policy planning and implementation in Mexico, as provided by LGEEPA Article 18:

“The Federal Government shall provide for the participation of all social groups in the development of programs for the preservation and restoration of ecological balance and environmental protection, as set out in this Act and other applicable provisions.”

Secondly, there has been a failure to effectively enforce environmental instruments and policy in Mexico in terms of authorizations, or performance of works and actions to restore the watershed and Lake Chapala, considering the following items related to the facts we present here concerning programs, policies, and practices:

Regarding the aforementioned water and environmental policy instruments, we can mention three eras of management of the Lerma-Santiago-Pacífico watershed of which Lake Chapala forms a part:

a).- The era of conservation of the forest and water resources of the Lerma and Santiago Rivers (1934)

This era was characterized by concern for the forest resources associated with water production; as such, limitations were imposed on the use of forests found throughout the watershed, including those of the Santiago River.

b).- The era of limitations on water use (1957–1970). The limitations on the exploitation of groundwater established during this era are still in force today. These limitations were reinforced by the recent declaration on groundwater availability of 3 January 2008, which attests that the groundwater in the watershed made up of the Lerma and Santiago River aquifers is overexploited, causing a negative water balance.

c).- The era of sustainable water management (1990 to date)

This corresponds to a policy of conservation, preservation, restoration, and protection² of resources and habitat, in which water resources are managed within scenarios of deterioration and scarcity due to the severe environmental deterioration of the Lerma

² Cf. LGEEPA Article 3 paragraphs XIV, XVI.

and Santiago rivers. An indicator of this was the crisis affecting Lake Chapala due to pollution and water scarcity caused by systemic watershed management problems. The consequence has been a series of attempts by institutions and civil society to find solutions to this serious problem. As a reflection of these efforts, various instruments have been adopted with a view to placing limitations on water use in the watershed, the goal being to restore and establish the sustainability of the watershed (master plan, studies supporting the declaration of a regulated zone for the watershed, Regulatory Law to Article 27 of the Constitution, municipal protection decrees, etc.).

Thus, the authorities fail to enforce these provisions for the management of water resources when the National Water Commission and the water authority of the state of Jalisco (CEAS) announce their intention to build the Arcediano Dam on the Santiago River without first restoring ecological balance to the river, despite the environmental policy that is explicitly laid out in various legal instruments applicable to this watershed.

In particular, Semarnat is failing to enforce the provisions governing sustainable water use and aquatic ecosystems of LGEEPA Articles 88–91. It intends to build a dam to supply water to the Guadalajara metropolitan area through the Huentitán ravine, which is covered by a declaration of protection from the municipal government of Guadalajara establishing that the Arcediano area is intangible [sic], only to be used for research and monitoring, and incompatible with a dam such as the one that the authorities intend to build (Appendix XXVI, Water supply to the Guadalajara metropolitan area).

To make this point even stronger, the pollution of the Santiago River is so severe that the water in the river is not even recommended for industrial uses, let alone residential uses.

The authorities have failed to effectively enforce the law as regards compliance with, and enforcement of, the environmental laws:

In the Submitters' opinion, in the case of the Lerma-Chapala and Santiago-Pacífico watershed, there exists an "absence of authority" impeding the generation of acts of authority that are subject to being challenged before and struck down by administrative tribunals. Furthermore, there has been a failure to exercise the powers granted to the authorities by the LGEEPA, the National Waters Act, and other water-related provisions to enforce the laws of Mexico, in terms of the inspection and monitoring procedure as well as the revocation of water-related concessions and authorizations.

Indeed, under the Internal Regulation of Semarnat in both its current version and the version in force prior to revision, Semarnat exercises its water-related powers through the CNA. The CNA is a deconcentrated body of Semarnat and its responsibility is to oversee compliance with, and enforcement of, the National Waters Act in Mexico (Article 44 of the Internal Regulation of Semarnat). This being the case, the CNA must exercise its authority over water apportionment and use in Mexico. To date it has failed to do so. It has repeatedly hidden behind the Watershed Council as a means of evading its responsibility under the National Waters Act for enforcing the provisions governing water use and apportionment. This is evident from the replies given to two different petitions filed by the Fundación seeking to ascertain the act of authority that was being prepared in relation to water apportionment, and particularly water apportionment from Lake Chapala, in letters dated 26 November 2001, 11 February

and 14 November 2002, and 10 January 2003. To these the CNA replied evasively, washing its hands of the matter. When it saw fit to evade its responsibility, it said that the Watershed Council is not an authority, yet when an act of authority was requested, it said that the matter had been decided by the Watershed Council. In this way, it repeatedly and with impunity violated Article 4 of the Federal Administrative Procedure Act (*Ley Federal del Procedimiento Administrativo—LFPA*), applicable where the National Waters Act is silent on any matter and providing as follows:

“Administrative acts of a general nature, such as decrees, circulars, and the like, shall be published in the Official Gazette of the Federation in order for them to produce legal effects, and those of an individual nature shall be published in the same publication where the laws so prescribe.

Where established by laws, draft regulations, decrees, resolutions, and other administrative acts of a general nature, where these affect the public interest they shall be published in the Official Gazette of the Federation in order to give interested parties an opportunity to make observations on the measures proposed within the period provided by law for such purpose and, by right, within 60 days of publication.”

Clearly, in the specific case at hand, it is the first situation that applies. Apportioning water from the Lerma-Chapala-Santiago-Pacifico watershed would entail issuing a resolution of a general nature. This is our understanding of the matter given that its effects apply to an undetermined number of citizens. In the case at hand, five states of the Republic are at issue in addition to the population of the Federal District. Therefore, any such resolution takes on the characteristics of a provision of this nature.

Moreover, the resolution issued (if in fact there was one) would affect the public interest, since its purpose would be to apportion the rights to use and enjoy national waters from the Lerma-Chapala watershed, whereas Article 7 of the National Waters Act provides:

The following are declared matters of public utility: II. The protection, improvement, and conservation of watersheds, aquifers, river channels, lakes, and other nationally owned bodies of water, as well as water infiltration for aquifer recharge and water diversion from one watershed or hydrological region to another; and IV. Restoring the water balance to nationally owned surface water or groundwater, including limitations on extraction, usage prohibitions, reserves, and changes in water use for residential users.

Furthermore, Article 13 of the National Waters Act acknowledges the existence of the Watershed Councils in the following terms:

Article 13.- The Commission, on the advice of its technical council, shall establish watershed councils as coordinating and consensus building bodies between the Commission; federal, state or municipal agencies and entities, and representatives of users of the respective watersheds, with a mandate to formulate and implement programs and activities for better water administration, development of water-related infrastructure and corresponding services, and preservation of watershed resources.

The Commission shall, in conjunction with the users, within the purview of the watershed councils, determine any limitations arising from emergency, extreme shortage, overexploitation, or reserve. In these cases, residential use shall have priority.

Along these lines, it is clear that any putative resolution made by the Watershed Council and/or by a monitoring group (in the case at hand) formed within the Watershed Council is null and void pursuant to Article 5 of the LFPA, which is applicable where the National Waters Act is silent, since such a resolution would not fit the criteria or requirements for an administrative act set out in the LFPA, which stipulates in Article 3 that:

- I. **It must be issued by the competent body through a public servant and, where the said body is a collegial body, its issuance must conform to the formalities of the applicable law or decree.** In the case at hand, the body competent under the National Waters Act to issue the act is without question not the Lerma-Chapala Watershed Council, and therefore the Monitoring and Assessment Group, under the applicable law, has no legal capacity to issue a resolution of a general nature such as this resolution; therefore, its resolutions must be ratified, modify, or revoked by the Watershed Council.
- II. **It must have a purpose that can be the subject of an administrative act; determined or determinable, specific as to circumstances of time and place, and contemplated by law.** In the case at hand, it is clear that the purpose of the resolutions issued must have as a legal referent Article 27 of the Constitution, the National Waters Act, and the special coordination agreement for apportionment, use, and availability of the nationally owned surface waters within the Lerma-Chapala watershed. In this context, the purpose of the resolution issued is unlawful, since it was not issued in accordance with the applicable laws, and therefore violates the framework of the law.
- III. **It must serve the public interest as governed by the provisions under which it is issued, and may not pursue other separate ends.** In this instance, this requirement clearly is not met, since the actual apportionment of water from the Lerma-Santiago-Pacifico watershed under the agreement of 1992 does not prioritize residential uses, much less the conservation and restoration of Lake Chapala, as per the object of the aforementioned agreement and clauses 3, 6, and 8 of the coordination agreements of 1991, as well as Article 7 paragraphs II and IV of the National Waters Act.
- IV. **It must be given in writing with the handwritten signature of the issuing authority, except in those cases where the law authorizes another form.** In this case, this requirement is not met, since although the Watershed Council is a collegial body, the act does not emanate from it but rather from an auxiliary group. Therefore, there is no act of authority, and the National Water Commission has evaded the fulfillment of its responsibility to the detriment of the sustainability of one of the country's most strategic resources: water.
- V. **It must have a basis in law and fact.** This criterion is not met since in order to specify each and every resolution, reference had to be made to the legal framework that served as a basis for it; nor was the factual basis taken into account, in terms of the existence of Lake Chapala and the critical situation of deterioration, waste, overexploitation, and loss of biodiversity prevailing in the entire Lerma-Chapala-Santiago-Pacífico hydrological region.
- VI. ..
- VII. ..
- VIII. ..
- IX. ..
- X. **It must mention the body from which it emanates.** This requirement is not

met, since the Technical Support Group, or failing that the Watershed Council, are not authorities as defined by Article 4 of the National Waters Act: "Authority and administrative responsibility over nationally owned bodies of water and the public property from which they are inseparable is vested in the Federal Executive Branch, which shall exercise this power directly or through the Commission."

Taking this point further, Semarnat and the National Water Commission have utterly failed in their duties and have been insensitive to the problem of which the residents of Juanacatlán have constantly been complaining as a result of the pollution of the Santiago River and its health impacts. These entities have failed to enforce LGEEPA Article 133, which provides: **"The Ministry, with the participation of the Ministry of Health in those cases where required by other legal provisions, shall conduct systematic and ongoing monitoring of water quality to detect the presence of contaminants or excess organic waste, and shall take the appropriate measures."**

Along these lines, the environmental authority of Mexico has failed to enforce the environmental law as regards providing for civic participation in the design of environmental policy instruments in Mexico, as provided by LGEEPA Articles 1; 18; 4 paragraphs XVI, XIX, XX; 157, and 158 in relation to Article 1(h) of the North American Agreement on Environmental Cooperation.

Additionally, the Authority has failed to exercise the powers vested in it by the National Waters Act and the criteria set out in the LGEEPA for management and protection of aquatic ecosystems. The result has been a systematic absence of environmental law enforcement and, consequently, the material impossibility for the complainants to exercise the procedural guarantees for access to justice in regard to the legality of water-related acts of authority in Mexico, thereby additionally violating the aforementioned applicable provisions of the North American Agreement on Environmental Cooperation: Articles 1(g); 5(1)(b), (j), and (l); 5(2); 6(1); 6(2); 6(3)(b) and (c), and 7.

In conclusion, the facts addressed by this submission constitute a set of systematic failures by the competent authority to effectively enforce the National Waters Act in terms of the exercise of acts of authority. The consequence is an absence of legal acts that would allow for us, as the affected parties, to exercise our rights relating to the conservation, sustainable management, preservation, and sustainable enjoyment of natural resources; in the case at hand, this refers to the water in the Lerma-Chapala-Santiago-Pacifico watershed, the migratory birds using Lake Chapala as a habitat, and the possible disappearance of Lake Chapala if the Mexican authorities persist with this environmental policy and with their failure to enforce the water-related laws of Mexico.

VI. Fulfillment of the requirements of NAAEC Article 14(1)

We believe that this submission must be analyzed by the Secretariat since it meets the requirements of NAAEC Article 14(1):

- a) It is presented in writing in Spanish.
- b) It clearly identifies the Submitter.
- c) It provides sufficient information to allow the Secretariat to review it.
- d) It is aimed at promoting law enforcement and not at harassing industry.
- e) It indicates that the matter has been communicated in writing to the

relevant authorities of the Party and indicates the Party's responses.

- f) It is filed by civic associations established in the territory of a Party.

VI. Communication of the matter in writing to the competent authorities:

The narrative of the facts relating to enforcement of, and compliance with, the laws of Mexico shows that the citizens have repeatedly, on an individual and collective basis, submitted these matters to:

The National Water Commission (CNA).

The Federal Attorney for Environmental Protection (Profepa).

The Minister of the Environment of Mexico, Víctor Lichtinger.

The President of the Republic, Vicente Fox Quezada.

The LVII Congress of the Union.

The Governor of the State of Jalisco.

Indeed, the Fundación Cuenca Lerma-Chapala-Santiago-Pacífico, in view of the grave deterioration of this watershed, and in particular Lake Chapala, applied to the National Water Commission for the purpose of requesting the acts of authority concerning water apportionment from the watershed, as well as copies of the resolutions or decisions determining water apportionment throughout the watershed (documentary appendices, stamped received by the CNA, discussed in the facts section of this submission).

The Fundación submitted a document to the Regional Office of the National Water Commission dated 14 November 2001 at the meeting of the Watershed Council of Metepec, state of México, calling for an appropriate apportionment of national waters from the watershed, given that irrigation was being prioritized to the detriment of the human and conservation uses that should be assigned in order to restore Lake Chapala (documentary appendix).

Moreover, in 2001 the Fundación filed a citizen complaint concerning the severe deterioration of Lake Chapala and the Lerma-Chapala-Santiago-Pacífico watershed, which have now plunged this extremely important ecosystem into one of the gravest crises of its history. This citizen complaint, pursuant to the LGEEPA, has no binding effect and could only result in a relevant recommendation (documents discussed in the facts section).

VIII. Mexican authorities that have failed to enforce the environmental law: side agreement and Mexican law.

The authorities listed in the preceding section.

IX. Other evidence supporting the submission (Appendix XXVII)

Press clippings binder

Document titled, "Chapala and su ribera" (Chapala and its banks).

X. Petitions:

- 1. That the CEC allow this submission and initiate an investigation to corroborate the failure to enforce the environmental laws in the case of the Lerma-Santiago-Pacífico Hydrological Region, administratively composed of the Lerma-Chapala watershed and the Santiago-Pacífico watershed.**
- 2. That on the basis of Articles 14 and 15 of the North American Agreement on**

Environmental Cooperation, and in reference to the failure to effectively enforce Mexican environmental law, a factual record be prepared with a view to corroborating the assertions contained in this submission.

As a corollary, the undersigned Mexican organizations wish to emphasize that at various meetings and in various submissions we have applied to this body for help in saving Chapala. As of today, we still have evidence of an ambiguous position concerning the sustainable management of one of the country's most important watersheds. Today once again, we place in your hands the water that supplies 23 million Mexicans, the health of the residents of Juanacatlán and Salto, Jalisco, the business of saving Chapala from extinction, and the business of saving the migratory bird habitat found throughout the watershed and in the severely endangered Lake Chapala itself. Let's give Chapala a chance.

Sincerely,

RAQUEL GUTIÉRREZ NAJERA MANUEL VILLAGOMEZ RODRIGUEZ
President, IDEA A.C., President of the Fundación

LUIS AGUIRRE.
President, Sociedad Amigos del Lago A.C.

ESTELA CERVANTES RODRIGO SALDAÑA
Residents of Juanacatlán

MA. GUADALUPE LARA
Comité Pro defensa de Arcediano, A.C.

ALFREDO MENCHACA PADILLA
Amigos de la Barranca, A.C.

**JAIME ELOY
PRESIDENT, CIMA, A.C.**

**José de Jesús Gutiérrez Rodríguez
PRESIDENT, RED CIUDADANA, A.C.**

**OSCAR CORDERO VIRAMONTES
AMCRESP, A.C. SECC. OCCIDENTE**

**Guadalajara, Jalisco, 15 May 2003
"For a culture of water"**