Secretariat of the Commission for Environmental Cooperation
Determination pursuant to Article 15(1)

Submitter:	Pro San Luis Ecológico, A.C.
Represented by:	Mario Martínez Ramos
Party:	United Mexican States
Revised Submission:	4 May 2007
Original Submission:	5 February 2007
Date of this determination:	15 July 2009
Submission no.:	**SEM-07-001 (*Minera San Xavier*)**

I. EXECUTIVE SUMMARY

1. Articles 14 and 15 of the North American Agreement on Environmental Cooperation (the "NAAEC" or the "Agreement") set out a process allowing any person or nongovernmental organization to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. The Secretariat of the Commission for Environmental Cooperation (the "Secretariat") initially considers submissions to determine whether they meet the criteria contained in NAAEC Article 14(1). When the Secretariat finds that a submission meets these criteria, it then determines, pursuant to the provisions of NAAEC Article 14(2), whether the submission merits a response from the concerned Party. In light of any response from the concerned Party, and in accordance with NAAEC and the *Guidelines for Submissions and Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the "Guidelines"), the Secretariat may notify the Council that the matter warrants the development of a Factual Record, providing its reasons for such recommendation in accordance with Article 15(1). Where the Secretariat decides to the contrary, it then proceeds no further with the submission.

2. On 5 February 2007, Mario Martínez Ramos, representing Pro San Luis Ecológico, A.C., (the "Submitter"), a Mexican organization, filed a submission (the "original Submission") with the Secretariat asserting that Mexico was failing to effectively enforce its environmental law in connection with an authorization issued to the company Minera San Xavier, S.A. de C.V. ("Minera San Xavier") for an open pit mining project located in Cerro de San Pedro, San Luis Potosí (the "Project"). The Submitter asserts that, by issuing an environmental impact authorization for the project in question, the Mexican Environmental Impact and Risk Office (*Dirección General de Impacto y Riesgo Ambiental*—DGIRA) violated a judicial decision that ordered an expanded analysis of the mining project. It further maintains that despite the fact that the environmental impact statement (EIS) anticipated significant impact in the environs of Cerro de San Pedro, the

Project was authorized without the criteria, restrictions, and principles contemplated in the environmental law quoted by the Submitter having been observed by Mexico.

3. On 4 April 2007, the Secretariat determined that the Submission did not conform to certain criteria set out in Article 14(1), and so informed the Submitter, providing 30 days to file a revised Submission. On 4 May 2007, the Submitter filed a revised Submission (the "revised Submission") including additional information related to alleged remedies pursued by the Submitter as well as copies of correspondence with the authorities concerning the matter raised in the Submission.

4. On 29 June 2007, the Secretariat found that the Submission met the requirements of Article 14(1) and requested a response from Mexico pursuant to Article 14(2). On 25 September 2007, Mexico filed its Response, stating that certain information was confidential pursuant to NAAEC Article 39. On 5 June 2008, Mexico filed a summary for public disclosure of confidential information contained in the Response. Upon request from the Secretariat, on 24 March 2009 Mexico provided an update of the pending proceedings notified in its Response.

5. After analyzing the Submission in light of Mexico's Response, **the Secretariat determines that Submission SEM-07-001 does not warrant the development of a Factual Record**. In accordance with Section 9.6 of the Guidelines, the Secretariat explains below its reasons for this determination (the "Determination").

II. SUMMARY OF THE SUBMISSION

6. The Submitter asserts that Mexico is failing to effectively enforce its environmental law by granting an environmental impact authorization to Minera San Xavier company for an open mine project, underway at the time of the Determination, to exploit a gold and silver deposit located in the municipality of Cerro de San Pedro, San Luis Potosí (the "Project").[1]

7. The Submitter maintains that by authorizing the Project, Mexico is failing to effectively enforce its environmental law. The Secretariat perused the laws cited by the Submitter, including the fourth paragraph of Article 4 of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*); Articles 3 paragraph XX, 15 paragraph XI, 28, 30, 35, 79 paragraph II, 98, 113, 145, 146, and 181 of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA); Articles 5, 9, 16 paragraph IV, and 20 of the Regulation to the LGEEPA respecting Environmental Impact (RIA); Article 36 of the Regulation to the LGEEPA respecting Hazardous Waste; Mexican Official Standard NOM-059-ECOL-1994, determining species and subspecies of terrestrial and aquatic flora and fauna that are endangered, threatened, rare, and subject to special protection, and establishing specifications for protection of species (the "NOM-059"); the administrative order approving the land use plan for San Luis Potosí and its

[1] Original Submission, Appendix 4, p. 15.

metropolitan area (the "Land Use Plan" or POSLP); and, an order restricting water extraction from the San Luis Potosí valley aquifer (the "Restriction Order").[2]

8. The following sections summarize the assertions contained in the original Submission of 5 February 2007 and the revised Submission of 4 May 2007.

A. Assertions concerning the alleged illegality of the 2006 environmental impact authorization

9. On 1 August 1997, Minera San Xavier filed the environmental impact statement ("EIS") for the Project and requested a land use change from the National Institute of Ecology (*Instituto Nacional de Ecología*—"INE").[3] On 26 February 1999, INE issued an environmental impact authorization for a land use change for the territory of the Project ("AIA-1999").[4] The Submitter pursued various legal actions against AIA-1999. On 5 October 2005, the Federal Tax and Administrative Court (*Tribunal Federal de Justicia Fiscal y Administrativa*—"TFJFA") overturned AIA-1999 and ordered DGIRA to issue a new decision on land use change and environmental impact observing the guidelines set out in its ruling,[5] in particular on the re-examination of the applicable EIS requirements and category,[6] the description and interpretation of the POSLP, and consideration of NOM-059.[7]

10. Pursuant to the TFJFA ruling, on 10 April 2006, DGIRA issued a new decision in which it again granted environmental impact authorization for the land use change ("AIA-2006").

11. The Submitter states that the TFJFA ordered DGIRA to "decide on the application for authorization" in accordance with the guidelines of the court's decision, but that during the assessment process, DGIRA allegedly improperly requested additional information in order to amend omissions in the EIS.[8] The Submitter asserts that the TFJFA did not order DGIRA to "rectify omissions in the application" and that because of that, DGIRA failed

[2] A restriction order for an indefinite time on groundwater pumping in the region known as Valle de San Luis Potosí, SLP.

[3] Currently, the former responsibilities of INE in relation to the environmental impact assessment process are within the purview of the Environmental Impact and Risk Branch (*Dirección General de Impacto y Riesgo Ambiental*—DGIRA) of the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat).

[4] Original Submission, Appendix 1: Doc. DOO.P.100.0330 issued by INE, granting environmental impact authorization to Minera San Xavier, S.A. de C.V., p. 1.

[5] Original Submission, p. 5.

[6] Mexican environmental law in force at that time included three categories for the preparation of an environmental impact statement: general, intermediate and specific, the latter being the one ordered by the TFJFA.

[7] Response, Exhibit 6: Doc. S.G.P.A./DGIRA.DG.0567/06 issued by DGIRA, granting environmental impact authorization to Minera San Xavier, S.A. de C.V., pp. 45, 50, 77, and 78.

[8] Original Submission, p. 13.

to comply with the TFJFA ruling.[9] In the Submitter's opinion, DGIRA "violated" the TFJFA's decision by not observing: i) restrictions imposed by the Land Use Plan;[10] ii) protection of species listed under NOM-059; and iii) requirements regarding the category of environmental impact statement applicable to the Project.[11] The Submitter concluded that the illegality of the Project was *res judicata*[12] and that DGIRA should therefore simply have denied authorization for the Project to Minera San Xavier.

12. According to the Submitter, DGIRA failed to enforce NOM-059, a standard applicable to the conservation of species identified on the Project site, by carrying out "a series of maneuvers with flora and fauna species and specimens designed to mislead us into thinking that there are no species in the municipality of Cerro de San Pedro that are either endangered or protected by the legal provisions of our country."[13]

13. The Submission further asserts that the Project does not observe land use restrictions imposed by the POSLP.[14] The Submitter attached information about a complaint (*recurso de queja*) it filed on July 5, 2006 with the TFJFA against AIA-2006. In the complaint, the Submitter states that AIA-2006 was issued in violation of a TFJFA decision ordering DGIRA to decide the Minera San Xavier application in accordance with the guidelines set forth in the court's decision, and directing DGIRA among other things to ensure compliance with the POSLP.[15] The Submitter argues that by issuing AIA-2006, DGIRA violated LGEEPA Article 35 paragraph III(a), since it did not observe the restrictions imposed by the POSLP, which designates the Project site as a "restoration area" and prohibits industrial activities in that area. In this regard, the Submitter maintains that DGIRA, incorrectly, justified the Project authorization by means of an interpretation of the POSLP which, according to the Submitter, concluded that "the mining industry is not an industry but a mining activity". DGIRA reasoned that "industry" is characterized as a secondary activity, while "mining" is rather a primary activity, not restricted by a POSLP.[16] In the documentation provided, the Submitter observes that Mexican law adopts the term "mining industry" in referring to activities that are today being carried out by Minera San Xavier in Cerro de San Pedro,[17] and adds that DGIRA adopted a radical interpretation of the TFJFA's decision — on a matter that had already been decided by the court — in order to justify issuing AIA-2006 in support of the Project.[18]

[9] *Ibid.*, p. 8.
[10] Revised Submission, p. 8.
[11] Revised Submission, p. 8 and Appendix 3: Sentence on case 170/00-05-02-9/634/01-PL, October 5, 2005, TFJFA.
[12] *Ibid.*, p. 3.
[13] Revised Submission, p. 12, and Appendix 14: Complaint of 3 July 2006 filed by Pro San Luis Ecológico, A.C. with the TFJFA, p. 32.
[14] Revised Submission, p. 11.
[15] Revised Submission, Appendix 14: Complaint of 3 July 2006 filed by Pro San Luis Ecológico, A.C. with the TFJFA, p. 9.
[16] Revised Submission, p. 11 and Appendix 4: Doc. S.G.P.A./DGIRA.DG.0567/06 issued by DGIRA, granting environmental impact authorization to Minera San Xavier, S.A. de C.V., p. 51.
[17] Revised Submission, Appendix 14: Complaint of 3 July 2006 filed by Pro San Luis Ecológico, A.C. with the TFJFA, pp. 28-31.
[18] Original Submission, p. 5.

B. Assertions concerning the alleged inconsistencies in the information submitted in the EIS and irreversible harm to the environment

14. According to the Submitter, there are inconsistencies between the quantities of explosives indicated in AIA-1999 and the volumes requested from the Ministry of National Defense (*Secretaría de la Defensa Nacional*).[19] This data, the Submitter asserts, "serves as a basis for quantifying the magnitude of the environmental impacts," and thus changing the data alters the expected impacts in the EIS.[20] The Submitter further states that the siting of the Project's tailings pond violates provisions of the RIA that establish a minimum distance for such facilities.

15. As to the water demand stated by Minera San Xavier, the Submitter asserts that the water balance presented by AIA-2006 does not correspond to the data contained in the EIS[21] and notes that, if the Project were to be carried out, harm would be caused to the San Luis Potosí valley aquifer by virtue of the horizontal flow of pollutants.[22]

16. Regarding the Project's other alleged environmental impacts, the revised Submission refers to some included in the EIS, about which the authorities had knowledge when they issued the 1999 and 2006 environmental impact authorizations. The Submitter states that the Project will have an adverse impact on the aquifer, due to the water demands of the Project,[23] and affirms that the Restriction Order limited extraction of the water from the San Luis Potosí aquifer.[24] According to the Submitter, the EIS also indicates that the landscape of Cerro de San Pedro is to be modified within a period of eight years, since the Project will cause the disappearance of a kilometer of mountainous terrain and will leave a crater approximately 200 m deep and tailings piles 65 m high.[25] According to the Submission, waste piles of 79 and 117 million tons will be located at a distance of 9 km from the state capital in an area surrounded by communities.[26] The Submission cites Article 36 of the Regulation to the LGEEPA respecting Hazardous Waste ("RRP") which imposes restrictions on the siting of tailings ponds upstream of potentially affected human settlements or bodies of water within a radius of 25 km.[27] The Submitter moreover asserts that the EIS predicts adverse atmospheric impacts due to machinery emissions and dust caused by the movement of equipment and materials, which will affect air quality, particularly in the city of San Luis Potosí.[28] The Submitter states that

[19] Authorization for the use of explosives is under the authority of the Ministry of the National Defense (*Secretaría de la Defensa Nacional*), pursuant to the Federal Law of Firearms and Explosives (*Ley Federal de Armas de Fuego y Explosivos*).
[20] *Ibid.*, p. 5, and revised Submission, p. 13.
[21] Original Submission, p. 13.
[22] *Ibid.*, pp.13-14.
[23] Revised Submission, pp. 4-5.
[24] *Ibid.*, p. 5.
[25] *Ibid.*, p.4.
[26] *Ibid.*, pp. 2 and 4. The Submitter indicates that the sizes of the piles will be 79 and 117 million tons of leachable cyanide-containing tailings and non-leachable sulfur-containing tailings, respectively.
[27] Revised Submission, p. 3.
[28] *Ibid.*, p. 5.

the EIS further predicts adverse impact on species located on the Project site, some of which are listed in NOM-059.

17. The Submitter asserts that by virtue of the alleged irregular environmental impact assessment and the issuance of AIA-2006 in favor of the Project, the provisions of environmental law cited in the Submission were not enforced, nor were the so-called "precautionary" and "sustainable development" principles observed.[29]

III. SUMMARY OF THE RESPONSE

18. In accordance with NAAEC Article 14(3), Mexico filed its response with the Secretariat on 25 September 2007.

19. In its response, Mexico notified the Secretariat of the existence of an administrative proceeding and a judicial proceeding before the Mexican courts and because of these requested that the Secretariat, pursuant to Article 14(3)(a) of the Agreement, proceed no further with its review of the Submission.[30] Mexico alleges that the matter has previously been the subject of an administrative proceeding[31] and that domestic remedies are available to the Submitter in relation to the matter raised in the Submission.[32]

20. As to the assertion concerning the illegality of AIA-2006, Mexico states that in July 2007, the TFJFA ruled that DGIRA had issued the authorization in conformity with the guidelines laid down by the court[33], and thus that the authorization was "no longer subject to analysis at that judicial instance".[34] Mexico adds that "the Submitter's argument that the admissible decision was to overturn the environmental impact authorization is groundless and contrary to the resolution of the judiciary".[35] Likewise, Mexico notes that not only was the assertion of violations of law during the environmental analysis of the Project determined to be groundless by the Mexican courts, it will also be the subject of an upcoming judicial proceeding before the TFJFA, as the Submitter's complaint is scheduled to be heard again in a new proceeding.[36] Mexico adds that the Mexican courts stated that the AIA-2006 "expanded the technical and legal analysis to assess fundamental environmental aspects and to identify the relevance of the Project's environmental impacts" and this serves to confirm the legal validity of AIA-2006.[37]

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[29] *Ibid.*, p. 2.
[30] Response, p. 1.
[31] *Ibid.*, pp. 6-7.
[32] *Ibid.*, pp. 7-12.
[33] *Ibid.*, p. 16.
[34] Decision on complaint in file 170/00-05-02-9/634/01-PL-05-04-QC of 4 July 2007, issued by the plenum of the upper chamber (*Sala Superior*) of the TFJFA. *In*: Response., p. 13.
[35] Response, p. 15.
[36] *Ibid.*, pp. 13 and 16.
[37] *Ibid.*, p. 16.

21. Mexico did not explicitly respond to assertions related to the Project's alleged violation of restrictions imposed by the POSLP. Nonetheless, since the Secretariat has treated information enclosed with a submission or a response, as part of the respective document, it also examined a copy of AIA-2006 enclosed in Mexico's Response, and which sets out DGIRA's reasoning for authorizing the Project in accordance with the POSLP.

22. AIA-2006 notes that while "the POSLP establishes guidelines and criteria for programming and planning and does not derive in land use limitations or restrictions in the Municipality of Cerro de San Pedro",[38] the POSLP "is mandatory for the public and private sectors" [39], and that DGIRA is required to "observe the environmental aspects of the POSLP".[40]

23. Furthermore, the Appendix of the Response states that DGIRA based part of its analysis on the North American Industry Classification System ("NAICS"), the Mining Act (*Ley Minera*), and the POSLP. In this regard, AIA-2006 emphasized that *mining* activities as opposed to industrial activities: "are construed as consisting of the extractive phase, not the processing phase,"[41] this latter phase corresponding to industry; that mining activity is classified in an economic sector of primary activities, not linked to industry;[42] and, that the POSLP distinguishes "mining sector activities" from those corresponding to industrial sectors.[43] AIA-2006 maintained that the Project's mining activities are not restricted by the POSLP, since the POSLP only corresponds to industrial activities.

24. As to the assertion that the principles of sustainable development and precaution were ignored by AIA-2006, Mexico responds that the former was observed during the environmental impact assessment while the latter, emanating from the Rio Declaration, is not binding because it has not been incorporated into the LGEEPA.[44]

25. Concerning the assertion that the Project was authorized despite the existence of adverse environmental impacts documented in the EIS, Mexico responds that AIA-2006 required measures designed to reduce and control the environmental impacts,[45] in accordance with the LGEEPA.[46] Mexico further states that the environmental impact assessment procedure adequately examined the impacts arising from the use of explosives,[47] the operation of the tailings pond,[48] and those relating to protected species and groundwater

[38] Response, Exhibit 6: Doc. S.G.P.A./DGIRA.DG.0567/06 issued by DGIRA, granting environmental impact authorization to Minera San Xavier, S.A. de C.V., p. 51.
[39] *Ibid*, p. 55.
[40] *Idem.*
[41] *Ibid.*, p. 67.
[42] *Ibid.*, p. 70.
[43] *Ibid.*, p. 68.
[44] Response, pp. 22-23.
[45] *Ibid.*, p. 18.
[46] *Ibid.*, p. 17.
[47] *Ibid.*, pp. 23-25.
[48] *Ibid.*, pp. 25-28.

use.[49] In short, Mexico's Response documents its efforts to enforce the environmental laws at issue.

IV. REASONING OF THE SECRETARIAT

A. Consideration of Mexico's Notification of Pending Proceedings under Article 14(3)

26. NAAEC Article 14(3)(a) provides:

> 3. The Party shall advise the Secretariat within 30 days or, in exceptional circumstances and on notification to the Secretariat, within 60 days of delivery of the request
>
> (a) whether the matter is the subject of a pending judicial or administrative proceeding, in which case the Secretariat shall proceed no further; […][50]

27. . The Secretariat recalls NAAEC Article 45(3)(a) which defines judicial or administrative proceedings for the purposes of Article 14(3) as:

> [A] domestic judicial, quasi-judicial or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order […][51]

28. As noted above, on 10 April 2006 DGIRA issued a new decision (AIA-2006) in which it authorized the Project. In AIA-2006 DGIRA found that, according to the results of the Project's environmental impact assessment, the Project did not contravene any environmental law provisions, and that it "[did] not contribute to one or more species being declared threatened or endangered"[52]. LGEEPA Article 35 requires denial of an environmental impact authorization when:

> a) there is contravention of provisions of this Law, its regulations, official Mexican standards and other applicable regulations;
> b) the works or activities may cause one or more species to be listed as threatened or endangered or when one of these categories of species is affected;
> c) false information related to the environmental impacts of the works or activities is provided by the applicants. [53]

[49] *Ibid.*, pp. 35-40.
[50] NAAEC Article 14(3)(a).
[51] NAAEC Article 45(3)(a).
[52] Submission, Appendix 4, p. 118.
[53] LGEEPA Article 35.

29. The Submitter filed a complaint with the TFJFA against this second authorization (the AIA-2006) because DGIRA, in allegedly acting outside the guidelines set by the court in issuing the environmental impact authorization for the Project, allegedly also failed to adhere strictly to the TFJFA ruling.[54]

30. On 5 July 2007, the TFJFA dismissed the complaint, finding that the matter had to be reconsidered in a new hearing.[55] In view of this decision, the Submitter filed an amparo action (*recurso de amparo*)[56] before a multi-judge court.[57] As of the date of filing of the Response, according to Mexico, both the complaint, which is being heard in a new hearing, and the amparo action, were pending. Before issuing this Determination, the Secretariat requested Mexico to provide an update of the proceedings notified in its Response. On March 24, 2009 Mexico informed the Secretariat that:

> Through a sentence issued on April 20, 2008, the Tenth District Administrative Court of the Federal District resolved the *amparo* in favor of Pro San Luís Ecológico, A.C.
>
> Contesting the court sentence, on May 20, 2008, […], representing the third party "Minera San Xavier, S.A. de C.V.," filed a "review recourse" which was transmitted to the Tenth Collegiate Administrative Tribunal of the First Circuit and was recorded under the file number 215/2008.
>
> On January 2, 2009 the Tenth Collegiate Administrative Tribunal of the First Circuit, declared it had no authority to review the issue and turned to the Ninth Collegiate Administrative Tribunal of the First Circuit, since the latter has already issued resolutions in connection with this matter.[58]

31. Mexico maintains that the matter raised in the Submission is the subject of current pending proceedings, and therefore requests that the Secretariat proceed no further in accordance with NAAEC Article 14(3)(a).

32. Before proceeding to address Mexico's NAAEC 14(3)(a) Notification, it is important to note that there is no binding precedent that the Secretariat must follow arising from its previous Determinations.[59] Each Submission presents the Secretariat with a new set of considerations, which must be analyzed in accordance with NAAEC and the Guidelines. The Secretariat reiterates that it is not a court, the Submissions on Enforcement Matters ("SEM") process is not adversarial, and that the primary function of the Secretariat with regard to Articles 14 and 15 is to neutrally and efficiently facilitate and administer the process provided for in NAAEC and the Guidelines.

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[54] Submission, Appendix 14: Complaint of 3 July 2006 filed by Pro San Luis Ecológico, A.C. with the TFJFA.

[55] Response, Exhibit 1: Decision on complaint in file 170/00-05-02-9/634/01-PL-05-04-QC of 4 July 2007, issued by the plenum of the upper chamber (*Sala Superior*) of the TFJFA.

[56] The *amparo* is a constitutional action under articles 103 and 107 of the Constitution that —among other things — can be brought by individuals challenging laws or acts that allegedly violate constitutional guarantees. The Mexican Amparo Law (*Ley de Amparo*) implements this.

[57] Indirect *amparo* action of 1 August 2007 filed by Pro San Luis Ecológico, A.C.

[58] Update provided by Mexico on the proceedings related to Submission SEM-07-001 (*Minera San Xavier*), received by the Secretariat on 24 March, 2009 through e-mail.

[59] *See* SEM-97-001 (*BC Hydro*) Notification pursuant to Article 15(1) (27 April 1998), p. 8.

33. The above notwithstanding, the Secretariat must attempt to ensure a modicum of predictability and thus fairness in its practice with regard to Articles 14 and 15, for example, by taking into account lessons learned from previous Determinations and Factual Records[60]. The Secretariat, in analyzing whether notification of a pending proceeding under NAAEC Article 14(3)(a) would require the Secretariat to proceed no further, has, in this and previous cases, considered factors such as:

- whether the proceeding in question qualifies as a judicial or administrative proceeding in accordance with Article 45(3)(a);
- whether it is being pursued *by the Party* in a timely fashion and in accordance with its law, and is also related to the same matter addressed in the submission; and,
- whether the proceeding invoked by the Party in its Response appears to have the potential to resolve the matter(s) raised in the submission.[61]

34. The Secretariat has also noted that key factors in deciding to proceed no further when proceedings fall within the scope of Article 45(3)(a) are the risks of duplication of efforts and interference with pending litigation.[62]

35. The Secretariat considers that the threshold of whether judicial or administrative proceedings are pending should be construed narrowly to give full effect to the object and purpose of the NAAEC,[63] and more particularly, to Article 14(3). Only those proceedings notified pursuant to Article 14(3) and categorized in Article 45(3)(a) may preclude the Secretariat from proceeding further.

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[60] *See* regarding the Secretariat's practice with regard to a Party's Article 14(3) notification, for example, Council Resolution 08-03 (23 June 2008), recognizing the Secretariat's determination that certain matters should be excluded from the Factual Record regarding Submission SEM-04-005 (*Coal-Fired Power Plants*) due to the existence of pending proceedings pursuant to Article 14(3)(a), available at: http://www.cec.org/files/pdf/sem/04-5-RES_en.pdf, last visited 22 June 2009.

[61] The Secretariat recalls that Article 14(3)(a) notifications have always been thoroughly considered by the Secretariat, and "[i]n view of the commitment to the principle of transparency pervading the NAAEC, the Secretariat cannot construe the Agreement as permitting it to base its determination that it is before the situation contemplated by Article 14(3)(a), and that it shall proceed no further with a Submission, on the mere assertion of a Party to that effect." SEM-01-001 (*Cytrar II*), Determination pursuant to Article 14(3) of the North American Agreement on Environmental Cooperation (13 June 2001). *Cfr*. SEM-97-001 (*BC Hydro*), Article 15(1) Notification (27 April 1998); SEM-03-003 (*Lake Chapala II*), Article 15(1) Notification (18 May 2005); SEM-04-005 (*Coal-fired Power Plants*), Article 15(1) Notification (5 December 2005); SEM-05-002 (*Coronado Islands*), Article 15(1) Notification (18 January 2007).

[62] The Secretariat has observed that "[c]ivil litigation is a complex undertaking governed by an immensely refined body of rules, procedures and practices," and that the Factual Record process "may unwittingly intrude on one or more of the litigant's strategic considerations." There is thus a risk that proceeding in such circumstances could result in inadvertent interference with ongoing proceedings. See SEM-00-004 (*BC Logging*) Notification pursuant to Article 15(1) (27 July 2001); and SEM-96-003 (*Oldman River I*), Determination pursuant to Article 15(1) (2 April 1997).

[63] "The Secretariat is given direction in various parts of the Guidelines and NAAEC to interpret and apply the provisions of Articles 14 and 15 of NAAEC in light of NAAEC's object and purpose" SEM-07-005 (*Drilling Waste in Cunduacán*) Determination pursuant to article 14(3) (8 de April 2009) pp. 7-8.

36. The proceedings notified by Mexico in this matter were initiated *by the Submitter and not Mexico*. They therefore, in part, fall outside of the definition of pending proceedings in Article 45(3)(a). The proceedings notified by Mexico in this matter are however being pursued in accordance with Mexican law, and can be characterized as administrative proceedings. The Secretariat must in any event, take seriously Mexico's notification of pending proceedings which deal with the same material subject matter as the Submission, even though these do not fit the definition in NAAEC Article 45(3)(a). The domestic recourse being pursued by the Submitter seeks the nullification of AIA-2006, which is at the heart of the Submission. In such a circumstance, there is a possibility that preparation of a Factual Record could —inadvertently— interfere with the pending proceedings initiated by the Submitter. Guideline 7.5 indeed admonishes the Secretariat to consider the possibility that proceeding (beyond Article 14(1)) in a situation where a submitter is also pursuing private remedies, could risk duplicating or interfering with such proceedings. Here, although the Submission has moved beyond Article 14(1), similar concerns exist.

37. However, only out of precaution and by exception have matters outside of Article 45(3)(a), such as criminal proceedings, been considered as requiring the Secretariat to proceed no further, and then only as long as they remain "active and ongoing".[64]

38. In considering Mexico's Notification of pending proceedings (as requiring the Secretariat to proceed no further), the Secretariat must now consider whether there are factors such as potential interference and duplication of efforts are factors with SEM-07-001. The Secretariat is also informed by its previous practice in analogous circumstances.

39. A brief analysis of the concept of *lis pendens* may be useful in elucidating the idea of interference with and duplication of efforts in pending proceedings.[65]

1. Interference and the doctrine of *lis pendens*

40. Under public international law *lis pendens* may arise when "proceedings involving the same cause of action and between the same parties are brought in the courts of different States[…]".[66] The Court of Justice of the European Communities has ruled that:

> Lis Pendens within the meaning of that article[67] arises where a party brings an action before a court in a contracting state for the rescission or discharge of an

[64] SEM-00-004 (*BC Logging*) Notification pursuant to article 15(1) (July 27 2001) p. 17.
[65] Where appropriate, the Secretariat may consider comparable practice in public international law in order to inform its application and interpretation of Articles 14 and 15. See the Secretariat's determination on Submission SEM-007-05 (*Drilling Waste in Cunduacán*), *at* paras. 23 and 24, available at: < http://www.cec.org/files/pdf/sem/07-5-DET14_3__en.pdf >, last visited on 22 June 2009.
[66] Article 27 of the Convention on Jurisdiction and the Recongnition and Enforcement of Judgements in Civil and Commercial Matters. Official Journal of the European Union, 21 December 2007.
[67] Article 21 of the Convention of 27 September 1968 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters: "Where proceedings involving the same cause of action and between the same

> international sales contract whilst an action by the other party to enforce the same contract is pending before a court in another contracting state[68]

41. *Lis pendens* can be categorized as:

> a. conflicts between courts and tribunals of general personal and subject-matter jurisdiction;
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> b. conflicts between courts and tribunals of general personal and subject matter jurisdiction and universal courts and tribunals of specialized competence;
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> c. conflicts between courts and tribunals of general personal and subject-matter jurisdiction and regional courts and tribunals with unlimited jurisdiction ratione materiae;
>
> d. conflicts between courts and tribunals of general personal and subject-matter jurisdiction and regional courts and tribunals of specialized competence.[69]

42. Concerns about parallel and conflicting outcomes have been expressed by the former President of the International Court of Justice:

> [T]he dangers for international law, resulting from the increasing number of judicial institutions in the modern world, should be stressed. […] [I]t would be most regrettable if, on specific problems, different courts were to take divergent positions.[70]

43. The Arbitral Tribunal[71] in the Ireland-UK *MOX Plant Case* considered the possibility of parallel and conflicting outcomes between itself and the European Court of Justice ("ECJ") on certain matters before both it and the ECJ, and decided that:

> "further proceedings in the case shall remain suspended until the European Court of Justice has given judgment or the Tribunal decides otherwise."[72]

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parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. […] Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court."

[68] Gubisch Maschinenfabrik KG v Giulio Palumbo. Case Law No.C-144/86. Court of Justice of the European Communities.

[69] *The Competing Jurisdictions of International Courts and Tribunals*. Letelier, Ricardo - Reseña de libro. Estudios Internacionales - Vol. Nbr. 38-150, July 2005.

[70] Gilbert Guillaume, *The Future of International Judicial Institutions*, ICLQ, Vol. 44, 1995, 848, pp. 861-862. In: *Lis Pendens Arbitralis*. Francisco Ortega Vicuña. Available at: http://www.arbitration-icca.org/media/0/12224290630120/lis_pendens_arbitralis.pdf, last visited 24 June 2009.

[71] Arbitral Tribunal Constituted Pursuant to Article 287, and Article 1 of Annex VII, of the United Nations Convention of the Law of the Sea for the Dispute Concerning the MOX Plant, International Movement of Radioactive Materials, and the Protection of the Marine Environment of the Irish Sea.

[72] Ireland-UK, *The MOX Plant Case*, Tribunal Order No. 4 (14 November 2003), available at: http://www.pca-cpa.org/showpage.asp?pag_id=1148, last visited 22 June 2009.

44. Although potential interference with ongoing proceedings is something the Secretariat must be wary of when it issues Determinations, similarly to courts and tribunals when they are seized of matters before other courts and tribunals (i.e. *lis pendens* maters), the Secretariat is, as stated above, not a court or tribunal, and does not issue any judgments or take any actions which have legal effect. Secretariat Determinations are not binding on the Parties or submitters, and Factual Records are not rulings or judicial opinions on an asserted failure of effective enforcement of environmental law. Therefore, it is not evident how the Secretariat's proceeding with review of a matter under Article 14, or recommending a Factual Record pursuant to Article 15 could actually "interfere" with ongoing domestic proceedings in the same way that conflicting court judgments could.

45. The above considerations notwithstanding, the Secretariat has historically undertaken to avoid actions which could cause inadvertent non-judicial interference. The Secretariat must take into account the purpose of Guideline 7.5(a) and exercise caution in proceeding where the submitter is pursuing private remedies regarding matters raised in the submission.[73]

2. Duplication of efforts

46. Another key question in the context of whether to proceed no further when pending proceedings exist is whether the development of a Factual Record in such circumstances might cause a duplication of administrative or judicial efforts. It is clear that if a Party would be actively seeking the kind of voluntary compliance, remedies, and administrative orders listed in Article 45(3)(a), or the examples of enforcement provided in Article 5(1), and, in developing a factual record, the Secretariat were to require the Party to undertake actions[74] with regard to the same matters raised in a submission, duplication of enforcement efforts might arise: the Secretariat could in such a case also unwittingly lead to commitment of additional resources or diversion of existing resources.

47. In the case of Minera San Xavier, the company in question is defending the legality of an administrative decision before the Mexican courts. Even if the administrative authorities that issued the decision were involved in this process as defendants, there would be little possibility to duplicate efforts because *the Party* is not "seeking" compliance with environmental law, viz. Article 45(3)(a). As mentioned above, the pending proceedings notified by Mexico do not fall within the definition of Article 45(3)(a), and the

[73] It should be noted that the Secretariat, in reviewing its practice with regard to ongoing judicial or administrative proceedings, has also found no evidence that the recommendation or actual development of a Factual Record has ever obstructed or interfered with an ongoing judicial or administrative proceeding, even in situations when the concerned Party notified the Secretariat of the existence of such proceedings in its Response and the Secretariat nonetheless felt compelled to recommend a Factual Record. Neither have any of the Parties ever stated that development of a Factual Record where pending proceedings have been notified, caused such interference.

[74] *Cfr.* NAAEC Art 21 (1) (a) "On request of the Council or the Secretariat, each Party shall, in accordance with its law, provide such information as the Council or the Secretariat may require, including:

(a) promptly making available any information in its possession required for the preparation of a report or factual record, including compliance and enforcement data […]"

Secretariat as a consequence cannot, as Mexico requests, determine to proceed no further with SEM-07-001 pursuant to Article 14(3) as a formal procedural matter.

48. The Submitter is though pursuing private remedies before Mexican courts regarding matters identical to those raised in the Submission. The necessary information for development of a Factual Record is confidential, i.e. not "publicly available' in accordance with Article 15(4)(a), and is before a Mexican court[75] considering action on the same assertions as those in the Submission.

49. The Secretariat bases its reasoning for this Determination, not on NAAEC Article 14(3), which for the grounds stated above, does not apply to the pending proceedings in this case. Rather, the Secretariat is exercising its discretionary powers under NAAEC Article 15(1) in having considered both the Submission and Response of the Party. The Secretariat concludes that a preponderance of the specific assertions raised by the Submitter do not warrant development of a Factual Record. In doing so, the Secretariat also considered certain other assertions that might have warranted development of a Factual Record in other circumstances. It is important to note in that connection, that the motivations for this Determination apply only to the facts before the Secretariat in SEM-07-001, and are not binding on future Determinations.

B. A Factual Record is not warranted with respect to the assertions on the EIS category, NOM-059, water extraction, use of explosives and location of the tailings pond

Listed Species under NOM-59

50. The Submitter asserts that AIA-2006 manipulates information on flora and fauna species to conclude that there are no endangered or protected species under NOM-059 in the areas selected for the Project location.[76] NOM-059 lists species falling under several protection categories and specifies their respective protection requirements.[77] Among these provisions, NOM-059 provides that species "may be extracted from their natural environment" for restoration purposes, provided that reporting and prior authorization for taking listed species is obtained.[78] Mexico responded that AIA-2006 identified five cactacean species with protection status under NOM-059[79] and that it conditioned the authorization on implementation of programs in order to rescue and relocate listed flora and fauna.[80] Mexico also reported that the Project proponent operates a plant nursery and a botanical garden where a number of species (included those listed in NOM-059) are

[75] NAAEC Article 15(4)(a) notes that the Secretariat may consider relevant information that is "publicly available".
[76] Revised Submission, p. 12, and Appendix 14: Complaint of 3 July 2006 filed by Pro San Luis Ecológico, A.C. with the TFJFA, p. 32.
[77] Guideline 1 NOM-059-ECOL-1994.
[78] Guideline 6.2 NOM-059-ECOL-1994.
[79] Response, p. 32.
[80] Response, pp. 29-30.

being protected.[81] Mexico maintains that it observed a policy aimed at preventing environmental impacts in issuing AIA-2006 and that conditions imposed upon the Project were consistent with the objectives in Guideline 6.2 of NOM-059, which is "ensuring 96% survival of individuals".[82]

51. The Secretariat considers that a Factual Record is not warranted with regard to assertions as to species under NOM-59, and conditions included in AIA-2006 also appear to satisfy one of the Submitter's central concerns: identification and conservation of listed species under NOM-059.

Water Balance

52. The Submitter also asserts that the water balance of the Project was not established in AIA-2006. LGEEPA Article 30 requires that an environmental impact assessment shall contain a description of possible effects considering the elements that are present in particular ecosystems. The Submitter contends that the Project violated the Restriction Order (*Decreto de Veda*) that restricted additional water extraction from the Valle de San Luis aquifer. The Restriction Order restricts issuing water concessions and limits availability to existing permits. Mexico contends that the Project will not modify the existing water balance in the Valle de San Luis aquifer, because water will be obtained through concessions previously granted to third parties, and assigned by contract to Minera San Xavier.[83] Mexico concludes that there will be no additional water extraction from the Valle de San Luis aquifer and that there is no cumulative impact to the water extraction processes in the valley.[84]

53. The Secretariat finds no open questions that warrant the development of a Factual Record with regard to the alleged failure to provide a water balance and the restrictions to water extraction in the Valle de San Luis aquifer. Mexico's Response leaves no questions open as to the assertions regarding water balance.

The EIS Category

54. The Submitter maintains that during the authorization process of AIA-2006, DGIRA required additional information from the Project developer to correct defects in AIA-1999 and, more specifically, to conform the EIS to the applicable category for the size of the Project. Article 9 of the RIA – in force at that moment – classified an EIS into three categories: general, intermediate and specific, and states that intermediate and specific EIS are filed when project characteristics require more precise information. The Submitter contends that at the time of the environmental impact authorization application, the nature of the project merited a Specific EIS and that instead, Minera San Xavier filed a General EIS. The information provided in the annexes to the Response, reflects that during the process to authorize AIA-2006, Mexico requested and obtained additional

[81] Response, p. 31.
[82] Response, p. 35.
[83] Response, p. 36.
[84] Response, p. 36.

information from the Project proponent, administrative units within Semarnat and from the National Commission for the Knowledge and Use of Biodiversity (*Comisión Nacional para el Conocimiento y Uso de la Biodiversidad*—"Conabio")[85] in order to obtain information for the assessment of the environmental impacts of the Project and to improve the quality and quantity of the information originally included in the EIS.

55. While there could be a legal question with regard to curing an EIS by DGIRA when such a process is not explicitly provided for, the Secretariat considers that there are no relevant facts beyond those which have been brought to light by the Submission and Response, and there are no central open questions in DGIRA's information request process which would warrant development of a Factual Record.

Volume of Explosives

56. The Submitter asserts that there are inconsistencies in the volumes of explosives authorized by the Ministry of Defense and those authorized by DGIRA. They contend that the volume of explosives is an indication of the magnitude of environmental impacts caused by the Project. Mexico reports that the Ministry of Defense granted permit for 5,000 kg of explosives (from October 2 to December 31, 2004) and not 25,000 kg of explosives *per day*, as asserted by the Submitter. Mexico states that even if Minera San Xavier would have requested more explosives from the Ministry of Defense than those eventually authorized by DGIRA, the company is only authorized to use explosives in the amounts provided by environmental authorities and this set of circumstances cannot be construed as a failure to effectively enforce environmental laws.

57. The Secretariat considers that the Submitter's assertion regarding alleged inconsistencies among authorized volumes of explosives has been adequately addressed by Mexico in its Response and determines it can proceed no further with this particular assertion.

Location of the Project

58. The Submitter asserts that the Project is located at approximately 8 km from the city of San Luis Potosí, violating RRP Article 36 that limits the location of tailing ponds. The second paragraph of RRP Article 36 in force in 1999 provides that:

> Tailing ponds may be located where tailings are generated, except where upstream to communities and receiving bodies [i.e. aquifer] that may be affected are located at a distance of 25 km.[86]

59. Mexico responds that the Project is actually located at 20 km from the city of San Luis Potosí[87] and contends that AIA-2006 included a detailed risk assessment that defined risk mitigation actions incorporated in the environmental impact authorization. Thus, even if

[85] Response, Exhibit 6: Doc. S.G.P.A./DGIRA.DG.0567/06 issued by DGIRA, granting environmental impact authorization to Minera San Xavier, S.A. de C.V., pp. 8-10.
[86] RRP Article 36, second paragraph.
[87] Response, p. 25.

the tailings pond is not located at the minimal distance required by RRP, the risk assessment found no risk to the nearby communities. Mexico adds that current development of standards applicable to tailings are now oriented towards consideration of site location and tailings hazardousness.[88] Finally, Mexico describes conditions imposed in AIA-2006 which included a monitoring and contingency program for cyanide and heavy metals management.[89]

60. The Secretariat considers that the Response addresses the Submitter's concerns relative to the location and hazardousness of the Project's tailing ponds and finds no open matters which warrant the development of a Factual Record for this particular assertion.

C. The POSLP and impacts to soil

61. In accordance with NAAEC Article 15(1), the Secretariat considers there are open questions regarding the POSLP and impacts to soil and environmental degradation allegedly occurring as a result of the Project's authorization.

62. The Secretariat notes that the assertions made in the Submission are coincident with those made in the complaint (*recurso de queja*) filed by the Submitter on July 5, 2006, particularly, those related to alleged DGIRA non-compliance with several legal provisions, including principles of Mexican law when evaluating the environmental impacts to Cerro de San Pedro and with the POSLP. Information with respect to Submitter assertions on the environmental impact authorization of the Minera San Xavier project, is *also* under consideration by the Mexican courts, according to Mexico's Response.

63. With respect to the Submitter's assertion that the Project will cause irreparable harm to the Cerro de San Pedro environment, the Secretariat considers that AIA-2006 recognizes that the current environmental degradation of Cerro de San Pedro is a factor for authorizing the Project,[90] and this leaves open questions not fully addressed by Mexico's Response. The Secretariat notes that DGIRA analyzes the environmental quality of a natural protected area located in the surroundings of the Project site to support its views on the current degradation level at Cerro de San Pedro. The Secretariat considers that *ad perpetuam* soil impact in the Project site and the conclusion under the AIA-2006 that the Project improves the environmental conditions of Cerro de San Pedro, might, in other circumstances, merit inclusion in a Factual Record. Both of these matters also raise questions regarding how precautionary and sustainable development principles were observed when issuing AIA-2006. In this regard, even though Mexico contends that LGEEPA has not incorporated the precautionary principle, reference made to it by

[88] Mexico refers to NOM-141-SEMARNAT-2003 published in the Official Journal of the Federation on 13 September 2004. Response, p. 27.
[89] Response, p. 27.
[90] Response, Exhibit 6: Doc. S.G.P.A./DGIRA.DG.0567/06 issued by DGIRA, granting environmental impact authorization to Minera San Xavier, S.A. de C.V., pp. 105-108.

DGIRA in AIA-2006 as mandatory[91] clearly suggests some applicability to the environmental impact assessment process.

64. The Secretariat notes that there are open questions on how an open-mining project, considering long-term soil impacts, affects environmental restoration efforts. However, such matters are currently before Mexican courts, and information likely to be crucial for developing a Factual Record, even if one were warranted, is not publicly available.

65. The Secretariat also considered the Submitter's assertion of an alleged violation committed by DGIRA in authorizing the Project without having observed the restrictions imposed by the POSLP. A Factual Record, were one to be warranted, could include information concerning: the use of the NAICS in the assessment of the Project's processing components;[92] DGIRA's issuance of reference guides referring to industrial components of the mining projects;[93] the use of the terms *extractive industry* and *mining industry* in documents prepared by DGIRA for authorization of the Project;[94] and the conclusion by DGIRA that the implementation of environmental programs for the Project will meet the purposes of the government of San Luis Potosí stated in the POSLP.[95]

66. The Submitter asserts that DGIRA violated a court ruling which imposed measures requiring the issuance of a new environmental impact permit, considering, among other factors, the POSLP. Analysis included in AIA-2006 shows that: DGIRA conducted a review of the legal status and enforceability of the POSLP; determined that the POSLP is a binding administrative act; and concluded that the POSLP did not impose limitations on the feasibility of the Project in Cerro de San Pedro. The Submitter questions DGIRA's rationale when considering the POSLP's restrictions on mining activities in both SEM-07-001 and in a complaint filed before TFJFA.

67. The matters in the preceding paragraph are questions about the interpretation of a court ruling under Mexican law, and those matters are not issues for the CEC Secretariat. What the CEC Secretariat can do in a Factual Record is to examine assertions regarding alleged failures to effectively enforce environmental law in accordance with NAAEC and the

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[91] DGIRA "has complied with the precautionary principle, to which the authority responsible of conducting the environmental impact assessment shall invariably observe" Response, Exhibit 6: Doc. S.G.P.A./DGIRA.DG.0567/06 issued by DGIRA, granting environmental impact authorization to Minera San Xavier, S.A. de C.V., p. 100.

[92] For example, in the heap leaching, cyanidation, chemical precipitation, rotary furnace smelting, and liquid concentrate retrieval processes. Response, Exhibit 6: Doc. S.G.P.A./DGIRA.DG.0567/06 issued by DGIRA, granting environmental impact authorization to Minera San Xavier, S.A. de C.V., pp. 15-29.

[93] *Guía para elaborar la manifestación de impacto ambiental modalidad regional de proyectos mineros*, Semarnat, Dirección General de Impacto y Riesgo Ambiental, online at <http://www.semarnat.gob.mx/tramitesyservicios/informaciondetramites/Impacto%20ambiental/GUIAS/REGIONALES/GUIAS/RMIA(minero).doc> (viewed 13 February 2009).

[94] M. Logsdon, K. Hagelstein, and T. Mudder, *The Management of Cyanide in Gold Extraction*, International Council on Metals and the Environment, online at <http://www.icmm.com/page/1616/the-management-of-cyanide-in-gold-extraction> (viewed 13 February 2009).

[95] Response, Exhibit 6: Doc. S.G.P.A./DGIRA.DG.0567/06 issued by DGIRA, granting environmental impact authorization to Minera San Xavier, S.A. de C.V., p. 73.

Guidelines, and consider facts related to those assertions. The Submitter's legal assertions regarding the POSLP apparently concern the dissatisfaction of the Submitter with how an administrative body interprets a court mandate, which is an issue beyond the scope of a Factual Record.

68. Development of a Factual Record does not entail a legal restatement or interpretation, application, or revision of how domestic courts and/or a branch of government interpret domestic environmental laws. The latter are the activities of Mexican State branches including the judiciary. The Submitter is in essence asking the Secretariat for a legal restatement, interpretation, and application of AIA-2006, which is something the Secretariat has no authority to do.

69. In light of the foregoing, the Secretariat determines that the assertions regarding the POSLP do not warrant the development of a Factual Record.

D. Conclusion

70. Finally, the Secretariat notes that, in accordance with NAAEC and the Guidelines, factors motivating this Determination include: 1) the existence of ongoing proceedings pursued by the Submitter and regarding the same matters raised in the Submission; 2) regarding the latter, a consequential lack of publicly available information and a concomitant concern about the efficient use of resources for development of a Factual Record[96]; 3) a paucity of central open questions warranting development of a Factual Record; and, 4) the possibility of inadvertent duplication of efforts in a situation where the assertions in the Submission before the Secretariat are simultaneously before the concerned Party's courts.[97]

V. DETERMINATION

71. Without opining on any legitimacy the assertions expressed by the Submitter may have with regard to the Project, and on the basis of the reasons set out above, the Secretariat determines in accordance with Article 15(1) of NAAEC, that a Factual Record is not warranted for submission SEM-07-001 (*Minera San Xavier*). In accordance with section 9.6 of the Guidelines, the Submitter and the Council of the Commission for Environmental Cooperation are hereby notified that the process relating to this Submission is terminated.

[96] The existence of private remedies for a number of the Submitter's assertions which have not yet been pursued has also been considered by the Secretariat. *Supra*, note 32.

[97] The accessibility of environmental information has been a factor in developing a Factual Record and the types of information that a Factual Record could include. *See*, for example, SEM-04-007 (*Quebec Autos*), Notification pursuant to Article 15(1) (15 May 2005), p. 14; SEM-04-005 (*Coal-Fired Power Plants*) Notification pursuant to Article 15(1) (5 December 2005), p. 2 ; and SEM-03-003 (*Lake Chapala II*) Notification pursuant to Article 15(1) (May 18 2005), p. 19.

(original signed)
per: Dane Ratliff, Director, Submissions on Enforcement Matters Unit

and

(original signed)
Paolo Solano, Legal Officer

ccp: Enrique Lendo, Semarnat
David McGovern, Environment Canada
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Submitter