



MAY 30 2014

Dr. Irasema Coronado  
Executive Director  
Secretariat of the Commission for Environmental Cooperation  
393, rue St-Jacques Ouest, bureau 200  
Montréal (Québec)  
H2Y 1N9

Dear Dr. Coronado :

I am writing with regard to recent Notifications issued by the Secretariat concerning the *BC Salmon Farms* submission (SEM-12-001), the "Notification to the Submitters and to Council regarding proceedings notified by Canada Issued May 7, 2014" and the "Article 15(1) Notification to Council that Development of a Factual Record is Warranted issued May 12, 2014."

After reviewing the above mentioned Notifications, I must once again register Canada's objection with the Secretariat's interpretation of the *North American Agreement on Environmental Cooperation* (the "Agreement" or the "NAAEC") with regard to its mandate in the Submission on Enforcement Matters (SEM) process. As we have made clear in a previous letter to you regarding the same concerns (our letter on the *Alberta Tailings Ponds* submission (SEM-10-002) dated 14 May 2014), our position is that the NAAEC does not give the Secretariat the authority to interpret a notice given by a Party that a matter is the subject of a pending proceeding, in accordance with NAAEC Article 14(3). Further, in Canada's view, the Secretariat cannot attribute to itself powers to interpret a Party's domestic law.

As it is our duty under the Agreement, we provided a letter on 4 October 2013 advising the Secretariat of pending legal proceedings, including a lawsuit filed by one of the submitters, on the matters raised in the submission. We also delivered, upon the Secretariat's request, further information on the status and nature of the two legal proceedings, in our letter dated 17 December 2013.

In its 7 May 2014 Notification, the Secretariat indicates that, based on its analysis of the pending legal proceedings, it would cease its consideration of the submission's assertions concerning section 35 of the *Fisheries Act*. The Secretariat also claims that since Canada has not provided a substantive response to the submission, it would be justified in continuing to consider whether a factual record is warranted on Canada's enforcement of *Fisheries Act* section 36. This intention was confirmed by the Secretariat's 15 May 2014 Notification to the Council, which recommends the preparation of a factual record.

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Notwithstanding the actions the Secretariat should have taken upon being advised of this proceeding, I can again confirm that the matters at issue in the KAFN lawsuit and the Morton action in judicial review, and those raised in the *BC Salmon Farms* submission are the same. Furthermore, I can confirm that both proceedings remain open.

With respect to the status of the KAFN case, we note that in the 7 May 2014 Notification, the Secretariat concludes that this lawsuit is not pending based its own opinion concerning the likelihood that the case will be pursued by the plaintiffs. I would like to clarify that it is not within the Secretariat's mandate to offer an opinion or to speculate on future actions to be taken by plaintiffs in a pending legal proceeding.

Furthermore, once a Party has advised the Secretariat of pending legal proceedings, the SEM process does not require or contemplate a Party providing further response to a submission's assertions, with the understanding that any further steps in the submission process would interfere with or duplicate pending legal proceedings. The NAAEC does explicitly state that once the Secretariat has been advised of pending legal proceedings by a Party that it "shall proceed no further." Moreover, pursuant to Section 9.6 of the *Guidelines for the Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC*, the Secretariat should promptly notify the Council and the Submitter, in writing, that the submission process is terminated.

For these reasons, I would like to make very clear that we do not intend to engage in or recognize as valid under the NAAEC any further consideration of this submission. Furthermore, we would request once again that the Secretariat proceed with notifying the Council and the Submitters that the *BC Salmon Farms* submission (SEM-12-001) has been terminated, in accordance with NAAEC Article 14(3).

Sincerely,

A handwritten signature in blue ink that reads "D. McDougall". The signature is written in a cursive, flowing style.

Dan McDougall  
Assistant Deputy Minister  
International Affairs Branch

cc: Enrique Lendo, Alternate Representative to the CEC Council for Mexico  
Jane Nishida, Alternate Representative to the CEC Council for the United States