

Secretariat of the Commission for Environmental Cooperation

Determination in accordance with Article 14(1) of the North American Agreement on Environmental Cooperation

Submitters: Movimiento Ambientalista del Noreste
Party: United Mexican States
Submission received on: 11 July 2016
Date of the determination: 22 August 2016
Submission no.: SEM-16-002 (*Monterrey VI Aqueduct*)

I. INTRODUCTION

1. Articles 14 and 15 of the North American Agreement on Environmental Cooperation (“NAAEC” or the “Agreement”) provide for a process allowing any person or non-governmental organization residing or established in Canada, Mexico or the United States to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. As an initial step, the Commission’s Secretariat (“the Secretariat” of the “CEC”)¹ considers such submissions in accordance with the requirements specified in NAAEC Article 14(1). Should the Secretariat deem that a submission satisfies said requirements, it then determines whether, under the provisions of NAAEC Article 14(2), it is warranted to request a response from the Party concerned. In light of said Party’s response—if any—and in accordance with the NAAEC, the Secretariat determines whether the matter warrants the preparation of a factual record. If so, it then notifies the CEC Council and explains the reasoning for its recommendation in adherence with Article 15(1); should the Secretariat determine instead that the preparation of a factual record is not warranted, it shall proceed no further with the submission.²
2. On 11 July 2016, the environmental group Movimiento Ambientalista del Noreste (the “Submitter”),³ filed a submission with the Secretariat under NAAEC Article 14. The Submitter asserts that authorities of the federal and state governments are failing to effectively enforce environmental law with respect to the protection of ecological balance and biodiversity in northeastern Mexico.
3. The Submitter asserts that the federal government is supporting the project known as Monterrey VI (hereafter the “project” or “Monterrey VI”). Said project, also promoted

¹ The Commission for Environmental Cooperation (CEC) was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), an instrument signed by Canada, Mexico, and the United States (the “Parties”) and published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) on 21 December 1993. The constituent bodies of the CEC are its Council, Secretariat and Joint Public Advisory Committee (JPAC).

² For detailed information on the various stages of the submission process, as well as on the Secretariat’s determinations and factual records, please consult the page dealing with submissions on effective enforcement of environmental law, at the CEC website: <<http://www.cec.org/submissions>>.

³ The submitter originally requested the confidentiality of its name pursuant to NAAEC Article 11(8). On 17 August 2016 the Submitter authorized the Secretariat release of its name.

by the state government of Nuevo León, proposes to construct an aqueduct to transfer waters from the Pánuco River, in the state of Veracruz, to Nuevo León, in order to supply water to the Monterrey metropolitan area.⁴ The Submitter observes that Mexico is a signatory to international treaties which prohibit the transfer of water resources between different basins.⁵ The Submitter argues moreover that the realization of the project will cause grave environmental damages.⁶

4. The Submitter affirms that the Monterrey VI project will affect the water supply, ways of life and availability of natural resources of indigenous and peasant communities in San Luis Potosí, Tamaulipas and Veracruz;⁷ that the project is unnecessary as the city of Monterrey will be enjoy sufficient water until 2028 and indeed, should it implement alternative measures, until 2050;⁸ that the authorization granted by the National Water Commission (*Comisión Nacional del Agua—Conagua*) to the water supply utility in the capital of Nuevo León, i.e., the decentralized public institution Monterrey Water and Drainage Services (*Servicios de Agua y Drenaje de Monterrey—SADM*), is not valid without the endorsement of the basin councils (*consejos de cuenca*);⁹ that the complaint filed with the Federal Attorney General (*Procuraduría General de la República—PGR*) against the execution of the Monterrey VI project was ignored;¹⁰ that no opportunities for public consultations were organized;¹¹ that the Pánuco River Basin, the source of the proposed water transfers, is one of the most polluted basins in Mexico;¹² and that the Monterrey VI project's environmental impact statement (MIA-Monterrey VI) ignores technical and scientific information, as well as minimizes the effects on ecosystems and populations.¹³
5. The Submitter asserts that Mexico is failing to effectively enforce the following provisions: Article 4 of the Political Constitution of the United Mexican States (the "Constitution");¹⁴ Articles 1, 2, 28 and 54 of the Federal Environmental Liability Act (*Ley Federal de Responsabilidad Ambiental—LFRA*);¹⁵ Article 2 section VII of the Law Creating the Decentralized Public Institution Monterrey Water and Drainage Services (*Ley que crea la Institución Pública Descentralizada Servicios de Agua y Drenaje de Monterrey*); and Article 14.1.b of the Convention on Biological Diversity.¹⁶
6. In light of the analysis of submission SEM-16-002 (*Monterrey VI Aqueduct*) presented below, the Secretariat determines that the submission does not entirely satisfy the admissibility criteria specified in Article 14(1) of the Agreement. It hereby notifies the Submitters of this fact, in accordance with paragraph 6.1 of the *Guidelines for*

⁴ SEM-16-002 (*Monterrey VI Aqueduct*), Article 14(1) Submission, 11 July 2016 [submission] at 1.

⁵ *Ibid.* at 1 and 3.

⁶ *Ibid.* at 1.

⁷ *Ibid.* at 5.

⁸ *Ibid.* at 3 and 4.

⁹ *Ibid.* at 3.

¹⁰ *Ibid.* at 2 and 6.

¹¹ *Ibid.* at 2.

¹² *Ibid.* at 4.

¹³ *Ibid.* at 5.

¹⁴ *Ibid.* at 2.

¹⁵ *Idem.*

¹⁶ *Idem.*

Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (the “Guidelines”).

7. Under paragraph 6.2 of the Guidelines, the Submitter may file a revised submission within 60 working days of the date of the present determination. Should the Secretariat not receive a revised submission by **16 November 2016**, it will proceed no further with submission SEM-16-002 (*Monterrey VI Aqueduct*).

II. ANALYSIS

8. NAAEC Article 14 authorizes the Secretariat to consider submissions from any person or nongovernmental organization asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. As the Secretariat has stated in previous Article 14(1) determinations, Article 14 is not intended to be an “insurmountable screening device” to submitters.¹⁷ The Secretariat examined the present submission with this perspective in mind.

A Opening paragraph of Article 14(1)

9. The opening sentence of Article 14(1) authorizes the Secretariat to consider submissions “from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law.” The submission includes the Submitter’s name, address and contact information. There is no information in the submission to suggest that the Submitter is part of the government or under its direction.
10. Regarding whether the submission raises matters that are actually occurring, the Secretariat believes that the submission’s assertions meet the requirement that the matter at issue concern a current situation.¹⁸ The alleged enforcement failures raised by the Submitter in relation to the Monterrey VI project are ongoing—according to the Submitter—and, with the matter of transfers of water resources between hydrological basins, they threaten the ecological balance, biodiversity and availability of natural resources in the states of Veracruz, San Luis Potosí, Tamaulipas and Nuevo León.
11. Concerning whether the legal provisions cited in the submission qualify as environmental law in the terms of NAAEC Article 45(2) and whether the submission’s assertions refer to enforcement failures subject to examination under the submissions process, the Secretariat’s analysis follows below.

1) The environmental law at issue

12. In analyzing the present submission’s admissibility, the entire definition of “environmental law,” as per Article 45(2) of the Agreement, must be considered.¹⁹

¹⁷ See: SEM-97-005 (*Biodiversity*), Article 14(1) Determination, 26 May 1998; and SEM-98-003 (*Great Lakes*), Article 14(1)(2) Determination, 8 September 1999.

¹⁸ NAAEC, *supra* note 1, Article 14(1):

The Secretariat may consider a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law [...] (emphasis added).

¹⁹ NAAEC Article 45(2) defines the term “environmental law” as follows:

“For purposes of Article 14(1) and Part Five:

13. In examining submission SEM-16-002 (*Monterrey VI Aqueduct*) in light of said definition, the Secretariat finds that in certain cases the provisions cited by the Submitter qualify as environmental law, but not in all cases. Consequently, clarifications from the Submitter are necessary. Moreover, in relation to some of the provisions cited in the submission, more specific assertions and information are required before said provisions may be considered in the submissions process.

i. Political Constitution of the United Mexican States

14. Submission SEM-16-002 (*Monterrey VI Aqueduct*) cites the human rights enshrined in Articles 1, 4, 8, 14, 16, 17 and 133 of the Constitution.
15. Concerning Article 1 of the Constitution,²⁰ the Secretariat has previously taken the view that said provision recognizes the human rights of every person in the territory of the United Mexican States;²¹ that it enshrines the *pro homine* principle in the enforcement of norms related to human rights²²; and establishes the Mexican State's obligation to promote human rights,²³ such that Article 1 may serve to guide the Secretariat in its analysis under Article 14 of the NAAEC. The provisions in Article 1 related to the abolition of slavery and to non-discrimination are beyond the ambit of the CEC's mandate and are not considered in its analysis.²⁴
16. Article 4 of the Constitution establishes the right to a healthy environment, water and water sanitation and it may be considered when complements the analysis of other provisions cited in SEM-16-002 and concerns an issue of effective enforcement of the environmental law in question. However, the Secretariat's analysis is strictly limited to paragraphs five and six of Article 4.²⁵

(a) 'environmental law' means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through

- (i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,
- (ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or
- (iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas

in the Party's territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(b) For greater certainty, the term 'environmental law' does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

(c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

²⁰ See: SEM-15-002 (*Management of Analog TV Waste*), Article 14(1) Determination, 22 September 2015 at 5.

²¹ Constitution, Article 1, paragraph one.

²² *Ibid.*, paragraph two:

Norms in relation to human rights shall be interpreted in accordance with this Constitution and with the relevant international treaties in such a fashion as to always accord persons with the broadest protection.

²³ *Ibid.*, paragraph three.

²⁴ *Ibid.*, paragraphs four and five.

²⁵ See: SEM-06-006 (*Los Remedios National Park*), Article 14(1) Determination, 19 January 2007 at 4-5.

17. Regarding Articles 8, 14, 16, 17 and 133, these provisions may not be considered in the Secretariat's analysis as, following the definition of environmental law established in NAAEC Article 45(2), they do not have as their primary purpose "the protection of the environment, or the prevention of a danger to human life or health."

ii. The Federal Environmental Liability Act

18. The submission cites Articles 1, 2, 28 and 54 of the Federal Environmental Liability Act (*Ley Federal de Responsabilidad Ambiental—LFRA*).
19. Regarding LFRA Articles 1 and 2, the Secretariat concludes, as it has done in previous NAAEC Article 14(1) determinations,²⁶ that those provisions which refer to the criteria governing this law's enforcement,²⁷ its object²⁸ and the definitions thereto,²⁹ although they serve to orient the Secretariat when examining a submission, may not themselves be considered as environmental law, as they do not prescribe specific obligations which can be effectively enforced. In the absence thereof, they may not be subject to analysis under the NAAEC submissions process.
20. Concerning LFRA Article 28,³⁰ which establishes who has legal standing to bring an environmental liability suit, the Secretariat determines that it has the primary purpose of

²⁶ See: SEM-06-001 (*Ex Hacienda El Hospital*), Article 14(1)(2) Determination, 17 May 2006.

²⁷ LFRA Article 1 reads as follows:

This Law regulates environmental liability arising from damages to the environment, as well as reparations and compensation thereto, when required, adjudicated through the federal judicial proceedings established under Article 17 of the Constitution, alternative dispute resolution mechanisms, administrative proceedings and proceedings applicable to the commission of crimes against the environment and environmental management. The provisions of this legislation derive from the regulations of Article 4 of the Constitution and concern for public order and the social interest. They have as their object the protection, preservation and restoration of the environment and ecological balance, the guaranteeing of the human right to a healthy environment for the development and well-being of all persons, as well as the liability arising from environmental damage and degradation. The environmental liability regime recognizes that damage caused to the environment is distinct from property damage suffered by the owners of goods and natural resources. It recognizes that sustainable national development must consider economic, social and environmental values. The purpose of the judicial proceeding established in this Title is to determine environmental liability, without prejudice to proceedings for determining other forms of liability, such as property damage, and administrative or criminal liability.

²⁸ *Idem*.

²⁹ LFRA Article 2: "For the purposes of this Law, the following definitions shall apply, in addition to those established in the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*) and other environmental laws and international treaties to which Mexico is a Party. What is meant by: [...]".

³⁰ LFRA Article 28 establishes the following:

The legal prerogative and legitimate interest to act and bring legal proceedings on environmental liability, reparations and compensation for damages to the environment and the payment of fines, as well as concerning the benefits specified in the present Title, shall be recognized in respect of the following parties: I. Natural persons residing in communities adjacent to damages done to the environment; II. Non-profit Mexican private legal persons whose corporate purpose is environmental protection in general or protection of specific elements of the environment when acting on behalf of an inhabitant of the communities specified in section I; III. The Federation acting through the Public Prosecutor's Office; and IV. The public prosecutors or institutions exercising environmental protection functions in the states and the Federal District within their respective territorial jurisdictions, in conjunction with the Public Prosecutor's Office. The legal persons cited in section II of the present article shall accredit their status as legally constituted bodies with at least three years standing prior to bringing a suit for environmental damages. In addition, they must satisfy the requirements of the Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*).

protecting the environment or preventing a danger to human life since it provides the right to claim environmental liability, reparation and compensation arising from environmental damages and thus, it may be considered in the Secretariat's analysis. Regarding the LFRA Article 54 paragraph one,³¹ which establishes the right of any person to file a complaint with the Public Prosecutor (*Ministerio Público*) concerning a crime against the environment, the Secretariat considers that as is, it does not fit the definition of environmental law as it stands as a procedural norm that needs to be articulated with other provisions cited in a submission. The Secretariat also notes that, guided by article 1 of the LFRA,³² a legal action under LFRA may be triggered only after an actual environmental damage occurs.

21. The Secretariat finds that LFRA Article 28 relates to legal standing to bring an environmental liability suit while LFRA Article 54 provides the right to complaint an environmental offense before the public prosecutor. The Secretariat may consider the provisions in question if a revised submission asserts the existence of an actual environmental damage due to the Monterrey VI project execution and if actions under LFRA Articles 28 and 54 have been exercised.

iii. Law creating the Decentralized Public Institution “Monterrey Water and Drainage Services” (SADM)

22. The Secretariat finds that Article 2 section VII, cited by the Submitter, does not exist in this law and shall therefore not be subject to further analysis. The Submitter may indicate the correct provision in a revised submission.

iv. Convention on Biological Diversity

23. The Secretariat reads the submission as attempting to assert that Article 14.1.b of the Convention on Biological Diversity³³ was either not done or not adequately carried out. Article 14.1.b of the Convention on Biological Diversity, establishes the following:
 1. Each Contracting Party, as far as possible and as appropriate, shall: [...]
 - b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account [...] a) [w]ith a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures.³⁴
24. It is apparent from the submission that the Submitter is raising the issue of the environmental impact assessment process for the project in question, and not the development of an environmental assessment process for programs and policies. The Secretariat, however, needs additional information on the alleged deficiencies of the environmental impact assessment concerning the Monterrey VI project before determining whether the submission meets the NAAEC eligibility criteria. For example,

Furthermore, the parties specified in sections I and II shall enjoy the legal prerogative and legitimate interest to demand payment of costs incurred during actions brought to establish environmental liability.

³¹ Under LFRA Article 54, paragraph one: “Any person cognizant of the commission of a crime against the environment may make a direct complaint to the Public Prosecutor.”

³² LFRA, *supra* note 27, Article 1.

³³ Convention on Biological Diversity (CBD), published in DOF, 7 May 1993.

³⁴ See: CBD, Articles 14.1.b and 14.1.a.

the Submitter could cite in a revised submission the environmental law pertaining to the environmental impact assessment process and why it believes the Monterrey VI process did not comply with this requirement.

2) Assertions on failures to effectively enforce environmental law

25. Following the analysis of the environmental law at issue, the Secretariat considers the following assertions made by the Submitter with respect to the negative environmental impacts that Monterrey VI will allegedly have. The Secretariat determines that although the submission lists these impacts the Submitter does not specifically assert failures in the effective enforcement of environmental law in relation to the project's impacts. Therefore, the Secretariat finds that a revised submission is necessary. The Secretariat's determination is based on the following analysis:

i. Risks of harm to the ecological balance and biodiversity

26. The Submitter asserts that the project will have a negative impact on ecological balance and biodiversity in northeastern Mexico.³⁵ According to the Submitter, in addition to the effects in the state of Nuevo León, the project would also affect the "Huastecas de la Sierra Madre Oriental" ecosystem, which encompasses territory in the states of San Luis Potosí, Tamaulipas and Veracruz.³⁶ The submission does not specify whether the area in question is located within any other protected area under municipal, state or federal jurisdiction. The Submitter should clarify whether any protected areas exist in the project's proposed development zone. Furthermore, in relation to this assertion, the Submitter must identify the environmental laws that the Party is failing to effectively enforce.

ii. Environmental damage from the transfer of water resources between basins

27. First of all, the Submitter asserts that the alleged transfer of water resources between basins resulting from the Monterrey VI project will cause grave environmental damages and, should it be carried out, will affect the Monterrey metropolitan area as well as areas downriver from the Pánuco river basin.³⁷ Moreover, the Submitter affirms that the transfer of water resources between basins is prohibited under international treaties to which Mexico is a signatory.³⁸

28. The Secretariat believes that the assertion on environmental damage from water transfers may be examined under the submissions process; however, a revised submission must identify which provisions are not being effectively enforced. The Submitter must also specify which international treaties prohibit, as the submission asserts, the transfer of water resources between basins.

iii. Harm to indigenous and agrarian communities

³⁵ Submission at 1

³⁶ *Ibid.* at 5. See also: "Manifestación de Impacto Ambiental. Modalidad regional para el proyecto 'Monterrey VI'", July 2012 at 1-4.

³⁷ Submission at 1-3.

³⁸ *Idem.*

29. The Submitter asserts that water transfers will impact the availability of water resources among indigenous and agrarian communities that depend on the Pánuco River,³⁹ specifically, the communities settled in the hydrological basin “that captures and distributes the water that Monterrey VI proposes to pipe.” Moreover, said communities will also be affected by changes in the availability of other natural resources.⁴⁰
30. In a revised submission the Submitter should provide information to identify the communities, as well as specify which environmental laws the Party is failing to enforce effectively.

iv. Complaint filed against Monterrey VI

31. The Submitter states that he pursued remedies regarding the Monterrey VI project with the “competent authorities” at the state and national levels. However, he affirms said bodies ignored him. Furthermore, the Submitter states that he subsequently filed a complaint with the PGR.⁴¹ The Secretariat determines that a revised submission should include copies of the abovementioned legal actions or complaints, as well as the replies—if any—from the authorities. In a revised submission, the Submitter must also provide further details regarding the assertion that he “was ignored.” In effect, it is unclear whether the Submitter received no replies from the authorities or whether replies were received, which, however, failed to address the matters raised in the submission.
32. The Submitter must also provide the Secretariat with information on the present status of the complaint filed with the PGR, if this proceeding remains pending, or on the judgment rendered, in the event it has already concluded.

v. Public consultations

33. The Submitter asserts that the governor of Nuevo León “did not open the proposal to public consultations and scrutiny.”⁴² In light of this assertion, the Submitter must identify the issue which, in its opinion, warrants the launching of public consultations and specify whether said consultations would concern the environmental impact assessment process or rather specific proposals or public policies. Furthermore, the Submitter must cite the legal provision(s) that bear on this assertion and explain in what sense there has been a failure in the effective enforcement thereof.

vi. Legality of the authorization Conagua granted to Monterrey Water and Drainage Services (SADM)

34. The Submitter asserts that Conagua issued an authorization to SADM for the execution of the Monterrey VI aqueduct project. However, the Submitter argues said authorization is invalid without the endorsement of the basin councils concerned.⁴³
35. In the Secretariat’s view, the Submitter must identify the applicable legal provisions that pertain to this assertion. It must also clarify in what sense there has been a failure in

³⁹ *Ibid.* at 1.

⁴⁰ *Ibid.* at 5.

⁴¹ *Ibid.* at 1 and 2.

⁴² *Idem.*

⁴³ *Ibid.* at 3.

effective enforcement of said provisions. The Submitter should enclose a copy of the authorization issued by Conagua.

vii. Validity of the Monterrey VI project's environmental impact statement

36. The Submitter asserts that the project's environmental impact statement (MIA-Monterrey VI), prepared to obtain the project's authorization, "ignores much [available] technical and scientific information" and that it minimizes the potential harm to the Pánuco-Tampaón River ecosystem and its neighboring populations.⁴⁴
37. The Secretariat believes that the Submitter must substantiate whether MIA-Monterrey VI was authorized by the competent environmental authorities. Moreover, if possible, it should include in a revised submission a copy of this authorization. In addition, the Submitter must specify what type of technical and scientific information was supposedly ignored in MIA-Monterrey VI and how this assertion relates to a specific law not being effectively enforced.

B The six requirements of NAAEC Article 14 (1)

38. After evaluating the opening paragraphs of Article 14(1), the Secretariat next determines whether the submission is in compliance with the six requirements established in NAAEC Article 14(1). The Secretariat determines that submission SEM-16-002 (*Monterrey VI Aqueduct*) is not in full compliance with these requirements. The Secretariat's reasoning is detailed in the paragraphs below.

(a) is in writing in a language designated by that Party in a notification to the Secretariat

39. The submission complies with requirement (a) of Article 14(1), as it was filed in writing in one of the languages designated by the Parties for this purpose (in Spanish, in this particular case).

(b) clearly identifies the person or organization making the submission

40. The submission satisfies Article 14(1)(b). In effect, the Submitter provided its name, address and other contact information, which was sufficient for the Secretariat to clearly identify and communicate with the Submitter.

(c) provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based

41. Regarding compliance with Article 14(1)(c), the submission enclosed the Monterrey VI project's environmental impact statement, technical information on the water situation in Nuevo León,⁴⁵ an electronic copy of a criminal complaint filed against the project,

⁴⁴ *Ibid.* at 5.

⁴⁵ The technical information enclosed with the submission includes the following documents: Jaime Leal Díaz, "Mitos y realidades del agua en Monterrey" (undated, publisher unnamed, place of publication unspecified); Blanca Flores Arriaga, *et al.*, *The Future of Water Availability and Demand in the Metropolitan Area of Monterrey, México*, Escuela de Graduados en Administración Pública y Política Pública, Tecnológico de Monterrey, Nuevo León, Mexico, 2009, and "La Ley de Aguas que México requiere: ¿megaproyectos impuestos o planificación participativa?" (report without a named author, date,

photographic materials, a letter to the president of the republic and another to the governor of the state of Nuevo León.

42. However, the Secretariat finds that the submission enclosed neither a physical nor an electronic copy (nor the hyperlinks thereto) of the following information cited by the Submitter – information which the Secretariat requires if it is to conclude an analysis in accordance with Article 14(1):
 - a. information supporting the assertion that the federal government supports the Monterrey VI project;
 - b. if possible, a copy of the water transfers authorization that Conagua granted to SADM;
 - c. a copy of the authorization of the environmental impact statement, if one was issued.
43. Regarding the existence of pending judicial or administrative proceedings, the Secretariat must take into consideration paragraph 7.5 of the Guidelines which directs it to consider, when requesting a response, whether the matter is the subject of any pending judicial or administrative proceeding.⁴⁶ In this light, a revised submission should include additional information on the current status of the authorization of the environment impact assessment of Monterrey VI.
44. Finally, the revised submission should also enclose other information considered relevant to the examination of the matter at issue.
 - (d) *appears to be aimed at promoting enforcement rather than at harassing industry*
45. The submission complies with NAAEC Article 14(1)(d), as it appears to be aimed at promoting enforcement of the law rather than at harassing an industry. Paragraph 5.4 of the Guidelines states that, in making such a determination, the Secretariat will consider whether or not: (i) “the submission is focused on the acts or omissions of a Party rather than on compliance by a particular company or business; especially if the Submitter is a competitor that may stand to benefit economically from the submission”; and (ii) “the submission appears frivolous.”
46. In reading the submission it is apparent that although the Submitter is referring to a development project to be jointly executed by the public and private sectors, the submission appears to be aimed at promoting the enforcement of environmental law to protect ecological balance, natural resources and water management in the Mexican states of Veracruz, San Luis Potosí, Tamaulipas and Nuevo León.

publisher or place of publication), as well as two electronic documents: “Inviabilidad del Proyecto Monterrey VI” and “Planeación urbana segura por manejo integral y control del agua fluvial”.

⁴⁶ As subparagraph 7.5 of the Guidelines establishes:

In considering whether private remedies available under the Party’s law, such as those identified in Article 6(3), have been pursued by the Submitter and others, the Secretariat will be guided by whether:

- (a) continuing with the submission process could duplicate or interfere with private remedies being pursued or that have been pursued, in particular those that involve the Party, and in such cases the Secretariat should consider terminating the process in whole or in part; and
- (b) reasonable actions have been taken by the Submitter to pursue private remedies prior to making a submission, bearing in mind that barriers to the pursuit of some remedies may exist in particular cases.

(e) *indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any*

47. The submission enclosed copies of the communications sent to different authorities, which —according to the Submitter— received no replies. As the submission puts it, the Submitter “has indeed communicated in writing with the competent [a]uthorities of the Party in question, without receiving any direct replies.”⁴⁷
48. The Submitter states, furthermore, that another communication was sent to the governor of Nuevo León demanding respect for the right to water, along with studies related to water resources planning.⁴⁸ An appeal was also made to the Congress demanding that the governor of Nuevo León cancel the Monterrey VI project. The Submitter did not specify, however, whether said appeal was addressed to the state or federal Congress. The Secretariat finds that the submission does not meet Article 14(1)(e) criteria. A revised submission should include copies of these communications with the state governor and Congress, respectively, along with the replies, if any.

(f) *is filed by a person or organization residing or established in the territory of a Party*

49. The submission is in compliance with Article 14(1)(f), as it was filed by a person who is established in the territory of an NAAEC Party and has no ties to the government.

III. DETERMINATION

50. For the reasons detailed herein, the Secretariat considers submission SEM-16-002 (*Monterrey VI Aqueduct*) to be not in full compliance with the admissibility requirements specified in NAAEC Article 14(1). Consequently, the Submitter is invited to provide a revised submission that addresses the following matters:
- i) information regarding the assertion that the federal government supports the Monterrey VI project (see paragraphs 3 and 42);
 - ii) explanations regarding the lack of effective enforcement of the provisions cited in paragraphs 20, 21, 22 and 24;
 - iii) information and explanations with respect to the assertion questioning the legality of transferring water resources between different basins (see paragraphs 3 and 28) and the legality of Conagua’s authorization (paragraphs 34 and 35);
 - iv) information to enable compliance with the requirement specified in subparagraph 14(1)(c) regarding the information to be enclosed with a submission (see paragraphs 26, 30, 32, 33, 35 and 37); and
 - v) information satisfying the requirement specified in subparagraph 14(1)(e) on communications with the relevant authorities concerning the issue in question (see paragraph 31).

⁴⁷ *Ibid.* at 4.

⁴⁸ *Ibid.* at 6.

51. In accordance with paragraphs 6.1 and 6.2 of the Guidelines, the Secretariat hereby notifies the Submitter that the latter shall dispose of 60 working days to provide a submission that conforms to all of the criteria specified in NAAEC Article 14(1). If such a revised submission is not received by **16 November 2016**, at the latest, the Secretariat will terminate the process with respect to submission SEM-16-002 (*Monterrey VI Aqueduct*).
52. The Submitter may provide a revised version of his submission, as well as any additional information in electronic form, to the following email address: <sem@cec.org>. Please note that the Submitter need not include the documents already enclosed with the original submission.

Secretariat of the Commission for Environmental Cooperation

(original signed)

Per: Robert Moyer
Director, Submissions on Enforcement Matters Unit

(original signed)

Per: Paolo Solano
Legal Officer, Submissions on Enforcement Matters Unit

cc: Enrique Lendo, Alternate Representative of Mexico
Louise Métivier, Alternate Representative of Canada
Jane Nishida, Interim Alternate Representative of the United States
César Rafael Chávez, CEC Executive Director
Submitter