

[UNOFFICIAL TRANSLATION]

ACCION COLECTIVA

SUBMISSION TO THE COMMISSION FOR ENVIRONMENTAL COOPERATION ON THE EFFECTIVE ENFORCMENT OF ENVIRONMENTAL LAW CONCERNING THE “CITY CENTER PROJECT” IN THE CITY OF LEÓN, GUANAJUATO, MEXICO

SUBMITTER:

ACCIÓN COLECTIVA SOCIOAMBIENTAL, A.C.

ACCIÓN COLECTIVA SOCIOAMBIENTAL, A.C., is a civil association, duly incorporated under Mexican law by notarial act N° 7,795 of 6 September 2013, executed in the presence of Jesús César Santos del Muro Amador, Notary Public N° 15 of León, Guanajuato, and registered under Folio N° V20*4852 of the Public Register of the same city.

Under its statutes, the mission of **ACCIÓN COLECTIVA SOCIOAMBIENTAL, A.C.** is “the comprehensive defense of fundamental human rights in accordance with the highest national and international protection standards; as a non-profit organization, acting in strict adherence with the law, the association may promote and organize any actions which benefit individuals and/or communities in terms of ensuring access to the full enjoyment of their rights. Moreover, the Association shall work to defend the environment by seeking to ensure that non-human nature, which is intrinsically deserving of protection, is acknowledged and endowed with a status that is socially, legally and politically relevant.”

Charter

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THE FACTS PROMPTING OUR SUBMISSION:

We declare under oath that the facts underlying our submission are as detailed below:

For a **summary of the Project and background information from 2016**, please consult [ANNEX 1](#).

FACTS (which occurred in 2017): “City Park Project - Phase One”

Hereafter, in the interests of brevity, the following terms and abbreviations will be used:

AUTHORITIES and STAKEHOLDERS (in alphabetical order)	
<i>Colegio de Ingenieros Civiles de León A.C</i>	(College of Engineers)
Project Management Department of the DGOP of the City of León (<i>Dirección de Gerenciamiento de Proyectos de la DGOP del Municipio de León</i>)	DGP
Environmental Regulation Department of the City of León (<i>Dirección de Regulación Ambiental del Municipio de León</i>)	DRA
General Directorate for Environmental Management of the City of León (<i>Dirección General de Gestión Ambiental del Municipio de León</i>)	DGGA
General Directorate for Public Works of the City of León (<i>Dirección General de Obra Pública del Municipio de León</i>)	DGOP
The Project known as “ <i>City Park - Primera Etapa</i> ”	(the Project)
“MRP CKD”, S. de R.L. de C.V. Fideicomiso MRP LEÓN CIB/2467	(the Developer)
Institute for Access to Public Information for the State of Guanajuato (<i>Instituto de Acceso a la Información Pública para el Estado de Guanajuato</i>)	IACIP Guanajuato
Ecology Institute of the State of Guanajuato (<i>Instituto de Ecología del Estado de Guanajuato</i>)	IEE
General Scope Environmental Impact Statement of the “ <i>City Park Project – Phase One</i> ” (MIA-MG-506-2017)	
Federal Attorney for Environmental Protection (<i>Procuraduría Federal de Protección al Ambiente</i>)	Profepa
Environmental ruling on the Project (<i>Resolución Ambiental de El Proyecto</i>)	(the Ruling)
Ministry of the Environment and Natural Resources (<i>Secretaría de Medio Ambiente y Recursos Naturales</i>)	Semarnat
Court of Administrative Justice of the state of Guanajuato (<i>Tribunal de Justicia Administrativa del Estado de Guanajuato</i>)	TJA Guanajuato
Open Government Unit of the City of León (<i>Unidad de Transparencia del Municipio de León</i>)	UTM León

THE ENVIRONMENTAL IMPACT ASSESSMENT FILE: A TIMELINE ¹

Submission of the Environmental Impact Statement for the Project and initiation of the assessment process:

- On 31 March 2017, the Developer filed an application with the DGGA requesting the **designation of the scope** applicable to **the Project**’s Environmental Impact Statement (EIS).
- On 7 April 2017, the DRA published, on its office platforms, file number **DGGA-DRA-290-2017** on “Public Consultations” to bring **the Project** to the public’s attention.

¹ The information contained in this section comes from **the Ruling** and from the replies to various access to information requests filed with UTM León.

- On **12 April 2017**, the **DRA** issued file number **DGGA-DRA-310-2017** to inform **the Developer** that the latter must file a “**General Scope**” **Environmental Impact Statement**. Receipt of this file was acknowledged on **24 April 2017**.
- On **16 August 2017**, the **Developer** submitted a “General Scope” EIS, including annexes, with the **DGGA** to obtain **the Project**’s environmental authorization. This EIS was registered under file control number **MIA-MG-506-2017**.
- According to a reply from **UTM León**, contained in file number **UT/0646/2019** of **11 March 2019**, the **DGGA** states that on **18 August 2017**, the **DRA** published on its office platforms the **Listado Semanal** (Weekly List) of the environmental impact statements received for the purposes of further assessment, in addition to the **Project Summary Extract**.
- On **30 August 2017**, **DGGA** personnel conducted a field visit at the site of **the Project**, to inspect the conditions there and verify the accuracy of the information contained in the documents filed by **the Developer**.

Suspension and renewal of the environmental impact assessment process:

- On **31 August 2017**, the **DGGA**, issued file number **DGGA/988/17**, in which it ordered the *suspension of the procedure, by means of an information injunction communicated to the Developer*, which stated that, “*inasmuch as the application filed does not contain sufficient information to determine, know or verify the potential environmental impacts of the work or activity.*” Receipt of this file was acknowledged on **7 September 2017**.
- On **28 September 2017**, the **Developer** submitted the information requested by the **DGGA** in file number **DGGA/988/17** in order to further pursue the assessment process.

The requesting of Expert Opinions on the Soil Mechanics Study:

- On **10 October 2017**, the **DRA** requested an expert opinion from the **DGOP** on the **Soil Mechanics Study**, via file number **DGGA-DRA-670-2017**. Receipt of this file was acknowledged on **13 October 2017**.
- On **10 October 2017**, the **DRA** requested an expert opinion from the **IEE** on the **Soil Mechanics Study**, via file number **DGGA-DRA-672-2017**. Receipt of this file was acknowledged on **11 October 2017**.
- On **20 October 2017**, the **DRA** requested an expert opinion from the **College of Engineers** on the **Soil Mechanics Study**, via file number **DGGA-DRA-694-2017**. Receipt of this file was acknowledged on the same day.

Extension of the deadline for completing the environmental impact assessment process:

- On **13 October 2017**, the **DGGA** determined, via file number **DGGA-1146-17**, in favor of an extension of the deadline for assessing **MIA-MG-506-2017**, the EIS filed by **the Developer**. Receipt of this determination was acknowledged on **25 October 2017**.

Receipt of expert opinions on the soil mechanics study:

- On **14 November 2017**, the **DGGA** took receipt of the **College of Engineers**’ expert opinion.
- On **22 November 2017**, the **DGGA** took receipt of the expert opinion of the **DGP (a DGOP affiliated agency)**.
- The **IEE** did not provide an expert opinion.

Environmental authorization of the "City Park" project (MIA-MG-506-2017):

- On **15 November 2017**, the **DGGA** issued **the Ruling** that conditionally authorized **the Project**. **The Developer** was notified of this decision on **24 November 2017**.

For a summary of the **FACTS that occurred in 2018**, please consult **ANNEX 2**.

For a summary of the **FACTS that occurred in 2019**, please consult **ANNEX 3**.



FAILURES IN THE EFFECTIVE ENFORCEMENT OF ENVIRONMENTAL LAW

To adequately establish the **Project's** omissions and violations in relation to the applicable environmental law, a few preliminary remarks are in order.

In accordance with the provisions of Articles 1 and 133 of the Political Constitution of the United Mexican States, the International Treaties to which the Mexican state is a Party form part of the **CONSTITUTIONAL EDIFICE** governing the validity of laws and acts of authority in the Mexican Republic, which fact implies that organs of public administration must interpret and jointly enforce the human rights included in the Constitution and International Treaties as, under our legal order, both sets of rights constitute a unitary bloc.

Accordingly, the **General Act on Ecological Equilibrium and Environmental Protection** (la *Ley General del Equilibrio Ecológico y la Protección del Ambiente*—LGEEPA) regulates the provisions of the Constitution bearing on environmental protection and the preservation and restoration of ecological balance, which have as their object the fostering of sustainable development and laying the foundations for guaranteeing, amongst other rights, the right of every person to live in an appropriate environment for his/her development, health and wellbeing. Non-compliance with the provisions of this law, as well as with the environmental policy instruments which it regulates, in and of itself, harms the environment, natural resources, wildlife and public health, thereby affecting the right to a healthy environment enshrined in Article 4 of the Constitution.

Among the environmental policy instruments provided for under LGEEPA is the **Environmental Impact Assessment**, which it defines under Article 28 as *the process utilized by the authorities to establish the conditions that shall govern the execution of works and activities, which may cause ecological imbalances or exceed the limits and conditions stipulated in applicable provisions on environmental protection and the preservation and restoration of ecosystems, in order to avert or minimize their negative effects on the environment.*

From this perspective, an **Environmental Impact Assessment** is not merely paperwork that must be completed as a requirement prior to undertaking works or activities that may cause environmental damage. An **Environmental Impact Assessment** is, above all, a **process** designed—if fully implemented—to ensure that we citizens may be **certain that the execution of a given project or activity will not undermine our constitutionally protected right to a healthy environment.**

For reasons we shall now explain, the environmental ruling on the **City Park Project – Phase One** is illegal and its execution could damage the environment, natural resources and wildlife, insofar as: (1) the **DGGA** was not the competent authority to understand, evaluate, and adjudicate the environmental impact assessment process; (2) the scope of the environmental impact assessment designated by the **DRA** is not commensurate with the potential environmental impact of the project's works and activities; (3) the **DRA** took actions outside statutory procedures; and (4) the **DGGA** did not comply with due process in its due diligence of the environmental impact assessment process.

CONCERNING THE PRESIDING AUTHORITY'S JURISDICTION

The environmental ruling on the **City Park Project – Phase One** is illegal insofar as the **General Directorate for Environmental Management of the City of León (DGGA)** was not the competent authority to understand, evaluate, and adjudicate the environmental impact assessment process.

Although Article 1 Section II of the **Municipal Regulation** states that its provisions “*have as their object fostering the City's sustainable development through the regulation of the procedures governing the environmental impact assessment of works or activities under municipal jurisdiction...*” and Article 5 Section XVI of the same regulation attributes to the **DGGA** the power to “*assess the environmental impact of works and activities under the City's jurisdiction,*” it's important to point out that the distribution of jurisdictions regarding which authorities are to understand, evaluate and adjudicate environmental impact assessment processes must respect the rules established in **LGEEPA** Articles 4, 5, 7 and 8. Moreover, the provisions of the **LGEEPA** are ratified by Articles 6, 7 and 8 of the Environmental Protection and Preservation Act of the state of Guanajuato (*Ley para la Protección y Preservación del Ambiente del Estado de Guanajuato*—**LPPAEG**).

As the **LGEEPA** and the **LPPAEG** both clearly state, cities and municipal governments may *participate* in the environmental impact assessment of works or activities under state jurisdiction, but the power to conduct such assessments falls solely to the federal and state governments.

However, as is evident when one reads file number **DGGA-DRA-310-2017**, issued by the **DRA** on **12 April 2017**, the municipal authority did not follow the rules on the distribution of jurisdictions in determining the competent authority to understand, evaluate and adjudicate the environmental impact assessment process of a project or activity to be located—in the present case—in the municipal territory of León, Guanajuato. In effect, the **DRA** itself assumed a jurisdiction that does not belong to it. Moreover, in so doing, it also failed to comply with its obligation to cite the legal precepts, grounds and objectives underlying its determination.

The legal provisions cited by the **Director of the DRA**, to underpin file number **DGGA-DRA-310-2017**, concern the *application requirements*, the *annexes*, the *works or activities which require a municipal environmental impact authorization*, the *contents of the environmental impact statement* and the *environmental impact statement modalities*, all of which are detailed in the **Municipal Regulation**.

Furthermore, file number **DGGA-DRA-310-2017** offers no explanation regarding the reasoning behind the **Director of the DRA**'s conclusion that the **Developer** must file **the Project**'s EIS with the DRA and not, for example, with the **IEE** or **Semarnat**'s **DGIRA**, as stipulated by the provisions of the **LGEEPA** and the **LPPAEG**.

REGARDING THE PRESIDING AUTHORITY'S ACTIONS BEYOND STATUTORY PROCEDURES

The environmental ruling on the *City Park Project – Phase One* is illegal insofar as the **Environmental Regulation Department of the City of León (DRA)** took actions beyond statutory procedures.

In accordance with **Municipal Regulation** Article 104, *the environmental impact assessment process* formally begins when an application is filed with the authority. The present case is no exception. However, although **FINDING II** of **the Ruling** notes that the **Developer** filed its application with the **DGGA** for an environmental impact assessment of **the Project** on **16 August 2017**, it was on **7 April 2017** that the **DRA** published on its office platforms file number **DGGA-DRA-290-2017** on “**Public Consultations**” to inform the public of a project that it would only receive for its assessment **131 days later**.

In light of its relevance, we have provided below a transcription of file **DGGA-DRA-290-2017** and underlined irregularities therein and/or shared impressions on its content:

Subject: Public Consultation

*Project: "CITY PARK – PHASE ONE"
TO THE GENERAL PUBLIC*

In the City of León, Guanajuato, on the 5th day of the month of April 2017:

Regarding a matter of public information and pursuant to the provisions of Articles 118 Section IV, 122 and 123 of the Environmental Management Regulation of the City of León, Guanajuato, in light of the potential for a significant alteration of environmental conditions occasioned by or that may be occasioned by the preparations for and construction of the project known as "City Park – Phase One"

[...], information has been publicly released via a project summary extract to facilitate the organization of a public information meeting, under the auspices of the designated Commission, to inform citizens and, as the case may be, gain their approval.

Consequently, the project known as "City Park – Phase One" is being made Public Knowledge:

*[...], so that the interested parties may issue proposals and formulate considerations of a technical character;
[...].*

The present file was published on the platforms of the offices the Environmental Regulation Department, in public view, on 7 April 2017, for all relevant legal purposes.

First of all, an important clarification is in order: the **Municipal Regulation** does not, in any of its articles, provide for **Public Consultations** on projects filed with the **DGGA** for assessment purposes.

Be that as it may, although the **DRA** file states that on **7 April 2017** information was made public by means of a project summary extract, in fact, neither the **DGGA** nor the **DRA** had firsthand knowledge of **the Project** and/or the **Project Summary Extract** until an application for an environmental impact assessment was filed, an event which only occurred on **16 August 2017**, i.e., 131 days after this **DRA** file was published.

On the same lines, in its reply to **UTM León**, contained in file number **UT/0646/2019** of **11 March 2019**, the **DGGA** confirms that the **DRA** published file number **DGGA-DRA-290-2017** on **7 April 2017**. However, it also indicated that the information annexed to said file was the information submitted by **the Developer** in its request that a **scope be assigned** to its EIS; in the event, said information consisted of a *land use permit* (Annex 1), *legal documents* (Annex 2), *the project plan* (Annex 3) and a *Conagua file* (Annex 4) and not the *project summary extract*, as indicated by the **DRA** in file number **DGGA-DRA-290-2017**.

Similarly, in its reply to **UTM León**, the **DGGA** contradicts the **DRA**, in that whereas the latter indicates in file number **DGGA-DRA-290-2017** that it is publishing the *project summary extract* due to *the possibility that the preparation and construction of the project known as "City Park – Phase One" occasions or may occasion a significant alteration of environmental conditions*, the **DGGA** states that the project does not affect the environment and that, furthermore, the *project summary extract* was published on **18 August 2017** and not on **7 April 2017**, as stated in the **DRA** file.

DGGA said as follows:

On 7 April 2017, in a general manner, and under no formal obligation on the part of the Environmental Regulation Department, file number DGGA-DRA-290-2017 was published to inform the public of the project known as "City Park"; annexed to said file was information presented by the project Developer for the purpose of requesting that a scope be assigned to said project. Included among the documents enclosed with the Developer's application were a land-use permit and a project works plan, which, upon review, led to the determination that the project does not affect the environment; [...].

It's worth noting that on 16 August 2017, the environmental impact statement was filed for the project in question and, as a consequence, in compliance with the provisions of Article 120 of the Regulation on Environmental Management in the City of León, Guanajuato, on 18 August 2017, the weekly listing of environmental impact statements received for future assessment was published on the platforms of the offices of the Environmental Regulation Department, an agency affiliated with the General Directorate for Environmental Management, [...].

On the same day, 18 August 2017, the project summary extract was published, along with the listing mentioned in the preceding paragraph [...].

It's important to emphasize that the **DRA**'s file number **DGGA-DRA-290-2017** is based on Article 118 Section IV of the **Municipal Regulation** which refers to works or activities that may provoke a *significant alteration of environmental conditions which occasion or may occasion the destruction, isolation or fragmentation of ecosystems, affect the structure or function thereof, or modify their development trends*. In addition, the **DRA** bases this file on **Municipal Regulation** Articles 122 and 123, which refer, respectively, to *the publication of the list stipulated in Article 121* and to *public information meetings*, but not to a **Public Consultation**.

REGARDING THE SCOPE ASSIGNED TO THE ENVIRONMENTAL IMPACT STATEMENT

The environmental ruling on the *City Park Project – Phase One* is illegal insofar as the scope assigned to the environmental impact statement by the **Environmental Regulation Department of the City of León (DRA)** is not commensurate with the potential environmental impact of the project’s works and activities.

The final paragraph of **LGEEPA** Article 30 stipulates that “... *the modalities pertaining to environmental impact statements and risk studies shall be established by the Regulation to this Law.*” In this respect, Article 10 of the **Regulation to the LGEEPA on Environmental Impact Assessment** states that *environmental impact statements shall be filed under the following modalities: I. Regional, or II. Particular.*

*Article 11.- The regional scope applies to environmental impact statements in the following cases:
[...]*

IV. Proposed projects in sites where, due to the interaction with different regional environmental subsystems, cumulative, synergistic, or residual impacts are foreseeable, which may result in destruction, isolation or fragmentation of ecosystems.

In other cases, the applicant shall file an environmental impact statement of particular scope.

LPPAEG Article 31 stipulates that the scope of the environmental impact statement for a given project or activity may be *general, intermediate, or specific*, in the terms of the Regulation.

The **Regulation to the LPPAEG on Environmental Impact Assessment** states that environmental impact statements shall be filed under the following modalities: *General A, B, or C, Intermediate or Specific.*

Articles 19, 20, 21, 25 and 27 of the **Regulation to the LPPAEG on Environmental Impact Assessment** specifies the conditions governing which scope – *General A, B, or C, Intermediate or Specific* – shall apply to a given environmental impact statement.

In the present case, in reply to the **Developer**’s request for **assigning a scope** to **the Project**’s Environmental Impact Statement, the **DRA** issued file number **DGGA-DRA-310- 2017** of **12 April 2017**, in which it informed **the Developer** that it must file an EIS of “**General Scope**”.

With the foregoing in mind, based on a reading of the documents in **the Project**’s file, especially the *Environmental Impact Statement*, the *Comprehensive Study on the Conservation of Los Cárcamos Park*, the *Bird Study* and the *Program for Managing 4 Priority Species listed in NOM-059-SEMARNAT-2010*, but also based on its location—**adjacent to Los Cárcamos Park wetlands**—and its dimensions, characteristics, scope and complexity, it is clear that the *City Park Project – Phase One* will generate *cumulative, synergistic and residual impacts*, which may occasion ecosystems destruction, isolation or fragmentation.

It’s important to point out that the very same **DRA**, which despite its determination that **the Developer** must file a “**General Scope**” **Environmental Impact Statement**, acknowledges in file number **DGGA-DRA-290-2017** of **7 April 2017** that **the Project** could *provoke significant alteration of environmental conditions which would cause or may cause the destruction, isolation or fragmentation of ecosystems, affect the structure or function thereof, or modify their development trends* in the terms of **Municipal Regulation** Article **118 Section IV**.

Due to its location—**adjacent to Los Cárcamos Park wetlands**—and the risks posed by its dimensions, characteristics, scope and complexity, as well as the fact that the “**General Scope**” is the least stringent level specified in all applicable legislation and is only found in the **Municipal Regulation**, in our view, a scope at this is not commensurate with the works or activities required for a project such as *City Park – Phase One*.

In accordance with the principle of *hierarchical subordination*, a regulation is absolutely subordinate to a law and may not modify or a limit a law. In light of this principle, the **Municipal Regulation** cannot create mechanisms inconsistent with those contemplated by the **LGEEPA**, the **Regulation to the LGEEPA on Environmental Impact Assessment**, the **LPPAEG** or the **Regulation to the LPPAEG on Environmental**

Impact Assessment. The fact is the “**General Scope**” status assigned to **the Project**’s Environmental Impact Statement only exists in the municipal regulation and entails fewer requirements than a scope at any other level in all other applicable legislation.

In this regard, one could cite as a supporting argument the jurisprudential thesis rendered by the Supreme Court of Mexico in the case: "**FACULTAD REGLAMENTARIA. SUS LÍMITES.**"

REGARDING DUE PROCESS

The environmental ruling on the *City Park Project – Phase One* is illegal insofar as the **DGGA** and the **DRA**, both of which are City of León agencies, failed to adhere to due process formalities in their due diligence of the environmental impact assessment process, as a result of which damages to the environment, natural resources and wildlife may ensue.

In this section, we will address various issues demonstrating the municipal authority’s failure to adhere to due process, as provided for in the applicable environmental law:

The Right of Access to Information and Participation

The **DGGA** and the **DGA** did not guarantee the right of the citizens of León to receive timely and adequate information during the environmental impact assessment process. As a consequence, they were unable to participate and/or intervene in **the Project**’s assessment.

Whereas, **Municipal Regulation** Articles 104 to 119 specify the rules governing the conduct of the environmental impact assessment process for works and activities under municipal jurisdiction, Articles 120 to 123 prescribe the instructions and mechanisms governing how the **DGGA** must publicize information on the projects awaiting its assessment. In accordance with said provisions, when the **DGGA** receives an application for the *environmental impact assessment* of a project or activity under its jurisdiction it must include it in the *listing* of environmental impact statements received for its assessment, as well as publish the corresponding *project summary extract*.

That said, under **Municipal Regulation** Article 5, the **DGGA** has the power *to assess the environmental impact of works and activities under municipal jurisdiction and issue rulings accordingly*, provided that such assessments are conducted in accordance with the provisions of the *LGEEPA, the LPPAEG, this Regulation, other related legal provisions and conventions or whatever cooperation and coordination agreements may be signed*.

It is the case that in its reply to **UTM León**, contained in file number **UT/0646/2019** of **11 March 2019**, the **DGGA** stated that on **18 August 2017**, the **DRA** published the *listing* and the *project summary extract* on its office platforms:

It’s worth noting that on 16 August 2017, the environmental impact statement scope for the project in question was admitted and, as a consequence, in compliance with the provisions of Article 120 of the Regulation on Environmental Management in the City of León, Guanajuato, on 18 August 2017, the weekly listing of environmental impact statements received for future assessment was published on the platforms of the offices of the Environmental Regulation Department, an agency affiliated with the General Directorate for Environmental Management, [...].

On the same day, 18 August 2017, the project summary extract was published along with the listing mentioned in the preceding paragraph [...].

It is important to remember that the object of publishing information on a project or activity is not only to guarantee the right to information but also to ensure that interested parties may emerge to express their views on projects subject to assessment. Although the **Municipal Regulation** states that the **DGGA** *must compile and publish a list and make available to any interested party the project summary extract corresponding to a given project or activity*, it is also true that this provision does not indicate where such information must be

published. Consequently, pursuant to Article 5 of the **Municipal Regulation**, the DGGGA should have complied with the provisions stipulated in **LGEEPA** Article 34 Section I.

Although in its reply to **UTM León**, contained in file number **UT/0646/2019** of **11 March 2019**, it is noted that the **DGGGA** did comply with the obligation to publish the *listing* and *project summary extract*, this was not done, however, in a newspaper with a wide circulation in the state of Guanajuato. The fact that both the *list* and the *project summary extract* were published in the **DRA**'s office platforms does not rectify the issue in question, namely that the hierarchically superior **LGEEPA** requires publication in a newspaper, i.e., a medium with a wider circulation, obviously, than the **DRA**'s office platforms.

In support of the foregoing, it should be noted that the **Supreme Court of Mexico** has ruled on this matter: In a **Constitutional case**

Case: 89/2010

Court: First Chamber of the Supreme Court of Mexico

And in a **Protection Review case**

Case: 956/2015

Court: First Chamber of the Supreme Court of Mexico

In the absence of the *project summary extract*'s publication in a newspaper with a wide circulation, the citizens of the City of León were not given the opportunity to request a *public information meeting* on **the Project** or to participate in the environmental impact assessment process.

Regarding the species included in NOM-059-SEMARNAT-2010

As part of its environmental impact assessment application for **the Project**, the **Developer** appended a series of documents with the **Environmental Impact Statement**, including **Estudio Integral para la Conservación del Parque Los Cárcamos, León, Gto** (Comprehensive Study on the Conservation of Los Cárcamos Park, hereafter "the Comprehensive Study") and a **Estudio de Aves²** (hereafter, "the Bird Study").

According to the Comprehensive Study, **Los Cárcamos Ecological Park** is: *an ecological area of 11 ha, located in the northern part of the city, a few meters from the Metropolitan Park, where the El Palote dam is found. [...] it consists mostly of hills covered with pasture in excellent condition, [...], and also includes a path for corridors [...]. Furthermore, it has a lake that is a destination for different types of birds, such as Canada geese, wild ducks, cormorants, coots, etc. There is also a greenhouse in the park, which accommodates very diverse types of plants, such as palm trees, smoketree spurges, arabia plants, etc.* (page 11 | **The Comprehensive Study**).

Regarding *characterization of aquatic wildlife in the area*, as the Comprehensive Study puts it "our characterization consists of two types: birds and fishes. The former are described below ..." (page 51 | **The Comprehensive Study**):

Birds

The species of water birds described below include ones with potential for habitat mobility between the two reservoirs analyzed in the ecological system under study.

*It is important to note that Los Cárcamos Park offers an alternative feeding site for this type of bird (see page 51 | **The Comprehensive Study**).*

*Figure 31. Specimen of Egretta thula (snowy egret) (page 51 | **The Comprehensive Study**).*

*Figure 32. Specimen of Ardea alba (great egret) (page 51 | **The Comprehensive Study**).*

² The Bird Study was carried out in the month of May 2017. Due to the time of the year when observations were made, it wasn't possible to register all of the types of migratory birds that visit the wetlands in Los Cárcamos Park or the El Palote Reservoir.

Figure 33. Specimen of *Megaceryle alcyon* (belted kingfisher) (page 52 | The Comprehensive Study).
[...]

In fact, any of the migratory species present in the El Palote reservoir,³ may also fly to the reservoir in Los Cárcamos Park (page 54 | The Comprehensive Study).

In addition, according to the Comprehensive Study, the site “constitutes an ‘ecosystemic island,’ within the El Palote-Los Cárcamos Park complex, consistent with the concept of ‘archipelago reserves’⁴, developed by Gonzalo Halffter (2004), with wetlands characteristics, thorn forest banks and anthropogenically introduced vegetation (pepper trees, beefwoods, etc.), in ecotone with the urban planning of the City of León, Gto” (page 62 | The Comprehensive Study).

In addition, the *Estudio Integral para la Conservación del Parque Los Cárcamos*, establishes that:

As the water in the El Palote reservoir [...] is filtered through the entire reservoir curtain and its support structure, this generates internal pressure known as suppression. The resulting effect is a vertical flow which gives rise to small bodies of water. In the case of the study area, such flows were observed in the body of water located in Los Cárcamos Park.

Moreover, the permeability of the layer subjacent to the clayey area presents conditions favorable to the presence of such groundwater flows, [...] (pp. 76-77 | Estudio Integral).

Finally, in its conclusions, the Comprehensive Study determined that:

The results of the physical and chemical analysis of reservoir water show that the reservoir may be considered an eutrophic body of water. Consequently, human actions which engender the entry of organic material should be avoided.

...

*... Los Cárcamos Park is a habitat typical of the water runoff areas found in the Laja River’s upper basin and, **only a deeper and fuller analysis of fauna, in time and space, could adequately produce evidence for wildlife indexing purposes.** Based on the precautionary principle, this habitat should be preserved with utmost care, even though the space occupied by the body of water in Los Cárcamos Park may be of anthropogenic origin.*

[...]there definitely exists an ecosystem in equilibrium as an “ecosystemic island” in an urban area, in contrast, for instance, with the small lake ecosystems and tributary streams of the Sierra de Lobos.

According to estimates, the insertion of infrastructure at a depth no greater than 11 meters would not influence the natural flow existing between El Palote reservoir and the body of water in Los Cárcamos Park, provided the following recommendation is accepted:

As a preventive measure, consistent with findings of the Soil Mechanics Study, an anti-capillarity structure should be inserted to surround the underground foundations of the planned infrastructure; this measure could condition the natural flow established between bodies of water during the stages of construction entailing earthmoving and the construction of foundations and containment walls, however [...].

As a preventive measure, the installation of piezometric level monitoring wells is recommended [...], in effect, during excavations, the presence of water mirrors impeding normal operations is not a rare occurrence. It is recommended that this piezometric monitoring network be operational and maintained for the duration of the planned infrastructure’s useful life [...].

³ According to its webpage, the Metropolitan Ecological Park of León is a 337 ha Protected Natural Area. The reservoir per se accounts for 85% of its surface area, making it a highly attractive habitat for flora and fauna, including pelicans, Canada geese, wild ducks, herons, gulls, cormorants, ibexes and over 204 species of migratory and resident birds. For further information, please consult: <http://ito.mx/Lk8> i.

⁴ “Reservas archipiélago: Un nuevo tipo de área protegida” (pp. 281-282): <http://ito.mx/Lkc8>

Ecologically, the site presents stable environmental conditions; however, it is important to take into account the site's ecological value and the corresponding proposed mitigation measures. (pp. 77-79 | The Comprehensive Study).

Along the same lines, the *bird flights survey in The Bird Study* indicates that:

Records on the abundance of each species focused on two issues: 1) [...] flights between Los Cárcamos Park and Metropolitan Park; and 2) bird-flight altitudes. Of the 291 recorded flights, 69% were recorded in the corridor between Los Cárcamos Park and the Metropolitan Park [...].

Regarding the species which flew between both parks, the majority [...]. All species of waterfowl (ducks and herons) flew between both parks (page 13 | The Bird Study).

The Bird Study also proposes a series of *Measures to mitigate impacts generated by the operation of the City Park complex*:

Mitigation of the effects of incidental bird mortality from collisions with tower type structures

- Reduction of the three factors that produce bird collisions against windows: transparency, reflection and light.

[...] (pp. 19-20 | The Bird Study).

Moreover, according to the *Plan Maestro del Parque Metropolitano de León* (León Metropolitan Park Master Plan), El Palote Reservoir is a natural waterbird reserve. Consequently, it recommends that wetlands be established and maintained. As the document explains:

3.1.24 El Palote Reservoir and the Metropolitan Park

El Palote Reservoir [...] is a natural reservoir of waterbirds, migratory birds and land birds (including some species listed under some category of special protection in NOM-059-ECOL-2010), and [...].

The following are proposals [...] recommended for consideration in the reservoir Master Plan:

3.1.24.1 Sediment control

[...]

3.1.24.2 Creation and maintenance of habitats and corridors.

[...]. To improve conditions in the aquatic habitats and wooded areas in Metropolitan Park, the following strategies are proposed:

Short-term strategy:

1. [...]

2. Confection of artificial wetlands to serve as wildlife habitat [...]. The establishing of different types of wetlands (surface flow and vertical flow) is recommended. [...]. Likewise, consideration should be given to integrating the wetlands already present on the site (pp. 215-216 | Master Plan).

Along the same lines, “Table 92. Risk Categories” from the León Metropolitan Park Master Plan (page 311 | **Master Plan**) compiles a list of the species of migratory and resident waterbirds found in the León Metropolitan Ecological Park and which, according to the Comprehensive Study on the Conservation of Los Cárcamos Park, *may also fly to the basin in Los Cárcamos Park (page 54 | The Comprehensive Study).*

The following are among the migratory and/or aquatic bird species known to fly to Los Cárcamos Park and represent just a few of the species listed in **NOM-059-SEMARNAT- 2010**:

Common name and scientific name of birds listed in NOM-059-SEMARNAT-2010

Northern pintail (*Anas acuta*). Status: priority for conservation.

American widgeon (*Anas americana*, *Mareca americana*). Status: priority for conservation.

Blue-winged teal (*Anas discors*, *Spatula discors*). Status: priority for conservation.

Lesser scaup (*Aythya affinis*). Status: priority for conservation.

Osprey (*Pandion haliaetus*). Status: priority for conservation.

Great blue heron (*Ardea herodias*). Status: subject to special protection.

More generally, the **Convention on Wetlands of International Importance especially as Waterfowl Habitat (RAMSAR Convention)**—to which Mexico is a State Party—establishes under Article 1.2, that “waterfowl are birds ecologically dependent on wetlands” and, under Article 4, that “Each Contracting Party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening.”

In respect thereof, as part of its application, **the Developer** appended to the Environmental Impact Statement for the *City Park Project – Phase One* a document entitled **Programa de Manejo para 4 Especies Prioritarias y en la NOM-059-SEMARNAT-2010** (Management Program for 4 Priority Species Listed in NOM-059-SEMARNAT-2010).

Out of all of the resident or migratory water birds that may be found in Los Cárcamos Park, only the following species are included in this Management Program:

Common name and scientific name of birds listed in NOM-059-SEMARNAT-2010

Mexican duck (*Anas platyrhynchos diazi*). Status: threatened.

White-winged dove (*Zenaida asiatica*). Status: priority for conservation.

Mourning dove (*Zenaida macroura*). Status: priority for conservation.

Red-lore amazon (*Amazona autumnalis*). Status: priority for conservation.

At all events, **the Developer** did not obtain an authorization from SEMARNAT’s **General Directorate for Wildlife** for its **Management Program for 4 Priority Species listed in NOM-059-SEMARNAT-2010**, an official standard referenced in Article 9 Section XIII of the **General Wildlife Act** (*Ley General de Vida Silvestre*—LGVS) and Article 32 Section VI of the **Internal Regulation of the Ministry of the Environment and Natural Resources** (*Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales*).

In conclusion, as attests a comprehensive examination of the documents appended to **the Developer**’s application, as well as the **León Metropolitan Park Master Plan**, it is possible to establish that, regardless of the perimeter classified as a protected natural area, the two parks should be considered as forming a single unit in respect of the wildlife that inhabits or visits it, a unit which the **City Park Project – Phase One** would fragment, were it to be constructed.



ENVIRONMENTAL LAW AT ISSUE

LAWS | STANDARDS | REGULATIONS (ACRONYMS)

1. **Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)**
2. **General Ecological Balance and Environmental Protection Act (24/01/2017) (LGEEPA)**
3. **Regulation to LGEEPA on Environmental Impact Assessment (RLGEEPA)**
4. **General Wildlife Act (LGVS)**
5. **NOM-059-SEMARNAT-2010 (NOM-059)**
6. **Internal Regulation of the Ministry of the Environment and Natural Resources (Semarnat Internal Regulation)**
7. **Environmental Protection and Preservation Act of the state of Guanajuato (29/12/2015) (LPPAEG)**
8. **Regulation to the LPPAEG on Environmental Impact Assessment (15/06/2012) (RLPPAEG)**
9. **Regulation for the Environmental Management of the City of León, Guanajuato (Municipal Regulation)**
10. **Regulation of the Metropolitan Ecological Park Trust (Reglamento del Patronato del Parque Ecológico Metropolitano de León, Gto.—Park Regulation)**
11. **León Metropolitan Park Master Plan (Master Plan)**

For access to all environmental law, click **HERE: [Legislación Ambiental](#)**



RAISE THIS ISSUE WITH THE GOVERNMENT

MEETING WITH FEDERAL AND MUNICIPAL AUTHORITIES

On **21 February 2019**, members of **Plataforma #SalvemosElHumedalLosCarcamos** had the opportunity to meet with officials from **Semarnat**, **Profepa** and the **DGGA**.

Meeting minutes

PROPOSAL WITH POINT OF AGREEMENT IN THE SENATE OF MEXICO

On **19 February 2019**, Senator Antares Guadalupe Vázquez Alatorre raised a motion with point of agreement exhorting various authorities to undertake actions to halt the irreversible environmental damages impacting the wetlands in the Los Cárcamos Ecological Park, located in León, Guanajuato. The competent Commission issued its opinion on the proposal, which was then approved by the full Senate.

Proposal with Point of Agreement

Opinion of the Environment, Natural Resources and Climate Change Commission

Publication of the opinion on 4 April 2019 in:

Gaceta del Senado N° LXIV/ISPO-116



LEGAL REMEDIES PURSUED⁵

Type of remedy: **Nullity action**

Plaintiff: C. Juan García Hurtado

Date: 4 June 2018

File N°: 861/4ª Courtroom/18

Current status: **Dismissal due to plaintiff withdrawal**

N.B. Information was gained by means of this remedy. In the ensuing **admission agreement** **THE DEFINITIVE SUSPENSION** demanded by the plaintiff was **CONCEDED**. However, this agreement lapsed due to the plaintiff's withdrawal.

Type of remedy: **Civil complaint** (2 complaints)

Plaintiff: C. Pablo Roberto García Gómez Sivertson

Date: 12 and 19 February 2019

File N°: PFPA/18.7/2C.28.2/00021-19

Folio N° 1103625 and 1103627

Current status: Pending

N.B. The actor is a member of Red Alebrije network which, in turn, is a member of **Plataforma #SalvemosElHumedalLosCarcamos**

Type of remedy: **Administrative complaint**

Plaintiff: Acción Colectiva Socioambiental, A.C.

Date: 1 April 2019

Folio N° 747

Current status: Pending

N.B. Acción Colectiva Socioambiental is a member of **Plataforma #SalvemosElHumedalLosCarcamos**

Type of remedy: **Civil complaint**

Plaintiff: Acción Colectiva Socioambiental, A.C.

Date: 9 April 2019

File N°: none in the absence of notification

⁵ The five legal remedies mentioned hereafter appear in chronological order.

Current status: Pending

N.B. Acción Colectiva Socioambiental, A.C. is a member of [Plataforma #SalvemosElHumedalLosCarcamos](#)

For access to all legal remedies pursued, click [HERE](#): Recursos Legales



[All Documents pertaining to the Submission](#)