

Secretariat of the Commission for Environmental Cooperation
Determination of the Secretariat in accordance with Articles 24.27(2) and (3) of
United States-Mexico-Canada Agreement

Submitters: Names Withheld Pursuant to ECA Article 16(1)(a)
Party: United Mexican States
Date of submission: May 15, 2023
Date of determination: June 14, 2023
Number of submissions: SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*).

I. INTRODUCTION

1. On July 1, 2020, the United States-Mexico-Canada Agreement (USMCA or “the Agreement”) and the on Environmental Cooperation Agreement (ECA) entered into force. As of this date, the Submissions on Enforcement Matters (SEM) process originally established by Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) is by Articles 24.27 and 24.28 of the USMCA. The Secretariat of the Commission for Environmental Cooperation (“CEC Secretariat”)¹ remains responsible for implementing the SEM process, as stipulated in the ECA.²
2. Articles 24.27 and 24.28 of the USMCA provide a process for any person or entity legally established under the laws of a Party to file a submission asserting that a Party to the USMCA is failing to effectively enforce its environmental laws. The CEC Secretariat initially reviews submissions based on the requirements set out in USMCA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements, it then determines, in accordance with the criteria of Article 24.27(3), whether the submission merits a response from the Party in question. In light of the Party's response, the Secretariat then determines whether the matter warrants the preparation of a factual record and, if so, informs the CEC

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”). The constituent bodies of the CEC are its Council, Secretariat, and Joint Public Advisory Committee (JPAC).

² The Secretariat takes the view that although the provisions governing the SEM process are set forth in Chapter 24 of the USMCA, certain related procedures are also established under the Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada (ECA), namely: the Secretariat's role in the implementation of the Submissions on Enforcement Matters process, the Council's role in exchanging information with the Environment Committee, the preparation and publication of factual records, and the Council's cooperation activities. The Secretariat is mindful of ECA Article 2(3) which states in part: “The Commission will continue to operate under the modalities in place as of entry into force of this Agreement, including its rules, policies, guidelines, procedures, and resolutions, to the extent these modalities are consistent with this Agreement.” Environmental Cooperation Agreement, Articles 2(3); 4(1)(l)–(m); 4(4); and 5(5).

Council and the Environment Committee,³ providing its reasons under Article 24.28(1); otherwise, it terminates the review of the submission.⁴

3. On 15 May 2023, two organizations that requested confidentiality of their data under Article 16(1)(a) of the ECA (collectively, “the Submitters”) filed a submission with the Secretariat pursuant to Article 24.27(1) of the USMCA.⁵ Two coalitions—*Observatorio Ciudadano de la Subcuenca Valle de Bravo-Amanalco* and *Sé la Voz de la Naturaleza*—joined the Submitters and made public their joining the submission. On 7 June 2023, *Consultoría 5 Elementos, Centro de Investigación y Aprendizaje del Medio Ambiente* and three other individuals who requested confidentiality of their personal data, notified their participation as submitters, by means of a written document submitted to the Secretariat.⁶
4. The Submitters claim that Mexico is failing to effectively enforce its environmental laws regarding the protection of forests, biodiversity, and water resources affected by degradation processes and pollution in the Valle de Bravo-Amanalco sub-basin, municipality of Valle de Bravo, State of Mexico, Mexico.
5. According to the Submitters, Mexico is failing to effectively enforce various legal provisions and regulatory instruments in force in Mexico:
 - i. Article 4 of the Political Constitution of the United Mexican States (“the **Constitution**”);
 - ii. Articles 20 *bis* 4: Section II, 20 *bis* 5: Section V, 46, 161, 170, 170, 182, 192 and 193 of the General Act on Ecological Balance and Environmental Protection (**LGEEPA**);
 - iii. Articles 9: Sections II, XXVI and XXXVI, 15, 86: Sections IV, V, VII, VIII, XI and XII, and 95 of the National Waters Act (**LAN**);
 - iv. Articles 74 and 80 of the LGEEPA Regulations on Natural Protected Areas (**RANP**);
 - v. Articles 4, Section II and 9 of the Regulations of the LGEEPA on Environmental Impact Assessment (**REIA**);
 - vi. Articles 45, 46 and 47 of the Internal Regulations of the Ministry of Environment and Natural Resources (**RI-Semarnat**), and
 - vii. Article 222 of the National Code of Criminal Procedures (**CNPP**).
6. In addition, the submission refers to the National Water Program 2020-2024; the National Forestry Program 2020-2024, and the Management Program for the Natural Resources Protection Area of the Valle de Bravo, Malacatepec, Tilostoc and Temascaltepec River

³ The Environment Committee is established by USMCA Article 24.26(2) and its role is to “oversee the implementation” of USMCA Chapter 24.

⁴ More details on the various stages of the submissions on enforcement matters process, the public registry of submissions, and previous Secretariat determinations and factual records can be found on the CEC website at <<http://www.cec.org/submissions-on-enforcement>>.

⁵ SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), USMCA Article 24.27(1) Submission (15 May 2023), at: <https://bit.ly/23-5_SUB> [Submission].

⁶ SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), written support for the Submission pursuant to Article 24.27(1) of the USMCA (7 June 2023), at: <http://www.cec.org/wp-content/uploads/wpallimport/files/23-5-escrito-de-adhesion-peticionarios_redacted_es.pdf>.

Basins ("Management Program APRN-Valle de Bravo-MTT Basins" or "the Management Program").

7. After examining the submission, the Secretariat determines that it meets all the admissibility requirements set forth in paragraphs 1) and 2) of Article 24.27 of the USMCA, and determines that, pursuant to paragraph 3) of the same article, the response of the Government of Mexico is warranted, for the reasons set forth in Section III: "Analysis" of this determination.

II. SUMMARY OF SUBMISSION

8. In submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), the Submitters assert that Mexico is not effectively enforcing its environmental laws regarding the protection of forests, biodiversity, and water resources affected by degradation and pollution in the Valle de Bravo-Amanalco sub-basin in the State of Mexico, Mexico.
9. The Valle de Bravo-Amanalco sub-basin is a vital hydrological region that supplies water to the local population and, through the Cutzamala system, provides 40 percent of the drinking water supply in the Metropolitan Zone of the Valley of Mexico. The municipality of Valle de Bravo, State of Mexico, is part of this sub-basin, recognized for its diversity of flora and fauna, in addition to the fact that its forests play an important role in water catchment and serve as habitat for numerous species, many of which are endemic. The territory of Valle de Bravo possesses important parts of the mesophilic mountain forest and is composed of 60 percent of pine-oak forests; it is also home to 396 springs and six important rivers, as well as the Miguel Aleman dam, better known as the Valle de Bravo dam or lake; It is also located mostly within the Valle de Bravo, Malacatepec, Tilostoc and Temascaltepec River Basins Natural Resources Protection Area ("APRN-Cuencas Valle de Bravo-MTT" or "the APRN"), a protected natural area established in 1941 as a forest protection zone and recategorized in 2005.⁷
10. The Submitters assert that in Valle de Bravo there has been a proliferation of "non-inclusive development" characterized by "weekend real estate tourism," which promotes "the privatization of common use resources," such as access to the lake, springs, rivers, and wooded areas.⁸ They also maintain that the region presents a series of environmental and urban planning problems linked to the lack of harmonization of territorial instruments; that pressure from land use change and increased population density generates cumulative impacts,⁹ and that water quality in the sub-basin has deteriorated as a result of sedimentation and contamination of the Valle de Bravo dam by direct drainage discharges into the lake, as well as discharges from aquaculture and agricultural activities into rivers and streams in the upper basin.¹⁰

A. Regarding the obligation to regulate uses and utilization of the APRN-Cuencas Valle de Bravo-MTT

11. The Submitters state that the Management Program (*Programa de Manejo del Área de Protección de Recursos Naturales de las Cuencas de los Ríos Valle de Bravo, Malacatepec,*

⁷ *Id.* at §§ 1-4.

⁸ *Id.* at § 4.

⁹ *Id.* at § 6.

¹⁰ *Id.* at § 7.

Tilostoc y Temascaltepec—“APRN-Cuencas Valle de Bravo-MTT”) does not comply with the parameters established by the LGEEPA and the RLAN, since the program did not specify the densities, intensities, conditions and modalities of the projects, nor did it establish the corresponding limitations of uses and utilization based on studies of acceptable limits of change and carrying capacities.¹¹

12. The Submitters contend that such absence of parameters in the APRN-Valle de Bravo-MTT Watershed Management Program opened the municipality to establish—through the Valle de Bravo Municipal Urban Development Plan (*Plan de Desarrollo Urbano Municipal de Valle de Bravo*—“PDUM-Valle de Bravo”)—other land uses and housing densities outside of population centers, in areas designated as “undevelopable.”¹² They assert that, despite the fact that both the Management Program and the PDUM-Valle de Bravo stipulate urban land use only and exclusively for the zones designated as “human settlements,” the PDUM-Valle de Bravo itself established other land uses in mostly forested zones (non-urbanizable areas) outside of the human settlement zones, specifically in zones considered areas of sustainable ecosystem and natural resource utilization. With this, they add, the municipality of Valle de Bravo exceeded its authority to establish land uses, and “[opened] the territory of the protected natural area to the development of real estate projects, many of them without...the corresponding authorizations regarding environmental impact and land use changes.”¹³
13. According to the Submitters, this situation is causing several areas of the municipality, and therefore of the federal protected natural area, to change from forest to urban land use (legal and illegal), without the administrative authorities—federal, state and municipal, in their respective areas of competence—possessing the human, technical and financial capacity to attend to and follow up on the problem.¹⁴
14. The Submitters state that this lack of restrictions on real estate and urban development within the territory of the municipality of Valle de Bravo contrasts with what is observed in other subzones of the APRN-Cuencas Valle de Bravo-MTT, which leads one to believe that the National Commission of Natural Protected Areas (*Comisión Nacional de Áreas Naturales Protegidas*—Conanp) and the municipality, as a whole, “disregarded an environmental perspective and put urban needs before environmental needs,” for no justified reason.¹⁵
15. The submission states that the obligation to regulate land uses in the APRN-Cuencas Valle de Bravo-MTT corresponds to Conanp,¹⁶ and that, in any case, such regulation should have been resolved through a local ecological management program, developed and issued in accordance with Articles 20 *bis* 4: section II and 20 *bis* 5: section V of the LGEEPA.¹⁷

¹¹ *Id.* at §§ 21-22.

¹² *Id.* at § 22.

¹³ *Id.* at §§ 9 and 10.

¹⁴ *Id.* at § 10.

¹⁵ *Id.* at § 23.

¹⁶ *Id.* at § 24.

¹⁷ *Id.* at § 26.

B. On citizen complaint and environmental impact procedures

16. The Submitters assert that Mexico is not guaranteeing the right of access to information, participation and justice in environmental matters and is failing to effectively implement the citizen complaint mechanism provided for in the LGEEPA (which allows public participation and can give rise to inspection and oversight procedures, as well as the application of sanctions), since “the administrative authorities usually complete isolated procedures, lacking in public participation, where procedural rights are diminished [...] since access to sanction procedures is systematically blocked.”¹⁸
17. According to the Submitters, in the Valle de Bravo-Amanalco sub-basin, private individuals and state authorities have committed innumerable illegal acts by failing to comply with land use regulations.¹⁹ They maintain that despite the complaints filed with the Federal Attorney General's Office for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) and the National Water Commission (*Comisión Nacional del Agua*—Conagua), the responses from both authorities have been mostly non-existent or deficient, which has made it easier for real estate projects to continue moving forward without the necessary permits, even after safety measures and sanctions have been imposed.²⁰ This, they argue, creates a precedent for future developers to avoid compliance with the law, knowing that the developments will be regularized *after the fact*.²¹ The projects, as a whole, generate cumulative impacts that are causing serious damage to the ecosystem and environmental services in the Valle de Bravo-Amanalco sub-basin.²²

C. On the founding of population centers in the APRN-Cuencas Valle de Bravo-MTT

18. With regard to environmental impact assessments, the country's environmental laws require the incorporation of the best available techniques, methodologies, scientific information, and prevention and mitigation measures in the completed studies.²³ In order to achieve this, guidelines should be developed and made available to the public to facilitate the presentation of preventive reports, environmental impact statements and risk studies. The criteria set forth in these guidelines are, in turn, basic elements for the proper evaluation of the environmental impact of projects, but, if they are not respected, according to the Submitters, project proponents may reduce or manipulate the information contained in their environmental impact and risk studies as they see fit.²⁴ In the opinion of the Submitters, this is what is currently happening with the real estate developments in the municipality of Valle de Bravo.²⁵
19. According to the Submitters, the Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat) is also failing to comply with its obligation to prevent the construction of population centers within federally protected natural areas (*áreas naturales protegidas*—ANP), since it has authorized real estate projects that

¹⁸ *Id.* at §§ 28-30.

¹⁹ *Id.* at § 31.

²⁰ *Id.* at §§ 31-32.

²¹ *Id.* at § 32.

²² *Id.*

²³ *Id.* at § 35.

²⁴ *Id.* at §§ 36-40.

²⁵ *Id.* at § 40.

promote the urbanization of forest areas classified as undevelopable by the APRN-Valle de Bravo-MTT Watershed Management Program.²⁶

20. The Submitters list the following instances of non-compliance with federal regulations regarding ensuring the incorporation of the best information in environmental studies and avoiding the creation of new population settlements in the APRN-Cuencas Valle de Bravo-MTT:²⁷
- i. The APRN-Valle de Bravo-MTT Watershed Management Program does not establish the densities, intensities, conditions and modalities to which works and activities within the area should be subject;
 - ii. The APRN-Valle de Bravo-MTT Watershed Management Program does not limit uses and utilization through scientifically supported utilization rates and proportions;
 - iii. Semarnat has not developed and approved, in conjunction with the municipality and the state government, the local ecological management program to regulate land uses outside of population centers;
 - iv. Profepa does not verify safety measures to prevent further damage, nor does it monitor the application of such measures;
 - v. Profepa does not respect the cooperative nature of the complainants, nor does it inform them of the damage caused and the measures to prevent its consolidation;
 - vi. Profepa does not enforce the environmental liability regime and does not file criminal charges for environmental damage;
 - vii. Profepa has not corroborated all the facts reported within its jurisdiction;
 - viii. Semarnat has not published in the *Official Gazette of the Federation (Diario Oficial de la Federación—DOF)* the environmental impact methodological guidelines, thus failing to provide project developers with the best available information for a better environmental assessment, and
 - ix. Semarnat is not complying with its obligation to prevent the establishment of population centers within the federal protected natural area APRN-Cuencas Valle de Bravo-MTT.

D. On the quality and quantity of water in Valle de Bravo and its tributaries

21. The Submitters assert that, in recent decades, the water quality and quantity of the Valle de Bravo dam and its main tributaries has decreased significantly: deforestation, the expansion of the agricultural frontier, and the growth of an urban and rural population without adequate sewage and wastewater treatment services have contributed to the deterioration of the water quality of the Cutzamala System dams.²⁸ They also argue that the high concentrations of nutrients and organic matter in the reservoirs of the Cutzamala System have caused a phenomenon of eutrophication.²⁹ In the Valle de Bravo dam, the contamination index has increased in recent years to the point of exceeding ecological criteria in parameters such as chemical oxygen demand, fats and oils, and fecal coliforms. In addition, the rivers that flow

²⁶ *Id.* at § 41.

²⁷ *Id.* at § 42.

²⁸ *Id.* at § 43.

²⁹ *Id.* at § 44.

- into the dam-lake also show high levels of contamination due to receiving direct discharges of raw sewage.³⁰
22. According to the Submitters, water quality monitoring studies reveal higher levels of contamination in the urban areas of Valle de Bravo, especially in the municipal seat,³¹ and record fecal coliform values that exceed the maximum permissible limits are present in several bodies of water in the sub-basin, putting the health of inhabitants and visitors at risk. They also argue that the high levels of pathogenic microorganisms detected in the Amanalco River, which feeds the Valle de Bravo dam, suggest that the Amanalco treatment plant is malfunctioning.³²
 23. The Submitters point out that the lack of adequate sanitation infrastructure and the poor functioning of the existing system have a negative impact on both the quality of the water and the cost of making it potable at the Los Berros plant. Conagua has spent large sums of money on energy use and the purchase of aluminum sulfate to make the water potable, expenses that could be reduced by investing in prevention and sanitation activities in the sub-basin.³³
 24. They state that, despite the critical situation, Conagua continues to grant extensions to existing concessions without considering the water deficit and the impact on water resources; that in the municipality of Valle de Bravo numerous titles or permits for national waters have been granted without adequate verification by the responsible authorities, and that the inspections completed by Conagua have been minimal.³⁴
 25. The Submitters highlight the existence of “private” dams that do not have corresponding environmental authorizations, and the construction of which have affected water resources in the sub-basin, in addition to contributing to the reduction of the storage capacity of the Valle de Bravo dam-lake.³⁵ They add that the change in land use is another factor that has had a negative impact on water resources by affecting water infiltration and runoff, with a corresponding reduction in groundwater recharge.³⁶
 26. All these factors are generating increased contamination and water shortages in the Valle de Bravo-Amanalco sub-basin, “the main water collector that feeds the Colorines and Ixtapantongo dams and provides [...] 40 percent of the water that the Cutzamala System [supplies] to Mexico City.”³⁷
 27. The submission asserts that, according to current legislation, water authorities in Mexico are obliged to develop and implement programs and strategies that address specific problems related to water management;³⁸ to periodically evaluate the national water policy,³⁹ and to

³⁰ *Id.* at §§ 45-46.

³¹ *Id.* at § 46.

³² *Id.* at § 47-50.

³³ *Id.* at § 51.

³⁴ *Id.* at §§ 55-56.

³⁵ *Id.* at § 60.

³⁶ *Id.* at § 62.

³⁷ *Id.* at § 63.

³⁸ *Id.* at §§ 65-66.

³⁹ *Id.* at § 67.

implement actions within the National Water Program by federal authorities, as this is essential to combat the deterioration of ecosystems and the negative effects on the sub-basin.⁴⁰

28. The submission emphasizes that competent federal authorities have failed to implement several strategies of the National Water Program in the Valle de Bravo-Amanalco sub-basin to halt the degradation of water-related environmental services: monitoring and verification of allocations and concessions, as well as discharge permits; identification of infrastructure requirements for drinking water, drainage and wastewater treatment; promotion of conservation, management and recovery of watersheds; protection of aquifer recharge zones; completion of studies to determine the ecological flow in order to preserve the hydrological cycle, and monitoring and control in aquifers and watersheds that are overexploited and polluted, among many others.⁴¹
29. The Submitters argue that, in relation to the Valle de Bravo-Amanalco sub-basin, the federal authorities also fail to enforce other programs and strategies that complement the National Water Program, including the National Forestry Program 2020-2024 and the APRN Management Program itself;⁴² that Conagua and the corresponding basin organization have refrained from implementing specific programs, strategies and actions in response to the sub-basin's problems, with the aggravating factor that the Valle de Bravo-Amanalco Basin Commission—which used to coordinate the policies of the three orders of government and execute specific programs—has not been operating for years and is currently disbanded⁴³ and that although compliance with the actions set forth in the aforementioned programs requires institutional coordination, there has been no joint action by entities such as the National Forestry Commission (*Comisión Nacional Forestal*—Conafor), Conanp, Semarnat, the National Institute of Ecology and Climate Change (*Instituto Nacional de Ecología y Cambio Climático*—INECC), Conagua, the Ministry of Agrarian, Territorial and Urban Development (*Secretaría de Desarrollo Agrario, Territorial y Urbano*—Sedatu), the Ministry of Agriculture and Rural Development (*Secretaría de Agricultura y Desarrollo Rural*—Sader) and the Ministry of Tourism (*Secretaría de Turismo*—Sector), among others, to implement strategies to halt the deterioration of water-related ecosystem services in the sub-basin.⁴⁴
30. In sum, the Submitters state that the inaction of public entities in enforcing legal provisions directly impacts the forest ecosystems and hydrological services in the sub-basin, as well as the quality and quantity of water resources, which affects the quality of life not only of the local inhabitants but also of the nearby towns. The Submitters conclude that these shortcomings should be analyzed, investigated and addressed by the competent authorities.⁴⁵

III. ANALYSIS

31. The CEC Secretariat may consider any submission alleging that a Party to the USMCA is failing to effectively enforce its environmental laws. The Secretariat reiterates, as it has previously stated in determinations under Articles 14 and 15 of the North American Agreement

⁴⁰ *Id.* at § 68.

⁴¹ *Id.* at §§ 68-74.

⁴² *Id.* at §§ 75-76.

⁴³ *Id.* at § 78.

⁴⁴ *Id.* at §§ 77-78.

⁴⁵ *Id.* at §§ 79-80.

on Environmental Cooperation (NAAEC)⁴⁶ and also under the USMCA,⁴⁷ that the requirements of Articles 24.27(1), (2) and (3) of the NAAEC are not intended to be an insurmountable procedural screening device and, and must therefore be given a broad interpretation consistent with the objectives of Chapter 24 of the Agreement.⁴⁸ The Secretariat reviewed the submission with that perspective in mind.

A. Article 24.27(1)

32. USMCA Article 24.27(1) provides that any person of a Party may file a submission with the CEC Secretariat asserting that a Party is failing to effectively enforce its environmental laws.
33. Article 1.5 of the USMCA⁴⁹ defines the term *person of a Party* as “a national of a Party or an enterprise of a Party.” In turn, *national* means a natural person with the nationality [or permanent resident status] of a Party, while *enterprise* means “any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled,” which includes any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization “constituted or organized under the law of a Party.”
34. The Secretariat notes that not all of the Submitters qualify as an *enterprise* in terms of Article 1.5 of the USMCA. In particular, the Secretariat notes that the organizations *Observatorio Ciudadano de la Subcuenca de Valle de Bravo-Amanalco* and *Sé la Voz de la Naturaleza* are collectives that coordinate the work of various organizations in the town of Valle de Bravo, but neither one is a “constituted or organized entity under applicable law” and, therefore, they cannot be considered Submitters.
35. With respect to the 5 Elements Consultancy and the Research and Learning Center, the two organizations that originally filed the submission, as well as the three individuals who requested to join the Submitters (who, as mentioned above, requested confidentiality of their data in accordance with Article 16(1)(a) of the NAAEC), the submission—and, where applicable, the membership forms—provide information on their place of incorporation, date, registration number and the name of the person acting as legal representative in each case, as well as the organization acting as coordinator of the submission. The Secretariat determines that these organizations and persons qualify as *persons of a Party* in terms of the definition of Article 1.5 and for purposes of Article 24.27(1) of the USMCA, and therefore, they should be considered submitters.

⁴⁶ SEM-97-005 (*Biodiversity*), Determination under NAAEC Article 14(1) (May 26, 1998); SEM-98-003 (*Great Lakes*), Determination under NAAEC Articles 14(1) and (2) (September 8, 1999).

⁴⁷ SEM-20-001 (*Loggerhead Turtle*), Determination Pursuant to Articles 24.27(2) and (3) of the USMCA (Feb. 8, 2021), §8, at: <https://bit.ly/DET_20-001_es>; SEM-21-001 (*Fairview Terminal*), Determination Pursuant to Articles 24.27(2) and (3) of the USMCA (Mar. 9, 2021), §6, at: <https://bit.ly/DET_21-001_en> [available in English only]; SEM-21-002 (*Vaquita porpoise*) Determination Pursuant to USMCA Articles 24.27(2) and (3) (Sept. 8, 2021), §8, at: <https://bit.ly/DET_21-02es>.

⁴⁸ *Cfr.* USMCA, Article 24.2.

⁴⁹ The Secretariat has in mind the adoption of the Amending Protocol to the Treaty between the United Mexican States, the United States of America and Canada (“the Protocol”), whereby provisions were added to chapters 1 and 24, so that the numbering of some articles of said instrument was changed. This was the case with Article 1.5 “General Definitions,” initially Article 1.4, but later renumbered in accordance with the Protocol. Therefore, in the case of the Spanish version, it is necessary to consult the USMCA and its Protocol.

B. Environmental laws in question

36. In order to determine whether the submission identifies or refers to “environmental laws” as set forth in Article 24.27(1) of the USMCA, it is necessary to refer to the definition provided by the Agreement itself.

37. Article 24.1 of the USMCA establishes the following definition:

[E]nvironmental law means a statute or regulation of a Party, or provision thereof, including any that implements the Party's obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

- a) the prevention, abatement, or control of the release, discharge or emission of pollutants or environmental contaminants;
- b) the control of environmentally hazardous or toxic chemicals, substances, materials, or wastes, and the dissemination of information related thereto; or
- c) the protection or conservation of wild flora or fauna,¹ including endangered species, their habitat, and specially protected natural areas,²

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources.⁵⁰

¹ The Parties recognize that “protection or conservation” may include the protection or conservation of biological diversity.

² For the purposes of this Chapter, the term “specially protected natural areas” means those areas defined by the Party in its law.

In turn, **statute or regulation** means:

- b) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government.⁵¹

38. After analyzing the provisions and legal instruments cited in the submission, in order to assess whether they correspond to environmental laws within the meaning of the USMCA and whether they are specifically applicable and relate to the issues raised by the Submitters, the Secretariat found that the admissibility criteria established to proceed with the corresponding analysis in the SEM-23-005 process are not met in all cases. Below, the Secretariat details its reasoning in this regard.

39. The provisions cited by the Submitters are numerous and range from the Constitution and various federal laws and regulations to national planning instruments, as shown in the following table.

⁵⁰ USMCA, Article 24.1.

⁵¹ *Id.*

Table. Regulatory instruments cited in the submission.

Title	Acronym or abbreviation	Provisions cited
Political Constitution of the United Mexican States	Constitution	Article 4
General and federal laws		
General Act on Ecological Balance and Environmental Protection	LGEEPA	Articles 20 <i>bis</i> 4: Section II, 20 <i>bis</i> 5: Section V, 46, 161, 170: Sections I, II and III, 182, 192 and 193
National Waters Act	LAN	Articles 9: Sections II, XXVI and XXXVI, 15, 86: Sections IV, V, VII, VIII, XI and XII, and 95
General and federal law regulations		
Regulations of the General Act on Ecological Balance and Environmental Protection regarding Natural Protected Areas	RANP	Articles 74 and 80
Regulations of the General Act on Ecological Balance and Environmental Protection regarding Environmental Impact Assessment	REIA	Articles 4: section II and 9
Rules and Regulations of the Ministry of Environment and Natural Resources	RI-Semarnat	Articles 45, 46 and 47
Codes		
National Code of Criminal Procedures	CNPP	Article 222
Other legal instruments		
National Water Program 2020-2024		
National Forestry Program 2020-2024		
Management Program for the Natural Resources Protection Area of the Valle de Bravo, Malacatepec, Tilostoc and Temascaltepec River Basins.	Management Program APRN-Watersheds Valle de Bravo-MTT	

i) Political Constitution of the United Mexican States

40. **Article 4 of the Constitution** establishes, in its **fifth paragraph**, the human right to a healthy environment. The Secretariat has reiterated on previous occasions that this provision can be considered as long as it is complemented by an analysis of the environmental law in question,⁵² and the analysis is focused on that provision.⁵³

⁵² See SEM-06-006 (*Los Remedios National Park*), Determination Pursuant to NAAEC Article 14(1) (19 Jan. 2007), pp. 4-5; SEM-15-002 (*Analog TV Waste Management*), Determination Pursuant to NAAEC Article 14(1) (22 Sept. 2015), § 14.

⁵³ Constitution, Article 4, fifth paragraph:

Everyone has the right to a healthy environment for his or her development and well-being. The State shall guarantee respect for this right. Environmental damage and deterioration will generate responsibility for whoever causes it in terms of the law.

ii) General Act on Ecological Balance and Environmental Protection

41. **Article 20 bis 4 of the LGEEPA** provides that local ecological management programs will be issued by municipal authorities and, in the case of Mexico City, by the territorial districts. In addition to determining the different ecological areas of a zone and establishing ecological regulation criteria to be considered in development plans, these programs are intended to regulate land use outside of population centers in order to protect the environment and preserve, restore and sustainably use natural resources, which implies establishing guidelines for productive activities and the location of human settlements (**section II**). The Secretariat determines that this provision is related to the assertions in the submission and qualifies as environmental law pursuant to Article 24.1 of the USMCA, as it is oriented to the protection of the environment or human health through the coordination of authorities in matters of ecological planning and land use regulation. In this regard, the Secretariat keeps in mind that the purpose of ecological management is to regulate the use of land and productive activities in order to protect the environment, preserving and sustainably using natural resources.⁵⁴
42. **Article 20 bis 5 of the LGEEPA** provides that the procedures for formulating and issuing local ecological management programs will be determined by state laws, but that when a local ecological management program includes a ANP under federal jurisdiction or part of it, it will be developed jointly by Semarnat and the governments of the states and the corresponding municipalities or territorial districts (**section V**). The Secretariat determines that this provision is related to what was stated in the submission and qualifies as an environmental law pursuant to Article 24.1 of the USMCA because it is oriented to the protection of the environment or human health since it regulates the coordination of authorities in ecological planning matters. Also in this case, the Secretariat keeps in mind the purpose of environmental management as an instrument of environmental policy.⁵⁵
43. **Article 46 of the LGEEPA** establishes that natural resource protection areas will be considered ANPs (**section VI**), and specifies the ANPs under federal jurisdiction; it states that state governments have the power to establish parks, reserves and other categories of environmental management, in accordance with local legislation; that local ANPs may have characteristics established in the law or characteristics specific to each state, and that state ANPs may not be established in areas already declared as ANPs by the federal government. It also states that municipalities are also responsible for establishing ecological conservation zones and other categories, in accordance with local legislation. Specifically, this provision establishes that no new human settlements will be allowed in ANPs. The Secretariat determines that section VI and the subsequent paragraphs of said article are related to the assertions of the submission and qualify as environmental law pursuant to Article 24.1 of the USMCA, since they regulate the creation and characteristics of an ANP.
44. **Article 161 of the LGEEPA** establishes that the Semarnat will complete inspection and surveillance acts for compliance with the provisions of the LGEEPA and the regulations derived from it. The Secretariat determines that Article 161 of the LGEEPA relates to the matter raised in the submission and qualifies as environmental law in accordance with Article 24.1 of the USMCA, since it provides Semarnat with the power to enforce environmental law.

⁵⁴ LGEEPA, Article 3: Section XXIV.

⁵⁵ *Id.*

45. **Article 170 of the LGEEPA** states that when there is an imminent risk of ecological imbalance or serious damage or deterioration to natural resources, ecosystems or public health, the Semarnat may order safety measures such as: temporary, partial or total closure (**section I**); precautionary seizure of hazardous materials and waste (**section II**), and neutralization or any similar action that prevents the expected effects from occurring (**section III**). The Secretariat determines that the provisions of this article are related to the Submitters' arguments and qualify as environmental law in terms of Article 24.1 of the USMCA, since they establish preventive measures to avoid ecological imbalance or serious damage to natural resources.
46. **Article 182 of the LGEEPA** provides that in those cases in which Semarnat has knowledge of acts or omissions that could constitute crimes, it must report them to the Federal Public Prosecutor's Office, and that Semarnat may provide technical or expert opinions as requested by the Prosecutor's Office or judicial authorities. The Secretariat determines that this provision is related to the assertions of the submission and qualifies as environmental law pursuant to Article 24.1 of the USMCA, since its main purpose is the protection of the environment through the mechanism for reporting and exercising Semarnat's functions in event of environmental crimes.
47. **Article 192 of the LGEEPA** establishes that, once a complaint is accepted, Profepa will identify the complainant and will disclose the complaint to the person or authorities to whom the facts denounced are imputed. It also states that Profepa will carry out procedures to determine the existence of the acts, facts and omissions that are the subject of the complaint. The Secretariat determines that this provision is related to what is asserted in the submission and qualifies as environmental law as established in Article 24.1 of the USMCA, since its main purpose is the protection of the environment through environmental law enforcement mechanisms such as the citizen complaint.
48. **Article 193 of the LGEEPA** establishes that the complainant may cooperate with Profepa to provide evidence, documents and information, and that Profepa must consider the information provided by the complainant. The Secretariat determines that this provision is related to the issue raised in the submission and qualifies as environmental law pursuant to Article 24.1 of the USMCA, since its main purpose is the protection of the environment through environmental enforcement mechanisms such as the citizen complaint.

iii) National Waters Act

49. **Article 9 of the LAN** provides that Conagua is a decentralized administrative body of the Semarnat that acts as the highest authority in water matters, in charge of the implementation of the LAN and its regulations, both at the national and regional (hydrological-administrative) levels through its basin organizations. At the national level, Conagua: exercises its powers as the authority in water matters within the scope of federal jurisdiction (**section I**); formulates national water policy and proposes it to the head of the Executive Branch, in addition to monitoring and periodically evaluating its compliance (**section II**); promotes the efficient use of water and its conservation in the phases of the hydrological cycle, promoting the development of a culture of water awareness (**section XXVI**); and monitors compliance with and application of the LAN (**section XXXVI**). The Secretariat determines that the provisions of Article 9: Sections I, II, XXVI and XXXVI are related to the assertions in the submission and qualify as environmental law under Article 24.1 of the

USMCA because they have as their purpose the protection of the environment or human health, through the distribution of powers for the integrated management of water resources.

50. **Article 15 of the LAN** provides that water planning is mandatory for the management of water resources and the conservation of natural resources, vital ecosystems and the environment; that it shall be completed with the assistance of the Basin Councils, which shall establish consultation mechanisms to ensure the participation and co-responsibility of users and other interested social groups, and that it shall include the formulation, implementation and evaluation of the following instruments:

- i. National Water Program (**section I**);
- ii. water programs for hydrological basins or groups of basins, as well as state programs that will be integrated into the water programming by basins and regions (**section II**);
- iii. specific subprograms at the regional level that address problems of water scarcity, pollution and overexploitation (**section III**);
- iv. special or emergency programs to address special problems and situations (**section IV**);
- v. catalog of projects for the use or utilization of water and for the preservation and control of its quality (**section V**);
- vi. classification of water bodies according to their intended uses, and development of water balances in quantity and quality by basins, hydrological regions and aquifers (**section VI**);
- vii. strategies and policies to regulate the utilization, use or enjoyment of water and for its conservation (**section VII**);
- viii. mechanisms for consultation, agreement, participation and specific commitment for the execution and financing of programs (**section VIII**);
- ix. multiannual investment and annual operating programs for investments and actions completed by Conagua and the Basin Organizations (**section IX**), and
- x. water programming with consideration of factors such as environmental use, ecological conservation, sustainability of watersheds and ecosystems, and the feasibility of temporary or controlled utilization of groundwater (**section X**).

The Secretariat determines that the provisions of this article relate to the assertions in the submission and qualify as environmental law under Article 24.1 of the USMCA as they are aimed at the protection of the environment or human health, through the establishment of instruments and mechanisms for the formulation, enforcement and evaluation of water planning and programming.

51. **Article 86 of the LAN** establishes the list of powers of Conagua and, as applicable, of the corresponding basin organization, with respect to the prevention and control of water pollution. The Secretariat determines that the following provisions are related to the assertions in the submission and qualify as environmental law pursuant to Article 24.1 of the USMCA because they are oriented to the protection of the environment or human health, through the establishment of powers of Conagua and the basin organizations:

- i. establish and monitor compliance with the particular discharge conditions applicable to wastewater (**section IV**) in property and areas under federal jurisdiction (**subsection a**), national waters and property (**subsection b**), land

- that may contaminate the subsoil or aquifers (**subsection c**), and other cases provided for in the LGEEPA and in the LAN regulations (**subsection d**);
- ii. inspect and verify compliance with the provisions of the Official Mexican Standards (*Normas Oficiales Mexicanas*—NOM) regarding the preservation and conservation of the quality of national waters and assets indicated in the LAN (**section V**);
 - iii. to ensure that water for human consumption complies with the corresponding NOMs (**section VII**);
 - iv. to ensure that the use of wastewater complies with the NOMs on water quality (**section VIII**);
 - v. attend to environmental changes resulting from the use of water and establish the necessary measures to preserve water resources (**section XI**), and
 - vi. exercise the powers of the federation in matters of prevention and control of water pollution (**section XII**).
52. **Article 95 of the LAN** establishes that the “water authority” within the scope of federal jurisdiction shall complete inspections of wastewater discharges to verify compliance with the LAN, and that the results of such inspections may serve as a basis for the application of sanctions provided for in the same law. The Secretariat determines that this provision is linked to what was raised by the Submitters and qualifies as environmental law under Article 24.1 of the USMCA because it is oriented to the protection of the environment or human health, through inspection and other enforcement acts by the competent authority.

iv) Regulation of the LGEEPA regarding Natural Protected Areas

53. **Article 74 of the RANP** stipulates that the management program of an ANP must include the elements listed in Article 66 of the LGEEPA, as well as the specification of the densities, intensities, conditions and modalities to which the projects and activities within the protected area will be subject in compliance with the applicable regulations. The program must also specify the delimitation, extension, and location of the subzones and the area of influence of the area in question, and Semarnat must ensure that private activities comply with the objectives of the subzones. The Secretariat determines that the provisions of Article 74 of the RANP are related to the Submitters’ arguments and qualify as environmental law in accordance with Article 24.1 of the USMCA as oriented to the protection of the environment or human health, through the integration of ANP management programs.
54. **Article 80 of the RANP** provides that Semarnat will grant rates and establish proportions, limits of acceptable change or carrying capacities for uses and utilization within the ANPs, and that for this purpose it may collaborate with other agencies, public or private organizations, universities, research institutions or persons with experience and technical capacity in the matter, in order to develop the necessary methods and studies. The Secretariat determines that this provision is related to what was stated in the submission and qualifies as environmental law in terms of Article 24.1 of the USMCA, since it is oriented to the protection of the environment or human health, through the establishment of types of uses and utilization in the ANPs.

v) Regulation of the LGEEPA regarding Environmental Impact Assessment

55. **Article 4 of the REIA** provides that Semarnat is competent to formulate, publish and make available to the public the guidelines for the presentation of preventive reports, environmental impact statements and risk studies (**section II**), among other powers. The Secretariat determines that this provision is related to the assertions in the submission and qualifies as environmental law under Article 24.1 of the USMCA because it is oriented to the protection of the environment or human health, through public documents with standards to procure the best possible information in the environmental impact assessment processes.
56. **Article 9 of the REIA** establishes that project promoters must submit to Semarnat an environmental impact assessment (EIA) with relevant information on the environmental circumstances associated with the completion of the works and activities of the project in question. In addition, it states that Semarnat will develop guidelines to facilitate the preparation of the EIA, adapted to the type of work or activity to be carried out. The Secretariat determines that this provision is related to what was stated in the submission and qualifies as environmental law in terms of Article 24.1 of the USMCA because its main purpose is the protection of the environment or human health, through the environmental impact assessment procedure and the facilitation of the development of EIAs for such purpose.

vi) Internal Regulations of the Ministry of Environment and Natural Resources

57. **Article 45 of the IR-Semarnat** establishes that Profepa will have, for the exercise of its powers, *subprocuradurías*—environmental auditing, industrial inspection, natural resources and legal—which in turn will be assigned the corresponding administrative units and representative offices. Although this provision may qualify as environmental law in terms of Article 24.1 of the USMCA, the Secretariat determines that the submission does not include assertions regarding the lack of integration of the agencies under Profepa, and therefore it is not considered for further analysis.
58. **Article 46 of the RI-Semarnat** stipulates that Profepa's *subprocuradurías* offices and general directorates with inspection and surveillance powers have jurisdiction throughout the national territory and in areas under the nation's sovereignty and jurisdiction; that Profepa will have designated inspectors with powers to impose security measures; that the heads of *subprocuradurías*, general directorates and representative offices may receive support from any person assigned to the Profepa, and that the Profepa may request the assistance of public servants from other agencies or entities of the three levels of government, as long as they are accredited as federal inspectors. The Secretariat determines that this provision is related to what was stated in the submission and qualifies as environmental law in terms of Article 24.1 of the USMCA because its main purpose is the protection of the environment or human health, through the coordination of authorities in matters of inspection and monitoring related to environmental law.
59. **Article 47 of the RI-Semarnat** establishes the attributions of Profepa's *subprocuradurías* offices, which include: representing the interests of society in environmental matters; coordinating the attached administrative units and establishing integration and interrelation mechanisms for the correct performance of their attributions; agreeing to hold hearings with citizens; formulating, evaluating, supervising and following up on the programs, procedures and operative actions carried out by the representative offices, and in short, guaranteeing the exercise of the powers conferred on the administrative units assigned to it. The Secretariat

determines that **sections I, II, III, IX, XIV, XVIII, XX, XXI, XXII and XXIV** of this article are related to the issues raised in the submission and qualify as environmental law in terms of Article 24.1 of the USMCA for having as its main purpose the protection of the environment or human health, through the exercise of environmental law enforcement powers.

vii) National Code of Criminal Procedures

60. **Article 222 of the CNPP** establishes that any person, as well as any public official, who has knowledge of a possible crime has the obligation to report it to the Public Prosecutor's Office (or the police, in case of urgency). Failure to report may result in a sanction. The Secretariat determines that Article 222 of the CNPP constitutes a general provision on criminal matters, related to the reporting and prosecution of crime, but is not primarily oriented to the protection of the environment or human health, and therefore does not qualify as environmental law.

viii) Other legal instruments

61. The National Water Program 2020-2024 does not qualify as an environmental law because it is not an “an Act of Congress or regulation promulgated pursuant to an Act of Congress.”⁵⁶ However, because it is an instrument for the purpose of ensuring effective enforcement of environmental law, the Secretariat determines it is relevant to consider and reference it in the enforcement analysis with respect to submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*).
62. The National Forest Program 2020-2024 does not qualify as an environmental law, since it is not an “an Act of Congress or regulation promulgated pursuant to an Act of Congress.”⁵⁷ However, following the same reasoning set forth in the preceding paragraph, the Secretariat determines that it should be considered and referred to in the corresponding enforcement analysis.
63. The APRN-Valle de Bravo-MTT Watershed Management Program does not qualify as an environmental law either, since it is not an Act of Congress or a regulation issued pursuant to an Act of Congress.⁵⁸ However, the Secretariat considers it to be an instrument to ensure effective enforcement of environmental law and reference will be made to it in the corresponding enforcement analysis.

C. USMCA Article 24.27(2) Requirements

64. Article 24.27(2) establishes five requirements that a submission must meet to be admissible. After examining the submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*) with respect to the five paragraphs requirements in this Article, the Secretariat concludes that it complies with these requirements, as follows.

⁵⁶ USMCA, Article 24.1: In turn, **law or regulation** means: for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government.

⁵⁷ *Id.*

⁵⁸ *Id.*

The CEC Secretariat may consider a submission under this Article if it finds that the submission:

a) is in writing in English, French, or Spanish;


65. The submission is written in Spanish, thus satisfying the admissibility requirement set forth in USMCA Article 24.27(2)(a).

b) clearly identifies the person making the submission;

66. The submission includes the name, address, e-mail address and telephone number of the submitters: sufficient and adequate information to identify and communicate with the Submitters. Therefore, the submission satisfies USMCA Article 24.27(2)(b).

c) provides sufficient information to allow for the review of the submission, including any documentary evidence on which the submission may be based and identification of the environmental law of which the failure to enforce is asserted;

67. The Submitters cite several publications and studies with scientific information on the issue raised in the submission and include links for downloading. Among the documentary evidence on which the submission is confirmed are:

- i. Plans of the Valle de Bravo-Amanalco sub-basin with information on land use and vegetation, deforestation (2001-2021), ANP index (2002, 2021), ecological integrity (2002, 2021) and an analysis of forest to other land use change;⁵⁹
- ii. ⁶⁰
- iii. Information on administrative proceedings before Profepa;⁶¹
- iv. Subzoning map of the APRN-Cuencas Valle de Bravo-MTT, published by Conanp;⁶²
- v. Examples of specific cases of failure to consider the best available information during environmental impact assessment procedures;⁶³
- vi. Results of water quality monitoring studies completed between 2021 and 2023 by the organization Procuena, A.C. and the Mexican Civil Council for Sustainable Forestry;⁶⁴
- vii. Results of water quality monitoring completed between 2015 and 2018 by the Federal Commission for Protection against Health Risks (Cofepris);⁶⁵
- viii. Informe *Permanent water monitoring with public participation for the sustainable recovery of Valle de Bravo*, developed by the Aquatic Biochemistry

⁵⁹ Submission, Annex I.

⁶⁰ *Id.* at Annex II.

⁶¹ *Id.* at Annex III.

⁶² *Id.* at Annex IV.

⁶³ *Id.* at Annex V.

⁶⁴ *Id.* at Annex VI.

⁶⁵ *Id.* at Annex VII.

Laboratory of the Institute of Marine Sciences and Limnology, National Autonomous University of Mexico (UNAM).⁶⁶

- ix. Request for information managed through the Transparency Unit of Conagua, which contains data on the cost of electricity and chemicals for the purification of water from the Los Berros plant of the Cutzamala system,⁶⁷ y
- x. File in Google Earth format with the geolocation of private dams in the Valle de Bravo-Amanalco sub-basin.⁶⁸

68. The submission also includes a link to download the following documentation:

- ii. Management Program APRN-Basins Valle de Bravo-MTT;⁶⁹
- iii. *Strategic plan for the environmental recovery of the Amanalco-Valle de Bravo watershed: update*, published in November 2012 by the Mexican Institute of Water Technology;⁷⁰
- iv. [REDACTED]⁷¹
- v. Valle de Bravo-Amanalco Basin Ecological Management Plan,⁷² and
- vi. Agreement published in the DOF, which discloses the Management Program APRN-Basins Valle de Bravo-MTT.⁷³

69. The Secretariat determines that the submission satisfies USMCA Article 24.27(2)(c).

- d) *appears to be aimed at promoting enforcement rather than at harassing industry; and*

70. The Secretariat finds that the submission seeks effective enforcement of environmental law in relation to the protection of forest ecosystems and water quality in the face of adverse environmental effects arising from land use change, real estate development and the undue privatization of environmental assets asserted by the Submitters. Specifically, the submission refers to various real estate activities in the Valle de Bravo-Amanalco sub-basin; the obligation to regulate uses and utilization in the APRN-Cuencas Valle de Bravo-MTT; the establishment of population centers in said APRN; and the problems in terms of water quality and quantity derived from deficiencies in sanitary infrastructure, the existence of concessions granted and extended by Conagua, and the construction of private dams in the sub-basin. It also refers to failures in the effective implementation of citizen complaint and environmental impact procedures.

71. The Secretariat finds that USMCA Article 24.27(2)(d) is satisfied, since it is clear from the information and documentation included in the submission and its annexes that it is not aimed at harassing an industry.

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

⁶⁶ *Id.* at Annex VIII.

⁶⁷ *Id.* at Annex IX.

⁶⁸ *Id.* at unnumbered annex.

⁶⁹ *Id.* at Submission FN 1.

⁷⁰ *Id.* at Submission FN 2.

⁷¹ *Id.* at Submission FN 10.

⁷² *Id.* at Submission FN 53.

⁷³ *Id.* at Submission FN 60.

72. The submission states that in December 2022, a letter was submitted to the head of Profepa with a history of the complaints filed and the procedural status of each case. The Submitters state that with this they were seeking a response on the procedural progress of the proceedings in which they have participated.⁷⁴
73. The submission also informs of a letter sent to the Senate of the Republic in 2021 to request immediate attention to the issue. In the letter-petition, which gathered more than 52,000 signatures through the Change.org platform,⁷⁵ requested the integral management of the sub-basin, the reinstatement and operation of the Valle de Bravo-Amanalco Basin Commission and the enforcement of the APRN-Valle de Bravo-MTT Basin Management Program.
74. The Secretariat determines that the submission satisfies USMCA Article 24.27(2)(e).

D. Criteria set forth in Article 24.27(3) of the USMCA

75. USMCA Article 24.27(3) establishes four additional criteria that guide the Secretariat's review process:
- a) the submission alleges harm to the person making the submission;*
76. The submission asserts that Mexico fails to effectively enforce environmental law in terms of the obligation to regulate uses and utilization in the APRN-Cuencas Valle de Bravo-MTT; that the purpose of the ANPs is to preserve representative environments,⁷⁶ and that the management program for the APRN in question does not comply with the basic parameters because "it did not specify the densities, intensities, conditions, and modalities to which the works and activities that are completed in the protected area must be subject, nor did it establish limitations on uses and utilization based on studies of acceptable limits of change and carrying capacities."⁷⁷
77. The Submitters assert that they have denounced to Profepa and Conagua illegal actions by private parties and the repeated failure of state and municipal authorities to comply with land use regulations. Despite this, the procedural responses from the federal authority have been "null or, in some cases, precarious," and the real estate projects have been allowed to continue advancing without the proper permits, causing cumulative impacts and serious damage to the ecosystem of the Valle de Bravo-Amanalco sub-basin.⁷⁸
78. The Submitters assert that Semarnat fails to comply with its legal obligation to prevent the construction of population centers within ANPs under federal jurisdiction and that, in the case of the submission, the recurring authorization of projects that promote the urbanization of forest areas classified as non-developable has caused damage to the environment and the ecosystems of the sub-basin in question.⁷⁹

⁷⁴ Submission, Annex III: Profepa Files, Citizen Observatory of the Valle de Bravo-Amanalco Sub-basin (December 2022).

⁷⁵ "Water shortage threatens CDMX and the State of Mexico," letter-petition on the Change.org platform, available at: <<https://bit.ly/3N2b5iV>>.

⁷⁶ Submission, § 15.

⁷⁷ *Id.* at § 22.

⁷⁸ *Id.* at §§ 31-32.

⁷⁹ *Id.* at § 41.

79. The Submitters describe the critical water situation in the Valle de Bravo-Amanalco sub-basin and point out that, despite this, Conagua has been granting extensions to existing concessions, without taking into account the deficit in water availability in the Villa Victoria-Valle de Bravo aquifer, nor the impact of the concessions on water availability. This careless approach, they argue, has led to the overexploitation of water resources in the region. Another concern raised by the Submitters is the lack of inspections in the Valle de Bravo-Amanalco sub-basin: inspection visits by Conagua have been minimal, which increases risks and the possibility of environmental damage. In the opinion of the Submitters, without adequate supervision and compliance with the regulations, programs and strategies that the authority itself has established, it will not be possible to effectively identify and address the problems of water scarcity, contamination and overexploitation in the sub-basin, nor will it be possible to achieve integrated water management.⁸⁰
80. The Secretariat has previously determined that, when considering the issue of injury, it must examine whether the alleged harm referred to in the submission is due to the alleged lack of effective enforcement of environmental laws and whether such harm is related to the protection of the environment.⁸¹ Consistent with the practice in the implementation of the SEM process, the Secretariat determines that the submission satisfies the criterion set forth in USMCA Article 24.27(3)(a).
- b) the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter;*
81. Article 24.2(2) of the USMCA states that the objectives of Chapter 24 are “to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation, in furtherance of sustainable development.”
82. The submission describes issues of land use change, authorization of real estate projects, deforestation, pollution and water extraction that have affected forest ecosystems and water resources, generating a wide range of environmental deterioration problems in the Valle de Bravo-Amanalco sub-basin.⁸² All of these issues relate to multiple provisions of the USMCA, including Articles 24.2, 24.3, 24.4, 24.23 and 24.24.
83. In relation to Article 24.3(2), and the commitment of the Parties to improve their levels of environmental protection and ensure that these result from their environmental laws and policies, the submission states that:
- [...] the application of environmental and water regulations requires analysis, investigation, documentation and determination by [the CEC Secretariat] so that the Mexican State provides the human, technical and financial resources necessary to address the problems described above, generating the necessary projects and actions to

⁸⁰ *Id.* at §§ 43-65.

⁸¹ See: SEM-19-004 (*Barred Owl*), Determination under Articles 14(1) and (2) of the NAAEC (Nov. 21, 2019), § 28; SEM-11-002 (*Sumidero Canyon II*), Determination under Articles 14(1) and (2) of the NAAEC (Sept. 6, 2012), § 36; SEM-13-001 (*Gulf of California Tourism Development*), Determination under Articles 14(1) and (2) of the NAAEC (Nov. 23, 2013), § 62. *Cf. Guidelines for Submissions Regarding Effective Enforcement of Environmental Law Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, § 7.4.

⁸² Submission, §§ 1-12.

safeguard the Amanalco-Valle de Bravo [*sic*] sub-basin, its ecosystems and natural resources, including water, as a source of life.⁸³

84. The Secretariat believes that addressing the issues raised in the submission would contribute to promoting high levels of environmental protection, as well as effective enforcement of environmental laws, with respect to the management and conservation of the Valle de Bravo-Amanalco sub-basin.

85. The Secretariat concludes that the Submission satisfies USMCA Article 24.27(3)(b).

c) private remedies available under the Party's law have been pursued; and

86. The Secretariat believes that seeking (or having recourse to) remedies available to individuals can be interpreted broadly, so that it is possible to meet this criterion by filing a citizen complaint, but also by referring to a remedy initiated by a third party, be it an individual person or an organization or legal entity.

87. The submission includes information on the following filings:⁸⁴

[REDACTED]

88. The Secretariat finds that the submission satisfies USMCA Article 24.27(3)(c) since the Submitters describe the various remedies available to private parties to ensure environmental law enforcement in the Valle de Bravo-Amanalco sub-basin.

d) the submission is not drawn exclusively from mass media reports

89. With respect to Article 24.27(3)(d) of the USMCA, the Secretariat finds that the submission is *not* based on media reports. The submission is based on documentation and information regarding the environmental situation in question, which the Submitters gathered largely from legal actions filed, technical reports, scientific studies, official sources, technical documentation and requests for information.

⁸³ *Id.* at § 80.

⁸⁴ *Id.* at Annex III.

90. Accordingly, the Secretariat concludes that the submission meets the criteria set forth in USMCA Article 24.27(3)(d).

IV. DETERMINATION

91. For the reasons just stated in its analysis, the Secretariat determines that submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*) satisfies the admissibility requirements set forth in Article 24.27(2) of the USMCA and merits a response from the Government of Mexico, in terms of Article 24.27(3), concerning the effective enforcement of the environmental laws listed below:

- i. article 4: fifth paragraph of the **Constitution**;
- ii. Articles 20 *bis* 4: section II, 20 *bis* 5: section V, 46: section VI and subsequent paragraphs, 161, 170, 182, 192 and 193 of the **LGEEPA**;
- iii. Articles 9: Sections I, II, XXVI and XXXVI, 15, 86: Sections IV, V, VII, VIII, XI and XII, and 95 of the **LAN**;
- iv. articles 74 and 80 of the **RANP**;
- v. articles 4: section II and 9 of the **REIA**, and
- vi. Articles 46 and 47: Sections I, II, III, IX, XIV, XVIII, XX, XXI, XXII and XXIV of the **RI-Semarnat**.

92. In accordance with USMCA Article 24.27(4), the Party may provide a response to the submission within sixty days of receipt of this determination, i.e., no later than **14 August 2023**.

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation

(original signed)

By: Paolo Solano
Director of Legal Affairs and Head of SEM Unit

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