

Montreal, November 16, 2001

COUNCIL RESOLUTION 01-10

**Instruction to the Secretariat of the Commission for Environmental Cooperation Regarding the Assertion that the Government of the United States is Failing to Effectively Enforce the *Migratory Bird Treaty Act* (SEM-99-002)**

THE COUNCIL,

SUPPORTIVE of the process provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

CONSIDERING the submission filed on the above-mentioned matter by the Alliance for the Wild Rockies, Center for International Environmental Law, Centro de Derecho Ambiental del Noreste de Mexico, Centro Mexicano de Derecho Ambiental, Friends of the Earth, Instituto de Derecho Ambiental, Pacific Environment and Resources Center, Sierra Club of Canada, and the West Coast Environmental Law Association and the response provided by the Government of the United States on February 29, 2000;

HAVING REVIEWED the notification by the Secretariat of December 15, 2000 that the development of a factual record is warranted with respect to the submission (SEM-99-002); and

MINDFUL that the United States in its reply has indicated that, as a general matter, the assertions in the submission reflect, or result from, circumstances referred to in NAAEC Article 45(1), which provides that “[a] Party has not failed to “effectively enforce its environment law” or to comply with Article 5(1) in a particular case where the action or inaction in question by agencies or officials of the named Party : (a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or (b) results from *bona fide* decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities”;

HEREBY UNANIMOUSLY DECIDES:

TO INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* with respect to the two specific

cases identified in SEM-99-002. The first case involves the logging of several hundred trees by a private landowner during the nesting season of Great Blue Herons allegedly resulting in hundreds of crushed eggs. The second case involves a logging company's alleged intentional burning of four trees on private land, including one allegedly nested by a pair of ospreys;

TO DIRECT the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and to provide the Parties with the opportunity to comment on that plan; and

TO DIRECT the Secretariat to consider, in developing the factual record, whether the Party concerned "is failing to effectively enforce its environmental law" since the entry into force of the NAAEC on January 1, 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to January 1, 1994, may be included in the factual record.

APPROVED BY THE COUNCIL:

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Government of the United States of America  
by Judith E. Ayres

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Government of the United Mexican States  
by Olga Ojeda Cárdenas

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Government of Canada  
by Norine Smith