

Secretariat of the Commission for Environmental Cooperation
Notification by the Secretariat pursuant to Article 24.28
of the United States-Mexico-Canada Agreement

Submitters: In accordance with Article 16(1)(a) of the ECA,
Submitters' identities are kept confidential
Party: United Mexican States
Original submission: May 15, 2023
Notification date: October 13, 2023
Submission No.: SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*)

Executive Summary

On 15 May 2023, two organizations (“the Submitters”), who requested confidentiality for their data in accordance with Article 16(1)(a) of the ECA, filed a submission with the CEC Secretariat, pursuant to Article 24.27(1) of the USMCA. The submission* asserts that Mexico is failing to effectively enforce its environmental laws with respect to the protection of forests, biodiversity and water resources affected by degradation, soil erosion and pollution, as well as the impact caused by changes in land use, from forestry to real estate construction and urban infrastructure, in the Valle de Bravo-Amanalco sub-basin, municipality of Valle de Bravo, Mexico State. Two coalitions—*Observatorio Ciudadano de la Subcuenca Valle de Bravo-Amanalco* and *Sé la Voz de la Naturaleza*—joined the Submitters in filing the submission. In addition, on 7 June 2023, *Consultoría 5 Elements, Centro de Investigación y Aprendizaje del Medio Ambiente* and three more individuals, who also requested the confidentiality of their personal data, gave notice that they were joining as submitters in a filing with the Secretariat.†

On 14 June 2023, the Secretariat determined that, with the additional information received, submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*) fulfilled all applicable admission requirements and criteria—prescribed by Article 24.27(1) and (2) of the Agreement—and that a response from the government of Mexico (the “Party”) was warranted, pursuant to section 3 of the same article.‡

On 14 August 2023, the Secretariat received Mexico's response,§ in which it reported on the actions carried out in the effective enforcement of environmental law with respect to the uses in and usage of the Valle de Bravo, Malacatepec, Tilostoc and Temascaltepec River Basin Natural Resource Protection Area (“Valle de Bravo-MTT Basin NRPA”). In addition to sharing information on actions to be carried out in the short, medium and long terms in the protected area under the Valle

* SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), petition under Article 24.27(1) of the USMCA (May 15, 2023), at: <<https://bit.ly/45taDA3>>.

† SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), adhesion to the petition under Article 24.27(1) of the USMCA (June 7, 2023).

‡ SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), Determination under Articles 24.27(2) and (3) of the USMCA (June 14, 2023), at: <<https://bit.ly/45q5SaI>>.

§ SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), Mexico's Response under Article 24.27(4) of the USMCA (August 14, 2023), at: <<https://bit.ly/3tmcDNh>>.

de Bravo-MTT Basin NRPA management program, the Party reports on the existence of pending administrative proceedings that are being processed by the Federal Attorney's Office for Environmental Protection (*Procuraduría Federal de Protección al Ambiente—Profepa*) and the Attorney General of the Republic (*Fiscalía General de la República*).

It is important to clarify that the proceedings reported by the Party do not necessarily conclude with the processing of the submission, since they do not have the potential to resolve the substantive issue raised by the Submitters. This is supported by the fact that the proceedings mentioned by the Party seem to be limited to following procedural formalities without addressing substantive matters; moreover, none of the proceedings were initiated by the authority acting *motu proprio*; rather, it acted in response to complaints and the evidence supplied by complainants.

After conducting the analysis, in light of the Party's response, there are open central questions regarding the matter raised in submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*) and the preparation of a factual record is warranted in order to examine the failure alleged by the Submitters regarding the effective enforcement of environmental laws concerning the regulation of uses, the establishment of residential densities in non-urban zones outside the population centers in the Valle de Bravo-MTT Basin NRPA, citizen complaint procedures and environmental liability regime, and water quality and quantity in the Valle de Bravo dam reservoir and tributaries. A factual record could contribute information on Mexico's efforts to regulate uses and usage of the Valle de Bravo-MTT Basin NRPA. It could also address issues relating to real estate development in the protected area through the environmental impact assessment, establish acceptable limits on change of land use, and concurrent ecological zoning actions. A factual record could also clarify the effective implementation of the citizen complaint mechanism, as well as the inspection and enforcement actions carried out with respect to works and activities in the Valle de Bravo-MTT Basin NRPA. It could also address coordination among federal authorities concerning national waters, and the criteria to implement an environmental liability regime in the protected area in question.

The Secretariat sets forth its reasoning below and so notifies the Council pursuant to Article 24.28(1) of the USMCA.

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA or the “Agreement”) and the Agreement on Environmental Cooperation (“ECA”) entered into force. From that 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 governed by USMCA Articles 24.27 and 24.28, while the terms of its implementation and operation by the Secretariat of the Commission for Environmental Cooperation (“CEC or the “Commission”)¹ are now set forth in the ECA.²
2. The SEM process enables any person or entity legally established in Canada, the United States or Mexico to make a submission asserting that a Party is failing to effectively enforce its environmental laws.³ The CEC Secretariat (“Secretariat”) initially examines submissions based on the criteria and requirements prescribed by sections 1) and 2) of Article 24.27 of the USMCA. When the Secretariat finds that a submission fulfills such requirements, it proceeds to determine whether, as provided in Article 24.27(3) of the Agreement, the submission warrants a response from the Party in question. In light of the response provided by the Party, the Secretariat then determines whether the matter warrants the preparation of a factual record, and if so, it so informs the CEC Council and the Environment Committee,⁴ providing its reasons in accordance with Article 24.28(1); otherwise, the submission is closed.⁵
3. On 15 May 2023, two organizations (“Submitters”), which in accordance with Article 16(1)(a) of the ECA requested the confidentiality of their data and made a submission to the CEC Secretariat pursuant to Article 24.27(1) of the USMCA. Two coalitions—*Observatorio Ciudadano de la Subcuenca Valle de Bravo-Amanalco* and *Sé la Voz de la Naturaleza*—joined the Submitters⁶ of reference. In addition, on 7 June 2023, *Consultoría 5 Elements, Centro de*

¹ The Commission for Environmental Cooperation (CEC) was created in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), signed by Canada, the United States and Mexico (the “Parties”). The constituent bodies of the CEC are the Council, the Secretariat, and the Joint Public Advisory Committee (JPAC). Pursuant to Article 2(3) of the Agreement on Environmental Cooperation between the Governments of the United Mexican States, the United States of America and Canada (“Agreement on Environmental Cooperation,” “Agreement” or “ECA”), the CEC “shall continue to operate under the modalities in effect on the date of entry into force of this Agreement.”

² While the provisions currently governing the SEM mechanism are set forth in Chapter 24 of the USMCA, the ECA also establishes certain related procedures, namely: the Secretariat’s involvement in implementing the submission process; the Council’s role in the exchange of information with the Environment Committee; the preparation and publication of factual records; and the Council’s cooperation activities deriving from such records. ECA Articles 2(3), 4(1)(l), 4(1)(m), 4(4) and 5(5).

³ Article 24.27(1) of the USMCA provides that a submission may be submitted by “any person of a Party,” defined—under the general definitions in Article 1.5—as a “national [natural person with nationality or the character of permanent resident] or an enterprise [any private, public or social entity constituted or organized under applicable law] of a Party.”

⁴ Established under Article 24.26(2) of the USMCA, the Environment Committee has the duty to supervise the implementation of Chapter 24 of the Agreement.

⁵ For further detail on the various phases of the submissions on enforcement matters (SEM) process, the public record of submissions, and determinations and factual records prepared by the Secretariat, see the CEC website at: <www.cec.org/peticiones>.

⁶ Note that upon examining the submission, the Secretariat determined that *Observatorio Ciudadano de la Subcuenca de Valle de Bravo-Amanalco* and *Sé la Voz de la Naturaleza* “are collectives that coordinate

Investigación y Aprendizaje del Medio Ambiente and three individuals, who also requested the confidentiality of their personal data, gave notice that they were joining as submitters in a filing with the Secretariat.⁷

4. The submission asserts that Mexico is failing to effectively enforce environmental laws with respect to the protection of forests, biodiversity and water resources affected by degradation, soil erosion and pollution, as well as the impact caused by changes in land use from forestry in favor of real estate construction and urban infrastructure in the Valle de Bravo-Amanalco sub-basin, municipality of Valle de Bravo, Mexico State. According to the Submitters, it is failing to effectively enforce various legal provisions and regulatory instruments in effect in Mexico, namely:
 - 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, 182, 192 and 193 of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—**LGEEPA**);
 - iii) Articles 9 sections II, XXVI and XXXVI, 15, 86 sections IV, V, VII, VIII, XI and XII, and 95 of the National Water Act (*Ley de Aguas Nacionales*—**LAN**);
 - iv) Articles 74 and 80 of the LGEEPA Regulations on Protected Natural Areas (**RPNA**);
 - v) Articles 4 section II and 9 of the LGEEPA Regulations on Environmental Impact Assessment (**REIA**);
 - vi) Articles 45, 46 and 47 of the Internal Regulations of the Ministry of Environment and Natural Resources (*Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales*—**Semarnat RI**); and
 - vii) Article 222 of the National Code of Criminal Procedures (*Código Nacional de Procedimientos Penales*—**CNPP**).
5. On 26 May 2023, the Secretariat requested the Submitters to correct minor errors of form, which the Submitters did three days later on 29 May 2023.
6. On 14 June 2023, the Secretariat determined that the submission fulfilled all applicable admission requirements and criteria—prescribed by Article 24.27(1) and (2) of the Agreement—and that under section 3 of that article, a response was warranted from the government of Mexico,⁸ with respect to the effective enforcement of the following legal and regulatory provisions:⁹
 - i) Article 4, fifth paragraph of the Constitution;
 - ii) Articles 20 *bis* 4 section II, 20 *bis* 5 section V, 46 section VI *et seq.*, 161, 170, 182, 192 and 193 of the LGEEPA;

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." *Cfr.* SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), Determination under Articles 24.27 (2) and (3) of the USMCA (14 June 2023), §34.

⁷ SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), adhesion to the submission under Article 24.27(1) of the USMCA (7 June 2023).

⁸ SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), Determination under Articles 24.27(2) and (3) of the USMCA (14 June 2023), at: <<https://bit.ly/45q5SaI>> [Determination].

⁹ *Ibid.*, § 91.

- 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 RPNA;
 - 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 Semarnat RI.
7. On 14 August 2023, the Secretariat received the response from Mexico (the “Party”).¹⁰ The response provides information on the actions carried out in the effective enforcement of the environmental law with respect to the use and usage of the Valle de Bravo, Malacatepec, Tilostoc and Temascaltepec River Basin Natural Resource Protection Area (“Valle de Bravo-MTT Basin NRPA”); citizen complaints, enforcement and inspection and the environmental impact assessment procedures implemented, and the quality and quantity of water in the Miguel Alemán dam reservoir—better known as the Valle de Bravo lake or dam reservoir—and its tributaries. The Party states that several of the provisions cited by the Submitters should not have been considered by the Secretariat in its analysis, since they are not applicable to the matters raised in the submission.¹¹ Mexico further reports on the existence of pending administrative proceedings,¹² and requests that the submission be closed pursuant to Article 24.27(4)(a) of the USMCA.¹³
8. In accordance with Article 24.28(1) of the USMCA, the CEC Secretariat has examined whether, in light of Mexico's response, submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*) warrants the preparation of a factual record.
9. Following its review, the Secretariat found that none of the pending administrative proceedings, as reported by the Party, were initiated by or are being pursued by the Party. In addition, it is not evident that such ongoing proceedings have the potential to settle the substantive matters raised by the Submitters, and therefore they do not necessarily justify closing the submission.
10. In summary, after examining submission SEM-23-005 in light of the Party's response, the Secretariat concludes that such response leaves open central questions that **warrant the preparation of a factual record** to clarify the effective enforcement of the environmental law with respect to:
- i. Article 4 fifth paragraph of the Constitution;
 - ii. Articles 20 *bis* 4 section II, 20 *bis* 5 section V, 46 section VI *et seq.*, 161, 170, 182 and 192 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 RPNA, and
 - v. Articles and 9 [sic] of the REIA.

¹⁰ SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*), Mexico's Response under Article 24.27(4) of the USMCA (14 August 2023), at: <<https://bit.ly/3tmcDNh>> [Response].

¹¹ *Ibid.*, §§ 4-8.

¹² *Ibid.*, §§ 87, 94 and 95.

¹³ *Ibid.*, § 88 and 97.

II. ANALYSIS

a. Preliminary matters

Inapplicability of the provisions cited in the submission

11. The Party maintains that Articles 182, 192 and 193 of the LGEEPA, and Articles 46 and 47 sections I, II, III, IX, XIV, XVIII, XX, XXI, XXII and XXIV of the Semarnat RI—providing for the citizen complaint procedure and Profepa's inspection, enforcement and coordination duties—do not apply to the matters raised in the submission.¹⁴
12. As for Article 182 of the LGEEPA, establishing Profepa's authority to file complaints with the federal public prosecutor on acts or omissions that may constitute crimes under the applicable laws, the Party states that the provision “is not directly connected with the assertions raised by the Submitters,” although Mexico reports Profepa's related actions in its response.¹⁵ Thus, the Party reports that when “when acts, facts or omissions possibly constituting a crime were observed, the corresponding criminal complaints were filed by the Federal Attorney General under Article 182.”¹⁶ In this regard, we note that the Submitters assert that “Profepa fails to perform its legal obligation to apply the environmental liability regime set forth in the Federal Environmental Liability Act, which includes prioritizing restoration measures above compensation measures, as well as filing and following up on environmental criminal complaints by reason of the harm caused to the environment, in accordance with Articles 222, second paragraph of the National Code of Criminal Procedures and 182 of the LGEEPA.”¹⁷ The Secretariat therefore concludes that the provision in question is directly related to the assertions in the submission.
13. Regarding Articles 192 and 193 of the LGEEPA, both concerning the citizen complaint procedure, the Party contends that this mechanism is implemented between the complainant and the authority. While submission SEM-23-005 asserts that the environmental authority has failed to perform its “legal obligation to respect the capacity as assistant to complainants” [Article 193], the Party maintains that the Submitters do not refer to any specific citizen complaint procedure where Profepa has stopped enforcing such provisions.¹⁸ In effect, the submission asserts that the environmental authority fails to corroborate “each and every one of the reported facts” and does not meet its obligation to allow the complainant to assist with the complaint.¹⁹ Although the Submitters include information describing cases in which, after the citizen complaint is filed, “the response of the environmental authority is very limited” (e.g., only one inspection visit is conducted, safety measures are not timely verified, and conclusions rely solely on the good faith of offenders),²⁰ they do not specify in which citizen complaint docket(s) Profepa refused to acknowledge their assistance. Therefore, the Secretariat has determined *not* to continue to analyze Article 193 of the LGEEPA.

¹⁴ *Ibid.*, §§ 5-8.

¹⁵ *Ibid.*, § 5.

¹⁶ *Ibid.*, § 85.

¹⁷ Submission, § 42, section f.

¹⁸ Response, § 6.

¹⁹ Submission, § 42, sections g and e.

²⁰ *Ibid.*, § 32 and Exhibit II: Analysis of three projects with different characteristics that reflect the environmental and urban development issues in Valle de Bravo, p. 1.

14. Regarding Article 46 of the Semarnat RI, the response states that, while the provision is listed in applicable environmental laws in the submission, the statement of facts does not reference its non-enforcement, and accordingly the Party deems it inapplicable.²¹ In Article 47 of the same regulations, the Party points out that the Submitters cite it in general, and furthermore the Secretariat's analysis considered sections I, II, III, IX, XIV, XVIII, XX, XXI, XXII and XXIV, which contain general powers of the offices with no relation to the assertion raised by the Submitters.²² The Secretariat takes note of the Party's statement; in effect, the submission does not precisely describe a failure to enforce both provisions, and accordingly it will *not* be taken into consideration for further analysis.

b. Notification of pending judicial proceedings

15. In its response, the Party gives notice of the existence of pending proceedings and requests that the Secretariat close the submission, in accordance with Article 24.27(4)(a).²³
16. The transparency and credibility of the SEM process require a strict examination of the Party's notification of pending proceedings, pursuant to Article 24.27(4) of the USMCA. This is because the Agreement does not authorize the termination of a submission solely on the basis of a notification from the Party.²⁴ This has been corroborated by CEC practice throughout SEM process implementation since 1994, with respect to submissions that have mostly received the Council's favorable vote to prepare a factual record.²⁵
17. The Secretariat has noted on prior occasions that it is *not* a court and its determinations "are not binding on the Parties or submitters, and factual records are not rulings or judicial opinions on an asserted failure of effective enforcement of environmental law." Thus, it is not evident how a factual record could in any way interfere with ongoing domestic proceedings in the same way a judicial ruling could.²⁶
18. The threshold for considering whether there are pending judicial or administrative proceedings must be construed narrowly, in order to give full effect to the object and purpose of the SEM

²¹ Response, § 7.

²² *Ibid.*, § 8.

²³ *Ibid.*, §§ 87, 88, 94, 95 and 97.

²⁴ *Cfr.* SEM-01-001 (*Cytrar II*), Determination under Article 14(3) (June 13, 2001), p. 5, <https://bit.ly/DET_14_3-01-001_es>: "Only in the specific case where the matter that is the subject to a submission is the subject of a pending proceeding is the Secretariat authorized to proceed no further with its consideration of a submission [...]".

²⁵ SEM-96-003 (*Oldman River I*); SEM-97-001 (*BC Hydro*); SEM-98-004 (*BC Mining*); SEM-00-004 (*BC Logging*); SEM-00-006 (*Tarahumara*); SEM-01-001 (*Cytrar II*); SEM-02-003 (*Pulp and Paper*); SEM-03-003 (*Lake Chapala II*); SEM-04-002 (*Environmental Pollution in Hermosillo*); SEM-04-005 (*Coal-Fired Power Plants*); SEM-05-003 (*Environmental Pollution in Hermosillo II*); SEM-06-003 (*Ex Hacienda El Hospital II*) and SEM-06-004 (*Ex Hacienda El Hospital III*), consolidated; SEM-06-005 (*Species at Risk*); SEM-06-006 (*Los Remedios National Park*); SEM-07-005 (*Drilling Waste in Cunduacán*); SEM-07-001 (*Minera San Xavier*); SEM-09-003 (*Los Remedios National Park II*); SEM-09-002 (*Wetlands in Manzanillo*); SEM-11-002 (*Sumidero Canyon II*); SEM-10-002 (*Alberta Tailings Pond*); SEM-12-001 (*BC Salmon Farms*); SEM-13-001 (*Tourist Development in the Gulf of California*); SEM-19-002 (*City Park Project*); SEM-22-001 (*Pollution in Playa Hermosa*), and SEM-21-003 (*North Atlantic Right Whale*).

²⁶ SEM-07-001 (*Minera San Xavier*), Determination under Article 15(1) (July 15, 2009), § 44, at: <https://bit.ly/DET_07-007> [Determination 15(1) *Minera San Xavier*]. Also see the analysis of pending proceedings at §§ 40-44.

process;²⁷ in effect, “the Secretariat must attempt to ensure a modicum of predictability and thus fairness in [implementing the submission process].”²⁸ The fact that the Secretariat can determine whether the pending proceedings reported by a Party require termination of a submission process rests on the principle that a treaty cannot contribute to the realization of its express object and purpose if it is not effective.²⁹ Accordingly, it is necessary to implement the SEM process under the umbrella of institutional effectiveness, interpreting the provisions of the Agreement in a constructive manner.³⁰

19. Therefore, the Secretariat is authorized to apply this exceptional form of terminating a submission only after examining whether the preparation of a factual record could *duplicate efforts or interfere* in a judicial or administrative proceeding reported by the Party, considering: i) whether the proceeding in question was initiated by and is being pursued by the Party; ii) whether the proceeding is timely and in accordance with the Party’s law; iii) whether it deals with the same subject matter, including the same environmental law cited by submitters; and iv) whether the proceeding will potentially resolve the matters raised in the submission. For the sake of transparency, the analysis of each of the factors is presented below.

i) Whether the proceedings in question are being pursued by the Party

20. The Secretariat first analyzes whether any of the ongoing administrative proceedings notified by the Party were initiated by the Party,³¹ then considers the other three factors needed to determine the existence of pending proceedings.³²
21. The response refers to the following administrative proceedings to address environmental issues in the Valle de Bravo-Amanalco sub-basin and in response to the facts raised in the submission.³³

²⁷ *Ibid.*, § 35.

²⁸ *Ibid.*, § 33.

²⁹ See, for example: A. M. Slaughter and A. Wiersema, "The Scope of the Secretariat’s Powers Regarding the Submissions Procedure of the North American Agreement on Environmental Cooperation under General Principles of International Law,," § 6, at: CEC, North American Environmental Law and Policy, Citizen Submissions on Enforcement Matters, NAELP Series, vol. 27, Commission for Environmental Cooperation, Montreal, 2010, pp. 1-33, <<http://goo.gl/BnFqYe>>.

³⁰ "[I]nternational law authorises, indeed requires, the organisation, should it find it necessary, if it is to discharge all its functions effectively, to interpret its procedures in a constructive manner directed towards achieving the objective the Parties are deemed to have had in mind." See: United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea, doc. No. S/2006/992, December 15, 2006, § 17; available at: <<https://bit.ly/486xLXJ>>.

³¹ Determination 15(1) *Minera San Xavier*, § 36: " The proceedings notified by Mexico in this matter were initiated *by the Submitter and not Mexico*. They, therefore, in part fall outside of the definition of pending proceedings in Article 45(3)(a)" [emphasis in the original].

³² *Cfr.* SEM-96-003 (*Oldman River I*), Determination under Article 15(1) (April 2, 1997), at: <<https://bit.ly/3ZG7sTu>> [Determination 15(1) *Oldman River I*]. In particular, pp. 3-4:

The pending Federal Court case called to the attention of the Secretariat by Canada is not an action *pursued by the Party* within the meaning of Article 45(3)(a) [emphasis in the original]. [...] Since the current matter before the Canadian court was initiated and is being pursued by a private entity, and not a "Party" as that term appears to be employed in Article 45(3)(a), the Secretariat may consider other factors in its review of the Submission at this stage.

³³ Response, §§ 84 and 86 (in particular, charts [pp. 26-31 and 31-32] listing citizen complaints filed and attended to between 2021 and 2023).

- i) fifteen citizen complaints;³⁴
- ii) four injunction suits,³⁵ and
- iii) three criminal complaints.³⁶

22. Regarding the fifteen citizen complaints reported by the Party, three were closed due to the lack of interest by the complainant or the lack of sufficient elements to undertake an administrative proceeding and issue a ruling;³⁷ in four, the corresponding rulings were issued (ordering the relevant security measures and technical correction measures, including temporary total closure and economic penalties or fines as warranted in each case);³⁸ and the rest—a total of eight—were still active.³⁹ Note that two of the citizen complaints (both filed in June 2021) were assigned the same administrative docket number and were later consolidated, thereby closing them due to consolidation,⁴⁰ and the Party's response gave the most recent of the active complaints (begun in

³⁴ Citizen complaints No. PFPA/17.7/2C.28.2/00253-21, PFPA/17.7/2C.28.2/00193-21, PFPA/17.7/2C.28.2/00256-21, PFPA/17.7/2C.28.2/00244-21, PFPA/17.1/2C.28.2/00162-21, PFPA/17.7/2C.28.2/00199-21, PFPA/2C.28.2/00341-21, PFPA/17.7/2C.28.2/00081-22, PFPA/17.7/2C.28.3/00082-22, PFPA/17.7/2C.28.2/00083-22, PFPA/17.7/2C.28.2/00011-21, PFPA/17.7/2C.28.2/00327-21, PFPA/17.7/2C.28.2/00281-22 and PFPA/17.7/2C.28.2/00221-21, as well as a citizen complaint apparently filed in 2023, whose processing began in 2023 and was assigned administrative docket No. PFPA/17.3/2C.27.5/0016-23, but which in Mexico's response is presented with the same complaint number PFPA/17.7/2C.28.2/00221-21. *Cfr.* Response, §§ 84 and 86 (charts at pp. 26-31 and 31-32) and Exhibit MX-020, p. 3. It is clarified that citizen complaint No. PFPA/17.7/2C.28.2/00199-21, included in the chart in paragraph 84 (p. 27), appears again in the second chart presented by Mexico in its response (*cfr.* § 86), as it was subject to a later consolidation ruling (January 31, 2023); moreover, complaint No. PFPA/17.7/2C.28.2/00221-21 is cited twice in that second chart (p. 32), apparently due to an error in the Party's response, since the second mention in fact corresponds to a new citizen complaint from 2023. *Cfr.* Response, Exhibit MX-020, p. 3.

³⁵ Injunction suits No. 406/2021-III, 667/2021-VI and 540/2021-VI (derived from three of the citizen complaints under No. PFPA/17.7/2C.28.2/00011-21), and injunction suit No. 784/2022 (derived from citizen complaint No. PFPA/17.7/2C.28.2/00327-21). *Cfr.* Response, § 84 (chart at pp. 29 and 30).

³⁶ Unnumbered criminal complaint (derived from citizen complaint No. PFPA/17.7/2C.28.2/00081-22); criminal complaint No. FED/FEMDO/UEITMPO-MEX/0000291/2022 (derived from citizen complaint No. PFPA/17.7/2C.28.2/00011-21), and criminal complaint No. FED/MEX/TEJ/0001394/2023 (derived from citizen complaint No. PFPA/17.7/2C.28.2/00221-21 [*sic*]). *Cfr.* Response, §§ 84 and 86 (charts at pp. 28, 29 and 32).

³⁷ Citizen complaints PFPA/17.7/2C.28.2/00256-21, PFPA/17.7/2C.28.2/00081-22 and PFPA/17.7/2C.28.2/00082-22. *Cfr.* Response, § 84 (chart at pp. 26 and 28).

³⁸ Citizen complaints PFPA/17.7/2C.28.2/00341-21, PFPA/17.7/2C.28.2/00011-21, PFPA/17.7/2C.28.2/00281-22 and PFPA/17.7/2C.28.2/00221-21. *Cfr.* Response, §§ 84 and 86 (charts at pp. 27-29, 30-31 and 32).

³⁹ Citizen complaints PFPA/17.7/2C.28.2/00253-21, PFPA/17.7/2C.28.2/00193-21, PFPA/17.7/2C.28.2/00244-21, PFPA/17.7/2C.28.2/00162-21, PFPA/17.7/2C.28.2/00199-21, PFPA/17.7/2C.28.2/00083-22, PFPA/17.7/2C.28.2/00327-21 and PFPA/17.7/2C.28.2/00221-21 [*sic*]. *Cfr.* Response, §§ 84 and 86 (charts at pp. 26-28, 30 and 32).

⁴⁰ This refers to citizen complaints PFPA/17.7/2C.28.2/00199-21 and PFPA/17.7/2C.28.2/00221-21; the latter was consolidated with the former under the consolidation ruling issued October 7, 2022, the same administrative docket PFPA/17.3/2C.27.5/0027-21 applying to both. *Cfr.* Response, §§ 84 and 86 (charts, pp. 27 and 32) and Exhibit MX-020, p. 3.

2023) the same docket number as the closed and consolidated 2021 complaint.⁴¹ Also bear in mind that in two cases, the same citizen complaint gave rise to more than one administrative docket.⁴²

23. Regarding the four injunction suits, the Party reports that three are dismissed, meaning that they are closed; in one case, because legal interests were not shown to be affected;⁴³ and in the other two, because the disputed acts were deemed not to exist.⁴⁴ Accordingly, the Secretariat will only refer to the ongoing injunction suit.
24. With respect to the three criminal complaints, all are ongoing, although two have not been ratified. The Party reports that they are derived from the citizen complaints presented.⁴⁵
25. Information on the current status of all of the proceedings referenced in the Party's response are shown in Chart 1 below.

Chart 1. Proceedings notified by the Party⁴⁶

	Citizen complaint	Administrative proceeding	Status
1	PFPA/17.7/2C.28.2/00253-21	Administrative docket No. PFPA/17.3/2C.27.5/0033-21, initiated by summons ruling No. PFPA/17.1/2C.27.5/005090/202; the proceeding continues in discovery .	Active
2	PFPA/17.7/2C.28.2/00193-21	Administrative docket No. PFPA/17.3/2C.27.5/00025- 20, initiated by summons ruling No. PFPA/17.1/2C.27.5/005089/2021; the proceeding continues in discovery .	Active
3	PFPA/17.7/2C.28.2/00256-21	Administrative docket unknown. Closing ruling No. PFPA/17.1/2C.28/005673/2021 was issued due to the supposed "lack of interest by complainant." The complainant requested verification of enforcement measures. Under Ruling No. PFPA/17.1/2C.28/006210/2021, the authority determined that it was impossible "to perfect an administrative proceeding" because the complainant did not provide the names of the alleged offenders .	Closed
4	PFPA/17.7/2C.28.2/00244-21	Four administrative dockets, two ongoing: a. Administrative docket No. PFPA/17.3/2C.27.5/0018-20. Administrative ruling No. PFPA/17.1/2C.27.5/001882/2021 was issued, levying a fine. b. Administrative docket No. PFPA/17.3/2C.27.5/0001-21. Summons pending to be served . c. Administrative docket No. PFPA/17.3/2C.27.5/0036-21. Temporary total closure was imposed, the inspected person was	Active

⁴¹ Citizen complaint filed in 2023, whose processing began February 24, 2023 with the opening of administrative docket PFPA/17.3/2C.27.5/0016-23 but presented in Mexico's response as No. PFPA/17.7/2C.28.2/00221-21 (corresponding to a 2021 complaint).

⁴² Citizen complaints PFPA/17.7/2C.28.2/00244-21 and PFPA/17.7/2C.28.2/00327-21.

⁴³ *Cfr.* Response, § 84 (chart at p. 29), with respect to injunction suit No. 406/2021-III.

⁴⁴ *Ibid.*, with respect to injunction suits No. 667/2021-VI and No. 540/2021-VI.

⁴⁵ *Ibid.*, §§ 84 and 86 (charts at pp. 28, 29 and 32).

⁴⁶ *Ibid.*, §§ 84 and 86 (charts at pp. 26-31 and 31-32) and Exhibits MX-019 and MX-020.

		summoned, and the proceeding was initiated via Ruling No. PFPA/17.1/2C.27.5/006099/2022; the proceeding continues in trial . d. Administrative docket No. PFPA/17.3/2C.27.5/0034-21. Administrative ruling No. PFPA/17.1/2C.27.5/004449/2022 was issued, levying a fine.	
5	PFPA/17.7/2C.28.2/00162-21	Administrative docket No. PFPA/17.3/2C.27.5/0024- 21, in discovery .	Active
6	PFPA/17.7/2C.28.2/00199-21	Administrative docket No. PFPA/17.3/2C.27.5/0027-21. Summons yet to be issued . Docket subject to consolidation ruling No. PFPA/17.1/2C.28/001036/2023; in discovery .	Active
7	PFPA/17.7/2C.28.2/00341-21	Administrative docket No. PFPA/17.3/2C.27.5/0007-22. An administrative ruling was issued, levying a fine.	Closed
8	PFPA/17.7/2C.28.2/00081-22	Administrative docket number unknown. Citizen complaint docket closed due to alleged lack of interest by complainant. Based on the facts entered during the inspection visit, a criminal complaint was filed and is pending ratification . <i>Active criminal complaint</i> .	Closed
9	PFPA/17.7/2C.28.2/00082-22	Administrative docket number unknown. Due to the alleged "lack of interest by complainants," closing ruling No. PFPA/17.1/2C.28/003254/2022 was issued.	Closed
10	PFPA/17.7/2C.28.2/00083-22	Administrative docket No. PFPA/17.3/2C.27.5/0024-22. Summons ruling No. PFPA/17.1/2C.27.5/000789/2022 was issued. The docket awaits an administrative ruling .	Active
11	PFPA/17.7/2C.28.2/00011-21	Administrative docket No. PFPA/17.3/2C.27.2/00001-21. An administrative ruling was issued ordering corrective measures and a fine was levied. Inspection act No. 17-114-001-PF-21 verified the current status of the security measure; temporary total closure. A criminal complaint was filed under investigation file No. FED/FEMDO/UEITMPOMEX/0000291/2022, pending ratification . <i>Active criminal complaint</i> . Three injunction suits were filed as well Injunction suit No. 406/2021-III. Injunction suit No. 667/2021-VI. Injunction suit No. 540/2021-VI. The three injunction suits were dismissed due to the nonexistence of the disputed acts or because no legal interests were shown to be affected. <i>Closed injunction suits</i> .	Closed
12	PFPA/17.7/2C.28.2/00327-21	Administrative docket No. PFPA/17.3/2C.27.5/00049- 21. Jurisdiction assumed by ruling on the administrative docket. The inspected person filed injunction suit No. 748/2022. <i>Active injunction suit</i> .	Active

		Administrative docket No. PFPA/4.2/2C.27.2/0086/22 on forestry matters; the summons ruling is contingent on the resolution of injunction suit No. 748/2022.	
13	PFPA/17.7/2C.28.2/00281-22	Administrative docket No. PFPA/17.3/2C.27.5/0003-23. An administrative ruling was issued, levying a fine.	Closed
14	PFPA/17.7/2C.28.2/00221-21	Administrative docket No. PFPA/17.3/2C.27.5/0027-21. The inspection visit was performed and temporary total closure was ordered as a security measure. Consolidated with citizen complaint No. PFPA/17.7/2C.28.2/00199-21 and closed by consolidation ruling PFPA/17.1/2C.28/004254/2021.	Closed
15	PFPA/17.7/2C.28.2/00221-21 [sic] ⁴⁷	Administrative docket No. PFPA/17.3/2C.27.5/0016-23. The inspection visit was performed and site closure was ordered as a security measure. Based on the facts, a criminal complaint was filed under investigation file No. FED/MEX/TEJ/0001394/2023, with the trial ongoing . <i>Active criminal complaint.</i>	Active

26. With respect to the proceedings reported by Mexico that are active or ongoing (eight citizen complaints, three criminal complaints and one injunction suit),⁴⁸ the Secretariat examines, based on the information in the response, whether they do in fact constitute acts initiated or furthered by the Party for purposes of enforcing the environmental law with regard to the substantive matters raised in the submission.

27. With respect to the three criminal complaints:

- i) *Criminal complaint of 14 June 2022 for the alleged crime against biodiversity in relation to the logging of trees in the Valle de Bravo-MTT Basin NRPA*: begun by reason of citizen complaint No. PFPA/17.7/2C.28.2/00081-22.⁴⁹
- ii) *Criminal complaint of 9 August 2021 for the alleged crime of violating a total closure order*: begun by reason of citizen complaint No. PFPA/17.7/2C.28.2/00011-21.⁵⁰
- iii) *Criminal complaint of 12 April 2023 for the alleged crime against biodiversity*: begun by reason of citizen complaint No. PFPA/17.7/2C.28.2/00221-21 [sic].⁵¹

The response does not clarify whether the criminal complaints were initiated by the authority itself or by some other person.

28. With respect to the active injunction suit,⁵² note that it was filed by an individual against the acts in the administrative proceeding initiated with respect to citizen complaint file PFPA/17.7/2C.28.2/00327-21. That is, the injunction suit that the Party notifies as pending does not constitute an act implemented by the Party with the purpose of enforcing the environmental

⁴⁷ Note that this citizen complaint, corresponding to 2023, was presented in Mexico's response (apparently in error) with the same number as of the closed 2021 complaints.

⁴⁸ Cfr. Response, §§ 84 and 86 (charts at pp. 26-31 and 31-32).

⁴⁹ *Ibid.*, § 84 (chart at p. 28): docket number unknown.

⁵⁰ *Ibid.*, § 84 (chart at p. 29): criminal complaint No. FED/FEMDO/UEITMPO- MEX/0000291/2022.

⁵¹ *Ibid.*, § 86 (chart at p. 32): criminal complaint No. FED/MEX/TEJ/0001394/2023.

⁵² *Ibid.*, § 84 (chart at p. 30): injunction suit No. 748/2022.

law with respect to the substantive matter of the submission, but rather is a defense measure filed by a third party, in this case the inspected person himself.

29. The citizen complaints in question also do not themselves constitute acts pursued by the Party that further the implementation of enforcement measures with respect to change of forestry land use and environmental impact. In any case, with these remedies—which are reported as ongoing proceedings in the response—the complainants seek to drive the institution to address the impacts caused by the change in forestry land use and the performance of real estate works and activities without proper authorization. In this same regard, the three citizen complaints that were closed “due to lack of interest by the complainant”⁵³ confirm that the authority responds to the complainant's action and, in the absence thereof, the proceeding is deemed closed. Note, for example, that in one of the cases, after it was decided to close the docket to lack of complainant interest, a writ was filed with Profepa requesting that it verify the preventive and enforcement measures, to which the authority responded that it had “insufficient elements to undertake an administrative proceeding and issue a ruling,” since the initial complaint did not provide the name of the alleged offenders.⁵⁴
30. The Secretariat has previously stated that the threshold to determine the existence of a pending proceeding materializes when a government is *actively* engaged in applying the measures set forth in its laws with respect to the same matter raised by a submission. In such case, the Secretariat is in effect obligated to put an end to its examination and close the submission.⁵⁵
31. While the citizen complaints reported by the Party have given rise to administrative proceedings implemented by Profepa—some are still ongoing—the information in the response confirms that the authority acted and applied measures solely in response to the complaint itself: none of the dockets in question arose from direct Profepa action, and even in cases not prosecuted by the complainant, the docket was closed.
32. With respect to the criminal complaints, all three arose from citizen complaints, without the information contained in the response showing that the authority acted *motu proprio* with respect to the matter in question, i.e., without a citizen complaint. Even assuming that these criminal complaints were filed by the authority and they could constitute an act implemented actively by the Party to enforce the environmental law, available information indicates that two of them have not been ratified and the other is “trial ongoing.” Thus, the Secretariat finds, in its analysis, that the Submitters do not assert a failure to enforce environmental laws, but the authority's obligation to file the corresponding criminal complaint pursuant to Article 182 of the LGEEPA.
33. Therefore, the Secretariat considers that the Party's response does not show that the proceedings notified as pending—eight active citizen complaints, three criminal complaints and one ongoing injunction suit—are being *actively* pursued by the Party, and the existence of such proceedings is not deemed to be a sufficient argument to close submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*) accordingly.

⁵³ *Ibid.*, § 84 (chart at pp. 26 and 28), with respect to citizen complaints No. PFPA/17.7/2C.28.2/00256-21, PFPA/17.7/2C.28.2/00081-22 and PFPA/17.7/2C.28.2/00082-22.

⁵⁴ *Ibid.*, § 84 (chart at p. 26), with respect to la citizen complaint No. PFPA/17.7/2C.28.2/00256-21.

⁵⁵ *Cfr.* Determination 15(1) *Oldman River I*, pp. 3-4.

ii) Whether the proceeding is timely processed and pursuant to law

34. As noted above, the Secretariat's review enabled a determination that of the citizen complaints referred to by the Party in its response, eight are active, as seen in chart 2 below.⁵⁶

Chart 2. Active citizen complaints

Citizen complaint docket (date)	Measures imposed and status	Secretariat observations
PFPA/17.7/2C.28.2/00253-21 (August 17, 2021)	Temporary total closure and urgent measure. ⁵⁷ In discovery.	The urgent measures do not establish how the environmental damage will be repaired or compensated.
PFPA/17.7/2C.28.2/00193-21 (June 14, 2021)	No measures imposed. ⁵⁸ In discovery.	There is no record of urgent measures under LGEEPA, or reference to <i>Administrative Enforcement Criteria of the Environmental Liability Regime</i> .
PFPA/17.7/2C.28.2/00244-21 (August 5, 2021)	1. Administrative ruling entered and fine levied. ⁵⁹ 2. Summons pending. ⁶⁰ 3. Trial underway (summons). ⁶¹ 4. Administrative ruling entered and fine levied. ⁶²	1. No environmental liability procedure; no record of damage study or notice to public prosecutor; unclear whether forestry land use change permit was issued. 2. No corrective measures despite the fine. 3. Closure was "temporary total"; no record of damage reparation. 4. Closure was "temporary total"; no record of damage reparation.
PFPA/17.7/2C.28.2/00162-21 (May 13, 2021)	No security or urgent measures, or administrative ruling. ⁶³ In discovery.	The administrative docket was opened, but no urgent measures were entered, or reparation of environmental damage was determined.
PFPA/17.7/2C.28.2/00199-21 (June 23, 2021)	Temporary total closure imposed, but no summons to the administrative proceeding. ⁶⁴	The administrative docket was opened, but no urgent measures were entered, or reparation of environmental damage was determined, and no summons were issued.
PFPA/17.7/2C.28.2/00083-22 (March 28, 2022)	Notification of summons ruling. ⁶⁵ Awaiting administrative ruling.	Only summons ruling was notified. No evidence of urgent measures or reparation of environmental damage.

⁵⁶ Cfr. Response, §§ 84 and 86 (charts at pp. 26-31 and 31-32, listing citizen complaints filed and addressed from 2021 and 2023) and Exhibits MX-019 and MX-020.

⁵⁷ Profepa, administrative docket PFPA/17.3/2C.27.5/0033-21.

⁵⁸ Profepa, administrative docket PFPA/17.3/2C.27.5/00025-20.

⁵⁹ Profepa, administrative docket PFPA/17.3/2C.27.5/0018-20.

⁶⁰ Profepa, administrative docket PFPA/17.3/2C.27.5/0034-21.

⁶¹ Profepa, administrative docket PFPA/17.3/2C.27.5/0036-21.

⁶² Profepa, administrative docket PFPA/17.3/2C.27.5/0034-21.

⁶³ Profepa, administrative docket PFPA/17.3/2C.27.5/0024-21.

⁶⁴ Profepa, administrative docket PFPA/17.3/2C.27.5/0027-21.

⁶⁵ Profepa, administrative docket PFPA/17.3/2C.27.5/0024-22.

PFPA/17.7/2C.28.2/00327-21 (October 1, 2021)	Administrative docket opened. ⁶⁶ Inspection visit conducted. Temporary total closure of reported works and activities ordered, as a security measure. Summons ruling issued. Inspection visits conducted with respect to compliance with closure. Second administrative docket opened with Natural Resources Bureau (General Bureau of Forestry Inspection and Surveillance). ⁶⁷ No ruling.	The persons responsible for the environmental impact continued to be engaged in forestry land use activities through June 2022, without having the respective authorization.
PFPA/17.7/2C.28.2/00221-21 [sic] (February 24, 2023)	Administrative docket opened. ⁶⁸ Inspection visit performed. Temporary total closure ordered. No ruling.	As of the date of the response, the person who allegedly caused the environmental damage had yet to be summoned, and no administrative proceeding had been initiated.

35. With respect to the criminal complaints, the analysis enabled the identification of the following information shared by the Party:⁶⁹

Chart 3. Active criminal complaints

Source citizen complaint	Investigation file	Date of criminal complaint	Status
PFPA/17.7/2C.28.2/00081-22	Unknown	April 28, 2022	Unknown
PFPA/17.7/2C.28.2/00011-21	FED/FEMDO/UEITMPO-MEX/0000291/2022	Unknown	Unknown
PFPA/17.7/2C.28.2/00221-21 [sic]	FED/MEX/TEJ/0001394/2023	April 12, 2023	Unknown

36. The Submitters state that the application of the right to access to justice is an obligation not only of the courts, but also the administrative agencies.⁷⁰ They add that procedural guarantees are strictly mandatory because their purpose is to "enable persons to defend their rights before any type of act or omission."⁷¹ In this regard, they state that after the corresponding complaints were filed, the authority only performed one inspection visit, but did not conduct a timely verification and its conclusions rely on the good faith of the offenders,⁷² who violate closures or suspensions

⁶⁶ Profepa, administrative docket PFPA/17.3/2C.27.5/00049-21.

⁶⁷ Profepa, administrative docket PFPA/4.2/2C.27.2/0086/2022.

⁶⁸ Profepa, administrative docket PFPA/17.3/2C.27.5/0016-23.

⁶⁹ *Cfr.* Response, §§ 84 and 86 (charts at pp. 28, 29 and 32).

⁷⁰ Submission, § 28.

⁷¹ *Ibid.*

⁷² Submission, Exhibit II: Analysis of three projects with different characteristics reflecting environmental and urban development issues in Valle de Bravo, p. 1.

without any consequences.⁷³ Further, the Submitters hold that the administrative authorities often conduct isolated proceedings without the complainant's participation,⁷⁴ and private persons have engaged in countless unlawful acts in the Valle de Bravo-Amanalco sub-basin with the knowledge of Profepa and the National Water Commission (*Comisión Nacional del Agua*—Conagua) and without effective enforcement, and in most cases with null or precarious procedural responses.⁷⁵

37. The analysis shows that administrative dockets were opened for the active citizen complaints, but, in several cases, there is insufficient information to corroborate whether they were timely implemented, as the procedural status only states "in discovery," "in trial" or "summons in process,"⁷⁶ without any specifying details to confirm the speed of the actions implemented by the Party. Moreover, nothing in the Party's response refers to measures to be pursued for the reparation of damage, which are precisely what the environmental liability regime prescribed by the Federal Environmental Liability Act (*Ley Federal de Responsabilidad Ambiental*—LFRA), jurisprudence and enforcement criteria that the Party has adopted in this regard. In addition to not responding to the environmental liability regime, the corrective measures reported by the Party do not reflect the principle of *motu proprio*, whereby the authority should drive the proceeding, independent of the complaint. This points to attending to procedural formality without substantively addressing the purpose of the complaint.
38. In this regard, considering the matter of timeliness in the analysis, bear in mind that the Mexican Judicial Branch has determined that the environmental liability regime is at the constitutional level and its purpose is the reparation of environmental damage.⁷⁷ This is further noted in the *Administrative Enforcement Criteria of the Environmental Liability Regime*, adopted by Profepa for the enforcement of environmental laws in Mexico and which are presumed to be in effect.⁷⁸
39. Based on the foregoing, the Secretariat believes that it is not possible to conclude from the information presented in the Party's response that the proceedings notified as pending resolution are timely.

⁷³ *Ibid.* See also §42, section g) of the submission.

⁷⁴ Submission, § 30.

⁷⁵ *Ibid.*, § 31.

⁷⁶ *Cfr.* Response, §§ 84 and 86 (charts at pp. 26-28 and 31), with respect to citizen complaints PFPA/17.7/2C.28.2/00253-21, PFPA/17.7/2C.28.2/00193-21, PFPA/17.7/2C.28.2/00162-21, PFPA/17.7/2C.28.2/00199-21 and PFPA/17.7/2C.28.2/00083-22. See also §§ 87 and 95.

⁷⁷ ENVIRONMENTAL LIABILITY: SUBJECT TO A SPECIAL REGULATORY REGIME INVOLVING THE FEDERAL ENVIRONMENTAL LIABILITY ACT AND OTHER PROVISIONS, WHICH IMPLIES THE DUTY TO INTERPRET THEM IN SUCH A WAY THAT THE CONSTITUTIONAL MANDATE OF PROTECTION AND REPARATION PREVAILS. Isolated ruling of the Eighteenth Circuit Court for Administrative Matters for the First Circuit, Federal Judicial Branch, Ruling No. I.18o.A.71 A (10a.), *Federal Judicial Weekly and Gazette (Semana Judicial de la Federación y su Gaceta)*, 10th period, book 53, volume III, April 27, 2018, p. 2066, digital record: 2016752, at: <<https://bit.ly/48QddTB>> [ENVIRONMENTAL LIABILITY].

⁷⁸ Profepa, Ruling PFPA/5/07997 (August 1, 2016), *Criteria for the administrative enforcement of the environmental liability regime set forth in Article 4, fifth paragraph of the Political Constitution of the United Mexican States, the General Ecological Balance and Environmental Protection Act, the National Wildlife Act, the General Sustainable Forestry Development Act, the General National Property Act, the General Waste Prevention and Comprehensive Management Act, and the Federal Environmental Liability Act*, Profepa Legal Bureau, p. 29, at: <<https://bit.ly/3Qcs03E>> [Enforcement Criteria].

iii) Same matter and same environmental laws

40. The Secretariat has also determined on prior occasions that, when analyzing the possible duplication of efforts or possible interference with pending litigation, it should be considered whether similar legal questions are at issue:⁷⁹ examining whether the subject matter of the litigation matches the issue raised in the submission⁸⁰ and considering the need for a restricted reading of the pending "matter."⁸¹ It has further been held that citizen complaints constitute pending proceedings for purposes of the SEM process solely when they result in the implementation of administrative proceedings.⁸²
41. As previously mentioned, the Secretariat analyzes a total of 12 active administrative proceedings notified by the Party (eight citizen complaints, three criminal complaints, and one injunction suit), relating to the enforcement of Articles 4, fifth paragraph of the Constitution; 20 *bis* 4 section II, 20 *bis* 5 section V, 46 section VI *et seq.*, 161, 170, 182, 192 and 193 of the LGEEPA, and 9

⁷⁹ Cfr. Determination 15(1) *Oldman River I*, pp. 4-5:

In this instance, similar legal issues are before both the Federal Court and the Secretariat. [...] Both of these considerations weigh in favor of allowing the domestic proceeding to advance without risking duplication or interference by considering parallel issues under the Agreement.

⁸⁰ Cfr. SEM-00-004 (*BC Logging*), Article 15(1) Notification to Council (July 27, 2001), p. 19, <<https://bit.ly/463Tiym>> [15(1) Notification BC Logging]:

[...] Only those proceedings specifically delineated in Article 45(3)(a), pursued by a Party in a timely manner, in accordance with a Party's law, and concerning the same subject matter as the allegations raised in the submission should preclude the Secretariat from proceeding further [...]."

See also SEM-97-001 (*BC Hydro*), Recommendation to Council in accordance with Articles 14 and 15 (April 27, 1998), p. 2, <<https://bit.ly/45h0FBO>>: "[...] such a proceeding must concern the same subject matter as the allegations raised in the submission"; SEM-98-004 (*BC Mining*), Article 15(1) Notification to Council (May 11, 2001), p. 17, <https://bit.ly/ADV15_1_98-004>: "[...] such a proceeding must concern the same subject matter as the allegations raised in the submission"; and SEM-12-001 (*BC Salmon Farms*), Notification to the Submitters and to Council regarding proceedings notified by Canada (May 7, 2014), <<https://bit.ly/3sQBKYI>> with respect to the location of salmon farms cited in the submission and which are subject to pending judicial recourse (§ 18), and with reference to the judicial proceedings notified by the Party concerning aquaculture licenses and not regulations on the depositing of substances in water (§ 42-44).

⁸¹ Cfr. SEM-01-001 (*Cytrar II*), Article 15(1) Notification (July 29, 2002), p.7, <<https://bit.ly/3JtL5ep>> [15(1) Notification *Cytrar II*]:

The Secretariat has previously construed provisions of the Agreement narrowly when a broader reading could defeat the objectives of the Agreement by too liberally allowing Article 14(3)(a) to cut off further review.

⁸² Cfr. SEM-15-001 (*La Primavera Forest*), Article 15(1) Notification to Council (November 4, 2016), § 25, <<https://bit.ly/3l6ML4i>>:

The Secretariat considers that in any event, Mexico has conducted implementation of the citizen's complaint mechanism provided in Articles 189 of LGEEPA and 107 of LGVS and has [made] this process available to individuals.

See also 15(1) Notification BC Logging, pp. 20-21:

The concerns that weigh against development of a factual record when pending [civil] litigation is addressing the same subject matter as is raised in a submission are similar to the concerns relevant to whether a factual record is warranted with regard to a matter that is also subject to a timely, active, pending criminal investigation.

sections I, II, XXVI and XXXVI, 15, 86 sections IV, V, VII, VIII, XI and XII, and 95 of the LAN, all of which provisions are cited by the submission.

42. With respect to the subject matter of each active proceeding, the following information is identified:⁸³

Chart 4. Active proceedings and their subject matters

	Docket number and date	Subject matter
Citizen complaints	PFFPA/17.7/2C.28.2/00253-21 (August 17, 2021)	Change of land use, opening of material banks, without authorization.
	PFFPA/17.7/2C.28.2/00193-21 (June 14, 2021)	Removal of woodland vegetation with heavy machinery, as well as logging, change of land use from forestry to residential, within the "Casas Viejas" site.
	PFFPA/17.7/2C.28.2/00244-21 (August 5, 2021)	Construction of cyclone fencing and perimeter walls.
	PFFPA/17.7/2C.28.2/00162-21 (May 13, 2021)	Removal of vegetation with heavy machinery, logging and opening of a roadway to connect the Tres Puentes toll road with the Tres Puentes neighborhood.
	PFFPA/17.7/2C.28.2/00199-21 (June 23, 2021)	Logging activities, change of land use and earthworks alongside Camino El Castellano, town of Acatitlán, municipality of Valle de Bravo.
	PFFPA/17.7/2C.28.2/00083-22 (March 28, 2022)	Complaint for rock landfill to consolidate a garden area in the Valle de Bravo dam federal zone.
	PFFPA/17.7/2C.28.2/00327-21 (October 1, 2021)	Complaint on various environmental impacts of a project in forestry lands and cloud forest vegetation, affecting the natural course of the Tomatillos River, with heavy and manual machinery to fell adult trees around and about the property to build a residential complex, as well as a private lake in Ejido Cerro Gordo.
	PFFPA/17.7/2C.28.2/00221-21 [sic] (February 24, 2023)	Complaint against an enterprise for removal of forest vegetation, opening of roads and rock extraction without authorization, in the Valle de Bravo forest zone, Camino El Castellano and Camino La Gran Stupa, in El Crustel, town of San Matero Acatitlán.
Criminal complaints	Criminal docket number unknown (April 28, 2022)	Crimes against biodiversity consisting of cutting, logging or felling trees in a protected natural area under federal jurisdiction.
	Criminal docket FED/FEMDO/UEITMPO-MEX/0000291/2022 (Unknown)	Violation of security measures and failure to comply with measures.
	Criminal docket FED/MEX/TEJ/0001394/2023 (April 12, 2023)	Facts likely constituting crimes against biodiversity.

⁸³ Cfr. Response, §§ 84 and 86 (charts at pp. 26-31 and 31-32) and Exhibits MX-019 and MX-20.

Injunction suit	Suit No. 748/2022	Against official acts under the administrative proceeding of citizen complaint No. PFFPA/17.7/2C.28.2/00327-21t
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43. The active proceedings notified by the Party in effect relate to the subject matter of the submission. The Submitters assert that "the administrative authorities often conduct isolating procedures, lacking citizen participation, whereby procedural rights are diminished [...] as access to the penalty procedures is systematically blocked."⁸⁴ They further hold that despite the complaints filed with Profepa and the Conagua, the responses of both authorities have been mostly null or deficient, which has facilitated real estate projects progressing without the necessary permits, even after security measures and penalties have been imposed.⁸⁵
44. The information provided by the Party corroborates that this is the same subject matter raised by the Submitters. However, in its determination, the Secretariat finds that there is not sufficient reason to close the submission based on this element alone, since as noticed above, the proceedings are not actively pursued by the Party, nor does the response provide information corroborating their timeliness.
45. Moreover, the risk of causing a duplication of efforts or undue interference with the ongoing administrative proceedings (citizen complaints) notified by the Party, if the submission is processed further, is minimal since while the submission presents examples that broadly illustrate the lack of control of human settlements in the Valle de Bravo-MTT Basin NRPA, the preparation of a factual record would present aggregate data. That is, it would entail the compilation and analysis of general information, without specifying certain properties or cases, and would generally present an overview of the issue raised by the Submitters. For these reasons, the Secretariat has decided to continue with its analysis.

iv) Whether the proceeding may potentially resolve the matter raised in the submission

46. The examination of the notification of ongoing judicial or administrative proceedings takes into consideration whether their processing and resolution could, in effect, address and settle the matter raised in the submission.⁸⁶ It was recently considered, for example, whether the resolution of ongoing proceedings—and, in particular, the implementation of alternative dispute resolution mechanisms and the adoption of corrective measures (including the preparation and later implementation of environmental damage studies) in the framework of Profepa's administrative procedures—could address the concern raised in a submission, and potentially contribute to their

⁸⁴ Submission, §§ 28-30.

⁸⁵ *Ibid.*, §§ 31-32.

⁸⁶ *Cfr.* 15(1) Notification *Cytrar II*, p. 6:

To apply this exceptional condition for terminating a submission [i.e., to apply Article 14(3)(a) to close a submission], [...] there must be a reasonable expectation that the "pending judicial or administrative proceeding" invoked by the Party will address and potentially resolve the matters raised in the submission.

See also SEM-21-003 (*North Atlantic Right Whale*), Notification in accordance with Article 24.28(1) of the USMCA (June 3, 2022), § 27, and SEM-13-001 (*Tourist Development in the Gulf of California*), Notification with respect to a proceeding reported by Mexico (May 16, 2014), § 22.

resolution.⁸⁷ The mere existence of a complaint submitted to the competent authority does not necessarily give rise to an administrative proceeding intended to impose penalties or corrective measures, and therefore does not itself qualify as a pending remedy.⁸⁸

47. With respect to the citizen complaints notified by the Party, they relate to the effects of the change of land use, removal of forest vegetation and opening of roads, among other factors, in various places and specific cases.⁸⁹ However, the central theme in the submission includes the obligation to regulate uses in the Valle de Bravo-MTT Basin NRPA; the foundation of human settlements or residential densities in non-urban zones in said NRPA; alleged omissions in the effective implementation of the citizen complaint mechanism; and low water quality and quantity in Valle de Bravo and tributaries. The handling of the citizen complaints reported by the Party in its response is unlikely to resolve all core concerns stated in the submission.
48. To summarize, the ongoing citizen complaints listed in the response gave rise to active administrative dockets, but their resolution would not address the systemic issues and substantive questions raised in the submission. Since a factual record would present aggregate data, it is important to stress that it could not inadvertently interfere with the pending proceedings notified by the Party.
49. Therefore, the Secretariat will continue its analysis to determine whether the preparation of a factual record is warranted.

c. Assertions in submission SEM-23-005

50. The Secretariat considers whether, in light of the Party's response, the preparation of a factual record is warranted with regard to the alleged failure to effectively enforce the law with respect to:
 - i) Regulation of uses in the Valle de Bravo-MTT Basin NRPA
 - ii) Real estate development in non-urban zones in the Valle de Bravo-MTT Basin NRPA
 - iii) Citizen complaint procedures and environmental liability regime
 - iv) Water quality and quantity in the Valle de Bravo dam reservoir and tributaries

i) Regulation of uses of the Valle de Bravo-MTT Basin NRPA

51. The Submitters assert that the Management Program for the Natural Resource Protection Area of the Valle de Bravo, Malacatepec, Tilostoc and Temascaltepec River Basins ("Valle de Bravo-MTT Basin NRPA Management Program " or "Management Program") does not comply with the parameters prescribed by LGEEPA and the RLAN, since the program does not specify the densities, intensities, conditions and types of works, nor does it establish the corresponding usage limitations, based on studies of acceptable change levels and load capacities.⁹⁰

⁸⁷ Cfr. SEM-22-001 (*Pollution in Playa Hermosa*), Determination in accordance with Article 24.28(1) (November 4, 2022), §§ 41-43, at: <<https://bit.ly/3ZHtlfp>>. See also paragraph 32, which found that the implementation of an environmental damage study, as part of the security measures adopted by Profepa, could contribute to resolving the submitters' assertion.

⁸⁸ *Ibid.*, § 45.

⁸⁹ Cfr. Response, §§ 84 and 86 (charts at pp. 26-31 and 31-32).

⁹⁰ Submission, §§ 21-22.

52. The absence of such parameters in the Valle de Bravo-MTT Basin NRPA Management Program enabled the municipality to establish, through the Valle de Bravo Municipal Development Plan ("Valle de Bravo MDP"), other land uses and residential densities outside population centers, in zones designated as "non-urban." They state that, while both the Management Program and the Valle de Bravo MDP stipulate urban use solely and exclusively for zones designated as "human settlements," the Valle de Bravo MDP establishes other land uses in majority-forest zones (non-urban areas) outside the human settlement zones, specifically in zones deemed sustainable ecosystem and natural resource use areas. They add that the municipality of Valle de Bravo thereby exceeded its authority with respect to the establishment of land uses and "[opened] the territory of the protected natural area to the development of real estate projects, many without [...] the corresponding environmental impact and change of land use authorizations".⁹¹
53. According to the Submitters, this is causing, in various areas of the municipality and thus of the federal protected natural area, changes in land use from forestry to urban (legally and illegally), without the administrative authorities—federal, state and municipal, in the scope of their respective jurisdictions—having the human, technical and financial capacity to address and monitor the problem.⁹²
54. The Submitters state that this lack of restrictions for real estate and urban development in the territory of the municipality of Valle de Bravo contrasts with what is seen in other subzones of the Valle de Bravo-MTT Basin NRPA, leading them to believe that the National Protected Natural Area Commission (*Comisión Nacional de Áreas Naturales Protegidas*—Conanp) and the municipality both "disregarded an environmental perspective and prioritized urban over environmental needs," without just cause.⁹³
55. The obligation to regulate land uses in the NRPA, the Submitters assert, falls upon Conanp,⁹⁴ and in any case, such regulation should have been addressed through a local ecological zoning program, prepared and issued pursuant to Articles 20 *bis* 4 section II and 20 *bis* 5 section V of the LGEEPA.⁹⁵
56. In its response, the Party states that the Valle de Bravo-MTT Basin NRPA Management Program was prepared in accordance with the provisions of Article 66 of the LGEEPA, which establishes the minimum content of management programs for protected natural areas (PNA), and that the program addresses the physical, biological, social and cultural characteristics of the PNA in question.⁹⁶ With respect to the lack of specificity in the Management Program on the allowed uses and exploitations, and the limits established by scientifically established usage rates and ratios, the Party states that "the general purpose of the management program is to be the governing instrument for planning and regulation, establishing the basic activities, actions and guidelines for the management and administration of the NRPA" and that "[u]sage rates containing the number of specimens, parts or derivatives that may be extracted from an area in a given period" are found in the forestry management plans for projects to be developed in the NRPA, which are

⁹¹ *Ibid.*, §§ 9 and 10.

⁹² *Ibid.*, § 10.

⁹³ *Ibid.*, § 23.

⁹⁴ *Ibid.*, § 24.

⁹⁵ *Ibid.*, § 26.

⁹⁶ Response, § 30.

analyzed and evaluated in a multidisciplinary approach with the involvement of several competent agencies.⁹⁷

57. Regarding the regulation of land uses, the Party states that, under Article 20 *bis* 5 of the LGEEPA, that this falls under local ecological zoning programs (in this case, the Valle de Bravo MDP) and when the local programs cover a protected natural area under federal jurisdiction, they must be approved jointly by Semarnat and the state governments, municipalities and other local agencies.⁹⁸ Therefore, in the case of the Valle de Bravo-MTT Basin NRPA Management Program, land uses are not regulated, but rather in accordance with Article 47 *bis* of the LGEEPA, the NRPA was divided and subdivided solely to identify and delineate portions of the territory according to their characteristics (biological, physical and socioeconomic elements) and the corresponding management category.⁹⁹ The response lists the main aspects used to delineate the subzones of the Valle de Bravo-MTT Basin NRPA.¹⁰⁰

58. The Party stresses that regional and local ecological ordinances have different scopes.¹⁰¹ The information offered in the response further specifies, as follows:

The planning instrument of reference is actually a regional ecological zoning instrument [...] prepared on the basis of Articles 20 Bis 1, 20 Bis 2 and 20 Bis 3 of LGEEPA.

The assertion at numeral 42, section c) [of the submission], stating that “Semarnat has not developed and approved, jointly with the municipality and the state government in the Local Ecological Zoning Program governing land use outside population centers [...]” is inaccurate, since such program does not yet exist. *This is a duty of the municipality*, which is responsible for developing the environmental planning instrument at the local level [emphasis added].¹⁰²

59. However, the purpose of a local ecological zoning program is to determine the different ecological areas in the zone, performing a diagnosis of the environmental conditions of the territory in order to regulate, outside population centers, land uses in the performance of production activities and the location of human settlements.¹⁰³ Local ecological zoning programs may cover all or part of the territory of a municipality.¹⁰⁴ For their part, regional ecological zoning programs are not required to include the regulation of land uses, but rather “ecological regulation criteria for preservation, protection, restoration and sustainable use [...] in the region [...], as well as for the performance of production activities and the location of human settlements”.¹⁰⁵

⁹⁷ *Ibid.*, §57.

⁹⁸ *Ibid.*, § 34.

⁹⁹ *Ibid.*, § 35.

¹⁰⁰ *Ibid.*

¹⁰¹ Response, Exhibit 006: Ruling APRNVB/518/2023 (August 4, 2023), Natural Resource Protection Area Office, Valle de Bravo, Malacatepec, Tilostoc and Temascaltepec River Basins.

¹⁰² Response, Exhibit 013: Ruling SPARN/DGGFSOE/418/2313/2023 (August 7, 2023), General Bureau of Forestry Management, Soil and Ecological Zoning, Undersecretary for Environmental Policy and Natural Resources.

¹⁰³ *Cfr.* LGEEPA Article 20 *bis* 4: sections I and II.

¹⁰⁴ *Cfr.* Semarnat (2016), “Ecological Zoning” at: Compendium of Environmental Statistics (*Compendio de estadísticas ambientales*) 2017, Semarnat. General Bureau of Environmental Policy and Regional and Sector Integration, August 2016; available at: <<https://bit.ly/45joWqY>>.

¹⁰⁵ *Cfr.* LGEEPA Article 20 *bis* 3 section II.

60. Although the municipality of Valle de Bravo does not have a local ecological zoning program, as the municipal territory is located in part of the Valle de Bravo-MTT Basin NRPA; were such a local ecological zoning program to be implemented, it would have to be *drafted and approved jointly by Semarnat, the Mexico State government and the corresponding municipalities*,¹⁰⁶ further considering that once a PNA were established, "its extent, and as applicable the permitted land uses or any of its provisions, could only be modified by the authority that established it."¹⁰⁷
61. Note that while the local ecological zoning and municipal urban development programs, such as the Valle de Bravo MDP, are responsible for establishing land uses, the Mexican Supreme Court has made it clear that urban development and human settlement matters are concurrent and fall under the jurisdiction of the three levels of government in the case of zones under federal jurisdiction.¹⁰⁸ In this regard, the local authorities do not have exclusive and final jurisdiction over the zoning and regulation of human settlements, as they are under concurrent federal, state and municipal scope within their respective jurisdictions: "human settlements, the protection of the environment and the preservation and restoration of the ecological balance of *constitutionally concurrent* and their provisions are developed through general laws, i.e., involving the three levels of government,"¹⁰⁹ and "municipal duties with respect to human settlements and the environment—zoning and urban development plans, land use, issuance of construction licenses and permits and the establishment of ecological reserves—are *not absolute or unrestricted*" [emphasis added].¹¹⁰
62. In summary, since NRPA's (and their regulation) are under federal jurisdiction, municipal duties with respect to zoning, urban development plans, land use, issuance of construction licenses and permits in territories within the protected area are not performed exclusively, but rather concurrently.¹¹¹ In any case, the corresponding duties of the municipality of Valle de Bravo would

¹⁰⁶ *Ibid.* Article 20 bis 5 section V.

¹⁰⁷ *Ibid.* Article 62.

¹⁰⁸ *Cfr.* HUMAN SETTLEMENTS AND URBAN DEVELOPMENT: PERFORMANCE OF DUTIES OF THE MUNICIPALITIES IN SUCH MATTERS IN THE CASE OF A FEDERAL ZONE. Isolated ruling of the Mexican Supreme Court, First Chamber Ruling No. 1a. CXXXII/2014 (10a.), *Federal Judicial and Gazette*, 10th period, April 4, 2014, digital record 2006099, at: <<https://bit.ly/45nyK3i>>.

¹⁰⁹ CONCURRENT AUTHORITIES IN HUMAN RIGHTS MATTERS, ENVIRONMENTAL PROTECTION AND THE PRESERVATION AND RESTORATION OF THE ECOLOGICAL BALANCE. MUNICIPAL URBAN DEVELOPMENT PROGRAMS MUST BE CONSISTENT WITH FEDERAL AND STATE ECOLOGICAL ZONING PROGRAMS. Ruling of the Mexican Supreme Court (constitutional controversy), Full Court, Ruling P./J. 38/2011 (9a.), *Federal Judicial Weekly and Gazette*, 10th period, book 1, volume II, October 2011, p. 288, digital record 160856., at: <<https://bit.ly/46ppv3J>>.

¹¹⁰ "Constitutional controversy 212/2018," ruling of the First Chamber of the Mexican Supreme Court, session of September 29, 2021, published in the *Federal Judicial Weekly and Gazette*, 11th period, book 12, volume II, April 2022, p. 1296, <<https://bit.ly/3ZPutEn>>.

¹¹¹ *Ibid.*, pp. 1181-1182:

XXXVIII. Yum Balam Flora and Fauna Protection Area. The scope of municipal jurisdiction is not encroached upon by the regulation of zoning, land use and construction permits and licenses, since this is not an exclusive duty. It is federal duty to regulate and manage natural areas under federal jurisdiction, and municipal duties [are] subject to the environmental protection regime applicable to the biodiversity protection area (Management Program for the Yum Balam Flora and Fauna Protection Area in the municipality of Lázaro Cárdenas, State of Quintana Roo, published in the *Federal Official Gazette* on October 5, 2018).

be subject to the environmental protection regime of the Valle de Bravo-MTT Basin NRPA Management Program.

63. The Secretariat notes that the response does not mention coordination activities among the federal, state and municipal authorities to address authorization requests for real estate development in the NRPA in question, to provide projects with the corresponding environmental impact authorizations and, as applicable, change of land use. The Party states that uses and exploitations are established through *forestry management plans*¹¹² under the General Sustainable Forestry Development Act (*Ley General de Desarrollo Forestal Sustentable*—LGDFS),¹¹³ when in reality the issue alluded to by Submitters involves usage rates and ratios, the load capacity of ecosystems and acceptable levels of change for *all* uses within the Valle de Bravo-MTT Basin NRPA. In other words, the submission's assertions relate to the effective enforcement of provisions on protected natural areas, and while the forestry management plans contribute to adequate resource management, they do not establish, e.g., criteria or parameters for land use, ecosystem capacity in development projects, etc.
64. It is important to note that the scope of application of the SEM process is limited to federal laws and regulations whose enforcement is under the jurisdiction of federal authorities. Therefore, it would not be possible to for a factual record to address matters relating to actions to be performed and enforced by municipal or state authorities.¹¹⁴
65. Therefore, as concerns the alleged failure of the Valle de Bravo municipal authority to implement the Valle de Bravo MDP, the Secretariat determines *not* to address it in a possible factual record, since these are questions outside the scope of environmental law enforcement pursuant to USMCA Article 24.1.
66. With respect to the alleged failure of the federal authority to perform its concurrent duties with respect to ecological zoning and human settlements in the Valle de Bravo-MTT Basin NRPA, a factual record could present information on the coordinated actions of federal authorities to establish densities, intensities, conditions and types with respect to urban development works on lands located in the NRPA in question, as well as setting usage limitations based on acceptable limit studies for change in use and load capacities in the area.

ii) Real estate development in non-urban zones of the Valle de Bravo-MTT Basin NRPA and environmental impact assessment of real estate projects

67. The Submitters assert that "Semarnat fails to perform [its] obligation to prevent the founding population centers in an [unprotected natural area under federal jurisdiction], pursuant to the LGEEPA and its Regulations on Protected Natural Areas [RPNA], [...] as real estate projects [have been authorized] that promote the construction of urban infrastructure [...], accesses, roads

¹¹² Response, § 57.

¹¹³ LGDFS Articles 72 to 77.

¹¹⁴ Under Article 24.1 of the USMCA, which defines the term "environmental law," the Secretariat may only consider federal environmental laws in the SEM process:

[E]nvironmental law means a statute or regulation [...] the primary purpose of which is the protection of the environment [...]

[...] 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...

[... and] sanitary sewers [...], among others, within forest zones categorized by the same Management Program [Valle de Bravo-MTT Basin NRPA] as non-urbanized."¹¹⁵

68. With respect to the process to consolidate human settlements in the Valle de Bravo-MTT Basin NRPA, the Submitters assert that the environmental impact studies for completed real estate developments do not include the best techniques, methodologies, scientific information available and prevention and mitigation measures.¹¹⁶ They hold that the guidance and methodologies issued by Semarnat for the submission of environmental impact statements constitute basic elements for the proper environmental impact assessment of projects; but despite their existence, the criteria they provide are not being respected by the environmental impact and risk studies for real estate development works and projects in the NRPA, and project developers may reduce or manage the information contained in their environmental impact and risk studies as they see fit to obtain a favorable authorization.¹¹⁷ According to the Submitters, this is due to the fact that, to date, the guidance in question has not been published in the Federal Official Gazette (*Diario Oficial de la Federación—DOF*) nor in the Ecological Gazette (*Gaceta Ecológica*), according with Article 9, third paragraph of the REIA (even though they are found on the Semarnat website), and have not been updated since 2002.¹¹⁸ The Submitters add that since they are not published in the *DOF* nor in Semarnat's *Ecological Gazette*, such guidance is "not binding on project developers; much less taken into account by them."¹¹⁹
69. To summarize: In the Submitters' opinion, there has not been even minimal information enabling an adequate environmental impact assessment of real estate works and projects (because the corresponding impact studies do not respect the criteria prescribed in the guidance for such purpose), which has permitted the irregular construction of settlements and infrastructure in the Valle de Bravo-MTT Basin NRPA woodlands.¹²⁰
70. The Party holds that Conanp "does not have the authority to authorize real estate projects"¹²¹ and clarifies that "what is prohibited in protected natural areas is the founding of new population centers,"¹²² and not human settlements. It adds that in PNA management and administration, "ecological policy should seek to correct those imbalances that impair the quality of life of the population, while foreseeing trends in human settlement growth,"¹²³ and that in that sense, pursuant to LGEEPA:

"[A] human settlement subzone may be established in the PNA buffer zone for *those areas where there is a substantial modification or disappearance of original ecosystems* due to the development of human settlements before the PNA was declared, seeking the balance that should exist between human settlements and their environmental conditions [...]" [emphasis added].¹²⁴

¹¹⁵ Submission, § 41.

¹¹⁶ *Ibid.*, § 35.

¹¹⁷ *Ibid.*, §§ 36-40.

¹¹⁸ *Ibid.*, § 37.

¹¹⁹ *Ibid.*, § 39.

¹²⁰ *Ibid.*, § 40.

¹²¹ Response, § 37.

¹²² *Ibid.*, § 38.

¹²³ *Ibid.*, § 40.

¹²⁴ *Ibid.*, § 41.

71. Also with respect to human settlements in the Valle de Bravo-MTT Basin NRPA, the response notes that, according to the most recent National Geostatistics Framework of the National Institute of Statistics and Geography (*Instituto Nacional de Estadística y Geografía*—Inegi), with data from the 2020 Population and Housing Census, in 2000 there were 263 towns within the NRPA, while by 2020 that number had increased to 279.¹²⁵
72. Regarding the inclusion of best techniques, methodologies, available scientific information, and prevention and mitigation measures in the environmental impact studies for the real estate development proposed and completed in the Valle de Bravo-MTT Basin NRPA, [Mexico reports] that the environmental impact statement (EIS) is an environmental policy instrument intended to prevent, mitigate and restore environmental damage and to regulate works or activities, to avoid or reduce their negative effects on the environment and human health,¹²⁶ [and adds] that for the authorization of works or activities to be carried out within submitting an EIS [projects not requiring an environmental impact statement], it suffices to submit a preliminary report.¹²⁷ In this regard, Semarnat has prepared and published guidance (to comply with the right to information and in accordance with Article 4, section II of the REIA) to facilitate the preparation and submission of the different types of environmental impact statements, according to the type of work or activity to be carried out. This guidance—according to the Party—is available to the public and may be consulted under the "Guidance for support and consultation of Environmental Impact Procedures" website, at www.gob.mx/semarnat/documentos/guias-de-impacto-ambiental.¹²⁸ The Party further notes that the guidance is currently being revised and once the corresponding administrative proceedings are completed (including the preparation of the required regulatory impact statement, they will be published in the *DOF*.¹²⁹
73. The Valle de Bravo-MTT Basin NRPA was originally created as a forest protection zone under a decree from November 15, 1941, and recategorized as a protected natural area under the category of natural resource protection area (NRPA) on June 23, 2005.¹³⁰ Pursuant to Article 47 *bis* 1 of the LGEEPA, in addition to one or more nuclei and buffer zones, subzones may be created as determined in the corresponding management program. Buffer zones, which allow use activities aimed at sustainable development under conditions of ecosystem conservation, may include (as noted in paragraph 70, *supra*), *human settlement* subzones in "those areas where the substantial modification or disappearance of the original ecosystems has occurred, due to the development of human settlements prior to the protected area declaration."¹³¹
74. The General Human Settlement, Territorial Zoning and Urban Development Act (*Ley General de Asentamientos Humanos, Ordenamiento Territorial y Desarrollo Urbano*) defines a human settlement as a "demographic conglomerate with a set of communal living systems, in a physically localized area, considering the natural elements and material works it comprises," while *population centers* are "areas constituted by urbanized zones and those reserved for their

¹²⁵ *Ibid.*, § 42.

¹²⁶ *Ibid.*, § 59.

¹²⁷ *Ibid.*, §§ 48 and 58.

¹²⁸ *Ibid.*, § 57.

¹²⁹ *Ibid.*, § 63.

¹³⁰ Semarnat, Summary Ruling on a Protected Natural Area Management Program with the Category of Natural Resource Protection Area, Valle de Bravo, Malacatepec, Tilostoc and Temascaltepec River Basins, Mexico State, DOF, November 27, 2018, at: <https://bit.ly/3ttaQGo>.

¹³¹ LGEEPA Article 47 *bis* section II, section g).

expansion."¹³² In other words, all population centers may be deemed to contain human settlements, but not all human settlements may be regarded as population centers.

75. While the environmental provisions cited in the submission are not entirely clear with respect to what characteristics a *human settlement* should have to be regarded as a *population center*, there is an element that should be taken into consideration: to be subzoned with the category of human settlements in a buffer zones of a protected natural area, the areas in question must have been ecologically modified by reason of human settlements *prior to the PNA declaration*. The response does not address this central element with respect to the territorial delineation of the works and activities in human settlement subzones in the Valle de Bravo-MTT Basin NRPA or other urbanization questions, limiting its report to the number of towns going from 263 to 279 over the course of 20 years.
76. The submission states that, in the municipality of Valle de Bravo, the establishment of human settlements has not been regulated or controlled outside urban zones through environmental policy instruments, such as the environmental impact assessment procedure prescribed by LGEEPA.
77. While, as the Party notes, the creation of new population centers has not been authorized in the protected natural area (forest protection zone) consisting of the basins of the Valle de Bravo, Malacatepec, Tilostoc and Temascaltepec Rivers following their recategorization as a natural resource protection area (Valle de Bravo-MTT Basin NRPA) on June 23, 2005, it is clear that the environmental impact authorization mechanism for real estate projects, applied to date, have opened the door to the consolidation of urban infrastructure within the NRPA, mostly in woodland zones (non-urbanized under the Management Program) outside preexisting population centers and human settlements. That is, in practice, it allows the performance of works and the establishment of human settlements outside urban areas without involving the federal authority.
78. Human settlements may only be established in areas where the corresponding urban development plan—under municipal jurisdiction—so allows. However, as noted above, zoning and the regulation of human are of a concurrent federal, state and municipal scope if the zones or under federal jurisdiction. Thus, in the case of the municipality of Valle de Bravo, since it falls within a protected natural area, the regulation of human settlements should have involved the participation of the federal government and have been consistent with the regional ecological zoning program. In this sense, while there are questions on the scope of the municipal government's actions that *cannot* be part of a factual record, such as those dealing with local zoning by the municipality, the actions implemented by the federal authorities within the concurrent scope and with respect to the preparation of environmental impact assessment procedures with respect to developments within the Valle de Bravo-MTT Basin NRPA may form part of a factual record.
79. Moreover, as regards the Submitters' concern for the lack of enforcement and the criteria prescribed in the guidance for filing environmental impact statements for real estate development projects in the Valle de Bravo-MTT Basin NRPA, with the resulting effect on the corresponding environmental assessment and the definition of environmental impact prevention and mitigation measures:¹³³

¹³² LGAH Article 3 sections IV and VI.

¹³³ Submission, §§ 35-40.

- i) the existence of such publicly available guidance for online consultation (even if not updated)¹³⁴ means that the Party has complied with Article 4 section II of the LGEEPA Regulations on Environmental Impact Assessment (REIA),¹³⁵ *and it will not be considered for further analysis accordingly*;
 - ii) while the response corroborates that the guidance is available at the Semarnat website, the Party does not address why they have yet to be published in the *DOF* and the *Ecological Gazette*, pursuant to Article 9¹³⁶ of the Regulations, and therefore the response does not address the Submitters' concern regarding the failure to effectively enforce that provision; and
 - iii) although the Party holds that the guidance in question is currently being revised (following the submission of the regulatory impact statement to the National Regulatory Improvement Commission (*Commission Nacional de Mejora Regulatoria*—Conamer)) to proceed to publication in the *DOF*,¹³⁷ the Party's response does not provide further information in this regard and, to date, the Secretariat has been unable to identify any new draft guidance on the Conamer website.¹³⁸
80. To summarize: The Secretariat finds that the Party's response does not wholly resolve the concerns raised by Submitters with regard to the application of guidance for the preparation and filing of environmental impact statements concerning works and projects in the Valle de Bravo-MTT Basin NRPA. Also, the response also leaves open central questions that could be clarified in a factual record, namely: Semarnat's failure to publish the methodological environmental impact guidance in the *DOF*; the possible legal effects of such guidance on real estate project developers; the process to consolidate human settlements in the primarily woodland zones of the Valle de Bravo-MTT Basin NRPA (non-urbanized under the Management Program); the alleged omissions in environmental impact assessments and authorizations of the proposed real estate projects; and the binding nature of the technical opinions issued by the specialized Semarnat departments on their evaluation of real estate projects in the Valle de Bravo-MTT Basin NRPA.

iii) Citizen complaint procedures and the environmental liability regime

81. The Submitters assert that the Party is not guaranteeing the right to access information, participation and justice in environmental matters, and fails to effectively implement the citizen complaint mechanism set forth in LGEEPA, since "the administrative authorities often conduct isolated

¹³⁴ *Cfr.* Submission, § 37 and response, §§ 57 and 63.

¹³⁵ REIA Article 4 section II: "The Ministry is responsible for: [...] [d]rafting, publishing and making available to the public guidance for the filing of the preliminary report, the environmental impact statement in its various forms, and the risk study."

¹³⁶ REIA Article 9 (third paragraph):

The Ministry shall provide developers with guidance to facilitate the filing and submission of the environmental impact statement according to the type of work or activity intended to be carried out. The Ministry shall publish said guidance in the *Federal Official Gazette* and the *Ecological Gazette*.

¹³⁷ Response, § 63.

¹³⁸ *Cfr.* Conamer, "Regulation Search," National Regulatory Improvement Commission, at: <www.cofemersimir.gob.mx/>. Search also conducted in the "Search for procedures, information and citizen engagement" portal of the government of Mexican: <<https://bit.ly/3RS4URg>>.

procedures lacking citizen participation, whereby procedural rights are diminished [...] as access to the penalty procedures is systematically blocked."¹³⁹

82. The Submitters charge that in the Valle de Bravo-Amealco sub-basin, private persons and state authorities have committed countless unlawful acts by failing to comply with zoning ordinances.¹⁴⁰ They assert that despite the complaints filed with Profepa and Conagua, attention from both authorities has been mostly lacking or deficient, thus allowing real estate projects to progress without obtaining the necessary permits, even after security measures and penalties have been imposed.¹⁴¹ The Submitters maintain that this creates a precedent for future developers to avoid compliance, knowing that the developments will be regularized *a posteriori*.¹⁴² The projects as a whole, they add, cause cumulative impacts, leading to serious harm to the ecosystem and environmental services in the Valle de Bravo-MTT Basin NRPA.¹⁴³
83. With respect to the environmental liability regime applicable to official acts, the submission asserts that "Profepa fails to perform its legal obligation to enforce the environmental liability regime set forth in the [LFRA], which includes prioritizing restoration measures above compensation measures, as well as filing and following up on environmental criminal complaints by reason of the harm caused to the environment in accordance with Articles 222, second paragraph of the National Code of Criminal Procedures and 182 of the LGEEPA."¹⁴⁴
84. The Party offers information relating to 15 citizen complaints associated with the facts stated in the submission, eight of which are still active.¹⁴⁵ This information shows that in several of the complaint dockets, following the inspection proceedings and after determining the existence of the facts raised in the complaint, various corrective and security measures have been imposed. These include economic penalties, temporary total closure, requirement of the proper environmental impact authorization (EIA)—and when acts, facts or omissions (possibly constituting crimes) are detected—the filing of the corresponding criminal complaints with the Office of the Federal Attorney General.¹⁴⁶
85. Following a review of the information offered by the Party with respect to the administrative proceedings implemented, various questions arise with respect to several of the citizen complaints, as mentioned below:
- i) *Citizen complaint No. PFPA/17.7/2C.28.2/00253-21*, under administrative docket PFPA/17.3/2C.27.5/0033-21, with respect to the construction of an artificial lake and the logging activities in the Acatitlán area, apparently without having an EIA or authorization to change the forestry land use. Profepa imposed temporary total closure. The response does not establish how the environmental damage will be repaired or compensated in accordance with LFRA.

¹³⁹ Submission, §§ 28-30.

¹⁴⁰ *Ibid.*, § 31.

¹⁴¹ *Ibid.*, §§ 31-32.

¹⁴² *Ibid.*, § 32.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*, § 42, section f).

¹⁴⁵ *Cfr.* Response, §§ 84 and 86 (charts at pp. 26-31 and 31-32, listing citizen complaints filed and attended to between 2021 and 2023).

¹⁴⁶ *Cfr.* Response, §§ 83 and 85.

- ii) *Citizen complaint No. PFPA/17.7/2C.28.2/00193-21*, under administrative docket PFPA/17.3/2C.27.5/00025-20, with respect to logging activities and the removal of vegetation and forest soil with heavy machinery in "Casas Viejas". Profepa imposed temporary total closure. There is no record referring to the applicable criteria to enforce environmental liability or of having notified the public prosecutor.
- iii) *Citizen complaint No. PFPA/17.7/2C.28.2/00244-21*, under four administrative dockets, with respect to encroachments and real estate development in Cerro el Cualtenco, presumably without an EIA or a land use change authorization. Docket PFPA/17.3/2C.27.5/0018-20: After an inspection visit, Profepa imposed a fine and temporary total closure. Nothing indicates that the environmental liability procedure was followed, and there is no information as to whether authorizations were obtained, considering that the site was presumably logged and cleared, or whether reparation or compensation measures were ordered. Docket PFPA/17.3/2C.27.5/0034-21: Profepa imposed a fine, corrective measures (not specifying which) and temporary total closure. There is no information on the implementation of mechanisms to determine environmental liability.
- iv) *Citizen complaint No. PFPA/17.7/2C.28.2/00341-21*, under administrative docket PFPA/17.3/2C.27.5/0007-22, with respect to real estate construction in the Valle de Bravo dam federal zone and soil erosion in the "Velo de Novia" area. Profepa imposed a fine and temporary total closure. The authority ordered the offender, as a corrective measure, to submit the EIA and an environmental program to repair the damage, apparently without considering the preventive nature of the environmental impact assessment process.
- v) *Citizen complaint No. PFPA/17.7/2C.28.2/00081-22*, under an administrative docket whose number is not provided in the response, with respect to logging in Cerro Gordo. While the authority closed the docket "due to lack of interest by complainant"—which contrasts the *motu proprio* principle and the environmental liability procedure—it refers to the filing of a criminal complaint. However, no information is provided on the corresponding follow-up, since said complaint has not been ratified.
- vi) *Citizen complaint No. PFPA/17.7/2C.28.2/00082-22*, under administrative docket whose number is not provided in Mexico's response, with respect to the construction of a private dam within the PNA. When Profepa conducted the inspection visit, it could not access the interior of the site because that was fenced off with cyclone fencing; in the walk-around the site, the inspector observed dam construction work; however, no security measures were imposed. Due to the alleged "lack of interest by complainants," the docket was closed. There is no information indicating that Conagua was notified.
- vii) *Citizen complaint No. PFPA/17.7/2C.28.2/00083-22*, under administrative docket PFPA/17.1/2C.27.5/000789/2022, with respect to a landfill in the Miguel Alemán dam federal area. Nothing in the response presents information on corrective or urgent measures. The federal zone of a body of water was presumably encroached upon, although there is no record of notice to Conagua.
- viii) *Citizen complaint No. PFPA/17.7/2C.28.2/00011-21*, under administrative docket PFPA/17.3/2C.27.2/00001-21, consolidating various citizen complaints with respect to logging and cutting activities for a real estate project (hotel and

residential lots) in Cerro Gordo. The inspection visits show that trees were in fact felled, without the inspected person having filed a forestry land-use change authorization or EIA. The authority imposed a fine and temporary total closure. While a criminal complaint was filed with the Office of the Attorney General for the land-use change from forestry and from having broken the closure seals, the complaint has not been ratified.

- ix) *Citizen complaint No. PFPA/17.7/2C.28.2/00281-22*, under administrative docket PFPA/17.3/2C.27.5/0003-23, with respect to the removal of vegetation and forest soil, opening of roads and construction of a "private" dam for a residential complex in Cerro Gordo. The authority imposed a fine and temporary total closure, as well as the submission of an EIA as a corrective measure, apparently without considering the preventive nature of the environmental impact assessment process.

86. As for the security measures, entered by reason of the citizen complaints to which the Party refers, the information contained in the response shows that temporary closure was ordered in the following cases:¹⁴⁷

- i) PFPA/17.7/2C.28.2/00253-21,
- ii) PFPA/17.7/2C.28.2/00193-21,
- iii) PFPA/17.7/2C.28.2/00244-21,
- iv) PFPA/17.7/2C.28.2/00341-21,
- v) PFPA/17.7/2C.28.2/00011-21, and
- vi) PFPA/17.7/2C.28.2/00281-22.

Note that the Party does not refer to any case in which it has ordered the *final* total closure as a result of the citizen complaint process.

87. While the Party presents a description of the environmental impact assessment procedure,¹⁴⁸ it does not detail how the law is applied in cases in which, by reason of citizen complaints filed, works are documented on lands located in the Valle de Bravo-MTT Basin NRPA without the appropriate EIA. Further, the response offers no information about the assertion by Submitters as to whether Profepa has failed to perform its legal obligation to enforce the environmental liability regime set forth in the LFRA,¹⁴⁹ as noted is at the constitutional level in Mexico,¹⁵⁰ besides having a set of enforcement criteria¹⁵¹ that are not reflected in the docketing of the citizen complaint in question.

88. Furthermore, following a detailed analysis of the information supplied in the response, nothing in the administrative dockets for the citizen complaints in question establishes how the environmental damage reparation is sought or how it should be compensated; they do not specify how, given the existence of facts that could constitute crimes against the environment, the federal public prosecutor was [not] immediately notified (as required by the environmental rules in

¹⁴⁷ *Cfr.* Response, §§ 84 (chart at pp. 26-28 and 30) and Exhibit MX-019, pp. 5, 6, 8, 9, 11, 16 and 21.

¹⁴⁸ Response §§ 48-56 and 58-59.

¹⁴⁹ *Cfr.*, Submission § 42, section f).

¹⁵⁰ ENVIRONMENTAL LIABILITY, *op. cit.*

¹⁵¹ Enforcement Criteria, p. 29, which expressly states that they are "mandatory."

effect);¹⁵² and it is not clear why, in two of the three cases in which a criminal proceeding was initiated, the criminal complaints have not been ratified by the authority.¹⁵³ With respect to two of the citizen complaints, the authority even imposed an EIA as a corrective measure,¹⁵⁴ which does not appear to be in line with the preventive nature of an environmental impact assessment.

89. A factual record could address the mechanisms in place for the implementation of the environmental liability regime pursuant to the LFRA, and whether they are in fact incorporated into the citizen complaint process. It would also enable the presentation of information on how the *motu proprio* principle is observed, as it would seem, absent procedural action by complainants, Profepa has deemed its investigation in cases under submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*) to be closed.

iv) Water quality and quantity in Valle de Bravo and tributaries

90. The Submitters assert that in recent decades, water in the Miguel Alemán dam reservoir, better known as the Valle de Bravo dam reservoir or lake, and its main tributaries, has experienced a significant decrease in quality and quantity. As well, deforestation, farmland expansion and urban and rural population growth without adequate sewer services and wastewater treatment have contributed to an impaired water quality in the Cutzamala System dams.¹⁵⁵ They further allege that the high concentrations of nutrients and organic matter in the Cutzamala System reservoirs have led to a eutrophication phenomenon,¹⁵⁶ that the pollution level in the Valle de Bravo dam reservoir has increased in recent years beyond the parameters set forth in the ecological criteria for fecal coliform, chemical oxygen demand and oil and grease content, and that the rivers that empty into the dam reservoir also present high contamination levels due to the direct discharge of raw wastewater.¹⁵⁷
91. According to the Submitters, water quality monitoring studies reveal higher levels of contamination in the Valle de Bravo urban areas, especially at City Hall,¹⁵⁸ and several bodies of water in the sub-basin also report fecal coliform values that exceed the maximum allowable limits, endangering the health of residents and visitors, and high levels of pathogenic microorganisms in the Amanalco River, which feeds the Miguel Alemán dam, from which the Submitters assert the poor operation of the Amanalco wastewater treatment plan can be inferred.¹⁵⁹
92. The Submitters state that the lack of adequate sanitary infrastructure and the poor operation of existing infrastructure have had a negative impact on both water quality and the cost of potabilization at the Los Berros plant;¹⁶⁰ that despite the critical situation, Conagua continues to grant extensions to current water use concessions and grant new permits without adequate

¹⁵² *Cfr.* LGEEPA Article 182 and LFRA Article 54. Note, however, that the second provision was not cited in the submission.

¹⁵³ Unnumbered criminal complaints (filed by reason of citizen complaint PFPA/17.7/2C.28.2/00081-22) and FED/FEMDO/UEITMPOMEX/0000291/2022 (derived from citizen complaint PFPA/17.7/2C.28.2/00011-1).

¹⁵⁴ Citizen complaints No. PFPA/17.7/2C.28.2/00341-21 and PFPA/17.7/2C.28.2/00281-22.

¹⁵⁵ Submission, § 43.

¹⁵⁶ *Ibid.*, § 44.

¹⁵⁷ *Ibid.*, §§ 45-46.

¹⁵⁸ *Ibid.*, § 46.

¹⁵⁹ *Ibid.*, § 47-50.

¹⁶⁰ *Ibid.*, § 51.

inspection,¹⁶¹ and that the inspections performed by the responsible authority have been minimal.¹⁶²

93. The Submitters note the existence of "private" dams that do not have the corresponding environmental authorizations, and whose construction has led to a serious impact on the availability of water for the sub-basin, and which have also contributed to a reduction in storage levels of the Valle de Bravo dam.¹⁶³ They add that changes in land use have led to a negative impacts on water resources, affecting water infiltration and runoff, with the consequent decrease in groundwater recharge.¹⁶⁴
94. The Party states that in 2003 Conagua fostered the creation of the Valle de Bravo-Amanalco Basin Commission, as a forum for citizen participation for the coordination and negotiation of comprehensive management of water and associated resources in the basin. It further offers information on the Basin Commission's sixtieth ordinary meeting, held at Conagua's offices on June 19, 2019.¹⁶⁵
95. With respect to water quality and quantity in Valle de Bravo and its principal tributaries, the Party reports that the results obtained in sampling at the Miguel Alemán dam reservoir indicate that, from 2015 to 2018, the zones most contaminated by fecal coliforms were Muelle Municipal, Molino de Hoyos (at Fontana Rosa), El Mosco (at the mouth of the Velo de Novia River), San Gaspar and La Peña.
96. The Party states that the Evidence and Risk Management Commission of the Federal Commission for Protection Against Health Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios*—Cofepris) performs water quality monitoring for human use and consumption that is distributed to the population through formal supply systems.¹⁶⁶ It adds that the records of such monitoring in the hydrological region of the sub-basin in question, from 2019 to May 2023, show a chlorination efficiency of 100% in 2019, 99.40% in 2020, 100% in 2021, 93.41% in 2021 and 83.33% as of May 2023.¹⁶⁷
97. The Party reports that Conagua performed inspection visits in the sub-basin in question, with 35 inspection visits conducted from 2011 to 2022.¹⁶⁸ It also offers information with respect to concessions in effect in the Valle de Bravo-Amanalco sub-basin, where there are 1,466 concession titles: 941 pertaining to surface waters, 185 for groundwater, 56 discharge permits, and 284 federal zone usage permits.¹⁶⁹
98. With respect to private dams, the Party affirms that they exist in the municipality of Valle de Bravo; however, it states that there is no record of any being authorized, and "any that do exist do not have Semarnat authorization" and, in any case, Profepa would be the administrative unit

¹⁶¹ *Ibid.*, §§ 55-56.

¹⁶² *Ibid.*, § 57.

¹⁶³ *Ibid.*, § 60.

¹⁶⁴ *Ibid.*, § 62.

¹⁶⁵ *Cfr.* Response, § 69 and Exhibit MX-017.

¹⁶⁶ Response, § 74.

¹⁶⁷ *Ibid.*, § 78.

¹⁶⁸ *Ibid.*, § 68.

¹⁶⁹ *Ibid.*, Exhibit MX-016.

responsible for implementing an administrative procedure to levy penalties and order the compensation of environmental damage.¹⁷⁰

99. The Party reported that the Studies and Projects Bureau of the Mexico State Water Commission assists local governments locales and Conagua in generating initiatives to address water infrastructure issues in the region.¹⁷¹ In its response, it notes the Comprehensive Sanitation Plan for the “Miguel Alemán” Dam, whose actions include the construction of:¹⁷²

- 77 kilometres of sanitary sewers;
- two wastewater treatment plants (El Cerrillo and Valle Verde plants);
- two cofferdams, one at San Gaspar-El Arco and another at Velo de Novia;
- two collection reservoirs, one between Mesa de Jaimes and the city hall and another leading to the El Arco wastewater treatment plant.

100. With respect to the granting of extensions and assignment of water volume concession rights among private persons, the Party submits information on the respective mechanisms, which confirms that availability studies are conducted before extensions are granted. The response further refers to instruments to restrict water uses in drought or low water seasons, according to a prioritization system provided in the National Water Act. On this matter, the Secretariat does *not* consider the development of a factual record is warranted.¹⁷³

101. Following the analysis, the Secretariat finds that there does not appear to be a connection between the proceedings implemented by Profepa and Conagua; in cases where the irregular existence of dams, artificial lakes and wastewater discharges is detected, Profepa has initiated administrative proceedings without recording any coordinated inspection and verification actions, or of Conagua having been notified to perform its duties in this regard. Note, for example, that the Party holds that “while there are private dams in Valle de Bravo, this administrative unit does not have a record of any being authorized,” which corroborates a key assertion in the submission: while there are “private” dams (approximately 400, according to the Submitters), they are not authorized, despite the serious impact they could have on the environment and natural resources. This is noteworthy, since no information is presented on censuses of irregular dams and artificial lakes, hydrological feasibility studies, or any enforcement plan or program with respect to the phenomenon of irregular dams in the area.

102. A factual record could present information on: (1) coordination between Profepa and Conagua with respect to the implementation of inspection and enforcement actions in the Valle de Bravo-Amanalco sub-basin; (2) the existence of guidelines for coordination between Profepa and Conagua; (3) the performance of inspection and enforcement actions; and (4) the application of criteria to determine and enforce environmental liability in the case of “private” dams or artificial lakes created without having an EIA issued by Semarnat and without concessions, relevant permits or feasibility studies approved or issued by Conagua. A factual record could also provide information on: (5) surveys of irregular dams and artificial lakes, (6) hydrological feasibility studies, or (7) an enforcement plan or program with respect to the phenomenon of irregular dams in the area.

¹⁷⁰ *Ibid.*, § 60.

¹⁷¹ *Ibid.*, § 90.

¹⁷² *Ibid.*

¹⁷³ *Cfr.* LAN Articles 20, 24, 30 and seventh transitional article.

III. NOTIFICATION

103. Having examined submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*) in light of the response of the United Mexican States, the Secretariat finds that there are open, central questions regarding the effective enforcement of:
- i. Article 4: fifth paragraph of the Constitution;
 - ii. Articles 20 *bis* 4: section II, 20 *bis* 5: section V, 46: section VI *et seq.*, 161, 170, 182 and 192 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 RPNA; and
 - v. Articles and 9 [sic] of the REIA.
104. Pursuant to Article 24.28(1) of the USMCA, the Secretariat notifies the CEC Council and the USMCA Chapter 24 Environment Committee of its determination that, in furtherance of the objectives of Chapter 24 of the Agreement,¹⁷⁴ development of a factual record is warranted regarding submission SEM-23-005 (*Valle de Bravo-Amanalco Sub-Basin*).
105. Pursuant to USMCA Article 24.28(2), the Secretariat "shall develop the factual record if directed to do so by at least two members of the Council."

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation

(original signed)

By: Jorge Daniel Taillant
Executive Director

CC: Miguel Ángel Zerón, Alternative Representative of Mexico
Sandra McCardell, Alternative Representative of Canada
Jane Nishida, Alternative Representative of the United States
Environment Committee Contact Points
Paolo Solano, Director of Legal Affairs and Head of SEM Unit
Submitters

Exhibits: Environmental laws in question

¹⁷⁴ USMCA Article 24.2(2): "The objectives of this Chapter are to [...] promote high levels of environmental protection and effective enforcement of environmental laws [...]."