

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

Submitters: Center for Biological Diversity, *Centro Mexicano para la Defensa del Medio Ambiente*
Party: United Mexican States
Date of submission: 2 October 2024
Date of determination: 1 November 2024
Submission no: SEM-24-003 (*Sonora Railway Project*)

I INTRODUCTION

1. On 1 July 2020, the *Agreement between the United States of America, the United Mexican States, and Canada* (USMCA or “the Agreement”) and the *Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada* (the “Environmental Cooperation Agreement” or ECA) came into force. As of 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 under the responsibility of the Secretariat of the Commission for Environmental Cooperation (CEC or the “Commission”)¹ are now stipulated in the ECA.²
2. The SEM mechanism allows any person or entity legally established in Canada, the United States, or Mexico to file a submission asserting that a Party is failing to effectively enforce its environmental laws. The CEC Secretariat (“the Secretariat”) initially reviews submissions based on the requirements set out in USMCA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements, it then determines, in accordance with the criteria of USMCA Article 24.27(3), whether the submission merits a

¹ The Commission for Environmental Cooperation was established in 1994 under the *North American Agreement on Environmental Cooperation* (NAAEC), an instrument signed by Canada, Mexico, and the United States (the “Parties”). Under Article 2(3) of the *Agreement on Environmental Cooperation among the Governments of the United Mexican States, the United States of America and Canada* (ECA), the Commission “will continue to operate under the modalities in place as of entry into force of [the ECA], including its rules, policies, guidelines, procedures, and resolutions, to the extent these modalities are consistent with [the ECA].” The constituent bodies of the CEC are the Council, the Secretariat, and the Joint Public Advisory Committee (JPAC).

² While the provisions now governing the SEM mechanism are set out in chapter 24 of the USMCA, the ECA also establishes some related procedures, including the Secretariat’s role in implementing the submission process; the Council’s role in exchanges of information with the Environment Committee; the preparation and publication of factual records, and any cooperation activities of Council that flow from factual records: ECA Articles 2(3), 4(1)(l), 4(1)(m), 4(4), and 5(5).

response from the Party in question. In light of the Party's response, the Secretariat determines whether the matter warrants the preparation of a factual record and, if so, it so informs the CEC Council and the Environment Committee,³ providing its reasons in accordance with Article 24.28(1); otherwise, it terminates review of the submission.⁴

3. On 2 October 2024, Center for Biological Diversity and Centro Mexicano para la Defensa del Medio Ambiente (also known as Defensa Ambiental del Noroeste) filed a submission with the Secretariat in accordance with USMCA Article 24.27(1).⁵
4. According to the Submitters, Mexico is failing to effectively enforce its environmental law with respect to the environmental impact assessment of a rail project that is to connect the municipalities of Ímuris, Santa Cruz, and Nogales in the state of Sonora, Mexico. The Submitters assert that the project did not go through an environmental impact assessment (EIA) procedure as prescribed by environmental law. They further assert that the project will cross a protected natural area (PNA) and will result in the fragmentation of habitats for species which, they assert, are endemic and/or listed as endangered.⁶
5. According to the Submitters, the Party in question is failing to effectively enforce various legal provisions in force in Mexico:
 - i. Article 4, fifth and sixth paragraphs, of the Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos*);
 - ii. Articles 1, paragraphs I, II, IV, and VI; 2, paragraph II; 5, paragraphs X and XIX; 15, paragraphs I, III, IV, VI, and XII; 28, paragraphs I, VII, XI, and XIII; 30, first paragraph; 33, first paragraph; 34, first paragraph and subparagraphs I, II, III, IV, and V of third paragraph; 35, first, second, third, and fourth paragraphs; 44, first paragraph; 45, paragraphs I, II, III, IV, V, and VI; 46, paragraph XI; 47 *bis*, first paragraph; 161, and 182 of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*);
 - iii. Articles 1; 2, first paragraph; 4, paragraphs I, III, IV, and VI; 5(B) and (S); 9, first and second paragraphs; 10; and 16, first paragraph of the Environmental Impact Assessment Regulation (*Reglamento en Materia de Evaluación de Impacto Ambiental—REIA*) to the LGEEPA, and
 - iv. Articles 1; 3, paragraph I, subparagraph B; 5; 43, paragraphs I and II, and 46, of the Internal Regulation of the Ministry of the Environmental and Natural

³ The role of the Environment Committee, established under USMCA Article 24.26(2), is to supervise the implementation of chapter 24 of the USMCA.

⁴ For detailed information on the various stages of the submissions on enforcement matters (SEM) process, the public registry of submissions, and the Secretariat's determinations and factual records, visit the CEC website at <www.cec.org/submissions>.

⁵ SEM-24-003 (*Sonora Railway Project*), USMCA Article 24.27(1) Submission (1 October 2024), online at <<https://bit.ly/3YBxi5>> [Submission].

⁶ Submission at 9.

Resources (*Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales*—**RI-Semarnat**).

6. Further to a review of the submission, the Secretariat finds that it meets all the eligibility requirements of USMCA Article 24.27(1) and (2) and merits a response from the Government of Mexico, for the reasons set out in section III, “Analysis.”

II SUMMARY OF THE SUBMISSION

7. In submission SEM-24-003 (*Sonora Railway Project*), the Submitters assert that Mexico is failing to effectively enforce its environmental laws with respect to the construction of the Sonora railway project, whose developer is the state of Sonora. The Submitters assert that the project is being carried out without an assessment of its environmental impacts and without obtaining the required approvals before commencement of construction.⁷ Given the lack of assessment and approval pursuant to the applicable environmental law, the Submitters state that the total real impacts of the new infrastructure are unknown.⁸
8. The Submitters assert that the project will fragment at least one PNA and a highly important habitat for fauna. According to the Submitters, the route of the project will bisect connective corridors for species such as jaguar (*Panthera onca*) and will contribute to the isolation of populations of ocelot (*Leopardus pardalis*), among other species. The Submitters add that the rail project will interrupt the Sierra Azul-El Pinito corridor, thus interfering with wildlife migration routes.⁹
9. According to the Submitters, construction of the project began without the existence of any public documents explaining the details, environmental impacts, and mitigation measures.¹⁰ The Submitters relate the lack of transparency around the project to noncompliance with the requirements for its environmental viability.¹¹ They assert that the developer did not prepare or produce an environmental impact statement (EIS) for assessment, and that as a result, there is no public record of the environmental assessment of the project because of the supposed confidentiality of this documentation on grounds of “national security.”¹²
10. The Submitters note that the state of Sonora applied for “provisional approval” for the rail project, according to the information that they obtained. However, they note that such approval does not comply with the requirements of environmental law. Furthermore, they assert that the state of Sonora and the Ministry of National Defense (*Secretaría de la Defensa Nacional*—Sedena) deny holding such approval.¹³
11. The submission indicates that an EIS and conditional approval were finally issued in April and August 2024, respectively. The Submitters state that these were incorporated into the

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.* at 11.

¹⁰ *Ibid.* at 12.

¹¹ *Ibid.* at 9.

¹² *Ibid.* at 15 and 18.

¹³ *Ibid.* at 18.

project documentation nearly two years after commencement of construction.¹⁴ They further indicate that the geographical coordinates of the project are redacted in the EIS, making it difficult to fully appraise the impacts of construction and operation of the rail project.¹⁵

III ANALYSIS

12. The CEC Secretariat may consider submissions asserting that a USMCA Party is failing to effectively enforce its environmental laws. The Secretariat reiterates that the requirements of USMCA Article 24.27(1), (2), and (3) are not intended as an insurmountable procedural screening device¹⁶ and must therefore be given an expansive interpretation consistent with the objectives of Chapter 24 of the Agreement.¹⁷ The Secretariat reviewed the submission with that perspective in mind.

a. Article 24.27(1)

13. USMCA Article 24.27(1) stipulates that “any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws.”
14. USMCA Article 1.5¹⁸ defines the term *person of a Party* as “a national of a Party or an enterprise of a Party.” A *national* means a natural person who has the nationality [or permanent residency] of the Party, while an *enterprise of a Party* means “an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization ... constituted or organized under the law of a Party.”
15. The submission includes the name, legal domicile, place and date of incorporation, registry number, and identification data of the representatives of each of the Submitters. The Submitters are nonprofit organizations constituted in accordance with the laws of the United States and Mexico. The Center for Biological Diversity is a non-profit organization constituted in accordance with the laws of the state of California and domiciled in Tucson, Arizona; The *Centro Mexicano para la Defensa del Medio Ambiente* is a non-profit civic association domiciled in the state of Baja California. The Submitters are persons residing

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ SEM-97-005 (*Biodiversity*), NAAEC Article 14(1) Determination (26 May 1998); SEM-98-003 (*Great Lakes*), NAAEC Article 14(1) and (2) Determination (8 September 1999); SEM-20-001 (*Loggerhead Turtle*), USMCA Article 24.27(2) and (3) Determination (8 February 2021), §8, online at <https://bit.ly/DET_20-001_es>.

¹⁷ *Cf.* USMCA Article 24.2.

¹⁸ The Secretariat bears in mind the adoption of the *Protocol of Amendment to the Agreement* between the United States of America, the United Mexican States, and Canada (“the Protocol”), which added provisions to chapters 1 and 24 and renumbered the remaining provisions. One example is Article 1.5, “General Definitions,” initially Article 1.4 but renumbered in accordance with the protocol. Thus, in the case of the Spanish version, both the USMCA and the protocol must be consulted.

in the United States and Mexico and constitute a “person of a Party” in the sense of the definition given in Article 1.5 and for the purposes of USMCA Article 24.27(1).

b. Environmental laws in question

16. To determine whether the submission identifies or refers to “environmental laws” in the sense of USMCA Article 24.27(1), one must refer to the meaning given to that term in the Agreement.
17. USMCA Article 24.1 stipulates as follows:

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

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

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources.¹⁹

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

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

As for **law or regulation**, these terms mean:

...

- b) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government.²⁰

18. The provisions cited by the Submitters include the Constitution, the LGEEPA, the REIA, and the RI-Semarnat, as shown in the table below.

¹⁹ USMCA Article 24.1.

²⁰ *Ibid.*

Table 1. Laws and regulations cited in the submission

Title	Acronym or abbreviation	Provisions cited
General and federal laws		
Mexican Constitution		Article 4, fifth and sixth paragraphs
General Ecological Balance and Environmental Protection Act	LGEEPA	Articles 1, paragraphs I, II, IV, and VI; 2, paragraph II; 5, paragraphs X and XIX; 15, paragraphs I, III, IV, VI, and XII; 28, paragraphs I, VII, XI and XIII; 30, first paragraph; 33, first paragraph; 34, first paragraph and subparagraphs I, II, III, IV, and V of third paragraph; 35, first, second, third, and fourth paragraphs; 44, first paragraph; 45, paragraphs I, II, III, IV, V, and VI; 46, paragraph XI; 47 <i>bis</i> , first paragraph; 161, and 182
General and federal regulations		
Environmental Impact Assessment Regulation to the LGEEPA	REIA	Articles 1; 2, first paragraph; 4, paragraphs I, III, IV, and VI; 5(B) and (S); 9, first and second paragraphs; 10 and 16, first paragraph
Other instruments		
Internal Regulation of the Ministry of the Environmental and Natural Resources	RI-Semarnat	Articles 1; 3, paragraph I, subparagraph B; 5; 43, paragraphs I and II, and 46

a) Mexican Constitution

19. **Article 4 of the Mexican Constitution** establishes the human rights to equality between women and men; freedom of recreation for children; healthy, sufficient, high-quality food; a healthy environment for development and well-being; access to, disposal of, and sanitation of water; decent and dignified housing; identity, and immediate certification of one's birth. The Secretariat finds that the fifth and sixth paragraphs qualify as environmental law, since they recognize the human right to a healthy environment, water, and sanitation and satisfy the definition of environmental law given in USMCA Article 24.1.

b) General Ecological Balance and Environmental Protection Act

20. **LGEEPA Article 1** provides that this law is regulatory to the provisions of the Mexican Constitution, that its provisions are matters of public order and the societal interest, and that in addition to promoting sustainable development, its object is to establish the basis for: guaranteeing the right of every person to live in a healthy environment (**paragraph**

I); delineating the principles of environmental policy and the instruments for its application (**paragraph II**); protecting biodiversity and establishing and administering protected natural areas (**paragraph IV**), and preventing and controlling air, water, and soil pollution (**paragraph VI**). These provisions may qualify as environmental law in that they are aimed at protection of the environment and/or human health; however, they are insufficiently concrete to be applied directly. Therefore, the Secretariat finds that they should not be reviewed specifically but should guide its analysis in relation to submission SEM-24-003.

21. **LGEEPA Article 2** establishes the elements or concepts to be considered of public utility, such as the establishment, protection, and preservation of protected natural areas and ecological restoration zones (**paragraph II**). The Secretariat finds that this provision qualifies as environmental law in the sense of the USMCA, since its primary purpose is the protection of the environment through the creation and conservation of protected natural areas and ecological restoration zones.
22. **Article 5 LGEEPA** lists the following, among others, as powers of the Federation: environmental impact assessment of works or activities to which LGEEPA Article 28 refers and granting of corresponding approval where applicable (**paragraph X**) and monitoring and promotion of compliance with the LGEEPA and provisions flowing from it (**paragraph XIX**). The Secretariat finds that LGEEPA Article 5 and in particular paragraphs X and XIX, in relation to the matters raised by the submission, qualify as environmental law in the sense of USMCA Article 24.1, since their primary purpose is the protection of the environment through the assignment of federal powers in the area of ecological balance and climate change mitigation, environmental impact assessment and approval, and enforcement of the LGEEPA itself.
23. **LGEEPA Article 15** provides that for the formulation and administration of environmental policy and the promulgation of Mexican official standards, the following principles will be observed: ecosystems are a common heritage, and both life and the economic prospects of the country depend on their balance (**paragraph I**); the authorities and private individuals shall bear the responsibility for the protection of ecological balance (**paragraph III**); anyone who carries out works or activities that affect or may affect the environment is obligated to prevent or repair any harm that he may cause as well as to bear the corresponding costs, and anyone who protects the environment should be encouraged (**paragraph IV**); prevention is the most effective way of avoiding ecological imbalance (**paragraph VI**), and everyone is entitled to enjoy an environment conducive to his development, health, and well-being, and the authorities shall take measures to guarantee this right (**paragraph XII**). The Secretariat finds that this provision and its paragraphs qualify as environmental law because they are aimed at the protection of the environment or human health by means of an environmental policy that promotes the authorities' responsibility to protect ecological balance, by virtue of their duty to preserve the right to an adequate environment.
24. **LGEEPA Article 28** establishes the EIA procedure, whereby conditions are imposed on works and activities that may cause ecological imbalance or exceed the limits or conditions set out in the provisions applicable to the protection of the environment and

the preservation and restoration of ecosystems, with a view to preventing or minimizing the negative effects of the works and/or activities on the environment. In addition, it provides that the regulation to this act shall establish those works or activities requiring prior environmental impact approval, including water works, transportation routes, oil pipelines, gas pipelines, coal pipelines, and multi-use pipelines, among many others (**paragraph I**); works necessitating land use changes in forested areas, tropical wet forest, or arid areas (**paragraph VII**); works or activities in federal protected natural areas (**paragraph XI**), and works or activities under federal jurisdiction that may cause ecological imbalance or harm to public health, or that may exceed the limits set out in the legal provisions relating to the preservation of ecological balance and the protection of the environment (**paragraph XIII**). The Secretariat finds that this provision qualifies as environmental law because its primary purpose is the protection of the environment through the EIA procedure for works or activities that may cause ecological imbalance and that also require land-use changes in forested areas.

25. **LGEEPA Article 30** (first paragraph) stipulates that in order to obtain the environmental impact approval to which Article 28 refers, interested parties must file an EIS with Semarnat containing a description of the possible effects on the ecosystem or ecosystems that may be affected by the work or activity in question, considering the sum total of the elements making up said ecosystems, as well as the preventive, mitigation, and other measures necessary to avert and/or minimize the negative effects on the environment. The Secretariat finds that this provision qualifies as environmental law in the sense of USMCA Article 24.1 because its primary purpose is the protection of the environment or human health through regulation of the content of the EIS in the context of the EIA procedure.
26. **LGEEPA Article 33** (first paragraph) provides that for hazardous or radioactive waste confinement or disposal facilities, industrial parks engaged in high-risk activities, real estate developments affecting coastal ecosystems, and works or activities in natural areas under federal jurisdiction, Semarnat shall notify state governments, municipalities, or other territorial demarcations as applicable that it has received the corresponding EIS in order for them to state any considerations within their purview. The Secretariat finds that this provision qualifies as environmental law in the sense of USMCA Article 24.1, since its primary purpose is the protection of the environment through the EIA procedure with the participation of authorities at different levels of government.
27. **LGEEPA Article 34** (first and third paragraphs) provides that once an EIS is received and the corresponding file is opened, Semarnat shall make the document available to the public, and further stipulates that a public consultation may be held following the established procedure: Semarnat shall publish the application for environmental impact approval in its Ecological Gazette (*Gaceta Ecológica*), the developer shall publish an excerpt describing the project, work, or activity in a wide-circulation newspaper in the federative entity in question within five days of the filing of the EIS (**paragraph I**); any person may, within the ten days following publication of the excerpt, ask Semarnat to make the EIS available to the public in the same federative entity (**paragraph II**); in the case of works or activities that may result in serious ecological imbalances or harm to public health or ecosystems, Semarnat, in coordination with the local authorities, may hold a public information meeting at which the developer explains the technical

environmental aspects of the work or activity in question (**paragraph III**); any interested party may, within the twenty days following the time when Semarnat makes the EIS available to the public, propose the application of additional preventive and mitigation measures, and make observations as he sees fit (**paragraph IV**), and Semarnat shall add the observations made by interested parties to the file, and shall include in its decision the public consultation process and the results of any observations and proposals made in writing (**paragraph V**). The Secretariat finds that this provision qualifies as environmental law in the sense of USMCA Article 24.1 because it regulates consultation mechanisms, civic participation, and public meetings as part of the EIA procedure.

28. **LGEEPA Article 35** provides that upon filing of an EIS, Semarnat shall initiate the assessment procedure and open the corresponding file. In approving works and activities, Semarnat shall adhere to all applicable laws, urban development and ecological zoning plans, protected natural area declarations, and other applicable legal provisions. In its approval, Semarnat must assess the possible effects of the works and activities on ecosystems, considering the sum total of the elements making up the ecosystems and not merely the resources that are to be used or potentially affected. Once the EIS is assessed, Semarnat shall issue the corresponding decision. The Secretariat finds that this provision has as its primary purpose the protection of the environment, pursuant to USMCA Article 24.1, through the EIA procedure and the resulting decision.
29. **LGEEPA Article 44** (first paragraph) provides that zones of the nation's territory and areas under the sovereignty and jurisdiction of the nation that have not been significantly altered by human activity, or whose ecosystems need preservation and restoration, shall be subject to the LGEEPA regime and other applicable provisions. The Secretariat finds that this provision qualifies as environmental law in the sense of USMCA Article 24.1 because its primary purpose is the protection of the environment by means of the preservation of ecosystems through the creation of protected natural areas.
30. **LGEEPA Article 45** provides that the purposes of the establishment of protected natural areas are: preserving representative natural environments, biogeographical and ecological regions, and more fragile ecosystems in order to ensure the balance and continuity of evolutionary and ecological processes (**paragraph I**); protecting the genetic diversity of wild species, ensuring the conservation and sustainable use of biodiversity on the nation's territory, and especially, preserving endangered, threatened, endemic, rare, and specially protected species (**paragraph II**); ensuring the preservation and sustainable use of ecosystems, their components, and their functions (**paragraph III**); fostering scientific research and study of ecosystems and their balance (**paragraph IV**); generating, recovering, and popularizing traditional or new knowledge, practices, and technologies allowing for the preservation and sustainable use of biodiversity on the nation's territory (**paragraph V**); protecting human settlements, transportation routes, industrial and agricultural facilities by means of forested zones in mountain headwaters, as well as preserving the water cycle in watersheds and protecting surrounding ecological components (**paragraph VI**). The Secretariat finds that LGEEPA Article 45, paragraphs I, II, III, IV, V, and VI qualify as environmental law in the sense of USMCA Article 24.1 because their primary purpose is the protection of the environment through the creation of protected natural areas under a given legal framework.

31. **LGEEPA Article 46** provides that voluntarily designated conservation areas shall be considered protected natural areas (**paragraph XI**). The Secretariat finds that this provision qualifies as environmental law in the sense of USMCA Article 24.1, because its primary purpose is the protection of the environment through the preservation of ecosystems by means of protected natural areas voluntarily designated for conservation.
32. **LGEEPA Article 47 bis** (first paragraph) provides that for the establishment of protected natural areas, divisions and subdivisions shall be made in order to identify and delimit portions of the territory making up such areas, consistent with biological, physical, and socioeconomic components. Additionally, it provides that the territorial delimitation of activities in protected natural areas shall be carried out by means of zones and subzones with different management categories. While this provision has the primary purpose of protecting the environment or human health and therefore qualifies as environmental law in the sense of USMCA Article 24.1, it is not deemed relevant to the Secretariat's review, since the submission does not include direct assertions about the failure to enforce it.
33. **LGEEPA Article 161** provides that Semarnat shall carry out acts of inspection and surveillance to enforce the provisions of the LGEEPA and the regulations flowing from it. The Secretariat finds that LGEEPA Article 161 relates to the matter raised in the submission and qualifies as environmental law in the sense of USMCA Article 24.1, since it gives Semarnat the power to enforce the environmental law.
34. **LGEEPA Article 182** provides that where Semarnat takes cognizance of acts or omissions that may constitute offenses, it shall report them to the Office of the Federal Public Prosecutor (*Ministerio Público Federal*). Semarnat may provide technical or expert reports requested by judicial authorities. The Secretariat finds that this provision relates to assertions in the submission and qualifies as environmental law in the sense of USMCA Article 24.1, since its primary purpose is the protection of the environment through the mechanism enabling Semarnat to initiate proceedings where it takes cognizance of environmental offenses.

c) Environmental Impact Assessment Regulation to the LGEEPA

35. **REIA Article 1** provides that the regulation is applicable throughout the nation and that its object is to govern matters relating to federal EIA under the LGEEPA. This provision may qualify as environmental law in that it is aimed at the protection of the environment or human health; however, it is insufficiently concrete to be applied directly, and the Secretariat finds that while it should not be given specific consideration, it should guide the Secretariat's analysis in relation to submission SEM-24-003.
36. **REIA Article 2** (first paragraph) provides that REIA enforcement is under the jurisdiction of the federal executive branch acting by Semarnat, in accordance with the applicable law. The Secretariat finds that while this provision may qualify as environmental law in the sense of USMCA Article 24.1, it is insufficiently concrete to be applied directly to the assertions made in the submission.
37. **REIA Article 4** provides that Semarnat is competent to: assess environmental impacts and issue decisions concerning the execution of works or activities to which the REIA

refers (**paragraph I**); solicit opinions from other bodies and experts in support of EIA (**paragraph III**); carry out any public consultation process required during EIA (**paragraph IV**), and monitor compliance with the provisions of the REIA and any decisions made thereunder, as well as to impose sanctions and control and safety measures (**paragraph VI**), among other powers. The Secretariat finds that this provision relates to the assertions in the submission and qualifies as environmental law in the sense of USMCA Article 24.1, since it is aimed at the protection of the environment or human health through the EIA procedure and the promotion of civic participation.

38. **REIA Article 5** lists those works and activities requiring prior environmental impact approval by Semarnat, which include transportation routes (**paragraph B**) and construction work in protected natural areas (**paragraph S**). The Secretariat finds that this provision and its paragraphs bear a relationship to the assertions in the submission. In addition, it qualifies as environmental law, since its primary purpose is the protection of the environment through EIA.
39. **REIA Article 9** (first paragraph) provides that project developers must submit an EIS to Semarnat containing relevant information about the environmental circumstances associated with the execution of the works and activities of the project in question. The Secretariat finds that this provision bears a relationship to the assertions in the submission and qualifies as environmental law in the sense of USMCA Article 24.1, since its primary purpose is the protection of the environment or human health through the EIA procedure.
40. **REIA Article 10** establishes the two modalities of EIS: regional and particular. The Secretariat finds that while this provision qualifies as environmental law, since its primary purpose is the protection of the environment through instruments such as the preparation of an EIS that undergoes the EIA procedure for approval of works or activities, it is insufficiently concrete to be applied directly to the assertions made in the submission.
41. **REIA Article 16** (first paragraph) provides that where Semarnat takes cognizance of an intention to commence work or activities under federal jurisdiction, or where such work or activities have already commenced and may cause grave and irreparable ecological imbalance, harm to public health as a result of environmental problems, or harm to ecosystems, it shall immediately notify the interested party of its reasoned determination in order for the latter to submit the work or activity to the EIA procedure and to submit any relevant reports, expert testimony, or considerations within a period of ten days. The Secretariat finds that this provision qualifies as environmental law in the sense of USMCA Article 24.1, since its primary purpose is the protection of the environment through the exercise of Semarnat's powers of protection and prevention.

d) Internal Regulation of Semarnat

42. **RI-Semarnat Article 1** establishes the object of the organization and workings of Semarnat, its jurisdiction, structure, and the powers of its units and deconcentrated administrative bodies. In addition, Semarnat is a body of the federal executive branch that is vested with the powers set out in the Organic Act of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*), the LGEEPA, and other

provisions. The Secretariat finds that while this provision may qualify as environmental law in the sense of USMCA Article 24.1, it lacks sufficient concreteness to be applied directly to the assertions made in the submission and should not be given specific consideration, although it will guide the Secretariat's analysis in relation to submission SEM-24-003.

43. **RI-Semarnat Article 3** refers to the organization of Semarnat and also sets out the deconcentrated administrative bodies (**subparagraph B**), such as the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) (**paragraph I**). The Secretariat finds that while this provision may qualify as environmental law in the sense of USMCA Article 24.1, it lacks sufficient concreteness to be applied directly to the assertions made in the submission and should not be given further consideration.
44. **RI-Semarnat Article 5** establishes the powers and duties of Semarnat. The Secretariat finds that this provision qualifies as environmental law in the sense of USMCA Article 24.1, since its primary purpose is the protection of the environment through the exercise of the powers of the minister of the environment.
45. **RI-Semarnat Article 43** establishes the powers of Profepa: powers in relation to inspection and surveillance (**paragraph I**), and to receive, address, and investigate complaints falling under its jurisdiction, to carry out the necessary procedures, or to relay complaints to the competent authorities (**paragraph II**). The Secretariat finds that this provision and its paragraphs qualify as environmental law in the sense of USMCA Article 24.1, since their primary purpose is the protection of the environment through the distribution of powers.
46. **RI-Semarnat Article 46** stipulates that those units and branches of Profepa with inspection and surveillance powers may exercise these powers throughout the nation's territory and in those zones under its sovereignty and jurisdiction; that Profepa shall have designated inspectors with powers to impose safety measures; that the directors of the units, branches, and state offices may receive support from any person attached to Profepa, and that Profepa may solicit the assistance of public servants from other bodies or entities of the three levels of government, provided that they are accredited as federal inspectors. The Secretariat finds that this provision bears a relationship to the assertions in the submission and qualifies as environmental law in the sense of USMCA Article 24.1, since its primary purpose is the protection of the environment or human health through coordination of the authorities in relation to inspection and surveillance of environmental law.

b. Article 24.27(2) Requirements

47. USMCA Article 24.27(2) establishes five requirements for a submission to be eligible. Having reviewed the submission with respect to the stipulations of the five subparagraphs of this article, the Secretariat finds that submission SEM-24-003 (*Sonora Railway Project*) meets these requirements, as discussed in this section.

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

a) [I]s in writing in English, French, or Spanish

48. The submission in question is written in Spanish and therefore meets the eligibility criteria of USMCA Article 24.27(2)(a).

b) [C]learly identifies the person making the submission

49. The submission includes the name, domicile, email address, and telephone of the Submitters, which information is adequate and sufficient to identify and communicate with the Submitters.

50. The submission conforms to USMCA Article 24.27(2)(b).

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

51. The submission includes among its appendices the responses to requests for information sent to Sedena, the Sonora State Ministry of Infrastructure and Urban Development, and Semarnat. In addition, it includes a citizen complaint filed with Profepa and the response to the complaint, as well as Semarnat's response to a request for public consultation submitted by one of the Submitters.

52. The submission contains photographs and videos depicting progress on the rail project. These images were taken by the Submitters, who, they assert, made visits to the municipality of Ímuris and to El Aribabi Conservation Ranch, where the project is being carried out. The photographs and audiovisual material document parts of the railway route, the machinery used in its construction, and the transportation of materials. The images and videos are dated October 2023 and March 2024.

53. The Submitters also include interactive map files generated by geographical information systems with the aim of illustrating the routes of the existing and projected rail lines. The submission does not specify the source of the map data. The data relating to the Sonora railway project are considered approximate, since the Submitters themselves indicate that it was impossible for them to obtain the exact location of the project through their requests for information from the government.²¹

54. The Submitters rely on speeches given by the authorities in deducing and documenting the route of the rail line; furthermore, they rely on the same authorities' acknowledgement of the project's environmental impacts.²² Although the interviews and speeches presented by the Submitters are imprecise on various aspects, the Secretariat finds that this ambiguity supports central assertions in the submission relating to lack of transparency

²¹ Submission at 16.

²² *Ibid.* at 12–15.

and noncompliance with environmental requirements. What is more, the documentary evidence obtained by the Submitters *in situ* offers tangible evidence of the location and impact of the project.

55. In this regard, the Secretariat finds that the submission conforms to USMCA Article 24.27(2)(c).

d) [A]ppears to be aimed at promoting enforcement rather than at harassing industry

56. The Secretariat finds that the submission conforms to USMCA Article 24.27(2)(d), since it is clear from the information and documentation included in the submission and its appendices that it is not aimed at harassing industry, but rather at seeking the effective enforcement of the applicable environmental law in relation to environmental impact assessment of the Sonora Railway Project.

e) [I]ndicates whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any

57. The Submitters present documentation in support of their assertion that the matter has been communicated to the relevant authorities of the Government of Mexico. The submission includes a letter from the Submitters to the minister of the environment dated 17 June 2024, stating that the rail project “lacks proper environmental impact approval and is gravely affecting the ecosystems and species of Sonora.” The letter describes the value of the region’s ecosystems, warns against habitat fragmentation resulting from the route of the train line, and mentions the effects of the project on a PNA. By means of this letter, the minister of the environment was also informed that the provisional approval apparently obtained for the project has no legal basis in the LGEEPA or its regulation.²³

58. The Secretariat finds that the submission conforms to USMCA Article 24.27(2)(e) in that it includes information corroborating that the matter has been communicated in writing to the relevant authority of the Party.

c. USMCA Article 24.27(3) analysis

59. USMCA Article 24.27(3) establishes four additional criteria guiding the Secretariat’s review process:

a) Whether the submission alleges harm to the person making the submission

60. The Submitters assert that construction of the Sonora railway project will cause irreparable harm to fragile and highly important ecosystems, with impacts on species listed in various protected categories.²⁴ They explain that the project is located in an ecoregion known as the Sky Island region, which harbors a very diverse fauna and flora unique to this region.²⁵ They assert that the route of the project bisects the Sierra Azul-El

²³ *Ibid.*

²⁴ Submission at 9–12.

²⁵ *Ibid.* at 10.

Pinito migratory corridor at its most critical point, the Cocóspera River valley.²⁶ The effect of this fragmentation, according to the Submitters, will be a severe loss of habitat for jaguar, black bear, and ocelot, in both Mexico and the United States, with concomitant declines in their populations.²⁷ They assert that the project will affect endemic species such as the Sonora mud turtle and other protected species.²⁸ Finally, the Submitters assert that the rail project will cross the El Aribabi property, which comprises a PNA that will be impacted by the new infrastructure.²⁹

61. The Secretariat has previously found that when considering the issue of harm, it must assess whether the harm asserted is due to the alleged failure to effectively enforce the environmental law and whether the harm is related to environmental protection.³⁰ Consistent with its practice in implementing the SEM mechanism, the Secretariat finds that the submission satisfies the criterion of USMCA Article 24.27(3)(a).

b) Whether the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter

62. USMCA Article 24.2(2) provides that the objectives of chapter 24 are “to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation, in the furtherance of sustainable development.”
63. The Secretariat finds that the submission raises important matters about the application of the environmental impact assessment procedure in Mexico to a project crossing a region and a PNA that harbor species in protected categories, in addition to constituting an important migratory corridor for these species. A review of the matters raised in the submission would help promote high levels of environmental protection and effective enforcement of environmental laws relating to the environmental impact assessment and approval procedure as applied to the Sonora railway project.
64. The Secretariat concludes that the submission satisfies USMCA Article 24.27(3)(b).

c) Whether private remedies available under the Party’s law have been pursued

65. The Submitters indicate that they have sought action from the federal authorities by filing a citizen complaint with Profepa. In the complaint filed in March 2024, the Submitters

²⁶ *Ibid.* at 11.

²⁷ *Ibid.* at 12.

²⁸ *Ibid.* at 11.

²⁹ *Ibid.*

³⁰ SEM-19-004 (*Barred Owl*), Article 14(1) and (2) Determination (21 November 2019), § 28; SEM-11-002 (*Sumidero Canyon II*), Article 14(1) and (2) Determination (6 September 2012), § 36; SEM-13-001 (*Tourism Development in the Gulf of California*), Article 14(1) and (2) Determination (23 November 2013), § 62. *Cf. Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, section 7.4.

complain of construction work covered by LGEEPA Article 28 and related to the Sonora railway project being performed without environmental impact approval.³¹

66. The submission also includes a document from the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos—CNDH*) attesting that a case has been opened in response to a complaint filed by a collective called *Caminantes del Desierto*.³²
67. The Secretariat finds that the submission conforms to USMCA Article 24.27(3)(c), since the Submitters have shared documentation and information attesting to their pursuit of private remedies available under Mexico's law.

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

68. As regards USMCA Article 24.27(3)(d), the Secretariat finds that the submission *is not* exclusively based on mass media reports, but rather on documentation and information gathered by the Submitters, in good part from official sources, academic literature, and site visits made by the Submitters themselves. Although the submission does refer to political speeches published in the media, it includes the stenographic versions of official and primary sources.
69. Therefore, the Secretariat concludes that the submission satisfies the criterion of USMCA Article 24.27(3)(d).

IV DETERMINATION

70. For the foregoing reasons, the Secretariat finds that submission SEM-24-003 (*Sonora Railway Project*) meets the eligibility requirements of USMCA Article 24.27(2) and merits a response from the Government of Mexico pursuant to USMCA Article 24.27(3), in regard to the effective enforcement of the following environmental laws:
- i. Article 4, fifth and sixth paragraphs of the **Mexican Constitution**;
 - ii. **LGEEPA** Articles 2, paragraph II; 5, paragraphs X and XIX; 15, paragraphs I, III, IV, VI, and XII; 28, paragraphs I, VII, XI, and XIII; 30, first paragraph; 33, first paragraph; 34, first paragraph and subparagraphs I, II, III, IV, and V of third paragraph; 35, first, second, third, and fourth paragraphs; 44, first paragraph; 45, paragraphs I, II, III, IV, V, and VI; 46, paragraph XI; 161, and 182;
 - iii. **REIA** Articles 4, paragraphs I, III, IV, and VI; 5(B) and (S); 9, first and second paragraphs; and 16, first paragraph, and
 - iv. **RI-Semarnat** Articles 5, 43, paragraphs I and II, and 46.
71. Pursuant to USMCA Article 24.27(4), the Party may provide a response to the submission within the 60 days following receipt of this determination, or no later than **2 January 2025**.

³¹ Submission at 23; Submission, Appendix 1 at 1.

³² Submission, Appendix 11.

72. The response of the Party may clarify doubts raised in the submission with respect to the procedure followed by the competent authorities and may provide more information about the environmental dimension of the project.

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation

(original signed)

Per: Paolo Solano
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