

[UNOFFICIAL TRANSLATION]



**RESPONSE OF THE  
UNITED MEXICAN STATES**

**SUBMISSION SEM-24-003 (SONORA  
RAILWAY PROJECT)**

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**FILED WITH THE SECRETARIAT OF THE COMMISSION FOR  
ENVIRONMENTAL COOPERATION PURSUANT TO ARTICLE 24.27(4) OF THE  
AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED  
MEXICAN STATES, AND CANADA (USMCA)**

Mexico City, 7 February 2025

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## GLOSSARY

| Term                     | Meaning  |
|--------------------------|--|
| <b>ADVC</b>              | voluntarily designated conservation area   |
| <b>AIA</b>               | environmental impact authorization   |
| <b>CBD</b>               | Center for Biological Diversity  |
| <b>CEC</b>               | Commission for Environmental Cooperation   |
| <b>CEC Secretariat</b>   | Secretariat of the Commission for Environmental Cooperation  |
| <b>CEDS</b>              | Sonora State Ecology and Sustainable Development Commission ( <i>Comisión de Ecología y Desarrollo Sustentable del Estado de Sonora</i> )  |
| <b>Cemda</b>             | Centro Mexicano para la Defensa del Medio Ambiente   |
| <b>Conagua</b>           | National Water Commission ( <i>Comisión Nacional del Agua</i> )  |
| <b>Conanp</b>            | National Protected Natural Areas Commission ( <i>Comisión Nacional de Areas Naturales Protegidas</i> )   |
| <b>Constitution</b>      | Mexican Constitution ( <i>Constitución Política de los Estados Unidos Mexicanos</i> )  |
| <b>DGGFSOE</b>           | Forest Management, Soils, and Ecological Zoning Branch ( <i>Dirección General de Gestión Forestal, Suelos y Ordenamiento Ecológico</i> )   |
| <b>DGIRA</b>             | Environmental Impact and Risk Branch ( <i>Dirección General de Impacto Ambiental</i> )   |
| <b>DGVS</b>              | Wildlife Branch ( <i>Dirección General de Vida Silvestre</i> )   |
| <b>DRNOYAGC</b>          | Northwest and Upper Gulf of California Regional Division ( <i>Dirección Regional Noroeste y Alto Golfo de California</i> )   |
| <b>ECA</b>               | <i>Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada</i>   |
| <b>EIA</b>               | environmental impact assessment  |
| <b>EIS-R</b>             | The regional modality of environmental impact statement  |
| <b>environmental law</b> | The definition given in USMCA Article 24.1   |
| <b>INAI</b>              | National Transparency, Access to Information, and Protection of Privacy Institute ( <i>Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales</i> ) |
| <b>INECC</b>             | National Institute of Ecology and Climate Change ( <i>Instituto Nacional de Ecología y Cambio Climático</i> )  |
| <b>LGEEPA</b>            | General Ecological Equilibrium and Environmental Protection Act ( <i>Ley General del Equilibrio Ecológico y la Protección al Ambiente</i> )  |
| <b>LOAPF</b>             | Organic Act of the Federal Public Administration ( <i>Ley Orgánica de la Administración Pública Federal</i> )  |

|                                |  |
|--------------------------------|--|
| <b>Mexican Supreme Court</b>   | <i>Suprema Corte de Justicia de la Nación</i>  |
| <b>Mexico</b>                  | United Mexican States ( <i>Estados Unidos Mexicanos</i> )  |
| <b>NAAEC</b>                   | <i>North American Agreement on Environmental Cooperation</i>   |
| <b>NAFTA</b>                   | <i>North American Free Trade Agreement</i>   |
| <b>National Security Order</b> | Order instructing the agencies and entities of the Federal Public Administration to take the measures indicated, in relation to projects and works of the Government of Mexico considered to be in the public interest and the interest of national security, as well as strategic priorities for national development ( <i>Acuerdo por el que se instruye a las dependencias y entidades de la Administración Pública Federal a realizar las acciones que se indican, en relación con los proyectos y obras del Gobierno de Mexico considerados de interés público y seguridad nacional, así como prioritarias y estratégicas para el desarrollo nacional</i> ) |
| <b>Paris Agreement</b>         | The Paris Agreement, ratified by Mexico on 17 September 2016   |
| <b>PNA</b>                     | protected natural area   |
| <b>Profepa</b>                 | Office of the Federal Attorney for Environmental Protection ( <i>Procuraduría Federal de Protección al Ambiente</i> )  |
| <b>Protocol</b>                | <i>Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada</i>   |
| <b>Rail Project</b>            | Nogales, Sonora Railway Relocation Project   |
| <b>RI-Semarnat</b>             | Internal Regulation of the Ministry of the Environmental and Natural Resources ( <i>Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales</i> )  |
| <b>RLGEEPAMEIA</b>             | Environmental Impact Assessment Regulation to the General Ecological Equilibrium and Environmental Protection Act ( <i>Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Evaluación del Impacto Ambiental</i> )  |
| <b>Sedena</b>                  | Ministry of National Defense ( <i>Secretaría de la Defensa Nacional</i> )  |
| <b>SEM Form</b>                | The submissions on enforcement matters form  |
| <b>SEM Guidelines</b>          | <i>Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation</i>   |
| <b>SEM Instructions</b>        | The instructions for the SEM form  |
| <b>SEM Process</b>             | The submissions on enforcement matters process   |

|                   |   |
|-------------------|---|
| <b>Semarnat</b>   | Ministry of the Environment and Natural Resources ( <i>Secretaría de Medio Ambiente y Recursos Naturales</i> )                                    |
| <b>Sidur</b>      | Sonora State Ministry of Infrastructure and Urban Development ( <i>Secretaría de Infraestructura y Desarrollo Urbano del Gobierno de Sonora</i> ) |
| <b>Submission</b> | submission SEM-24-003 (Sonora Railway Project)  |
| <b>Submitters</b> | CBD and Cemda   |
| <b>USMCA</b>      | <i>Agreement between the United States of America, the United Mexican States, and Canada</i>  |

## INDEX OF DOCUMENTARY APPENDICES

| Appendix      | Description of document  |
|---------------|--|
| <b>MX-001</b> | Order instructing the agencies and entities of the Federal Public Administration to take the measures indicated, in relation to projects and works of the Government of Mexico considered to be in the public interest and the interest, of national security as well as strategic priorities for national development |
| <b>MX-002</b> | Final environmental impact approval  |
| <b>MX-003</b> | Análisis del INECC sobre los Beneficios del Transporte de Carga Ferroviario.   |
| <b>MX-004</b> | [REDACTED]   |
| <b>MX-005</b> | Comunicado de Prensa SCJN.   |
| <b>MX-006</b> | Constitution of Mexico ( <i>Constitución Política de los Estados Unidos Mexicanos</i> )  |
| <b>MX-007</b> | Citizen complaint  |
| <b>MX-008</b> | Determination A14/SEM/07-001/73/DETN 15(1)   |
| <b>MX-009</b> | Determination A24.27(2)(3)/SEM/23-006/06/DET   |
| <b>MX-010</b> | Determination A24.27(2)(3)/SEM/24-001/12/DET   |
| <b>MX-011</b> | Determinación A24. 7 )(3)/SEM/24-003/07/DET  |
| <b>MX-012</b> | Formulario SEM.  |
| <b>MX-013</b> | Formulario SEM.  |
| <b>MX-014</b> | [REDACTED] / la P  |
| <b>MX-017</b> | [REDACTED]   |
| <b>MX-018</b> | [REDACTED]   |
| <b>MX-019</b> | [REDACTED]   |
| <b>MX-020</b> | Oficio PFPA/5.3/2C.28.2/04223.   |
| <b>MX-021</b> | [REDACTED]   |
| <b>MX-022</b> | Oficio SRA/DGIRA/DG-01961-24.  |
| <b>MX-023</b> | [REDACTED]   |
| <b>MX-024</b> | Submission SEM-20-001 ( <i>Loggerhead Turtle</i> )   |
| <b>MX-025</b> | Submission SEM-21-002 ( <i>Vaquita Porpoise</i> )  |
| <b>MX-026</b> | Submission SEM-24-003 (Sonora Railway Project)   |
| <b>MX-027</b> | RI-Semarnat  |
| <b>MX-028</b> | RLGEEPAMEIA  |

## A. BACKGROUND

1. On 2 October 2024, CBD and CEMDA filed a submission<sup>1</sup> with the CEC Secretariat pursuant to USMCA Article 24.27(1).
2. The Submission asserts that the Mexican environmental authorities failed to effectively enforce the environmental law with respect to **1)** assessment of the environmental impacts associated with a rail project (the “Rail Project”) that will connect the municipalities of Ímuris, Santa Cruz, and Nogales in the state of Sonora, Mexico, and **2)** impacts on a PNA, which affords habitat for species that are endemic and/or listed as endangered.
3. Further to its review of the Submission, the CEC Secretariat, in determination **A24.27(2)(3)/SEM/24-003/07/DET**,<sup>2</sup> issued 1 November 2024, found that the Submission met the eligibility requirements of USMCA Article 24.27 and requested a Party Response from Mexico (“the Party”) in regard to the effective enforcement of the following legal provisions:
  - a) Article 4, fifth and sixth paragraphs, of the **Mexican Constitution**;<sup>3</sup>
  - b) 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 the 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, of the **LGEEPA**;<sup>4</sup>
  - c) Articles 4 paragraphs I, III, IV, and VI; 5(B) and (S); 9, first and second paragraphs, and 16, first paragraph, of the **RLGEEPAMEIA**;<sup>5</sup>
  - d) Articles 5, 43 paragraphs I and II, and 46, of the **RI-Semarnat**.<sup>6</sup>

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<sup>1</sup> MX-026.

<sup>2</sup> MX-011.

<sup>3</sup> MX-006.

<sup>4</sup> MX-014.

<sup>5</sup> MX-028.

<sup>6</sup> MX-027.

## B. PRELIMINARY CONSIDERATIONS

4. Before presenting the Party Response, it is indispensable to state that the Submission **did not meet the eligibility requirement of USMCA Article 24.27(2)(e)**, which is that the matter was communicated in writing to the relevant authorities of the Party; and that RI-Semarnat articles 5, 43, paragraphs I and II, and 46 **do not meet the criteria of USMCA Article 24.1**. The corresponding analysis is presented below in order to provide for an adequate focus.

### **a) The Submission does not meet the requirement of USMCA Article 24.27(2)(e)**

5. The Party notes that the filing of a USMCA Article 24.27 submission is guided by the **SEM Form**, which is made available by the CEC Secretariat on its website.<sup>7</sup>
6. Its use is optional for persons filing submissions; however, **using it ensures that the submitter understands the eligibility requirements** for Article 24.27 submissions.
7. The SEM Form is accompanied by a set of instructions for its completion (**SEM Instructions**),<sup>8</sup> which reiterate the general definitions as well as those specific to chapter 24 (Environment), in addition to providing a concise discussion of the aspects that **must be covered by each submission**, these being:
- Part I: Identification,
  - Part II: Representative(s),
  - **Part III: The submission.**
8. In relation to **Part III** of the SEM Form, the SEM Instructions indicate that the submission must include the following:
- 1)** The party to which it refers.
  - 2)** The environmental law that the Party is failing to enforce.
  - 3) A statement of the facts addressed by the submission, written clearly and concisely**, covering all of the following:
    - a) Include a succinct accounting of the facts.
    - b) Explain whether harm is being caused to the environment due to failures

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<sup>7</sup> MX-012.

<sup>8</sup> MX-013.



to effectively enforce the environmental law.

**c) Indicate that the matter has been communicated to the relevant authorities of the Party in question and mention any response provided by said authorities.**

- d) Describe whether reasonable steps have been taken or private remedies under the Party's law have been pursued before filing the submission.
- e) Corroborate that the submission is not based exclusively on media reports or items published in the media.

9. Furthermore, the SEM Instructions state that the submission must be accompanied by **legible and complete copies of all documents cited in it.**

10. The Submitters stated in their submission<sup>9</sup> that the matter had been communicated to the Mexican environmental authorities by means of the filing of a citizen complaint<sup>10</sup> with Profepa:

**The matter has been communicated to the relevant authorities of the Party in question**

Based on Articles 8 and 17 of the Mexican Constitution as well as Article 189 of the General Ecological Equilibrium and Environmental Protection Act (LGEEPA), the execution of construction work covered by LGEEPA Article 28 without environmental impact approval was reported to Office of the Federal Attorney for Environmental Protection by means of a citizen complaint. Appendix 1.

11. In this regard, it must be emphasized that the CEC Secretariat, in determination **A24.27(2)(3)/SEM/24-001/12/DET**<sup>11</sup> of **5 June 2024** concerning submission **SEM-24-001 (Time Ceramics)**, **terminated** its review of the submission, finding that **a citizen complaint is not an adequate instrument with which to prove that the matter has been communicated to the Party:**

In the revised submission, the Submitter mentions a **citizen complaint** filed 1 February 2024 with the National Water Commission, as well as additional documents not included in the additional information. While the communication in question does satisfy the requirement of pursuing remedies available to the Submitter in Mexico set out in USMCA Article 24.27(3)(c), it is not aimed at communicating the matter in question to the relevant administrative authority nor does it mention the authority's response, if any.

[...]

The CEC Secretariat finds that submission SEM-24-001 (Time Ceramics) does not meet the requirements of USMCA Article 24.27(2) because the submission: i) does not provide information on the applicability of the cited provisions relating to environmental impact, forested land use changes, and Semarnat administrative matters, and ii) **does**

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<sup>9</sup> MX-026 at 23.

<sup>10</sup> MX-007.

<sup>11</sup> MX-010 at 3.

not demonstrate that the matter has been communicated in writing to the authorities of the Party.

12. As may be seen, a citizen complaint is not a relevant instrument for proving that the matter was communicated to the Party for the purposes of USMCA Article 24.27(2), as noted by the CEC Secretariat in that determination, which, notably, corresponds to a submission filed the same year as the one currently at issue.
13. It may additionally be noted that the list of supporting documents contains a letter from the Submitters to Semarnat; however, this document **was not mentioned anywhere in the statement of facts as proof that the matter was communicated to the Party**, as indicated in the SEM Instructions; on the contrary, the document submitted to cover that requirement was the **citizen complaint**.
14. Thus, although Mexico understands that the CEC Secretariat has previously found that the requirements of USMCA Article 24.27(1), (2), and (3) are not intended as an insurmountable procedural screening device and must be given an expansive interpretation in consonance with the goals of USMCA chapter 24,<sup>12</sup> this does not imply that in doing so, **the Secretariat may violate the principles of legality, legal certainty, and impartiality to the detriment of the Parties**. The CEC Secretariat must ensure that these principles are observed in the course of the SEM process, adhering to consistent reasoning from one decision to the next.
15. This is particularly true given that **the Submitters possess the information necessary to file an adequate submission** under the terms of USMCA Article 24.27, in addition to those laid out in the SEM Instructions. This would allow the CEC Secretariat to **act objectively in carrying out the SEM process**, taking into account the opportunities available to both the Submitters and Mexico to assert their arguments on a level playing field. In particular, this situation could have been corrected by the CEC Secretariat if it had requested a revised submission, which did not happen.
16. Likewise, it must be emphasized that the Submitters have previously filed submissions, namely **SEM-20-001 (Loggerhead Turtle)**<sup>13</sup> and **SEM-21-002 (Vaquita Porpoise)**,<sup>14</sup> that resulted in factual records. Therefore, **ignorance of the requirements for the preparation and filing of submissions** cannot be

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<sup>12</sup> 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); SEM-21-002 (*Vaquita Porpoise*), USMCA Article 24.27(2) and (3) Determination (8 September 2021).

<sup>13</sup> MX-024.

<sup>14</sup> MX-025.

countenanced on the mere basis of an expansive interpretation by the CEC Secretariat.

17. Therefore, it is requested that the CEC Secretariat, when reviewing this Party Response, take into account not only Mexico's arguments attesting to its compliance with the applicable environmental impact- and PNA-related provisions, but also the fact that the processing of the submission at hand did not adequately interpret the eligibility requirement of USMCA Article 24.27(2)(e). The Party thus respectfully exhorts the Secretariat not to continue with its review of the Submission, in order to maintain a consistent approach, thereby strengthening the impartiality of its determinations.

**b) The provisions of RI-Semarnat are not environmental law in the sense of USMCA Article 24.1**

18. On this point, **USMCA Article 24.1** stipulates as follows:

**USMCA Article 24.1: Definitions**

For the purposes of this chapter:

**environmental 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, including endangered species, their habitat, and specially protected natural areas,

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; and

**statute or regulation means:**

[...]

(b) for Mexico, an Act of Congress or **regulation promulgated pursuant to an Act of Congress** that is enforceable by action of the federal level of government;

[...]

19. In this context, the CEC Secretariat found that the provisions in question qualify as environmental law, arguing that their primary purpose is the protection of the environment through the distribution of jurisdiction; however, this interpretation is inaccurate and does not adhere to the content of the cited provision, since **the primary purpose of the RI-Semarnat is not that of an environmental law**, but rather that of a legal instrument **of a strictly administrative nature**,

since its object is **to establish the organic structure, powers, and internal division of jurisdiction within Semarnat**, which is reflected in the content of its provisions.

20. It is worth recalling that regulations are legal instruments issued by the head of the federal executive branch, in exercise of the regulatory power vested in him by Article 89 paragraph I of the Constitution.<sup>15</sup> Their purpose is the implementation of a law, elaborating on and complementing in detail the provisions contained in the laws promulgated by the Congress of the Union, which is consistent with the definition of a regulation for Mexico.
21. Regulations are thus **instruments accessory to a law (statute)**, implying a **directly subordinate relationship to the law** (principle of hierarchical subordination); **they are subordinate instruments that find their measure and justification in a law**.<sup>16</sup>
22. In contrast, the purpose of **internal** regulations is **to delimit jurisdictions and to coordinate the internal functions of the bodies of the federal executive branch**, and they originate in the LOAPF, a law which, by reason of its own nature and object, cannot be considered an environmental law, since its purpose is to establish the foundations for the organization of the federal public administration, as provided in Article 1:

Article 1. This Act **establishes the foundations for the organization of the federal, centralized, and paragovernmental public administration** [...]

23. In this context, it is appropriate to conclude that the RI-Semarnat is an instrument that is accessory to the LOAPF, based on Articles 14, 17, 17 Bis, 18, 20, and 32 Bis, **whose purpose is to regulate the organization and workings of Semarnat**, determining the duties, structure, and powers of its administrative units and deconcentrated administrative bodies, which are aspects of a **primarily administrative nature**.
24. It must be emphasized about the **citizen complaint procedure that it is governed by LGEEPA articles 189 to 200** (which may qualify as environmental law), a situation fully explored by the CEC Secretariat in **determination**

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<sup>15</sup> MX-006 at 89.

<sup>16</sup> Tesis: VI.2o. 188 A, digital record 209579.

**A24.27(2)(3)/SEM/23-006/06/DET**,<sup>17</sup> concerning submission SEM-23-006 (*Illegal Logging in Jalisco*). This evidences the fact that the RI-Semarnat is not the relevant instrument for analyzing the effective enforcement of environmental law in relation to the citizen complaint procedure, **since this regulation does not establish obligations or rights for individuals.**

25. For the foregoing reasons, and whereas the purpose of the RI-Semarnat does not correspond to the USMCA Article 24.1 definition of environmental law — since its primary purpose is not the protection of the environment but rather the distribution of jurisdiction among the administrative units and deconcentrated bodies of Semarnat, by virtue of its own nature — and whereas the relevant instrument for reviewing the measures taken by Mexico in relation to the citizen complaint procedure is the LGEEPA itself, as applicable, the Party respectfully requests that the CEC Secretariat exclude RI-Semarnat Articles 5, 43 paragraphs I and II, and 46 from its review.

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<sup>17</sup> MX-009, paragraphs 30–34.

### C. PARTY RESPONSE OF MEXICO PURSUANT TO USMCA ARTICLE 24.27(4)

26. This Party Response specifically addresses the Submitters' assertions in relation to the actions of the Mexican environmental authorities, with respect to **the alleged failure to assess the environmental impacts associated with a rail project** that is to connect to the municipalities of Ímuris, Santa Cruz, and Nogales in the state of Sonora, Mexico **and will allegedly effect a PNA.**
27. As stated by the CEC Secretariat in its request for a response from Mexico, the USMCA came into effect on 1 July 2020 pursuant to the *Protocol Replacing the* North American Free Trade Agreement *with the* Agreement between the United States of America, the United Mexican States, and Canada.
28. On this basis, and in compliance with USMCA Article 24.27(4), Mexico hereby presents its Party Response in accordance with its commitments under the USMCA, which are binding as of its entry into force on 1 July 2020.<sup>18</sup>

**a) Whether the matter in question is the subject of a pending judicial or administrative proceeding, in which case the CEC Secretariat shall proceed no further**

**i) Relationship between the citizen complaint and the submission: potential to resolve the matter raised**

29. Notwithstanding that, as stated in the **PRELIMINARY CONSIDERATIONS**, the provisions of the RI-Semarnat, including those relating to the citizen complaint procedure, do not satisfy the USMCA Article 24.1 definition of environmental law, it is important to emphasize that the assertions in the Submission were communicated to Profepa in the form of a citizen complaint<sup>19</sup> filed by the representative of one of the Submitters. **This administrative proceeding is ongoing in accordance with the LGEEPA and has the potential to address the central aspects of the Submission.**
30. In this regard, it is important to recall that the CEC Secretariat has considered in

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<sup>18</sup> Article 24.4, "Enforcement of Environmental Laws," stipulates that "[n]o Party shall fail to effectively enforce its environmental laws [...] after the date of entry into force of this Agreement." This is confirmed by Article 28, "Non-retroactivity of treaties," of the *Vienna Convention on the Law of Treaties*, which provides that the "provisions [of the treaty] do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

<sup>19</sup> MX-007.

previous determinations<sup>20</sup> whether administrative and/or judicial proceedings notified by Mexico were initiated by the environmental authorities, as elements of the Secretariat's analysis in determining whether or not they have the potential to resolve the matter raised in a submission and therefore to terminate its review.

31. To justify this criterion, the CEC Secretariat has taken as a reference point **determination A14/SEM/07-001/73/DETN 15(1)**,<sup>21</sup> concerning submission SEM-07-001 (*Minera San Xavier*), finding that:

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).

32. However, this interpretation is inconsistent with **NAAEC Article 45(3)(a)**<sup>22</sup> (a provision applicable to the case at hand under ECA Article 2(3) and paragraph 9.6 of the Guidelines), since the definition of administrative and/or judicial proceeding does not require these to be initiated by the Party in order to be considered relevant to the review of a submission. It states only that proceedings must be timely in accordance with the applicable domestic law.

33. In fact, in the same determination, the CEC Secretariat elaborated on its reasoning, stating:

The proceedings notified by Mexico in this matter are however being pursued in accordance with Mexican law, and can be characterized as administrative proceedings. The Secretariat must in any event, take seriously Mexico's notification of pending proceedings which deal with the same material subject matter as the Submission, even though these do not fit the definition in NAAEC Article 45(3)(a).

34. It is therefore evident that the CEC Secretariat, in reviewing the relevance of administrative and/or judicial proceedings notified by Mexico, **should only consider whether these are being processed in a timely manner in accordance with the Party's law**, irrespective of whether they were initiated by the Party or at

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<sup>20</sup> SEM-22-002 (*Tren Maya*), USMCA Article 24.28(1) Notification (17 April 2023); SEM-23-002 (*Avocado Production in Michoacán*), USMCA Article 24.28(1) Notification (25 September 2023); SEM-23-003 (*Agave Production in Jalisco*), USMCA Article 24.28(1) Notification (24 November 2023).

<sup>21</sup> MX-008.

<sup>22</sup> Article 45: Definitions.

3. For purposes of Article 14(3), "judicial or administrative proceeding" means:

(a) a domestic judicial, quasi-judicial or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and [...]

the request of an individual. In this case, as stated earlier, the citizen complaint procedure is governed by the LGEEPA, which qualifies it as a valid administrative proceeding for the purposes of NAAEC Article 45(3)(a).

35. Under the LGEEPA, the citizen complaint is a mechanism whereby any person may complain to Profepa of facts, acts, or omissions that may result in ecological disequilibrium or in harm to the environment or natural resources, or may contravene federal environmental law. Its purpose is to enable **Profepa, as the prosecutorial authority responsible for environmental justice, to investigate and determine the existence of environmental offenses**, and, where applicable, **to issue an administrative decision, with the corresponding sanctions**.
36. In this context, the **citizen complaint filed by the representative of one of the Submitters in March 2024** was the mechanism whereby **Profepa** was notified that Sedena was allegedly performing construction work covered by **LGEEPA Article 28** as part of the project called **"Nogales, Sonora Railway Relocation Project" without environmental impact approval**. Profepa was asked to make an inspection visit in order to verify the existence of such approval, or in its absence, to shut down construction as a safety measure.
37. Additionally, it is evident that both the photographs presented as evidence of construction of the project and the requests for information attached to the Submission correspond to those provided by the representative of the **Submitters** to document their **citizen complaint**.
38. This is consistent with the facts asserted by the Submitters in their submission, without overlooking that their statement of facts **does not specify how Mexico allegedly failed to enforce its environmental law**. They merely discuss issues relating to a lack of EIA for the Rail Project, pursuant to LGEEPA Article 28.
39. In relation to the processing of the citizen complaint, on **3 April 2024**, in file no. **PFPA/5.3/2C.28.2/04223**,<sup>23</sup> the Office of the Deputy Attorney for Legal Affairs (*Subprocuraduría Jurídica*) of Profepa, the competent authority to carry out this procedure, communicated to the **Submitters'** representative that the **Office of the Deputy Attorney for Natural Resources (*Subprocuraduría de Recursos Naturales*)** of Profepa made inspection visits from 2 to 7 February 2024, producing the corresponding official record for subsequent review.

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<sup>23</sup> MX-020.



40. Further to this proceeding, [REDACTED] [REDACTED] [REDACTED] [REDACTED]<sup>24</sup>the Office of the Deputy Attorney for Natural Resources specified that the inspection visits were made by its Forest Inspection and Surveillance Division (*Dirección de Inspección y Vigilancia Forestal*) as well as by the Environmental Impact and Federal Coastal Zone Division (*Dirección de Impacto Ambiental y Zona Federal Marítimo Terrestre*), with the aim of verifying compliance with environmental law, particularly as regards the **environmental impact** of the project called **"Nogales, Sonora Railway Relocation Project,"** comprising the **"Ímuris-Miguel Hidalgo"** section and the **"Conexión Frontera"** section.
41. It should be mentioned that the inspection visits were made prior to the filing of the citizen complaint by the Submitters, by virtue of which this complaint was consolidated into file no. PFPA/5.3/2C.28.2/00034-23, opened 5 December 2023, because of the previous filing of another citizen complaint for Sedena's alleged failure to obtain environmental approval for development of the Rail Project.
42. On the date of submission of this Party Response, the documents in file no. PFPA/5.3/2C.28.2/00034-23 are under study and review by the aforementioned branches, which will, at the appropriate procedural moment, determine the appropriate course of action under the applicable law.
43. It is important to note that because of the procedural status of file no. PFPA/5.3/2C.28.2/00034-23, no further details are provided on the documents and evidence in this file, since these are being assessed prior to issuance of the corresponding administrative decision.
44. As may be observed, the central issues asserted in the Submission correspond to the demands made in citizen complaint file no. PFPA/5.3/2C.28.2/00034-23; in particular, **construction of a Rail Project in northern Sonora state, allegedly without submission of an EIS and without obtaining the corresponding AIA prior to commencement of construction**, under the terms of the LGEEPA and the RLGEEPAMEIA.
45. It should be stated that **the results of the investigation will be communicated to the Submitters' representative in due course**, thus concluding the processing of the citizen complaint under the terms of LGEEPA Article 199.
46. The results may evidence the following, among other aspects:

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<sup>24</sup> MX-019.

- a) that a **recommendation** is issued by **Profepa**, if the outcome of the investigation indicates the existence of facts or omissions on the part of the **federal, state, or municipal authorities involved**, or
- b) that **there are no violations of environmental law**, where the outcome of the investigation, as well as the inspection visits made, **indicates that no environmental violations were detected**.

47. By virtue of the foregoing arguments, and since **there exist administrative proceedings brought in a timely manner by Mexico under its domestic law** which have the **potential to resolve the central issues asserted in the Submission** — in particular, the alleged lack of EIA and corresponding AIA, which are **pending and constitute timely action by the competent authorities within their administrative spheres**, as the CEC Secretariat has previously found<sup>25</sup> — the Party respectfully requests that the Secretariat proceed no further in processing the Submission.

**ii) Alleged lack of environmental impact assessment, and change of status of the protected natural area**

48. In addition to the existence of pending administrative proceedings with the potential to resolve the central issues of the Submission, and with a view to contributing to the transparency integral to the SEM process, the CEC Secretariat is hereby informed that the Submitters' assertion about the alleged lack of an EIS and failure to obtain the corresponding AIA prior to commencement of work on the Rail Project, under the terms of the LGEEPA and the RLGEEPAMEIA, **is incorrect**.

49. In this regard, the CEC Secretariat is hereby informed that [REDACTED]  
[REDACTED]  
DGIRA reported that, [REDACTED]  
[REDACTED], Sidur filed with DGIRA the **EIS-R** for the Project called **"Nogales, Sonora Railway Relocation Project,"** to undergo the **EIA procedure**, which was recorded under no. **26SO2024V0008**.

50. By virtue of the foregoing, on **8 August 2024**, in file no. **SRA/DGIRA/DG-03105-**

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<sup>25</sup> MX-010 at 3.

**24,**<sup>26</sup> <sup>27</sup> <sup>28</sup> DGIRA, after assessment of the EIS-R for the project called “**Nogales, Sonora Railway Relocation Project,**” issued, with a basis in law and fact, the decision **granting conditional environmental impact approval** for the project, establishing the terms and conditions to which it must adhere in order to prevent, mitigate, and offset any environmental impacts caused by its development.

51. As regards the Submitters’ statement to the effect that provisional environmental impact approval for the Rail Project is not contemplated in the LGEEPA or the RLGEEPAMEIA, it is important to specify that on 22 November 2021, the Order instructing the agencies and entities of the Federal Public Administration to take the measures indicated, in relation to projects and works of the Government of Mexico considered to be in the public interest and the interest of national security, as well as strategic priorities for national development (*Acuerdo por el que se instruye a las dependencias y entidades de la Administración Pública Federal a realizar las acciones que se indican, en relación con los proyectos y obras del Gobierno de Mexico considerados de interés público y seguridad nacional, así como prioritarias y estratégicas para el desarrollo nacional—“National Security Order”*)<sup>29</sup> was published in the Official Gazette of the Federation, providing as follows:

ARTICLE ONE. The execution of **projects and works under the responsibility of the Government of Mexico that are associated with infrastructure for the** communications, telecommunications, customs, border, hydraulic, water, environment, tourism, health, **railways in all their modalities**, energy, ports, and airports sectors and any which, by virtue of their purpose, characteristics, nature, complexity, or magnitude are considered priorities or strategic for national development are hereby declared to be in the public and national security interest.

ARTICLE TWO. **The bodies and entities of the Federal Public Administration are hereby instructed to grant provisional approval upon the filing and/or obtaining of the reports, permits, or licenses necessary to commence the projects or works to which the preceding article refers,** so as to ensure their timely execution, the expected social benefit, and the allocation of the approved budgets.

Provisional approval shall be granted within a period of five working days from filing of the corresponding application. Where this period elapses without express provisional approval having been granted, approval will be deemed to have been granted.

ARTICLE THREE. Provisional approval shall be effective for the twelve months following the date that it is granted, during which period final approval must be obtained, pursuant to the applicable provisions.

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<sup>26</sup> MX-023.

<sup>27</sup> MX-016.

<sup>28</sup> MX-002.

<sup>29</sup> MX-001.

52. Sobre la base del Acuerdo APF, [REDACTED] SIDUR applied for provisional approval of the works and/or activities of the project titled "Relocation of Nogales, Sonora Rail Lines."
53. Por otra parte, el 12 d May 2023, [REDACTED]<sup>31</sup>, la DGIRA comunicó a la SIDUR [REDACTED] resulting in provisional environmental impact approval to commence project works and activities.<sup>3031</sup>
54. It must be emphasized that DGIRA also informed Sidur that pursuant to Article 3 of the National Security Order, the latter was to obtain final approval of the Rail Project within a period no longer than twelve (12) months as from the working day following the promulgation of the National Security Order, and in accordance with the applicable law. This period commenced on 16 May 2023 and ended on 16 May 2024.
55. **For the assessment of the environmental impacts of the Rail Project as prescribed by the LGEEPA and the RLGEEPAMEIA**, DGIRA took into account that Sidur filed the EIS-R within the period established for the granting of final approval, **thus ensuring the validity of the procedure under the applicable law.**
56. It must not be overlooked that the National Security Order was challenged in judicial review action (*Controversia Constitucional*) **217/2021** filed by INAI, which argued that the federal executive branch had encroached on congressional authority; as a result, the Mexican Supreme Court declared the order invalid, in a decision of **18 May 2023**.
57. Nevertheless, the Supreme Court specified that **since this is not a criminal matter, its decision was not retroactive**;<sup>32</sup> consequently, the invalidity of the order **did not affect the provisional approval granted to the Rail Project**, since this approval was granted based on the legal framework in effect at the time. **Therefore, this provisional approval remained valid and in force** up to the granting of final approval.
58. In short, it has been proven that Sidur, **prior to development of the Rail Project, applied for and obtained the provisional approval required in order to commence construction**, in compliance with the National Security

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<sup>30</sup> MX-017.

<sup>31</sup>

<sup>32</sup>

Order, and that it subsequently **applied for and obtained final environmental impact approval, pursuant to the applicable provisions**. In this context, while questions might be raised by the CEC Secretariat about the exact chronology of the commencement of work, it is evident that **the actions of the competent authorities have been lawful at all times**, guided by a commitment to ensuring compliance with the applicable law and with the principles of legality and transparency governing these procedures.

### **iii) Legal compliance and applicable legal provisions**

59. As has been shown, the Rail Project obtained both provisional and final environmental impact approval within the time periods and terms that were legally applicable at that time. In this context, one must assess compliance with the applicable provisions, specifying the legal foundations and the procedures followed to ensure due observance of environmental law.

#### **Mexican Constitution**

60. **Article 4:** Establishes the right of every person to a healthy environment for his development and well-being, and the government's obligation to guarantee the realization of this right. For compliance with this provision in the context of the Rail Project, the EIA procedure was implemented with strict adherence to the applicable law.
61. DGIRA ruled in the final approval that **Sidur must comply with all mitigation and compensation measures**, as well as **recommendations, studies, reports, and plans or programs set out in the EIS-R** and in the complementary information presented. These measures **were assessed by DGIRA as viable** for implementation and consistent with environmental protection in the context of the Rail Project.
62. The EIA procedure served to identify the possible negative impacts on the region's ecosystems and natural resources that would ensue from the execution of the project. As a result of this analysis, **preventive, mitigation, and compensation measures were applied, with the goal of minimizing any impacts on the environment**. Among these measures were the following:

- a) **Reforestation and ecological restoration:** Reforestation of areas affected by vegetation removal was ordered, using native species in order to ensure the conservation of ecological equilibrium.

- b) **Hazardous waste and materials management:** Strict provisions were applied for collection, management, and disposal of hazardous wastes and construction materials, in order to prevent soil and water contamination.
  - c) **Protection of bodies of water:** Specific terms were included in the environmental approval to prevent alteration of natural drainages and contamination of water sources.
  - d) **Biodiversity conservation:** Measures were included for protection of habitats and ecological corridors, ensuring the preservation of local species.
63. Furthermore, with the granting by DGIRA of provisional and final approval, it was demonstrated that development of the Rail Project adheres to environmental law and is subject to compliance with terms and conditions ensuring the protection of the environment.
64. Therefore, the constitutional right to a healthy environment has been respected and guaranteed through enforcement of the EIA procedure, with the adoption of concrete measures to prevent and mitigate the negative effects of the project.

## **LGEEPA**

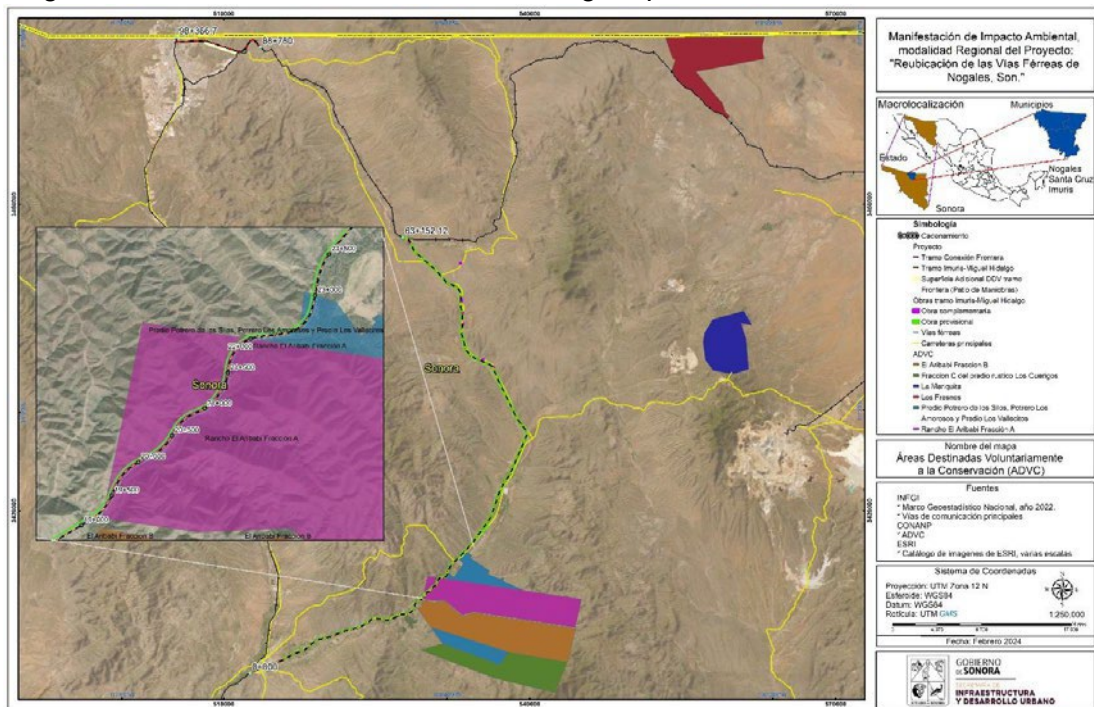
65. **Articles 2 paragraph II, 28 paragraph XI, 33, 44, 45 paragraphs I, II, III, IV, V, and VI, and 46:** In an initial analysis, DGIRA found that the Rail Project could be linked to provisions relating to the protection and preservation of PNAs and ecological restoration area; however, a more detailed review determined that these provisions are not applicable to the case in question.
66. According to the Submitters, the construction of the Rail Project would cross the “**Rancho El Aribabi B**” PNA, categorized by Conanp as an ADVC; in support of their assertion, they provided a map produced by Wildlands Network, as well as photographic and video material taken in 2024.
67. On this note, the Party informs the CEC Secretariat that as part of the comprehensive analysis required by the EIA procedure, DGIRA [REDACTED] asked Conanp to issue **a technical opinion** on the project titled “**Nogales, Sonora Railway Relocation Project**”.<sup>33 34</sup>
68. Specifically, DGIRA asked Conanp to report **whether the works and activities**

<sup>33</sup> MX-021.

<sup>34</sup> MX-015.

**consisting of the construction and operation of a rail line** — whose route appeared to partially impact PNAs in the ADVC management category, these being **“Predio Potrero de los Sitios, Potrero los Amorosos and Predio Los Vallecitos,”** holding certificate no. CONANP-319/2012, and **“Rancho el Aribabi Subdivision A,”** holding certificate no. CONANP-250/2011 — **adhered to the provisions of these certificates,** and to state whether the preventive and mitigation measures proposed by the developer were sufficient to avoid impacts thereupon.

69. For this purpose, DGIRA specified that in chapter 3 of the EIS-R<sup>34</sup> submitted by Sidur, it was established that the route of the Ímuris-Miguel Hidalgo section of the project affected two ADVCs, lying between distance markers 22+046 and 22+115 and between markers 22+585 and 23+008 in the case of “Predio Potrero de los Silos, Potrero Los Amorosos and Predio Los Vallecitos,” for a length of 0.492 km, and between distance markers 19+327 and 22+000, in the case of in “Rancho El Aribabi Subdivision A,” for a length of 2.673 km, as shown on the following map:



70. In response to this request, t h e DRNOYAGC, [REDACTED] communicated that it was not possible to issue the corresponding technical opinion, following the application for early cancellation of the certificates declaring as ADVCs the areas named “Predio Potrero de Los Silos, Potrero Los Amorosos and Predio Los Vallecitos,” holding certificate no. **CONANP-319/2012**, and “Rancho el Aribabi Subdivision A,” holding certificate no. **CONANP-250/2011**, under the terms

of Articles 133 paragraph IV and 134 of the RLGEPAANP.<sup>35 36</sup>

71. It deserves mention that the regional divisions of Conanp have the power to issue any technical reports and opinions within this body's purview — pursuant to the applicable legal provisions — that may be requested by the administrative units of Semarnat as part of the procedures for the granting of environmental impact approvals, under the terms of RI-Semarnat Article 76 paragraph X.<sup>37</sup>
72. Furthermore, the perimeter contained in the EIS-R for the Rail Project shows that **the project's development does not directly affect the "Rancho el Aribabi Subdivision B" ADVC**, as the Submitters asserted in the Submission.
73. Therefore, the Party informs the CEC Secretariat, under the terms of RLGEPAANP Articles 133 paragraph IV and 134, that since the early cancellation of certificates **CONANP-319/2012** and **CONANP-250/2011** for the "Predio Potrero de Los Silos, Potrero Los Amorosos and Predio Los Vallecitos" and "Rancho el Aribabi Subdivision A" ADVCs, respectively, was applied for, the Rail Project is no longer governed by the federal PNA protection regime, so that LGEEPA Articles 2 paragraph II, 28 paragraph XI, 33, 44, 45 paragraphs I, II, III, IV, V, and VI, and 46 are no longer relevant.
74. **Article 5 paragraphs X and XIX:** This article establishes the power of the Federation to carry out the EIA procedure to which LGEEPA Article 28 refers and to

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<sup>35</sup> MX-018.

<sup>36</sup> Article 133. The certificate to which this chapter refers shall be extinguished by the following causes:

[...]

IV. By early cancellation by the title holder, under the terms of Article 134 of this Regulation.

[...]

Article 134.— The title holder of a voluntarily designated conservation area may cancel the certificate in advance by submitting a document to the Commission requesting cancellation of the certificate. In the case of ejidos and communities, they shall in addition submit the minutes of the meeting in which the desire for the property to no longer be dedicated to conservation was expressed.

<sup>37</sup> Article 76. The regional divisions shall be established in accordance with the applicable legal provisions, with domicile and geographical extent to be determined by the incumbent of the Commission by means of an order published in the Official Gazette of the Federation. Such regional divisions have the following powers, within their assigned geographical areas:

[...]

X. To issue any technical reports and opinions within the purview of the Commission, pursuant to the applicable legal provisions, that may be requested by the administrative units of the Ministry in the context of procedures for granting of approvals, permits, and concessions relating to environmental impact, forests, the federal coastal zone, wildlife, land use changes on forested land, and any other relating to protected natural areas under the jurisdiction of the Federation, their zones of influence, refuge areas for the protection of aquatic species, critical wildlife conservation habitats, and other areas whose administration falls to the Commission and are located within its geographical area;

[...]



issue the corresponding AIA (**paragraph X**), as well as surveillance and promotion, within its sphere of jurisdiction, of compliance with the LGEEPA and any provisions flowing from it (**paragraph XIX**).

75. In this regard, concerning **paragraph X**, as stated above, on **11 April 2024** DGIRA received file no. [REDACTED] whereby Sidur, as developer of the Rail Project, submitted the corresponding EIS-R in order to undergo the EIA procedure, and it was registered under no. **26SO2024V0008** pursuant to LGEEPA Article 28 paragraphs I, VII, and X; further to review thereof, on 8 August 2024, DGIRA granted conditional approval for development of the Rail Project, establishing terms and conditions to mitigate its environmental impacts.<sup>38</sup>
76. As to **paragraph XIX**, the Party reiterates to the CEC Secretariat that Profepa is the competent body for surveillance of compliance with environmental law, including the LGEEPA and the RLGEEMPAMEIA; in this connection, it must be noted that **the thirteenth term of the final approval** established that Semarnat, acting through Profepa, is responsible for supervising compliance with the terms of said approval, as well as with the applicable environmental impact-related provisions, ensuring that they are complied with.
77. **Article 15:** This provision establishes that for the formulation and administration of environmental policy in Mexico, in relation to preservation and restoration of ecological equilibrium and environmental protection, the executive branch shall observe certain principles.
78. Among these, it provides that ecosystems are a common heritage of society and that their equilibrium is essential to life and economic activity in the country (**paragraph I**). In addition, both the authorities and individuals have the responsibility to protect ecological equilibrium (**paragraph III**) and must prevent, minimize, or repair any environmental harm that they may cause and bear the corresponding costs (**paragraph IV**); prevention is the most effective mechanism for avoiding ecological disequilibrium (**paragraph VI**), and everyone has the right to an adequate environment for their development, health, and well-being, with the authorities having the obligation to guarantee the realization of this right by taking the necessary measures (**paragraph XII**).
79. In the implementation of the Rail Project, Mexico has observed the principles of LGEEPA Article 15 by ensuring that the development of the project adheres to the preservation of ecological equilibrium and the protection of the environment.

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<sup>38</sup> MX-002.

80. In relation to **paragraph I**, the development of the Rail Project has taken into account the importance of ecological equilibrium, starting from the application for EIA and the corresponding granting of provisional and final approvals; in both, measures were considered that would minimize environmental impacts and ensure the compatibility of railway activities with the ecological integrity of the region.
81. In compliance with paragraphs **III, IV, and VI, Sidur**, as the developer of the Rail Project, has complied with all the procedures necessary for its construction, evidencing its responsibility for the protection of ecological equilibrium. DGIRA, for its part, has applied a preventive approach through the EIA procedure and the granting of final approval,<sup>39</sup> which established the conditions necessary to ensure that the development of the project takes place in a sustainable manner and in harmony with its surroundings (eighth term).
82. Similarly, the text of **paragraph XII** is directly related to Article 4 of the Constitution as it relates to everyone's right to a healthy environment, and observance thereof was discussed above in the corresponding section.
83. Additionally, **Chapter 3 of the EIS-R<sup>40</sup>** submitted by Sidur acknowledges all the environmental measures and actions that will prevent, mitigate, or compensate for any impacts that may result from the works and activities carried out in the context of the Rail Project, including **1)** environmental plans and studies; **2)** control and preventive measures and environmental best practices, and **3)** activities relating to tracking and application of mitigation measures.
84. **Article 28 paragraphs I, VII, XI, and XIII:** As stated earlier, DGIRA specified that the Rail Project falls exclusively under **paragraphs I and VII** of this article; therefore, its EIA was conducted in accordance with these provisions. DGIRA stated as well, in regard to **paragraphs XI and XIII, that the Rail Project does not fall under these provisions**, taking into account the technical opinion of Conanp, and also that **any impacts that may be caused by the development of the project were not considered serious or irreparable**; nevertheless, the eighth term of the final approval established mitigation and compensation measures (conditions).
85. **Article 30:** As stated, on **11 April 2024**, Sidur, in its capacity as developer of the Rail Project, **submitted the EIS-R to DGIRA**, reiterating the requirements contained in this article and thus evidencing that the article was observed.

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<sup>39</sup> MX-002.

<sup>40</sup> MX-015.

86. **Article 33:** In relation to compliance with this provision — and recalling that the Rail Project did not affect any PNA — DGIRA, in the context of the EIA procedure, gave the applicable notice to the municipalities of Nogales, Ímuris, and Santa Cruz so that they could state any consideration within their purview, which they did by means of the following documents:

|                                    |                                |
|------------------------------------|--------------------------------|
| Municipality of Nogales, Sonora    | <b>SRA/DGIRA/DEPG-00257-24</b> |
| Municipality of Ímuris, Sonora     | <b>SRA/DGIRA/DEPG-00258-24</b> |
| Municipality of Santa Cruz, Sonora | <b>SRA/DGIRA/DEPG-00259-24</b> |

87. **Article 34 paragraphs I, II, III, IV, and V:** In relation to enforcement of this article, the Party hereby informs the CEC Secretariat that **on 25 April 2024**, DGIRA opened the project file, which was made available to the public in the digital library of Semarnat, located at Av. Central # 300, Col. Carola, Alcaldía Álvaro Obregón, C.P. 01180, Mexico City.
88. Similarly, DGIRA included the electronic file of the EIS-R on the Semarnat portal, thus making it available to the public, at the following address: <https://app.semarnat.gob.mx/consulta-tramite/#!/portal-consulta>.
89. On **9 May 2024**, DGIRA received the letter from the Submitters' representative stating that he is a member of the municipality of La Paz, Baja California Sur, and claiming that he is affected by construction of the Rail Project, for which reason he requested the holding of a public consultation and information meeting.
90. Nevertheless, on **23 May 2024**, DGIRA informed the Submitters' representative, in file no. **SRA/DGIRA/DG-01961-24**<sup>41</sup> of 21 May 2024, of its decision **not to initiate the consultation, for lack of documentary proof of domicile showing that this person was a member of the affected community**, pursuant to LGEEPA Article 34 paragraph II and RLGEEPAMEIA Articles 40, 41, 42, and 43. **DGIRA did not receive further requests for the holding of a public consultation or meeting.**
91. In that file, DGIRA informed the Submitters' representative that the EIS-R of the Rail Project was available for viewing online at <https://app.semarnat.gob.mx/consulta-tramite/#!/portal-consulta>, under no. **26SO2024V008**.
92. Moreover, the Party specifies that **paragraph III** is not applicable to the Rail Project,

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**since the impacts of the work were not considered serious or irreparable by DGIRA**; nevertheless, mitigation and compensation measures were prescribed in the final approval (eighth term).

93. In addition, in relation to **paragraphs IV and V**, it is to be emphasized that no proposals for the application of additional preventive and mitigation measures or observations were received, and none was recorded in the AIA.
94. **Article 35:** The Party reiterates to the CEC Secretariat [REDACTED] [REDACTED] Sidur submitted the **EIS-R** of the Rail Project for the purposes of the EIA procedure, and this document was recorded under no. **26SO2024V0008**.
95. Consequently, DGIRA, after assessment of the EIS-R, issued the decision **granting conditional environmental impact approval** for the project with a basis in law and fact, establishing the terms and conditions to which the project must adhere in order to prevent, mitigate, or compensate for any environmental impacts that may result from its development.
96. **Articles 44, 45, and 46:** It must be emphasized concerning these articles **that they are not applicable to the submission at hand, since the Rail Project does not affect any PNA**, as demonstrated above; therefore, any analysis based on these articles lacks legal relevance in the context of the Rail Project.
97. **Article 161:** This article provides that the Ministry shall carry out acts of inspection and surveillance of compliance according to the provisions contained in the LGEEPA and those flowing from it; in this regard, the Party reiterates to the CEC Secretariat that the **thirteenth term of the final approval** stipulated that Semarnat, acting through Profepa, is responsible for supervising compliance with the terms of the approval as well as the applicable environmental impact-related provisions, ensuring their observance.
98. Likewise, [REDACTED] [REDACTED] the Office of the Deputy Attorney for Natural Resources communicated that it had conducted inspection visits to verify the Rail Project's compliance with environmental law as regards **forested-land-use changes and environmental impact**.
99. **Article 182:** This provision states that where Semarnat takes cognizance of acts or omissions that may constitute offenses under the applicable law, it shall file the corresponding complaint with the Office of the Federal Public Prosecutor. The Party informs the **CEC Secretariat** that nowhere in the facts presented in the Submission

is there any mention of failure by **Semarnat** to enforce this provision, which thus lacks legal relevance in the context of the Rail Project.

100. Nevertheless, the Party informs **the CEC Secretariat** that where the findings of inspection and surveillance procedures carried out by **Profepa** indicate the existence of federal environmental offenses, the corresponding legal action shall be taken.
101. It should be noted that this article provides that anyone with knowledge of the commission of an environmental offense may directly file the corresponding criminal complaint. This also applies to the Submitters.

## **RLGEEPAMEIA**

102. **Article 4 paragraphs I, III, IV, and VI:** As stated previously, with respect to **paragraph I**, in relation to the EIA and the granting of corresponding AIA, Sidur, as developer of the Rail Project, filed the EIS-R, [REDACTED] and final approval was granted by DGIRA on 8 August 2024, in file no. **SRA/DGIRA/DG-03105-24**.<sup>42 43 44 45</sup>
103. As to **paragraph III**, establishing DGIRA's power to **solicit opinions from other bodies and experts when carrying out the EIA procedure**, the CEC Secretariat is hereby informed that technical opinions and reports were requested from various bodies, including the DGVS, the DGGFSSOE, Conanp, Conagua, IMTA, CEDS, and the municipalities of Nogales, Ímuris, and Santa Cruz:

| No. | Body                            | File number             |
|-----|---------------------------------|-------------------------|
| 1   | DGVS                            | SRA/DGIRA/DEPG-00252-24 |
| 2   | DGGFSSOE                        | SRA/DGIRA/DEPG-00253-24 |
| 3   | Conanp                          | SRA/DGIRA/DEPG-00254-24 |
| 4   | CEDS                            | SRA/DGIRA/DEPG-00255-24 |
| 5   | Conagua                         | SRA/DGIRA/DEPG-00256-24 |
| 6   | Municipality of Nogales, Sonora | SRA/DGIRA/DEPG-00257-24 |
| 7   | Municipality of Imuris, Sonora  | SRA/DGIRA/DEPG-00258-24 |

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<sup>42</sup>

<sup>43</sup> MX-019.

<sup>44</sup> MX-016.

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|   |                                       |                         |
|---|---------------------------------------|-------------------------|
| 8 | Municipality of Santa Cruz,<br>Sonora | SRA/DGIRA/DEPG-00259-24 |
| 9 | IMTA                                  | SRA/DGIRA/DEPG-00260-24 |

104. Concerning paragraph IV, which establishes Semarnat's power to carry out the public consultation process, where this is required within the EIA procedure, it must be stated that the Submission does not specifically state how Mexico failed to enforce this provision, which thus limits the CEC Secretariat to asking Mexico to report on its enforcement, without a review of that enforcement.
105. Nevertheless, as may be noted in the documentation provided by the Submitters, in file no. SRA/DGIRA/DG-01961-24 of 21 May 2024,<sup>46</sup> DGIRA communicated to the Submitters' representative, in relation to his request for the Rail Project to undergo public consultation as prescribed by LGEEPA Article 34, that his request did not meet all the requirements of RLGEEPAMEIA Article 40, specifically by failing to present any documentary evidence of domicile indicating that he was a member of the affected community. Thus, there was no cause to initiate this procedure; additionally, the Party reiterates that no other request for public consultation on the Rail Project was received.
106. Concerning paragraph VI in relation to surveillance of compliance with the provisions of the regulation and the imposition of sanctions, the Party reiterates that Profepa is the authority competent to supervise compliance with environmental law, including with the LGEEPA and the RLGEEPAMEIA.
107. In this regard, and as discussed above, Profepa, as part of its duties in the context of the citizen complaint procedure, conducted inspection visits to the sites where the Rail Project is being developed, for the purpose of verifying the existence of the corresponding environmental approvals and in order to guarantee the effective observance of and compliance with the applicable environmental law.
108. **Article 5(B) and (S):** Paragraph B of this provision states that anyone intending to carry out works or activities relating to **transportation routes**, including the construction of railways, requires prior environmental impact approval from Semarnat. Accordingly, the Rail Project obtained provisional approval, in file no. **SRA/DGIRA/DG-01868-23**, as well as conditional approval further to the EIA procedure, in file no. **SRA/DGIRA/DG-03105-24**.
109. In addition, it is relevant to reiterate that as to paragraph S, **the route of the project is not located within any PNA**, according to the technical opinion of the Northwest and Upper Gulf of California Regional Division (*Dirección Regional Noroeste*

y Alto Golfo de California) of Conanp; therefore, **the federal PNA protection regime is not applicable to the Rail Project**. Moreover, as demonstrated earlier, according to the map provided by Sidur in the EIS-R, the route has no impact on the “Rancho el Aribabi B” ADVC, as the Submitters asserted.

110. **Article 9:** This provision establishes the obligation to file an EIS in the applicable modality for assessment of the project by DGIRA. In this regard, the Party reiterates that the EIS-R<sup>47 48</sup> was filed by Sidur in its capacity as developer, . This document [REDACTED] considered relevant to the execution of the Rail Project, with prevention, mitigation, and compensation measures proposed to reduce the possible negative impacts that might be caused.
111. **Article 16:** This provision establishes the power of Semarnat to intervene where a construction project may lead to serious or irreparable ecological disequilibrium. The Party reiterates that the Rail Project is not covered by this article, since it underwent the EIA procedure and **the project’s impacts were not considered by DGIRA to be serious or irreparable**. Nevertheless, in order to protect ecological equilibrium and reduce any impacts that may result from the development of the Rail Project, the eighth term of the final approval established the corresponding mitigation and compensation measures.
112. By virtue of the foregoing reasoning, and in accordance with USMCA Article 24.27(3)(a), the Party hereby requests that the CEC Secretariat proceed no further in reviewing the Submission.

**b) Any other information that the Party may wish to provide**

**i) The Rail Project will contribute to the development of Mexico-US trade**

113. The Sonora Rail Project will strengthen trade relations between Mexico and the United States by improving connectivity, reducing logistical costs, and optimizing supply chains, but it will also contribute to more-sustainable trade, as per the goals of chapter 24 of the USMCA, which stipulates that trade must be carried out in a manner that protects and conserves the environment.
114. Rail transportation is one of the most efficient and sustainable modes of transport, allowing large volumes of goods to travel with less fossil fuel consumption than by other

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<sup>47</sup> MX-015.

<sup>48</sup> MX-016.

means and a significant reduction in greenhouse gas emissions.

115. Enhancing rail transportation in the Sonora border region will serve to reduce the carbon footprint of transboundary trade and mitigate the negative effects of freight transportation on air quality.
116. Currently, much of Mexico-US trade depends on highway transportation, which generates high CO<sub>2</sub> emissions and heavy dependency on diesel. Railway modernization will help migrate a significant part of these operations to a more efficient, less polluting system.
117. According to INECC data, obtained using the LEAP-IBC tool, and using information from the national emissions inventory, energy savings from now until 2030 were estimated at about 459 PJ (petajoules) of fuel, based on a projection of 60% of current truck freight being migrated to rail transportation, along with a reduction of 1,900 tons of PM 2.5 (particulate matter 2.5) and an estimated reduction of 41.7 million tons of CO<sub>2</sub> equivalent by 2030. This shows that rail transportation emits significantly less greenhouse gases per ton of freight than highway transportation.<sup>49</sup>
118. The lower environmental impact of rail transportation helps meet commitments to improve air quality and reduce emissions under international agreements such as the USMCA and the Paris Agreement, respectively.
119. In addition, the Rail Project could reduce vehicle congestion on highways and at border crossings, reducing air pollution in cities such as Nogales, where prolonged wait times generate unnecessary pollutant particle emissions that affect air quality and public health.
120. With more efficient and more environmentally responsible rail infrastructure, Mexico is enhancing its role as a strategic trading partner in North America, promoting a model of economic growth aligned with environmental protection and climate change mitigation.

## **D. CONCLUSIONS**

121. As has been fully demonstrated, Mexico, through its federal environmental authorities, has effectively enforced the applicable environmental law in connection with the Rail Project. The Submitters' assertions have been analyzed in detail based on technical and legal evidence, and it has been proven that there is no failure whatsoever to enforce the environmental law.

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<sup>49</sup> MX-003.



122. The Submitters assert that the project impacted a PNA. However, **this statement has been demonstrated to be incorrect**, since the areas that could have been affected by the route of the Rail Project **ceased to be classified as ADVs**, further to the application for early cancellation of the corresponding certificates, as stated by the DRNOYAGC, which confirmed that these areas are no longer covered by an environmental protection regime; consequently, **the project does not affect any PNA**, and the provisions applicable to PNAs are not relevant to the submission at hand.
123. Moreover, as has been demonstrated, the project **as a whole adhered to the EIA procedure**, obeying the provisions of the National Security Order, the LGEEPA, and the RLGEEMPAMEIA, since **provisional approval was obtained** in accordance with the law applicable at the time, thus guaranteeing the viability of the project under environmental supervision.
124. The EIS-R was filed and assessed, making it possible to identify and mitigate potential environmental impacts, and **final environmental impact approval** was subsequently issued, including specific prevention, compensation, and restoration measures. This confirms that the Submitters' assertions about the non-existence of an EIA and corresponding AIA are unfounded.
125. As a result of the foregoing considerations, it has been fully demonstrated that **the processing and granting of the AIAs for development of the Rail Project took place with strict adherence to the applicable law**. From the outset, Sidur arranged for provisional approval in compliance with the National Security Order, allowing for timely and lawful execution of the project. Subsequently, and with adherence to the established deadlines, final environmental impact approval was obtained, **ensuring that the Rail Project met the environmental requirements**. Therefore, any questioning of the precise chronology of commencement of work on the project does not change the fact that **the actions of the competent authorities were transparent, diligent, and fully in accord with the principles of legality and good faith** governing these procedures.
126. It must be emphasized that development of the Rail Project has been consistent with the principles governing the relationship between trade and the environment, ensuring that environmental protection remains a central component of decision-making. Mexico's environmental policy has been applied with high standards and with adherence to its international obligations, thereby ensuring that the Rail Project is carried out with the safeguards necessary for the conservation of the region's

ecosystems.

127. The foregoing reflects Mexico's responsible implementation of policies that harmonize economic development with environmental protection, without weakening its laws nor affecting the integrity of the procedures established for the assessment and regulation of projects that have environmental impacts.
128. Along these lines, the effective enforcement of environmental law by the competent environmental authorities does not merely adhere to national standards but also answers to a shared vision in the North American region for the promotion of a form of sustainable development that balances economic growth with natural resource conservation.
129. It is essential to recall that from the outset, the Submission filed by the Submitters did not meet the requirements for review set out in the USMCA, since the matter was not communicated to the Party as prescribed by the submission mechanism.
130. The Submitters indicated that they communicated the matter raised in the Submission to the Mexican environmental authorities in the form of a citizen complaint; however, it has been demonstrated that this mechanism is not the adequate way to prove that a matter was duly communicated to the Party, as established by the CEC Secretariat itself in previous determinations. Despite this, **the CEC Secretariat improperly allowed the Submission, going against its own previous interpretation of the applicability of the eligibility requirements.**
131. Furthermore, in allowing the Submission, **the CEC Secretariat failed to identify the existence of a pending administrative proceeding before Profepa that concerns the same matters as those raised in the Submission**, which confirms that the Mexican authority was already addressing the matter through the proper institutional channels.
132. This error in allowing the Submission **affects the certainty and balance of the submission mechanism**, for it grants permission to review cases that do not meet the basic eligibility requirements, **vitiating the purpose of the SEM process, setting an unlawful precedent, and jeopardizing the validity of the process itself.**
133. Since the central issues raised by the Submitters **have been refuted with objective, verifiable evidence**, and since **the Rail Project does not affect any PNA** — because the areas mentioned by the Submitters **ceased to**

**be categorized as such, and the EIA procedure was strictly followed,** with granting of the corresponding approvals pursuant to the applicable legal provisions — **Mexico has demonstrated its commitment to environmental protection through the effective enforcement of its laws,** ensuring that the EIA for the Rail Project was carried out in accordance with the principles of sustainability, prevention, and environmental responsibility.

134. In view of the foregoing, Mexico reiterates that it is effectively carrying out its duties to enforce the following legal provisions, and respectfully asks the CEC Secretariat to proceed no further with its review of the Submission:

- a)** Article 4, fifth and sixth paragraphs, of the Mexican Constitution;
- b)** 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;
- c)** REIA Articles 4 paragraphs I, III, IV, VI; 5(B) and (S); 9, first and second paragraphs; and 16, first paragraph; and
- d)** RI-Semarnat Articles 5, 43 paragraphs I and II, and 46.