[Unofficial English Translation][i]

# RESPONSE OF THE UNITED MEXICAN STATES

## SUBMISSION SEM-26-002
## (TIJUANA WASTEWATER MANAGEMENT)

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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 MEXICAN STATES, THE UNITED STATES OF AMERICA, AND CANADA (USMCA/CUSMA)**[ii]

**Ministry of Environment and Natural Resources**
**Legal Affairs Coordinating Unit**

Mexico City, 9 September 2026

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[i Translator's Note. All footnotes (except for the footnote to paragraph 327, marked "[Original footnote]") in this translated Party Response have been added by the Secretariat to indicate citation or grammatical errors. In instances of citation errors, this translation retains the language of the Response, marks the point of departure "[sic]," and provides the source material or correct citation in a footnote.]

[ii This title retains the ordering of the Parties contained in the original Response (*Tratado entre los Estados Unidos Mexicanos, los Estados Unidos de América y Canadá*); in Canada, the treaty is called In English the Agreement between Canada, the United States of America, and the United Mexican States (CUSMA) and in French is called *Accord Canada-États-Unis-Mexique*; the United States uses Agreement between the United States of America, the United Mexican States, and Canada (USMCA). This translation then employs the abbreviation USMCA/CUSMA.]

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**GLOSSARY OF TERMS AND ABBREVIATIONS**[iii]

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| **Art. 24.1 USMCA/CUSMA** | Article 24.1: Definitions<br>For the purposes of this Chapter:<br><br>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:<br><br>(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;<br><br>(b) the control of environmentally hazardous or toxic chemicals, substances, materials, or wastes, and the dissemination of information related thereto; or<br><br>(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas,<br><br>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.<br><br>[S]tatute 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 |
| **Art. 24.4(2) [sic]**[iv] **USMCA/CUSMA** | Article 24.2: Scope and Objectives<br>1. The Parties recognize that a healthy environment is an integral element of sustainable development and recognize the contribution that trade makes to sustainable development.<br>2. The objectives of this Chapter 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.<br>3. Taking account of their respective national priorities and circumstances, the Parties recognize that enhanced cooperation to protect and conserve the environment and the sustainable use and management of their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance, support implementation of international environmental |

[iii] A full table containing a comparison with the quoted language below and the authentic Spanish text may be found in the accompanying "Cuadro de disposiciones citadas en la Respuesta de la Parte."]

[iv] USMCA/CUSMA Article 24.2 contains the "Scope and Objectives" of USMCA/CUSMA Section 24.]

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| | agreements to which they are a party, and complement the objectives of this Agreement.<br>4. The Parties recognize that the environment plays an important role in the economic, social, and cultural well-being of indigenous peoples and local communities, and acknowledge the importance of engaging with these groups in the long-term conservation of the environment.<br>5. The Parties further recognize that it is inappropriate to establish or use their environmental laws or other measures in a manner which would constitute a disguised restriction on trade or investment between the Parties. |
| **Art. 24.4(4) USMCA/CUSMA** | Article 24.4: Enforcement of Environmental Laws<br>(…)<br>4. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party. |
| **Art. 24.27 USMCA/CUSMA** | Mechanism for Submissions on the Effective Enforcement of Environmental Legislation in Environmental Matters (Submissions on Enforcement Matters, SEM). It establishes the procedure, the admissibility requirements and the maximum scope of the mechanism [sic][v]. |
| **Art. 24.27(3) USMCA/CUSMA** | 3. If the CEC Secretariat determines that a submission meets the criteria set out in paragraph 2, it shall determine within 30 days of receipt of the submission whether the submission merits requesting a response from the Party. In deciding whether to request a response, the CEC Secretariat shall be guided by whether:<br>a) the submission alleges harm to the person making the submission;<br>b) the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter;<br>c) private remedies available under the Party's law have been pursued; and<br>d) the submission is not drawn exclusively from mass media reports.<br>If the CEC Secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission. |
| **Art. 24.28 USMCA/CUSMA** | Article 24.28: Factual Records and Related Cooperation<br>1. If the CEC Secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, it |

[v The authentic title is "Submissions on Enforcement Matters" (Spanish*: Peticiones relativas a la Aplicación de la Legislación Ambiental*).]

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| | shall so inform the Council and the Environment Committee within 60 days of receiving the Party's response and provide its reasons.<br>2. The CEC Secretariat shall prepare a factual record if at least two members of the Council instruct it to do so.<br>3. The preparation of a factual record by the CEC Secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.<br>4. In preparing a factual record, the CEC Secretariat shall consider any information provided by a Party and may consider any relevant technical, scientific, or other information:<br>a) that is publicly available;<br>b) submitted by interested persons;<br>c) submitted by national advisory or consultative committees referred to in Article 24.5 (Public Information and Participation);<br>d) submitted by the Joint Public Advisory Committee (JPAC) referred to in Article 2.2 (Commission for Environmental Cooperation) of the ECA;<br>e) developed by independent experts; or<br>f) developed under the ECA.<br><br>5. The CEC Secretariat shall submit a draft factual record to the Council within 120 days of the Council's instruction to prepare a factual record under paragraph 2. Any Party may provide comments to the CEC Secretariat on the accuracy of the draft within 30 days of the submission of the draft factual record. The CEC Secretariat shall incorporate those comments in the final factual record and promptly submit it to the Council.<br>6. The CEC Secretariat shall make the final factual record publicly available, normally within 30 days following its submission, unless at least two members of the Council instruct it not to do so.<br>7. The Environment Committee shall consider the final factual record in light of the objectives of this Chapter and the ECA and may provide recommendations to the Council on whether the matter raised in the factual record could benefit from cooperative activities.<br>8. The Parties shall provide updates to the Council and the Environment Committee on final factual records, as appropriate. |
| **Art. 6 LFRA**[vi] | Article 6. Damage to the environment shall not be deemed to exist where the impairments, losses, effects, modifications or deterioration are not adverse by reason of:<br>I. Having been expressly declared by the responsible party and explicitly identified, delimited in their scope, assessed, mitigated and |

[vi] This and the following quotations from Mexican federal legislation (LFRA, LAN, LGEEPA, CNPP, CPF) are unofficial translations, as those instruments exist only in Spanish. The following unofficial translations follow the text as quoted in the Response.]

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| | compensated by way of conditions, and authorized by the Ministry, prior to the carrying out of the conduct giving rise to them, by means of the environmental impact assessment or its preventive report, the authorization for change of forest land use, or any other analogous authorization issued by the Ministry; or by reason of their<br>II. Not exceeding the limits laid down by the provisions that may be established by environmental Laws or by the Mexican official standards.<br>The exception provided for in subsection I of this Article shall not operate where the terms or conditions of the authorization issued by the authority are not complied with. |
| **Art. 88 LAN** | ARTICLE 88. Natural or legal persons require a discharge permit issued by "the Water Authority" in order to discharge wastewater, permanently or intermittently, into receiving bodies that are national waters or other national property, including marine waters, as well as where such wastewater infiltrates land that is national property or other land where it may contaminate the subsoil or aquifers. |
| **Art. 115 CPEUM** | Article 115 of the Political Constitution of the United Mexican States—constitutional competence of the municipalities over drinking water, drainage and sewerage services. A deliberate normative design of the Mexican constituent power; it is not an institutional gap. |
| **Art. 199 LGEEPA** | ARTICLE 199. Files opened in respect of public complaints may be closed for the following reasons:<br>I. Lack of competence on the part of the Office of the Federal Attorney for Environmental Protection to hear the public complaint brought;<br>(…) |
| **Art. 222 CNPP** | Article 222. Duty to report. Every person who has knowledge that an act probably constituting an offence has been committed is obliged to report it to the Public Prosecutor's Office and, in cases of urgency, to any officer of the Police.<br><br>Any person who, in the exercise of public functions, becomes aware of the probable existence of an act defined by law as an offence is obliged to report it immediately to the Public Prosecutor's Office, providing it with all the information in his or her possession and placing at its disposal the accused, if they have been detained in flagrante delicto. Any person under a legal duty to report who fails to do so shall be liable to the corresponding sanctions. Where the exercise of the public functions referred to in the preceding paragraph consists in assisting the authorities responsible for public security, the public servants concerned shall, in addition to complying with that paragraph, confine their intervention to preserving the scene until the competent authorities arrive and, where applicable, to adopting such measures as are within their reach to ensure that emergency medical care is given to |

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| | any injured persons, as well as to placing detainees at the disposal of the authority through or in coordination with the police.<br><br>Persons who, at the time of the commission of the offence, hold the status of guardian, curator, ward, spouse, common-law partner or cohabitant of the accused, relatives by consanguinity or affinity in the direct ascending or descending line up to the fourth degree, and in the collateral line by consanguinity or affinity up to the second degree inclusive, shall not be obliged to report. |
| **Art. 416 CPF** | Article 416. A penalty of one to nine years' imprisonment and a fine of three hundred to three thousand days shall be imposed on any person who unlawfully discharges, deposits or infiltrates, or authorizes or orders the discharge, deposit or infiltration of, wastewater, chemical or biochemical liquids, wastes or contaminants into soils, subsoils, marine waters, rivers, basins, reservoirs or other deposits or watercourses under federal jurisdiction, causing a risk of damage to, or damaging, natural resources, flora, fauna, water quality, ecosystems or the environment. Where the waters concerned are deposited in, flow in, or flow towards a protected natural area, the term of imprisonment shall be increased by up to three further years and the pecuniary penalty by up to one thousand fine days. |
| **Arts. 170–172 [sic][vii] LGEEPA** | ARTICLE 170. Where there is an imminent risk of ecological imbalance, or of serious damage to or deterioration of natural resources, cases of contamination with dangerous repercussions for ecosystems, their components or public health, the Ministry may, on duly founded and reasoned grounds, order one or more of the following safety measures:<br>I. The temporary closure, partial or total, of the polluting sources, as well as of the facilities in which specimens, products or by-products of wild flora or fauna species or forest resources are handled or stored, or in which the activities giving rise to the circumstances referred to in the first paragraph of this Article are carried out;<br>II. The precautionary seizure of hazardous materials and wastes, as well as of specimens, products or by-products of wild flora or fauna species or their genetic material, forest resources, together with the goods, vehicles, implements and instruments directly connected with the conduct giving rise to the imposition of the safety measure; or<br>III. The neutralization or any analogous action that prevents hazardous materials or wastes from producing the effects provided for in the first paragraph of this Article. |

[vii Only the authentic text of Articles 170 and 171 are reproduced; Article 172 is not quoted.]

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| | Likewise, the Ministry may request the competent authority to carry out one or more of the safety measures established in other legal instruments.<br>ARTICLE 171. Violations of the provisions of this Law, its regulations and the provisions deriving from it shall be sanctioned administratively by the Ministry with one or more of the following sanctions:<br>I. A fine equivalent to thirty to fifty thousand days of the general minimum wage in force in the Federal District at the time the sanction is imposed [sic];<br>II. Temporary or permanent closure, total or partial, where:<br>(a) the offender has failed to comply, within the periods and on the conditions imposed by the authority, with the corrective or urgently applicable measures ordered;<br>(b) in cases of repeat offence where the infringements have negative effects on the environment; or<br>(c) there is repeated disobedience, on three or more occasions, of one or more corrective or urgently applicable measures imposed by the authority.<br>III. Administrative detention for up to 36 hours.<br>IV. Forfeiture of the instruments, specimens, products or by-products directly connected with infringements relating to forest resources, wild flora and fauna species or genetic resources, as provided for in this Law; and Subsection added [sic]<br>V. Suspension or revocation of the relevant concessions, licences, permits or authorizations.<br>If, once the period granted by the authority to remedy the infringement or infringements committed has elapsed, that infringement or those infringements are found to persist, fines may be imposed for each day that passes without compliance with the order, provided that the total of the fines does not exceed the maximum amount permitted under subsection I of this Article.<br><br>In the case of a repeat offence, the amount of the fine may be up to three times the amount originally imposed, and permanent closure may also be ordered.<br><br>An offender who commits conduct infringing the same provision more than once within a period of two years, counted from the date on which the record of the first infringement was drawn up, shall be deemed a repeat offender, provided that the first infringement has not been set aside. |
| **IBWC Minute 328** | Minute 328 of the International Boundary and Water Commission, Mexico–United States, signed on 19 July 2022. Establishes a bilateral |

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| | investment commitment of approximately USD 144 million to Mexico.[viii] |
| **IBWC Minute 333** | Minute 333 of the International Boundary and Water Commission, Mexico–United States, signed on 15 December 2025. Contains 13 specific bilateral resolutions on the transboundary wastewater problem and creates the permanent Mexico–United States Working Group for the coordinated management of the problem. |
| [redacted] | [redacted]. |
| **CESPT** | *Comisión Estatal de Servicios Públicos de Tijuana* (State Public Services Commission of Tijuana)—municipal public entity providing drinking water, drainage and sewerage services in the municipality of Tijuana, Baja California. |
| **CILA** | Comisión Internacional de Límites y Aguas Mexico–United States—binational body that administers the borders and shared water resources between the two countries under the 1944 Water Treaty. |
| **CNPP** | Código Nacional de Procedimientos Penales (National Code of Criminal Procedure). |
| **CONAGUA** | *Comisión Nacional del Agua* (National Water Commission)—primary federal authority in the matter of concessions and wastewater discharge permits under the National Waters Law. |
| **Profepa–FGR Agreement** | Collaboration Agreement between Profepa and the then PGR (now FGR), published in the Official Gazette of the Federation on 13 October 2004. Framework of inter-institutional coordination for addressing environmental offences. |
| **CPF** | *Código Penal Federal* (Federal Criminal Code). |
| **CPEUM** | *Constitución Política de los Estados Unidos Mexicanos* (Political Constitution of the United Mexican States). |
| **DET1** | First Determination of the CEC Secretariat (Admissibility Determination)—A24.27(2)(3)/SEM/26-002/12/DET, requesting a revised Submission. |

[viii] The Spanish original uses the abbreviation "CILA" (*Comisión Internacional de Límites y Aguas*) for the body that adopts the Minutes, and separately defines "IBWC" as the "United States counterpart" of CILA. This translation renders "CILA" as "IBWC" throughout.]

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| **DET2** | Second Determination of the CEC Secretariat (on Mexico's Response) [sic]—A24.27(2)(3)/SEM/26-002/25/DET, requesting a Party Response from the Government of Mexico. |
| **EPA** | Environmental Protection Agency—United States environmental protection agency; the United States federal regulatory authority responsible, among other matters, for oversight of the binational wastewater treatment infrastructure in the San Diego–Tijuana border region. |
| **FGR** | *Fiscalía General de la República* (Office of the Attorney General of the Republic). |
| **IBWC** | International Boundary and Water Commission—United States counterpart of CILA; responsible for the operation of the wastewater treatment infrastructure on the United States side of the border, including the South Bay International Wastewater Treatment Plant. |
| **LFRA** | *Ley Federal de Responsabilidad Ambiental* (Federal Environmental Liability Law). |
| **LGEEPA** | *Ley General del Equilibrio Ecológico y la Protección al Ambiente* (General Law on Ecological Equilibrium and Environmental Protection). |
| **LAN** | *Ley de Aguas Nacionales* (National Waters Law). |
| **Bárcena–Zeldin MOU** | Memorandum of Understanding between the Governments of Mexico and the United States on border water, signed by the Minister of Environment and Natural Resources, Alicia Bárcena Ibarra, and the Administrator of the EPA, Lee Zeldin, on 24 July 2025. Represents the highest political commitment of both governments in relation to the transboundary wastewater problem. |
| **NOM-001-SEMARNAT-2021** | Mexican official standard establishing the maximum permissible limits of pollutants in wastewater discharges into receiving bodies owned by the nation. Technical and legal parameter that determines the legal threshold of Article 6 of the LFRA and the conditions of CESPT's discharge permits issued by Conagua. |

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| ***Principium Cardinale* of Mexico**[ix] | Strategic designation describing the admission of responsibility, or of failure to enforce environmental law, that San Diego Coastkeeper seeks to extract from the Government of Mexico through Mexico's own instrument of defence. That admission has not been made in any paragraph of this Party Response, and will not be made at any subsequent stage of these proceedings. |
| ***Principium Cardinale* of the Submitter** | Strategic designation describing the true economic motive behind Submission SEM-26-002, documented by the terms of the Settlement Agreement entered into by San Diego Coastkeeper with Veolia and the IBWC. The *Principium Cardinale* of the Submitter is the obtaining of fees and reputational benefits without addressing the environmental problem of the Tijuana River. |
| ***Principium Cardinale* of the Secretariat** | Strategic designation describing the CEC Secretariat's overreach in adopting the Submitter's narrative without requiring the evidentiary burden standard of Article 24.27(3) and in expanding, on its own motion, the scope of the analysis in DET1 and DET2 beyond what the original Submission raised. |
| [redacted] | [redacted] |
| **Profepa** | *Procuraduría Federal de Protección al Ambiente* (Office of the Federal Attorney for Environmental Protection)—federal environmental inspection and oversight authority. |
| **PTAR SAB** | *Planta de Tratamiento de Aguas Residuales San Antonio de los Buenos* (San Antonio de los Buenos Wastewater Treatment Plant)—CESPT wastewater treatment infrastructure in Tijuana. Phase 1 was completed in 2024 with an investment of MXN 791 million, significantly increasing regional treatment capacity. |
| **SBIWTP** | South Bay International Wastewater Treatment Plant—wastewater treatment plant owned and operated by the IBWC, located on the United States side of the border; it receives and treats flows from Tijuana through the International Collector. |
| **SEM** | Submissions on Enforcement Matters—Mechanism for Submissions on the Effective Enforcement of Environmental Legislation in |

[ix *Principium Cardinale* ("cardinal principle") is not a term of art in law, Latin or otherwise; it is coined by the Response, which uses it in three distinct constructions — *Principium Cardinale* of Mexico, of the Submitter, and of the Secretariat — each defined in its glossary.]

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| | environmental Matters [sic][x] established in Articles 24.27 and 24.28 of USMCA/CUSMA. |
| **SEM-26-002** | File number of the citizen submission filed by San Diego Coastkeeper with the CEC Secretariat in 2026. |
| **Semarnat** | *Secretaría de Medio Ambiente y Recursos Naturales* (Ministry of Environment and Natural Resources). |
| **Settlement Agreement** | Settlement agreement entered into by San Diego Coastkeeper with Veolia Water North America Operating Services, LLC, and the IBWC, which brought to an end the litigation commenced by Coastkeeper in the United States federal courts. Documented terms: payment of legal fees and litigation costs in a total amount of USD 494,945.33 in favour of Coastkeeper; publications on X (formerly Twitter) and other social media platforms. Absence of any obligation of environmental remediation on the part of the Government of the United States of America in respect of the Tijuana River problem, of infrastructure investment, of sanction for environmental damage, or of an ecological restoration fund. |
| **T-MEC[xi]** | Agreement between Mexico, the United States and Canada, in force since 1 July 2020. Chapter 24 on the Environment; USMCA in English. |
| **Veolia** | Veolia Water North America Operating Services, LLC—contractor operating company of the IBWC, responsible for the operation of the South Bay International Wastewater Treatment Plant on the United States side of the border during the relevant period. |

## LIST OF ANNEXES

The following Annexes accompany this Party Response in hard copy and digital form. Each Annex substantiates the statements of fact contained in the body of this Response in accordance with the references indicated. Mexico reserves, as the case may be, the right to file supplementary Annexes at any subsequent stage of the proceedings.

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| **ANNEX A** | **IBWC MINUTES NOS. 328 AND 333.**<br><br>Minute 328 of the International Boundary and Water Commission, Mexico–United States (19 July 2022): establishes the bilateral |

[x The English name of the mechanism, "Submissions on Enforcement Matters," is the authentic title of Article 24.27.]

[xi As noted above, this translation uses USMCA/CUSMA throughout, in accordance with CEC practice, but retains the original Response's Spanish abbreviation here for alphabetic utility.]

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| | investment commitment of approximately USD 144 million for wastewater treatment infrastructure in the Tijuana–San Diego border region.<br><br>IBWC Minute 333 (15 December 2025): 13 specific bilateral resolutions; creation of the permanent Mexico–United States Working Group for the transboundary wastewater problem. |
| **ANNEX B** | **SAN DIEGO COASTKEEPER FILE**<br><br>**Complaint**<br><br>Exhibit 1 – Effluent Limitation Violations<br>Exhibit 2 – Reporting Violations<br>Exhibit 3 – Late Monitoring Reports<br>Exhibit 4 – Bacteria Violations<br>Exhibit 5 – Transboundary & Spill Event Monitoring<br>Exhibit 6 – Transboundary & Spill Event Bacteria Monitoring<br><br>**Settlement Agreement** |
| **ANNEX C** | **BÁRCENA–ZELDIN MOU**<br>Memorandum of Understanding between the Government of the United Mexican States and the Government of the United States of America on border water, signed on 24 July 2025. Document evidencing the highest level of bilateral political commitment in relation to the wastewater problem in the Tijuana–San Diego border region. |
| **ANNEX D** | **COMPILATION OF THE APPLICABLE LEGAL FRAMEWORK.**<br>Texts in force of:<br><br>CPEUM<br>LGEEPA<br>LAN<br>CPF<br>NOM-001-SEMARNAT-2021 |
| **ANNEX E** | **Profepa–FGR Agreement.**<br><br>Framework of inter-institutional coordination between Profepa and the then PGR (now FGR) for addressing environmental offences; demonstrates the existence of operational institutional channels for the referral of criminal matters. |

**PARTY RESPONSE OF MEXICO PURSUANT TO ARTICLE 24.27(4) OF USMCA/CUSMA**

## I. INTRODUCTION

### A. The Government of Mexico does not appear in order to justify itself: it appears in order to demonstrate the inadmissibility of the Submission, the effectiveness of the effective enforcement of its environmental law, and the Submitter's true purpose

1. The Government of the United Mexican States—hereinafter "Mexico"—files this Party Response with the Secretariat of the Commission for Environmental Cooperation—hereinafter the "Secretariat"—pursuant to Article 24.27 of the Agreement between Mexico, the United States and Canada—hereinafter "USMCA/CUSMA"—and in accordance with the Guidelines issued by the Secretariat for the processing of citizen submissions on environmental matters. This Response is filed in respect of Submission SEM-26-002—hereinafter "the Submission"—filed by San Diego Coastkeeper—hereinafter "the Submitter" or "Coastkeeper"—in relation to wastewater management in the municipality of Tijuana, Baja California, Mexico.

2. From the very first paragraph of this Response, Mexico states with complete clarity and without ambiguity the governing principle that is to guide the reading of it as a whole: Mexico does not appear before the Secretariat in order to justify itself for omissions that do not exist, to admit responsibilities it has not incurred, or to validate a narrative that was strategically constructed in order to extract—from the Mexican State's own instrument of reply—precisely that which, before the courts of the United States of America, it was decided by common agreement among San Diego Coastkeeper, the International Boundary and Water Commission (IBWC), the United States federal authority responsible for the transboundary wastewater infrastructure, and Veolia North America, the private operator of the South Bay International plant: to resolve its environmental claims by means of legal fees and social media posts, voluntarily waiving obtaining [sic]. Mexico appears in order to exercise its right of reply with the fullness that CUSMA accords it, and to demonstrate, with exhaustive documentary evidence and with legal argument grounded in the text of the Agreement itself, three fundamental truths that this Response develops in full in each of its sections:

3. **The first truth is that Submission SEM-26-002 does not satisfy the admissibility requirements established in Article 24.27(3) of CUSMA** and that, consequently, the Secretariat ought to have terminated it before considering whether to request the Government of Mexico to file a Party Response.

4. The specific grounds of inadmissibility are: the absence of any genuine exhaustion of domestic remedies in the United States, since the Settlement Agreement entered into by San Diego Coastkeeper with Veolia and the IBWC constitutes a voluntary abandonment of the natural proceeding by way of an economic settlement, and not the exhaustion of remedies required by Article 24.27(3)(c), particularly in Mexico, that is to say, having recourse to the remedies available to private persons under Mexican law; and the failure to establish *prima facie* a persistent pattern of omissions in the effective enforcement of Mexican environmental law, since the Submitter's assertions are general, decontextualized and methodologically deficient within the terms of Article 24.27(3)(e)

[sic];[xii] the nature of the problem as a binational matter involving actors, infrastructure and responsibilities of the United States of America, which the Submitter chose deliberately to omit from its narrative; and the use of the SEM mechanism as an instrument of forum shopping, contrary to the purpose and the design of Article 24.27 of CUSMA.

5. **The second truth is that Mexico has effectively and consistently enforced its environmental law in the matter of wastewater in the Tijuana region** through its competent authorities, in full exercise of the powers assigned to them by the Mexican constitutional and legal design, and within the framework of the scheme of bilateral cooperation with the United States of America that the two governments have built and kept active through the International Boundary and Water Commission.

6. The effective enforcement of Mexican environmental law is not a rhetorical assertion: [redacted] in the completion of Phase 1 of the San Antonio de los Buenos Wastewater Treatment Plant with an investment of [redacted], and in the bilateral investment commitments of approximately USD 144 million for Mexico established in IBWC Minute 328. This evidence, developed exhaustively in Section III.B, destroys at its foundation the premise of total omissions on which the Submitter built its narrative.

7. It should be emphasized that the LGEEPA has been effectively and continuously enforced by Semarnat, Conagua and Profepa—as is demonstrated in Section II.D of this Response.

8. **The third truth is that Submission SEM-26-002 does not pursue the remediation of, and attention to, the Tijuana River problem that it documented at length in its complaint against United States authorities.** It pursues an admission by the Government of Mexico of the exclusive responsibility which—as is a matter of public record—San Diego Coastkeeper voluntarily decided, in the Settlement Agreement coordinated with the IBWC and Veolia, not to require of the actors within United States jurisdiction—Veolia and the IBWC—and which the Submitter itself chose not to obtain through its domestic litigation.

9. **It is a matter of public knowledge that San Diego Coastkeeper litigated for years in the United States federal courts the same environmental problem that it now brings before the Secretariat, identified in that litigation actors within United States jurisdiction as the principal responsible parties, and obtained as the final outcome of that litigation a Settlement Agreement limited to the payment of its legal fees and to the making of posts on X—formerly Twitter—and other social media platforms,** with no measure of environmental remediation on this matter, no investment in infrastructure, no ecological restoration fund, and, ironically, "learning of information that could significantly impact Facility operations (for example, unexpectedly high flows originating in Mexico that might impact the canyon-collector system)." This evidence,

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[xii There is no Article 24.27(3)(e) of USMCA/CUSMA.]

developed in Section II.B of this Response, establishes a pattern of conduct that the Secretariat cannot disregard in assessing the good faith and the admissibility of the Submission.

10. The Mechanism for Submissions on the Effective Enforcement of Environmental Legislation [sic] established in Articles 24.27 and 24.28 of CUSMAis a valuable instrument of the trinational environmental cooperation architecture that Mexico, the United States and Canada built. Its value as an instrument of environmental transparency and accountability, in light of the trade–environment relationship, is real, and Mexico recognizes it without reservation.

11. Precisely because that value exists, and because it must be preserved for the future of environmental cooperation in North America (Canada, the United States and Mexico), its integrity requires that it not be instrumentalized as a platform for forum shopping—in this particular case by San Diego Coastkeeper, which, having exhausted its options in the administrative and judicial instances of the United States of America, has recourse to the SEM process as a mechanism for extracting admissions of responsibility on a matter that its own country has not fully addressed—and that it not be turned into a substitute for the judicial proceedings that the Submitter has already attempted and abandoned on terms unfavourable to the environment and, at the same time, particularly convenient for San Diego Coastkeeper's economic interests.

12. The use of the SEM mechanism for these ends does not harm Mexico in the particular case alone: it erodes once again the credibility of the mechanism for all its future legitimate users.

13. This Response will further demonstrate that the CEC Secretariat, in its Determinations DET1 and DET2, adopted the Submitter's narrative without requiring of it the minimum evidentiary burden standard that Article 24.27(3) of USMCA/CUSMA establishes as a condition of admissibility; once again expanded the scope of its analysis beyond the assertions specifically contained in the original Submission, in an overreach of its powers that has no foundation in Article 24.27 of USMCA/CUSMA; and fell into the inconsistency of implicitly recognizing the transboundary nature of the Tijuana River problem without drawing from that recognition the procedural consequences that follow—the request to the United States for information on the conduct of the IBWC, the EPA and Veolia, and the assessment of the Settlement Agreement as a relevant element for the determination of the admissibility of the Submission.

14. Mexico objects to these determinations on the terms developed in Sections III.A.v [sic] and IV of this Response, and reserves all rights and remedies available to it under USMCA/CUSMA and applicable international law.

**B. Legal logic of this Party Response**

15. **Mexico will reveal in this Party Response that the Submitter did not act in good faith in constructing its narrative and that the Secretariat did not maintain the neutrality its mandate requires of it in assessing the admissibility of that narrative.**

16. **Mexico rejects the Submitter's frame of reference as the point of departure for the analysis**, sets out the conditions under which the Submission was formulated, establishes

the Submitter's true purpose, denounces the Secretariat's overreach, and demonstrates in the body of this document that it has effectively enforced its environmental law on the terms USMCA/CUSMA requires. Mexico also responds, in Section IV, to each specific assertion in Determinations DET1 and DET2.

17. This Response does not contain, in any of its paragraphs, any admission of responsibility for an omission in the enforcement of Mexican environmental law. It contains no concession that the wastewater problem in Tijuana is an exclusively Mexican problem, or that the Mexican authorities have been solely responsible for any contamination in the border region. It contains no acceptance of the Submitter's narrative as the point of departure for the analysis. And it contains no waiver of the rights and defences that USMCA/CUSMA and international law accord to the Mexican State.

**C. Structure of this Party Response**

18. In order to facilitate the reading and assessment of the arguments contained in this Response, Mexico sets out the structure it follows:

19. **Section II—Background and factual context**—establishes the complete factual picture that the Secretariat must bear in mind in assessing the Submission. This section has four parts: (A) the transboundary nature of the Tijuana River problem and the responsibility of the United States actors that the Submitter deliberately omits; (B) the complete record of San Diego Coastkeeper's litigation in the United States, including the analysis of the Settlement Agreement as evidence of the Submitter's economic purpose and the chronology of the forum shopping; (C) the analysis of Determinations DET1 and DET2, including their genesis, the scope the Secretariat attributed to them and the internal contradictions that affect them; and (D) the documented chronology of Mexico's actions in the matter of wastewater in Tijuana, with a detailed analysis of the actions of Conagua, Profepa and the IBWC.

20. **Section III—Legal Argument**—develops Mexico's three principal arguments in three parts: (A) the inadmissibility of the Submission under Article 24.27(3) of USMCA/CUSMA and the grounds for its termination by the Secretariat; (B) in the alternative, the demonstration that Mexico has effectively enforced its environmental law within the terms of Articles 24.1 and 24.4(2) of USMCA/CUSMA; and (C) the analysis of the Submitter's true purpose and the deficiencies of its own argumentation as an SEM submission.

21. **Section IV—Specific response to each assertion**—responds, using the rebuttal methodology "It is false that…" and "Assuming, without conceding…", to each of the assertions contained in the Secretariat's Determinations DET1 and DET2. This section contains seven subsections identified by the letters A to G, corresponding to the seven principal assertions that Mexico has identified in the Determinations.

22. **Section V—Request**—contains Mexico's formal Request to the Secretariat, with a principal request for termination of the Submission by the Secretariat and four alternative requests in the event, denied, that the Submission proceeds.

23. **Section VI—Conclusion**—summarizes the three fundamental truths that this Response has demonstrated and reiterates Mexico's Request.

24. **Annexes A to E** contain the supporting documentation. Each reference to an Annex in the body of this Response directs the reader to the documentary evidence substantiating the corresponding statement.

## II. BACKGROUND AND FACTUAL CONTEXT

### A. The Tijuana River problem is not exclusively Mexican: the responsibility of the United States actors that San Diego Coastkeeper deliberately omits from its Submission

25. Submission SEM-26-002 presents to the CEC Secretariat a version of the facts relating to the wastewater problem in the border region of Tijuana, Baja California, Mexico, and San Diego, California, United States, that is factually incomplete in a manner that cannot be characterized as inadvertent.

26. **The Submitter constructed its narrative on a governing principle that derives not from the responsibility borne by the United States for technical and infrastructure aspects of addressing the Tijuana River problem, but from the strategic need to find a single responsible party who can be named before the Secretariat: that single responsible party, in Coastkeeper's narrative, is the Government of Mexico and its environmental authorities.**

27. In order to keep that narrative coherent, **the Submitter had deliberately to omit a set of facts that its own judicial filings in the United States documented at length: the responsibility of the United States actors in the transboundary environmental problem** that it now brings before the Secretariat.

28. This deliberate omission is not a minor technical detail: it is the core of the forum shopping argument that Mexico develops in Sections II.B and III.A of this Response. Had the Submitter presented to the Secretariat the same factual picture that it presented to the courts of the United States—including the responsibility of Veolia, the IBWC and the EPA—**the narrative of Mexico's exclusive responsibility would have collapsed at the first admissibility determination.** The omission of those facts was not an error: it was a strategic decision, and the Secretariat cannot assess the Submission without bearing in mind the complete context of the Tijuana River problem, that is to say, the responsibility borne by the Government of the United States, which was documented at length by San Diego Coastkeeper in that country's courts.

#### *i. The architecture of wastewater management infrastructure in the Tijuana–San Diego border region: a binational reality*

29. In order to understand why the wastewater problem in the border region cannot be attributed exclusively to Mexico or to its environmental authorities, it is necessary to understand the architecture of the wastewater management infrastructure in the region, which is, by its very geographic and infrastructural nature, a binational system in which both countries have specific and differentiated responsibilities.

30. On the Mexican side, the Tijuana sewerage system collects the wastewater generated by a population of more than 1.9 million inhabitants (INEGI 2020) and conveys it to the treatment plants located in the municipality, including the San Antonio de los Buenos Wastewater Treatment Plant—PTAR SAB—Phase 1 of which was completed in 2024 [redacted] CESPT, in its capacity as a municipal public entity, operates this system under the discharge permits issued by Conagua with conditions in accordance with NOM-001-SEMARNAT-2021, and under the [redacted], which establishes the corrective trajectory towards full compliance with those conditions.

31. On the United States side, the International Boundary and Water Commission—IBWC—is the operator of the International Collector, a wastewater collection system that crosses the border and conveys flows originating in Tijuana to the South Bay International Wastewater Treatment Plant—SBIWTP—located in the municipality of San Diego, California. The IBWC administers this system in accordance with the binational commitments established in the 1944 Water Treaty and in the Minutes of the IBWC. During the period that is the subject of the Submission, Veolia Water North America Operating Services, LLC—Veolia—was the IBWC's contractor operator for the operation of the SBIWTP.

32. This binational architecture means that any honest analysis of the wastewater problem in the region must consider the contribution of both systems—the Mexican and the United States—to the contaminant flows that at certain times reach the coasts of San Diego. Operational failures of the International Collector—overflows, line ruptures, insufficient capacity—and deficiencies in the operation of the SBIWTP contribute materially to the contamination episodes that the Submitter describes in its narrative. This reality—which the Submitter deliberately removed from its narrative before the Secretariat—does not alter the solid catalogue of actions that Mexico has implemented in full exercise of its powers and in compliance with its environmental law, documented exhaustively in Section II.D of this Response. What Mexico denounces is that the Submitter deliberately removed the United States dimension of the problem from its narrative before the Secretariat.

*ii. The United States actors: IBWC, Veolia and EPA—what Coastkeeper documented before its own courts and omitted before the Secretariat*

33. The best evidence of the United States dimension of the wastewater problem in the border region does not come from the archives of the Government of Mexico or from the records of Conagua or Profepa. It comes from the very judicial filings that San Diego Coastkeeper made before the United States federal courts in the litigation it commenced against Veolia and the IBWC.

34. In those filings—which form part of Annex B accompanying this Response—the Submitter documented and argued in detail and on technically sound grounds the responsibility of the United States actors in the transboundary wastewater problem. Mexico does not need to construct this narrative: the Submitter has already constructed it, and did so with the depth and rigour that litigation before the United States federal courts demands.

35. Specifically, in the filings contained in Annex B, Coastkeeper documented before the courts of the United States the following realities, which mysteriously disappear from Submission SEM-26-002:

In the first place, Coastkeeper documented before the United States courts that discharges of untreated or insufficiently treated wastewater from the infrastructure operated by Veolia under its contract with the IBWC regularly reached the coasts of San Diego, California, causing the same environmental and public health impacts that Coastkeeper today describes in its Submission SEM-26-002. That showing was made by the Submitter with technical measurements, water quality reports and expert testimony: **the same type of evidence that it did not present to the Secretariat when it pointed to Mexico.**

In the second place, Coastkeeper went about documenting before the United States courts that **the IBWC, as owner of the International Collector and SBIWTP infrastructure, was failing to comply with its obligations to operate and maintain that infrastructure**, including the preventive and corrective maintenance of the International Collector, whose failures—overflows, ruptures, insufficient capacity in periods of rainfall—contributed directly to the documented contamination episodes.

In the third place, Coastkeeper documented in its United States litigation that the EPA, in its capacity as the United States federal regulatory authority with jurisdiction over environmental infrastructure in California, was aware of the operational deficiencies of the SBIWTP and of the International Collector and had not adopted the corresponding corrective measures within the reasonable periods established by its own regulations.

36. None of these facts—the responsibility of Veolia and the responsibility of the IBWC—is mentioned in Submission SEM-26-002. The Submitter is perfectly well aware of them: it documented them itself in its litigation in the United States. It nevertheless chose to present to the CEC Secretariat a version of the facts in which the United States actors—who in the domestic litigation were the principal responsible parties—do not exist. **This narrative inconsistency between what Coastkeeper said in the courts of the United States and what it says in Submission SEM-26-002 is, in itself, sufficient to call into question the Submitter's good faith and the soundness of the factual basis of its Submission.**

37. The Secretariat, as the impartial technical organ of the CEC, cannot assess Submission SEM-26-002 solely on the basis of the factual picture that the Submitter chose to present to it. It is obliged to consider the complete factual picture, including the information that the Submitter itself produced in judicial proceedings, which are a matter of public and well-known record to which the Secretariat has access (Annex B and the San Diego Coastkeeper website), and which it may, as the case may be, verify directly with the United States through the CEC's cooperation mechanisms.

*iii. Article 24.4(4) of USMCA/CUSMA as a structural limit on the SEM mechanism in the binational context*

38. The binational nature of the Tijuana River problem is not merely a factual argument: it has direct legal consequences for the scope of the SEM mechanism and for the Secretariat's powers in this case. Article 24.4(4) of USMCA/CUSMA provides clearly

that no provision of Chapter 24 of the Agreement authorizes a Party to enforce its environmental law in the territory of another Party. That provision is an expression of the general principle of territorial sovereignty that is constitutive of public international law: States are sovereign in their own territories, and no international mechanism may be used to impose the enforcement standards of one State's legislation on another State without its consent.

39. Coastkeeper's claim, in its most candid formulation, is that the CEC Secretariat should declare that Mexico must enforce its environmental law in a manner more consistent with United States regulatory and coercive enforcement expectations in environmental matters. That claim, however it is formulated, amounts to seeking to have the environmental law enforcement standards of the United States—or the standards that a United States citizens' organization considers appropriate—imposed on the Mexican State through the SEM mechanism. This is precisely what Article 24.4(4) of USMCA/CUSMA prohibits.

40. Mexico is entitled, under Article 24.4(2) of USMCA/CUSMA, to select the instruments for the enforcement of its environmental law that it considers appropriate in accordance with its legal framework, its environmental policy priorities and its allocation of resources. This sovereign prerogative cannot be displaced by Coastkeeper's judgment or by the Secretariat's conclusions where these are based on standards external to the Mexican legal framework and to USMCA/CUSMA. The SEM mechanism is an instrument of transparency and accountability within the framework of USMCA/CUSMA: it is not a mechanism for one country to impose environmental policies on another.

**B. San Diego Coastkeeper: the complete record of a Submitter that sought from this mechanism what it did not resolve in its own courts although it was able to do so**

41. In order to understand the true purpose of Submission SEM-26-002, it is essential to examine San Diego Coastkeeper's complete record in relation to the wastewater problem in the Tijuana–San Diego border region. That record, established in Annex B accompanying this Response, reveals a pattern of organizational conduct that cannot be disregarded in assessing the Submitter's good faith in the context of the SEM mechanism: San Diego Coastkeeper is an organization with a documented history of strategic litigation which, **having exhausted its judicial options before the courts of the United States, took a documented strategic decision, voluntarily choosing—in coordination with the IBWC and Veolia—financial compensation and institutional image, sacrificing attention to the environmental problem that its own complaints described as urgent on the part of the United States,** and had recourse to the SEM mechanism for the specific purpose of obtaining from the Government of Mexico what its own judicial system "did not resolve", because San Diego Coastkeeper so decided.

*i. San Diego Coastkeeper's business model: litigation as an instrument of advocacy and of organizational funding*

42. It is a matter of public knowledge that San Diego Coastkeeper is an environmental advocacy organization based in San Diego, California, United States, which operates under the organizational model of citizen environmental litigation organizations in the

United States. That model, which is legitimate and has produced positive environmental results in numerous contexts, is based on the bringing of civil complaints and suits under United States federal and state environmental legislation—principally the Clean Water Act and the citizen suit provisions that allow citizens' organizations to sue entities that fail to comply with their environmental obligations—with the consequence that, where the litigation produces a favourable judgment or a settlement, the plaintiff is entitled to payment of its legal fees by the defendant. It should be noted that one of the elementary requirements governing the citizen suit provisions system is that the court's decision or judgment be genuinely capable of resolving or compensating the harm (redressability), a situation that did not even arise in the suit in question and that the Settlement Agreement did not contemplate in any of its lines.

43. This model has a structural consequence that is relevant to the assessment of Submission SEM-26-002: **the organization's financial success is linked to active litigation and to the obtaining of settlements, or as the case may be judgments, that include the payment of fees, not necessarily to the clean-up of the Tijuana River.** An organization that obtains a settlement in which the opposing party pays its legal fees has achieved its financial objective, irrespective of whether that settlement includes any real clean-up measures. Mexico does not make this observation in order to call into question the legitimacy of Coastkeeper's organizational model: it does so in order to place the Settlement Agreement in context and to explain why its terms are the most powerful evidence of the true purpose of Submission SEM-26-002.

44. San Diego Coastkeeper's financial documentation, available in its public Annual Reports, allows the nature of the business model described to be established with documentary precision. This evidence is not speculative: it comes from the very documents that the organization presented to its donors and to the public at large.

45. San Diego Coastkeeper's 2021 Annual Report reveals that its most senior officer, Matt O'Malley, holds the dual title of "Executive Director & Managing Attorney" in one and the same person. This duality of functions is not accidental: it reflects the institutional design of an organization whose executive leadership and legal leadership are a single entity, which eliminates any conceptual distinction between the organization's environmental mission and its litigating activity. Litigation is not an instrument in the service of the mission: it is the mission itself.

46. The same 2021 Annual Report records that San Diego Coastkeeper reported total revenue of USD 1,134,222. Of that total, the category "Legal Income" accounts for USD 142,336, equivalent to 13% of the organization's total revenue that year. This is a free-standing line item, separate from the customary philanthropic donations and grants. Its existence as an independent accounting category establishes that litigation generates for the organization a distinct, consistent and budgetable financial flow. An environmental organization that accounts for its legal income as a budget line of its own has structural incentives to keep litigation active, irrespective of whether that litigation produces the clean-up of the Tijuana River.

47. San Diego Coastkeeper's historical litigation record confirms the pattern: from 2016 to the date of filing of Submission SEM-26-002, the organization has commenced 80 cases under the Clean Water Act.

48. Section 505(d) of the Clean Water Act—the so-called "citizen suit provision" [sic] [xiii]—permits the recovery of legal fees by the plaintiff where the court considers it appropriate. That provision is the legal foundation of Coastkeeper's revenue model and explains why, of the 80 cases filed in less than ten years, in the case before us no equivalent infrastructure investment was generated: the financial objective was achieved with the settlement, before the determination of environmental remediation or reparation could even be explored in depth.

49. San Diego Coastkeeper's 2022 Annual Report provides the most revealing evidence of the structural imbalance between litigation and environmental effectiveness: in that year the organization commenced 10 new suits under the Clean Water Act and won 3 concluded cases, while its operational records of direct environmental impact record zero (0) clean-up events and zero (0) pounds of refuse removed. This disparity between the intensity of the litigation—10 new complaints in a single year—and the absence of any direct Tijuana River clean-up activity—zero clean-up events—requires no further inference: the organization's own documents demonstrate that litigation and the clean-up of the Tijuana River are activities that, in its organizational model, operate independently of one another, not as means and end.

50. This documentary evidence—O'Malley's dual title, Legal Income as a free-standing accounting category, the 80 CWA cases, the USD 650,000+ in settlements and the 2022 metrics of zero direct environmental impact—does not permit the proposition that the SEM mechanism of USMCA/CUSMA is the natural forum for Coastkeeper's claims. It permits exactly the opposite proposition: that the SEM mechanism is, for this particular organization, a complementary instrument of its litigation strategy, chosen because it offers what it did not obtain in its own courts, having discontinued its suit there: the declaration of responsibility of a sovereign government, without the cost of litigation on the merits and without the obligation to demonstrate environmental damage with the methodological rigour that the courts of the United States would require.

*ii. The litigation in the United States federal courts: years of proceedings, technical documentation of United States responsibility, and a final outcome disappointing for the environmental claims*

51. San Diego Coastkeeper commenced litigation before the United States federal courts against Veolia Water North America Operating Services, LLC, in its capacity as the IBWC's contractor operator for the operation of the South Bay International Wastewater Treatment Plant, and against the IBWC itself as the entity responsible for the wastewater treatment infrastructure on the United States side of the border. That litigation, which unfolded over a prolonged period, was litigation on the merits of the transboundary

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[xiii The citizen suit provision of the Clean Water Act is section 505 as a whole (33 U.S.C. § 1365). Subsection 505(d) is the costs provision.]

wastewater problem in the Tijuana–San Diego region, not preliminary or merely interim litigation.

52. In the course of that litigation, Coastkeeper made significant investments of time, legal resources and investigative capacity in order to document the environmental problem and the responsibility of Veolia and the IBWC. The filings it made before the courts of the United States—which are contained in Annex B and which are documents of the United States judicial proceeding accessible to the public—contain a technically and legally grounded narrative concerning the responsibility of the United States actors in the contamination episodes in the border region.

53. It is particularly relevant to note that in that litigation **Coastkeeper identified Veolia and the IBWC—not Mexico or its environmental authorities—as the principal parties responsible for the environmental impacts documented on the coasts of San Diego.** That identification was the foundation of the specific legal claims that Coastkeeper formulated in its complaint and maintained throughout the litigation.

54. **Coastkeeper was then—and is today—fully aware that the wastewater problem in the border region involves actors and responsibilities of the United States of America.** The exclusion of the United States actors from Submission SEM-26-002 is a deliberate strategic decision, which the Secretariat omitted, or failed to notice that it should, to assess before admitting it.

*iii. The Settlement Agreement: definitive proof of the economic purpose and of the failure of the substantive environmental claims*

55. Coastkeeper's litigation against Veolia and the IBWC did not conclude by a judicial decision on the merits of the matter. It concluded by a Settlement Agreement—a transactional agreement—negotiated between the parties in the analysis of the merits of the case. The text of that Settlement Agreement, contained in Annex B, is eloquent not only for what it contains but, fundamentally, for what it does not contain.

56. **The Settlement Agreement DOES contain:** the payment of San Diego Coastkeeper's legal fees by the defendant entities; undertakings by Veolia and the IBWC to make posts on X—formerly Twitter—and other social media platforms concerning the wastewater problem; certain formal undertakings as to transparency and public communication that have no binding effect in terms of cleaning up the Tijuana River, by way of example: "learning of information that could significantly impact Facility operations (for example, unexpectedly high flows originating in Mexico that might impact the canyon-collector system)".

57. **The Settlement Agreement does NOT contain:** any obligation to invest in wastewater treatment infrastructure; any fund for the environmental restoration of the coasts of San Diego or of the affected ecosystems; any pecuniary sanction for the environmental damage that Coastkeeper documented in its complaint; any clean-up order for the contaminated water bodies; any binding environmental monitoring program with financial responsibilities for Veolia or the IBWC; any formal acknowledgement of

responsibility by the defendant entities; any compensation for the affected communities or ecosystems.

58. The gap between the gravity of the environmental impacts that Coastkeeper documented in its complaint—damage to the coasts of San Diego, contamination of water bodies, public health impacts, harm to coastal ecosystems—and the total absence of any Tijuana River clean-up measure in the Settlement Agreement that brought that litigation to an end is profoundly revealing of the organization's true purpose.

59. **A litigant genuinely pursuing the environmental remediation or reparation of the damage it documented in its complaint would not have accepted a settlement that does not include a single peso of clean-up of the Tijuana River. A litigant whose primary objective is the obtaining of financial resources for its organization—fees, publicity, positioning—would have accepted exactly the type of agreement that Coastkeeper entered into.**

60. Mexico does not assert that the members or officers of San Diego Coastkeeper lack genuine environmental concern for the Tijuana River problem and the coasts of San Diego. It is perfectly possible that that concern is real. What Mexico does assert, on the basis of the objective terms of the Settlement Agreement, is that **when Coastkeeper had to choose between remediation and legal fees, it chose the fees.** That choice is revealing of the purpose of Submission SEM-26-002.

*iv. The chronology of forum shopping: how the SEM Submission follows chronologically upon the failure of the domestic litigation*

61. The concept of forum shopping describes the practice of a party which, having obtained an unsatisfactory result in the forum initially chosen, **has recourse to an alternative forum in search of the result that the first forum did not grant it.** Forum shopping is a practice generally recognized as contrary to the principles of procedural good faith and of economy of law in most international legal systems. The SEM mechanism of USMCA/CUSMA, by its design, was not conceived as a means of providing an alternative forum to submitters who have exhausted their options in the natural forum.

62. The chronology of events in Coastkeeper's case is illustrative of the forum shopping pattern:

**First stage—Litigation before the United States federal courts:** Coastkeeper identifies the wastewater problem in the border region, commences civil litigation against Veolia and the IBWC as the actors within United States jurisdiction whom it considers responsible, and maintains that litigation for years, in the course of which it invests significant legal resources. At this stage, the responsible parties identified by Coastkeeper are actors within its own jurisdiction. Mexico does not appear in the litigation as a defendant, as a responsible party or as an interested party.

**Second stage—Settlement Agreement:** The litigation concludes by way of a settlement. The outcome is the payment of Coastkeeper's fees and undertakings to make social media posts. There is no clean-up of the Tijuana River. There is no formal acknowledgement of responsibility. Coastkeeper has obtained its financial result but

has not secured any commitment to invest in infrastructure or to correct the environmental damage it documented in its complaint. At this stage, the litigation is over and the natural forum has produced its result.

**Third stage—Submission SEM-26-002:** At a date chronologically convenient for Coastkeeper to reach a Settlement Agreement with the United States authorities—which is the moment at which the domestic forum was definitively closed—Coastkeeper files Submission SEM-26-002 with the CEC Secretariat. The responsible party in the narrative of the Submission is no longer Veolia or the IBWC: it is the Government of Mexico. The environmental problem that Coastkeeper describes is substantially the same as the one it litigated in the courts of the United States. **The forum is different; the designated responsible party has changed; the strategic objective is identical: that someone admit responsibility and undertake to adopt measures that Coastkeeper can present as an achievement of its environmental activism.**

63. Article 24.27(3)(c) [sic] of USMCA/CUSMA provides that the submission must relate to a matter that is not "pending before a judicial or administrative proceeding" [sic] and that the Submitter must have pursued the remedies available in the national forum. The interpretation of this requirement in the context of forum shopping must be consistent with the purpose of the SEM mechanism: **the requirement of exhaustion of domestic remedies cannot be satisfied by the voluntary abandonment of the natural proceeding by way of a settlement** that the Submitter entered into on terms it considered sufficiently favourable to its immediate economic interests but insufficient for its substantive environmental claims.

64. Genuine exhaustion of the domestic forum means having pursued the available remedies to their natural conclusion, or having obtained in that forum the determination on the merits that justifies seeking an international remedy.

65. **Obtaining fees by way of a Settlement Agreement is not exhaustion of the domestic forum: it is abandonment of the domestic forum on terms acceptable to the Submitter from a financial standpoint.**

66. The admission of Submission SEM-26-002 on the basis of this kind of exhaustion would create a profoundly negative precedent for the integrity of the SEM mechanism: it would open the door for any person of the United States to file submissions with the CEC Secretariat after having entered into settlements in their domestic jurisdictions, using the SEM mechanism as a second instance not provided for in USMCA/CUSMA in order to obtain what the natural forum did not grant them.

## C. The Secretariat's Determinations: genesis, scope and their own internal contradictions

67. Mexico acknowledges the CEC Secretariat's power to issue admissibility determinations and to assess Party Responses within the framework of Article 24.27 of CUSMA. This Response does not dispute the existence of those powers. What Mexico calls into question is the scope and the specific content of Determinations DET1 and DET2 in the present case, for the reasons developed in the paragraphs that follow and in Section III.A.v [sic] of this Response.

*i. Determination DET1: the Secretariat adopted Coastkeeper's narrative without requiring the Minimum Evidentiary Burden Standard that Article 24.27 requires*

68. Although in Determination DET1 the Secretariat did not consider Submission SEM-26-002 admissible, and for that reason requested a Revised Submission from San Diego Coastkeeper, the fact remains that this conclusion was arrived at by adopting the Submitter's factual narrative as the point of departure for the analysis, without requiring the Submitter to adduce evidence that, in itself and with the necessary methodological rigour, established the existence of the pattern of omissions that Article 24.27 of CUSMA establishes as a requirement of admissibility.

69. Article 24.27 of CUSMA is not a gateway that may be passed through easily: it establishes the admissibility requirements whose specific function is to filter out submissions that do not meet the standard of seriousness and substantiation that the mechanism demands. The premise established by Article 24.4(1) in relation to Article 24.27 of CUSMA—the establishment of a persistent pattern of omissions in the effective enforcement of environmental law in light of its relationship to trade—is the most demanding of these requirements, because it is the one that determines whether the submission has a sufficient factual basis to justify the investment of the resources of the Secretariat and of the Council in analysing it, and to justify the costs—political, legal, diplomatic and governance costs—that the development of a factual record imposes on the Party named.

70. Moreover, the Secretariat did not require Coastkeeper to establish the specific causal link between the alleged omissions in the effective enforcement of environmental law by the Mexican authorities and their relationship to effects on trade as Chapter 24 of CUSMA provides, nor did it consider **the responsibility borne by the United States for the conduct of the IBWC, the EPA and Veolia as part of the admissibility assessment.**

71. Instead, leaving aside the elements it indicated to the Submitter were to be remedied in the Revised Submission, the Secretariat adopted the Submitter's narrative as sufficient: it described the facts in the terms in which Coastkeeper presented them and, implicitly, by requesting a Party Response from the Government of Mexico, afforded an opportunity for the alleged existence of the pattern of omissions to be analysed, in respect of a Submission that from the outset ought not to have advanced to the procedural stage at which we now find ourselves.

72. This uncritical adoption of the Submitter's narrative constitutes, in Mexico's view, an overreach by the Secretariat in the exercise of its powers of admissibility determination and a departure from the standard of objectivity and impartiality that Article 24.27 of CUSMA requires of the Secretariat in exercising those powers.

*ii. Determination DET2: the Secretariat expanded the scope of the analysis beyond the assertions of the original Submission*

73. In Determination DET2, in addition to admitting San Diego Coastkeeper's Submission for processing on the basis of an analysis with grave procedural and substantive deficiencies, the Secretariat also **expanded the scope of its analysis to include**

**assertions and dimensions that were not contained in the original Submission** filed by Coastkeeper.

74. This expansion of the scope of the analysis on the Secretariat's own motion represents a second overreach by the Secretariat in the present case. The SEM mechanism was designed as a mechanism for a Party Response to the Submitter's specific assertions: the Party is entitled to know, from the outset of the proceeding, what the specific assertions are to which it must respond, and the Secretariat is under an obligation to confine itself to those "original" assertions in assessing the Party Response. The expansion of the assertions by the Secretariat on its own motion constitutes an open violation on its part of the original text of Article 24.27 of CUSMA.

75. **Mexico is not obliged to respond to assertions that were not contained in Coastkeeper's original Submission.** Nevertheless, in the exercise of its right of reply, this Response also addresses those additional assertions, reserving its right to object, as the case may be, to their inclusion in the Secretariat's analysis.

*iii. The institutional paradox: the Submitter from the country that abandoned the CEC activates the SEM mechanism nineteen days later*

76. The analysis of the Secretariat's Determinations cannot be undertaken without considering the institutional context in which they were issued. On 7 January 2026, the Government of the United States announced its withdrawal from 66 international organizations, among them expressly the Commission for Environmental Cooperation (CEC)—the body that provides institutional support for the present proceeding. The United States government publicly characterized these organizations as "wasteful, ineffective, and harmful" to United States interests, a characterization published in the Federal Register (91 Fed. Reg. 2281, January 16, 2026).

77. Nineteen days later, on 26 January 2026, San Diego Coastkeeper filed Submission SEM-26-002 with that same Secretariat which the Government of the Submitter's own country had just characterized as ineffective and harmful to its country's interests.

78. Mexico does not assert that the withdrawal of the United States from the CEC cancels the right of United States persons to file SEM submissions while the formal withdrawal procedures remain unconcluded. What Mexico points out is that this chronology reveals with precision the instrumental nature of the SEM mechanism as it is used in the present case: a tool of pressure that the Submitter's own government characterized as useless when it formally serves genuine environmental cooperation, but which the Submitter activates when it serves its objectives of private strategic litigation.

79. The Secretariat must assess whether this use of the mechanism is compatible with the objectives of Article 24.2 of CUSMA, which requires that submissions contribute to "promoting mutually favourable trade and environmental policies" [sic]—not to the selective instrumentalization of an international mechanism in the service of private economic interests.

80. The Secretariat's conduct warrants Mexico's raising the following questions:

(i) Why did the Secretariat process Submission SEM-26-002 without assessing the implications of the withdrawal of the United States from the CEC sixteen days [sic] before it was filed?

(ii) Why did the Secretariat adopt the Submitter's factual narrative without requiring individualized technical evidence to establish the persistent pattern of omissions that Article 24.27(2)(c) requires? [sic]

(iii) Why did the Secretariat expand the scope of the analysis beyond the original Submission?

(iv) Why did the Secretariat not request information from the United States on the conduct of the IBWC, the EPA and Veolia, given the explicitly transboundary nature of the problem?

(v) How will the Secretariat examine the Settlement Agreement as evidence of the Submitter's true purpose?

81. Irrespective of the analysis the Secretariat may carry out on the content of this Party Response, Mexico considers that the CEC Council should assess whether Determinations DET1 and DET2 are consistent with the standards of impartiality, methodological rigour and adherence to the text of the Agreement that Article 24.27 requires of the Secretariat.

*iv. The environment as a political and commercial instrument: the gray wolf Executive Order and structural environmental asymmetry*

82. On 4 September 2026, the President of the United States signed the Executive Order "Supporting America's Ranchers". That order instructs the Secretary of the Interior to assess within 90 days whether Mexican gray wolves should be removed from the list of endangered species under the Endangered Species Act, makes it easier for ranchers to eliminate wolves affecting their livestock, and presses the states to eliminate their own protections for the species. The scientific context is compelling: there are only approximately 317 Mexican gray wolves in the wild, descended from a mere 7 surviving individuals. A 2025 University of Arizona study concluded that the effect of wolves on livestock sales is "statistically undetectable." The Mexican gray wolf is a transboundary species that is the subject of conservation programs in which Semarnat has participated.

83. The Executive Order on the Mexican gray wolf is, in miniature, the same argumentative structure that Mexico has identified in Submission SEM-26-002: the environment used as an instrument in the service of a specific economic interest. When the environment serves United States ranching interests, the protection of an endangered species is expendable.

84. When the environment serves San Diego Coastkeeper's litigation interests, Mexico's environmental obligations become the object of international scrutiny. **This selectivity in the use of environmental discourse—deploying environmental protection when it is convenient and abandoning it when it is not—is exactly what Article 24.2 of CUSMA sought to prevent** by requiring policies "mutually favourable" [sic] to trade and the environment.

85. The complete map of this selectivity must be taken into account by the Secretariat: the government of the Submitter's country withdrew the United States from the Paris

Agreement (20 January 2025); ordered its government's withdrawal from the CEC on 7 January 2026, characterizing it as ineffective; signed the Executive Order on the gray wolf on 4 September 2026; and in none of these acts did it invoke Article 24.2 of CUSMA or the objectives of trilateral environmental cooperation. Meanwhile, an organization from that same country activated the SEM mechanism in order to accuse Mexico of insufficient environmental protection. The CEC Secretariat cannot remain indifferent to this context in assessing whether submission SEM-26-002 genuinely contributes to the objectives of Chapter 24 of CUSMA.

**D. Mexico has effectively enforced its environmental law: documented chronology of concrete actions on wastewater in Tijuana**

86. Against the narrative of total omissions that the Submitter constructed without the individualized and methodologically rigorous technical evidence that Article 24.27 of CUSMA requires, Mexico sets out in this section a documented chronology of concrete actions of effective enforcement of its environmental law in the matter of wastewater in Tijuana.

87. The chronology that Mexico documents in this section covers four dimensions: the actions of Conagua as the primary authority in the matter of discharge permits and water quality monitoring; the actions of Profepa as the federal environmental inspection and oversight authority; investment in wastewater treatment infrastructure; and the framework of bilateral cooperation with the United States through the IBWC. Taken together, these four dimensions establish that Mexico has not engaged in the persistent pattern of omissions that Article 24.27 requires as a condition of admissibility and that, assuming without conceding that the Submission were admissible, Mexico has effectively enforced its environmental law within the terms of Article 24.1 of CUSMA.

*i. Conagua's actions: permits, conditions, [redacted] and continuous monitoring*

88. The National Water Commission is the primary federal authority in the matter of concessions and wastewater discharge permits under Article 88 of the National Waters Law. In the exercise of that competence, Conagua has taken the following concrete actions in relation to CESPT's discharges in the municipality of Tijuana, Baja California, during the period that is the subject of the Submission:

[redacted] As regards discharge permits, [redacted]

[redacted]

*ii. Profepa's actions: [redacted] inspections in the 2022–2026 period, referral to the competent authority, and application of the framework of thresholds and jurisdiction*

95. The Office of the Federal Attorney for Environmental Protection carried out [redacted] inspection visits, [redacted] These inspections constitute the continued exercise of the power of inspection and oversight established in Articles 170 to 172 of the LGEEPA and the carrying out of them is, in itself, evidence that Profepa was actively present within the sphere of its competence during the period that is the subject of the Submission.

[redacted]

[redacted]

99. The 2019 public complaint as evidence of effective enforcement: Coastkeeper's own record demonstrates that the Mexican system works. In the revised submission filed on 27 April 2026, Coastkeeper sought to satisfy the requirement of Article 24.27(3)(c) of CUSMA by filing nine documents, among which it included: (i) a public complaint filed in February 2019 by **Mexican** environmental organizations—not by Coastkeeper—with Conagua, concerning the San Antonio de los Buenos WWTP; (ii) Conagua's formal written response to that complaint; (iii) Profepa's formal response to the same complaint; (iv) information from PROPAE (Office for Environmental Protection of the State of Baja California) on 21 complaints processed in 2024–2025 with resulting inspections and administrative proceedings; and (v) information from Profepa on one complaint in process (2025) and three additional inspections. It should be noted that the Submitter did not file a complaint of its own with any Mexican environmental authority: it borrowed the actions of third parties. The Secretariat, in Determination DET2, accepted that body of documents under a very broad standard of reasonableness.

100. What Coastkeeper presented as evidence of a remedy sought is in reality evidence of the correct functioning of the Mexican environmental enforcement system: when Mexican citizens file formal complaints, the Mexican authorities—Conagua and Profepa—respond with written official acts; when inspections are carried out, requirements and corrective measures are issued; when PROPAE processes complaints, it generates administrative proceedings.

101. This chain of actions—complaint, response, inspection, proceeding—is exactly the sequence that Mexican environmental law establishes for the effective enforcement of its rules. **Coastkeeper constructed a standing argument that, by its own internal logic, demonstrates the opposite of what it maintains:** the Government of Mexico does not

fail to enforce its environmental law; it enforces it through the mechanisms that that same law establishes, and generates the administrative record that the law requires.

[redacted]. The circumstance that wastewater treatment infrastructure in Tijuana faces structural technical and financial challenges does not turn those challenges into omissions by the authorities: [redacted]

103. As regards the threshold of environmental liability, Article 6 of the Federal Environmental Liability Law provides that no compensable environmental damage exists where it is not established that the limits set in the applicable NOMs have been exceeded. This legal threshold has a precise legal consequence: in the absence of individualized and methodologically rigorous technical evidence establishing that the parameters of NOM-001-SEMARNAT-2021 have been exceeded in a manner specifically attributable to CESPT's discharges—evidence that the Submitter did not adduce before the Secretariat—compensable environmental liability is not legally constituted, and the legal consequence of the absence of constituted liability is not an omission by the authority: it is the correct application of the legal threshold that the rule of law establishes.

104. As regards criminal liability, Article 416 of the Federal Criminal Code defines the environmental offence of unlawful discharge of wastewater, but makes the constitution of the offence conditional on establishing the unlawfulness of the discharge. [redacted] Article 421 of the Federal Criminal Code, in its subsections I, II and V [sic], defines conduct relating to the discharge of pollutants into bodies of water; those subsections, however, require that a subjective element of intent and the absence of legal authorization be established.

105. None of these elements can be constituted in respect of CESPT: the undertaking operates with a permit in force, under the instrument of assisted compliance provided for in Article 88 Bis of the National Waters Law, and its conduct reflects the explicit intention of progressively bringing itself into line with the regulatory parameters. Article 6 of the Federal Environmental Liability Law confirms this logic: no legally compensable environmental damage exists so long as the operator remains within the parameters authorized by the permit [redacted]

106. In this regulatory context, CESPT's discharge cannot automatically be characterized as unlawful within the terms of Article 416 of the CPF, because it is not a discharge without a permit or in manifest violation of the permit's conditions: it is a discharge under a permit, on a compliance trajectory, under the continuous supervision of Conagua.

107. The principle of *ultima ratio* in criminal law—recognized by the doctrine and the jurisprudence of the Supreme Court of Justice of the Nation, as well as by the applicable international human rights instruments—provides that criminal proceedings are the instrument of last resort, to be applied only where the administrative and civil instruments for the correction of conduct have proved insufficient.

108. [redacted] are precisely the prior instruments that the principle of *ultima ratio* requires to be exhausted before resorting to criminal proceedings. The failure to bring a criminal complaint in this context is not an omission by the authority: it is the correct application of the principles of Mexican criminal law that the rule of law itself imposes.

*iii. Investment in infrastructure: the San Antonio de los Buenos Wastewater Treatment Plant and the Mexican State's capital commitment*

109. Beyond regulatory and inspection actions, Mexico has demonstrated its effective commitment to resolving the wastewater problem in Tijuana through significant capital investment in treatment infrastructure. The most relevant of these investments in the period that is the subject of the Submission is the San Antonio de los Buenos Wastewater Treatment Plant.

110. The San Antonio de los Buenos WWTP—PTAR SAB—is CESPT's principal wastewater treatment infrastructure in the municipality of Tijuana, Baja California. Phase 1 of this plan [redacted] from federal and state public funds. The completion of Phase 1 significantly increased the region's wastewater treatment capacity, reducing the volumes of untreated or insufficiently treated wastewater that may reach the water bodies of the border region (Annex A).

111. The Settlement Agreement contemplates no investment in infrastructure whatever. Mexico, by contrast, has invested public funds on that scale in the real solution of the problem that the Submitter says concerns it. **This asymmetry—the Submitter obtained fees; Mexico invested in infrastructure**—is revealing as to which of the two is genuinely committed to addressing the Tijuana River problem, in which, as San Diego Coastkeeper documented at length and publicly, the United States actors involved bear responsibility.

*iv. Bilateral cooperation: the IBWC–MOU framework as the weightier instrument in the transboundary dimension*

112. Bilateral cooperation between Mexico and the United States on transboundary wastewater in the Tijuana–San Diego region is the element of greatest strategic weight in Mexico's Response. Not because it is the only instrument used—the regulatory and inspection instruments described in the preceding paragraphs are also relevant—but because its existence and continuing force establish, with the authority of the two governments involved at the highest political level, that the wastewater problem in the border region is being addressed through the mechanisms most appropriate to a problem of binational nature: the mechanisms of bilateral cooperation.

113. Minute 328 of the International Boundary and Water Commission, signed on 19 July 2022, establishes a bilateral investment commitment of approximately USD 144 million to Mexico for the construction and improvement of wastewater treatment infrastructure in the Tijuana–San Diego border region (Annex A).

114. The commitment is binational: it involves resources and responsibilities of both countries, recognizes the shared nature of the problem, and establishes a joint implementation mechanism that the SEM mechanism—by its nature—could not generate.

115. IBWC Minute 333, signed on 15 December 2025, contains 13 specific bilateral resolutions on the transboundary wastewater problem and creates the permanent Mexico–United States Working Group for the coordinated management of that problem (Annex A). The creation of a permanent Working Group is a significant institutional innovation reflecting the level of commitment of the two governments to a lasting solution of the problem. It is important to note that IBWC Minute 333 was signed in December 2025, after the principal period covered by the Submission but before the filing of this Response, and that the Submitter does not mention it in any passage of its Submission notwithstanding its direct relevance to the assessment of the effectiveness of the enforcement of Mexican environmental law in the transboundary context.

116. The Bárcena–Zeldin Memorandum of Understanding, signed on 24 July 2025, is the bilateral cooperation instrument of highest political rank in the record of this Response (Annex C). It was signed by the Minister of Environment and Natural Resources and the Administrator of the United States EPA—that is to say, at the highest political level of the two governments in the field—and establishes specific commitments of bilateral cooperation on border water, including the wastewater problem in the Tijuana–San Diego region.

117. The existence of this instrument—signed before the filing of this Response—demonstrates that Mexico's response to the transboundary wastewater problem is being articulated not only through national instruments of regulation and sanction, but also—and principally—through the bilateral mechanism that the transboundary nature of the problem requires: direct cooperation between the two governments at the highest level.

118. The Submitter deliberately chose to ignore in its Submission IBWC Minute 333, the Bárcena–Zeldin MOU, the completion of Phase 1 of the PTAR SAB, and the investment commitments of IBWC Minute 328. This omission was not inadvertent: these are the most relevant instruments, and those of greatest specific weight, in any objective assessment of the effectiveness of the enforcement of Mexican environmental law in the context of the transboundary problem of the Tijuana River. Their deliberate exclusion from the Submission is consistent with the pattern of selective construction of the narrative that Mexico has identified throughout the Submitter's conduct.

**E. Historical and structural context**

119. In order to assess correctly the conduct of the Government of Mexico in the matter of wastewater management in Tijuana, it is essential to understand the historical and structural context in which the problem is situated.

120. The signing of the North American Free Trade Agreement in 1994 included an explicit recognition of the environmental problems of the border area through the creation of the North American Development Bank (NADB) and the Border Environment Cooperation

Commission (BECC), institutions specifically created to finance and certify environmental infrastructure projects in the Mexico–United States border area.

121. The PTAR SAB was one of the first major projects financed with NADB funds, which demonstrates that the problem of Tijuana's wastewater was recognized and addressed as a border environmental priority from the earliest days of the NAFTA cooperation regime. The existence of these multilateral financing mechanisms, and Mexico's active participation in them, is incompatible with the narrative of submission SEM-26-002 that the Government of Mexico has ignored the problem.

122. The PTAR SAB began operations in the late nineteen-eighties. Since then, the plant has been expanded on multiple occasions in an attempt to keep pace with the growth in demand for treatment services. The growth in demand—driven by the city's demographic growth and by the expansion of connections to the sewerage system in new neighbourhoods—has, however, consistently outstripped the capacity of the planned expansions. This persistent gap between demand and capacity is not evidence of negligence: it is evidence of the magnitude of the challenge and of the inadequacy of the available resources in the face of the scale of the problem.

*i. The transboundary hydrological dynamics of the Tijuana River and their relationship to discharge events*

123. The Tijuana River basin covers approximately 4,280 square kilometres, of which approximately 70% is in Mexican territory and 30% in the territory of the United States. The basin includes the urban area of Tijuana in Mexico and part of San Diego County in the United States, and has as its final discharge point the Pacific Ocean coast in the area of the Tijuana beaches and of Imperial Beach in San Diego.

124. The hydraulics of the Tijuana River basin are complex and have characteristics that make the attribution of responsibility for coastal contamination events particularly difficult. During periods of normal precipitation, the river has a relatively low flow and the water flows are manageable by the binational treatment system. During intense rainfall events, however—which in the region typically occur between November and March, coinciding with the El Niño phenomenon in odd-numbered years [sic]—the river's flow can increase dramatically within hours, exceeding the capacity of the treatment systems on both sides of the border and generating overflows that contaminate the coast.

125. Overflow events during intense precipitation are a hydraulic phenomenon that no treatment infrastructure can eliminate entirely within a reasonable budget: to do so would require designing treatment capacity for the peak flows of the most extreme events, which would mean operating oversized—and therefore extremely costly—infrastructure for 95% of the year. The practical solution adopted by both countries—and recommended by hydraulic engineering experts—is the combination of sufficient treatment capacity for normal flows with overflow control systems (stormwater interceptors, retention basins, controlled by-passes) that minimize the quantity of untreated wastewater reaching the coast during storm events. This is exactly the strategy that Mexico is implementing through [redacted] and the expansion of the PTAR SAB.

126. The distinction between coastal contamination events caused by overflows during storms and those caused by normal operating discharges is fundamental to a correct assessment of Mexico's conduct. The former are hydraulic phenomena that are unavoidable in the context of the current infrastructure; the latter are the result of treatment capacity insufficient for the normal flow of wastewater generated by the city.

127. Submission SEM-26-002 does not draw this distinction: **it treats all coastal contamination events as though they were the result of the same cause**—the alleged "inaction" of the Government of Mexico—when in reality they have different causes and require different responses.

*ii. The South Bay IWTP and shared responsibility for binational treatment*

128. The South Bay International Wastewater Treatment Plant (SBIWTP) is the wastewater treatment plant operating on the United States side to treat waters coming from Mexico through the international collector established in accordance with the Minutes of the IBWC. The SBIWTP was built with United States federal funds and is operated by the United States International Boundary and Water Commission (IBWC) in coordination with the State of California. Its nominal capacity is 25 million gallons per day (mgd) under normal conditions, although its effective treatment capacity has varied significantly depending on operating conditions and on the maintenance carried out.

129. The SBIWTP plays a critical role in the binational wastewater treatment system because it complements the capacity of the PTAR SAB on the Mexican side. When the PTAR SAB reaches its maximum treatment capacity, the additional wastewater is conveyed to the international collector and treated at the SBIWTP. This complementarity makes the binational treatment system more robust than either of the two plants separately, but it also creates an interdependence that means that deficiencies in one plant affect the total capacity of the system.

130. Coastkeeper's litigation against the IBWC and Veolia—the private operator of the SBIWTP during the relevant period—was commenced precisely because Coastkeeper established that the SBIWTP was operating with deficiencies that contributed to coastal contamination. These problems included periods in which the plant operated far below its nominal capacity, events involving the release of untreated wastewater during storms, and deficiencies in the maintenance of treatment equipment. The Settlement Agreement resulting from that litigation implicitly acknowledged—to the point that the defendants agreed to pay attorneys' fees and to undertake certain communication actions—that there was a foundation for Coastkeeper's concerns about the operation of the SBIWTP.

131. These facts are directly relevant to the present SEM proceeding. If the SBIWTP contributed significantly to coastal contamination during the relevant period—as the United States litigation suggests—then **the attribution of exclusive responsibility to Mexico made by submission SEM-26-002 is incorrect.** The transboundary wastewater problem is a binational problem with causes on both sides of the border, and any analysis that reduces it to the responsibility of a single actor—Mexico—does not reflect the reality of the situation.

*iii. Mexico's contributions to the Border Infrastructure Investment Fund*

132. One element that submission SEM-26-002 ignores entirely is Mexico's financial participation in the funds for investment in border environmental infrastructure. The North American Development Bank (NADB), created in 1994 as part of the institutional package of NAFTA, has as its mission the financing of environmental infrastructure projects in the Mexico–United States border area. Mexico makes regular contributions to the capital of the NADB and, in return, has access to financing for environmental infrastructure projects in the border area.

133. The PTAR SAB has received NADB financing at different stages of its development. That financing complements the resources of the Mexican federal budget and has been essential in making possible the capacity expansions that would otherwise have required a larger exclusively federal budget. Mexico's participation in the NADB—as a contributor of capital and as a beneficiary of financing—demonstrates that Mexico is using all the financial mechanisms available to address the problem of wastewater treatment infrastructure at the border.

134. Mexico's contributions to the NADB and the financing received for projects such as the PTAR SAB form part of Mexico's record of good faith in the matter of investment in border environmental infrastructure. These financial data, available in the NADB's annual reports and in the budgetary records of the Government of Mexico, are not cited in submission SEM-26-002 or considered in the Secretariat's Determinations. Their omission produces an incomplete and unfair portrait of the conduct of the Government of Mexico.

**F. Analysis of the specific assertions in the submission and the factual response to them**

135. Submission SEM-26-002 makes a series of specific assertions about the conduct of the Mexican authorities that merit a point-by-point response. This Section examines each of the principal assertions in the submission and provides the corresponding factual response, supported by the documentary record of the competent authorities.

*i. Assertion concerning the frequency of discharges exceeding the NOM limits*

136. Submission SEM-26-002 asserts that wastewater discharges in the Tijuana region frequently exceed the limits established in NOM-001-SEMARNAT-2021. Mexico denies what the submission seeks to demonstrate—that this situation is the result of inaction or negligence on the part of the Government of Mexico—all the more so given that the Submitter itself publicly documented that the government of the United States of America has failed to address the problem it raises in the Submission.

137. Mexico notes its commitment to the environment and to addressing the Tijuana River problem through the investment in more advanced treatment technology that it is carrying out by way of the expansion of the PTAR SAB.

[redacted]

[redacted]

139. [redacted]

*ii. Assertion concerning the absence of criminal proceedings*

[redacted]

141. Mexican environmental criminal law—Article 416 of the Federal Criminal Code—establishes a specific offence for unlawful wastewater discharges: the discharge must be made "without a permit" [sic] or "in contravention of legal provisions" [sic]. CESPT operates with a permit in force and under a Compliance Program; its discharges are not "without a permit" or "in contravention of legal provisions" within the meaning of Article 416 of the CPF. The correct legal response to CESPT's situation is the administrative regime—permits, compliance programs, supervision—which is exactly the regime that Conagua has applied.

142. The principle of proportionality in the exercise of the State's punitive power requires that the State's response be proportionate to the gravity of the non-compliance. The supposed hypothesis of imposing criminal sanctions on the operators of public sanitation infrastructure—such as CESPT, which is a decentralized body of the state government operating basic services for millions of people—where the non-compliance is being managed by means of formal administrative instruments would be a disproportionate response that would generate adverse consequences for the city's sanitation service without producing any environmental benefit additional to what the administrative regime is already achieving.

*iii. Assertion concerning coordination among federal agencies*

[redacted] Submission SEM-26-002 argues that the lack of coordination among Conagua, Semarnat and Profepa generates gaps in the enforcement of environmental law. As has been demonstrated in Section IV.F of this Response, that argument disregards the formal instruments of inter-institutional coordination that exist: the 2004 Profepa–FGR Agreement and [redacted].

144. But inter-institutional coordination in the specific case of Tijuana's wastewater goes beyond these formal instruments. The IBWC coordinates at the bilateral level and

Semarnat coordinates at the national level; the meetings of the Bilateral Working Group established in IBWC Minute 333 (December 2025) bring together representatives of Conagua, Semarnat, Profepa and the IBWC alongside their United States counterparts—EPA and IBWC-Veolia —.

145. In order to review progress on the commitments and to coordinate the outstanding actions. This multidimensional coordination—bilateral, inter-institutional and multi-level—is exactly the type of comprehensive response that a complex problem such as that of transboundary wastewater requires.

*iv. Assertion concerning water quality at the affected beaches*

146. Submission SEM-26-002 cites water quality data for the beaches of San Diego—specifically at Imperial Beach and the beaches of southern San Diego bordering the mouth of the Tijuana River—to illustrate the impact of wastewater discharges. Mexico acknowledges that water quality at these beaches has historically been affected by wastewater discharges originating on both sides of the border. The submission does not, however, break down what proportion of the contamination is attributable to discharges on the United States side—including those from the SBIWTP during its periods of deficient operation.

147. Water quality data for the beaches of San Diego are measured and reported principally by San Diego County and by the United States EPA, using United States water quality standards for recreational use (BEACH Act). These data do not distinguish between contamination of Mexican origin and contamination of United States origin: they measure water quality at the point on the beach, which is the cumulative result of all sources of contamination in the basin. To use these data to attribute exclusive responsibility to Mexico, without carrying out the source analysis that would allow the contribution of each country to the total contamination to be quantified, is methodologically incorrect and cannot sustain the assertion of "non-effective enforcement" on Mexico's part.

148. The academic and technical studies that have examined water quality in the border coastal zone consistently conclude that the problem has multiple causes and that the contribution of each source varies depending on hydraulic, rainfall and seasonal conditions. To ignore this complexity and attribute the problem exclusively to Mexico—as submission SEM-26-002 does—is a simplification that the scientific rigour and the legal rigour of Article 24.27 of CUSMA cannot sustain.

## III. LEGAL ARGUMENT

149. This Section sets out the complete legal argument supporting the position of the Government of Mexico in the present proceeding. The argument is structured in three levels of analysis, each of which is independent and sufficient to give rise to the termination of the submission:

150. **First**, the inadmissibility of the submission for failure to meet the formal and substantive requirements of Article 24.27 of CUSMA.

151. **Second**, in the alternative and without this implying any concession whatever, the demonstration that Mexico has fully complied with its obligations as to the effective enforcement of its environmental law.

152. **Third**, the exposure of the economic purpose animating the Submitter's conduct, which constitutes the use of an environmental cooperation mechanism as an instrument of strategic litigation incompatible with the ends of Chapter 24 of CUSMA.

153. Each of these arguments is developed at the length and in the depth that the importance of the case demands.

154. The first—inadmissibility—is the primary argument and the one that must determine the outcome of the present proceeding. The CEC Secretariat has no power to proceed to develop a factual record where the submission itself does not satisfy the minimum thresholds established in Article 24.27(3) of CUSMA, which are requirements of admissibility and not mere discretionary criteria of assessment.

155. The second argument—effective enforcement—is made in the alternative, without conceding the premise of admissibility, and demonstrates that the abundant documentary record of the actions of Conagua, Semarnat and Profepa refutes the assertions of the submission point by point.

156. The third argument—the Submitter's purpose—complements the preceding ones by revealing the instrumental nature of the proceeding and the incongruity between the narrative constructed before the SEM and the Submitter's procedural conduct in the United States courts.

**III.A. The submission is inadmissible in its entirety—triple vector of inadmissibility under Article 24.27 of CUSMA**

*In claris non fit interpretatio*

— In matters that are clear, no interpretation is made —

157. *In claris non fit interpretatio.* Where the text is clear, interpretation is barred. This principle—a cornerstone of the international law of treaties and of Mexican law—governs the analysis that follows. Article 24.27 of CUSMA is neither obscure, nor ambiguous, nor lacunary. It is a technical, systematic provision, constructed with surgical precision by negotiators who knew the NAAEC precedents and chose more restrictive language. To interpret that language as mere discretionary guidance is not interpretation: it is the substitution of the agreed text by the unilateral will of the interpreter.

158. Submission SEM-26-002 is inadmissible on three independent and concurrent vectors, each sufficient in itself to prevent the Secretariat from recommending the development of a factual record. Stated in the language of the legal discipline that governs them:

**First:** the submission does not establish the trade nexus that the Agreement itself erects as a structural condition of the whole of Chapter 24. Article 24.4(1) of CUSMA limits the scope of the Parties' obligations as to the effective enforcement of environmental law to situations that affect "trade or investment between the Parties". Footnote 4 to the same Article—incorporated into the authentic text in accordance with

Article 31(2) of the Vienna Convention on the Law of Treaties—provides an exhaustive and bipartite definition of when that nexus exists. The submission falls within neither of the two normative hypotheses. Without a trade nexus, there exists no obligation whose omission is susceptible of a submission under Article 24.27.

**Second:** the submission fails to meet the requirement of prior communication to the competent authorities established in Article 24.27(2)(e) of CUSMA. The Secretariat itself—in the Time Ceramics Determination (SEM/24-001/12/DET) [sic][xiv]—established that the purpose of this requirement is that the relevant authorities be aware of the environmental problem prior to the filing of the submission and have an opportunity to act in the administrative sphere. The fact that the Tijuana River problem is widely known does not satisfy this threshold: public knowledge is not equivalent to formal written communication to the competent authority in the form that the Agreement requires.

**Third:** the submission identifies regulatory instruments—NOMs—that do not qualify as "environmental law" in the technical and circumscribed sense of Article 24.1 of CUSMA. The Agreement's definition—"an Act of Congress or regulation promulgated pursuant to an Act of Congress"—has a precise constitutional correlate in Mexican law: only laws in the formal sense (enacted by the Congress of the Union) and regulations in the strict sense (issued by the President of the Republic under article 89-I of the CPEUM) satisfy that definition. NOMs, whose enabling source is the Quality Infrastructure Law and whose issuance falls to the agencies of the Executive through technical committees, are not "regulations promulgated pursuant to an Act of Congress" in the constitutional sense. The Secretariat cannot extend by interpretation the catalogue of instruments that the Agreement defined with clarity.

159. The three vectors of inadmissibility are developed in the subsections that follow. The concurrence of all of them reinforces the conclusion: submission SEM-26-002 does not meet the threshold of admissibility established in Article 24.27 of CUSMA, and the Secretariat lacks authorization to recommend the development of a factual record.

### *III.A.1. The submission does not establish the trade nexus required by Article 24.4(1) and footnote 4 thereto of USMCA/CUSMA—a structural condition of Chapter 24*

160. The first vector of inadmissibility is the most fundamental: the submission does not establish that the matter it places before the Secretariat for scrutiny affects trade or investment between the Parties. This requirement is not an element of merit that the Secretariat assesses in its discretion: it is the structural condition that delimits the field of application of the whole of Chapter 24 of CUSMA.

161. Article 24.4(1) of CUSMA provides textually:

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[xiv The authentic citation is "A24.27(2)(3)/SEM/24-001/12/DET."]

"A Party shall not fail to effectively enforce its environmental legislation, through a sustained or recurring course of action or inaction, in a manner that affects trade or investment between the Parties." [sic] [xv]

(emphasis added)

162. The phrase "in a manner that affects trade or investment between the Parties" is neither adjectival nor decorative: it is the enabling precondition of the obligation. *In claris non fit interpretatio*: the provision is clear. *Verba legis non sunt violanda*: the words of the Agreement may not be done violence to. The Secretariat cannot have competence to examine situations of environmental non-enforcement that do not reach that threshold, irrespective of their ecological gravity or of the Submitter's narrative.

163. In order to avoid all ambiguity, the Parties negotiating CUSMA incorporated into the authentic text of Article 24.4 footnote 4, which establishes an exhaustive definition of when the trade nexus exists. Footnote 4 provides, under the rubric "For greater certainty":

"[F]or greater certainty, a person or industry that produces goods or provides services traded between the Parties, or with an investment in the territory of a Party, may be affected by the course of action or inaction of the Party referred to in paragraph 1; likewise, a person or industry that competes in the territory of a Party with goods or services of another Party may be affected by that course of action or inaction." [sic] [xvi]

(Footnote 4, Article 24.4, CUSMA)

164. The expression "for greater certainty"—*for greater certainty* in the authentic English text—has a settled technical meaning in the law of treaties: it introduces a clarification that operates as a binding and exhaustive definition, not as an illustrative list. Footnote 4 consequently establishes two, and only two, hypotheses in which the trade nexus arises:

(i) the person or industry affected by the conduct at issue produces goods or services traded between the Parties, or maintains an investment in the territory of a Party; or

(ii) the person or industry affected competes in the territory of a Party with goods or services of another Party.

*Ubi lex voluit dixit, ubi noluit tacuit*

— Where the law intended, it provided; where it did not, it kept silent —

165. *Ubi lex voluit dixit, ubi noluit tacuit.* The Agreement said what it meant to say: two precise hypotheses. Where it did not mean to say more, it kept silent. Submission SEM-26-002 identifies no person or industry falling within either of the two normative cases. It refers to the discharge of wastewater—an environmental phenomenon, not a trade or

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[xv The authentic English reads: "No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement."]

[xvi Footnote 4, in the authentic English, reads: "For greater certainty, a 'course of action or inaction' is 'in a manner affecting trade or investment between the Parties' if the course involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party."]

investment activity—and to its effects on the beaches and on the Tijuana River. The wastewater flowing from Tijuana to San Diego is not a good traded between the Parties.

166. The argument that the trade nexus is irrelevant in the SEM procedure—which the Secretariat has intimated in its determinations—is refuted by the very architecture of the Agreement. Footnote 5 to the same Article 24.4 provides that, "for the purposes of dispute settlement"—that is to say, when an arbitral panel hears the matter—the trade nexus is presumed to exist [sic].[xvii]

167. The existence of a presumption that operates exclusively "for the purposes of dispute settlement" necessarily implies that outside that sphere the presumption does not operate. Argument *a contrario*: if the nexus were irrelevant throughout Chapter 24, footnote 5 would be without object. That the negotiators included it demonstrates that they contemplated a scenario—the panel—in which the nexus is indeed required, and adopted the presumption there alone. In the SEM procedure, the nexus must be established, not presumed.

168. Article 24.27(3)(b) of CUSMA requires that the submission "raise matters whose advancement would contribute to the objectives of this Chapter" [sic].[xviii] The objectives of Chapter 24 are defined in Article 24.2: (a) to promote mutually favourable trade and environmental policies; (b) to foster high levels of environmental protection; and (c) to strengthen the capacities to address trade-related environmental issues.

169. A submission that establishes no trade nexus whatever cannot "contribute to the objectives" of a chapter whose architecture has trade as the transversal axis of subparagraphs (a) and (c). The burden lies on the Submitter to prove its contribution to the objectives of the Chapter; it has not done so.

### *III.A.2. The submission fails to meet the requirement of prior written communication to the competent authorities—Article 24.27(2)(e) of USMCA/CUSMA*

170. The second vector of inadmissibility lies in the failure to meet the formal requirement established in Article 24.27(2)(e) of CUSMA. That provision—located not in paragraph (3) of factors, but in paragraph (2) of requirements of the submission—requires that the written submission "indicate whether the matter has been communicated in writing to the competent authorities [sic] [xix] of the Party and the Response of the Party, if any."

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[xvii Footnote 5 to Article 24.4(1) reads: "For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise."]

[xviii The authentic English of Article 24.27(3)(b) reads: "[In deciding whether to request a response, the CEC Secretariat shall be guided by whether: …] (c) the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter."]

[xix The authentic English of Article 24.27(2)(e) reads: "[The CEC Secretariat may consider a submission under this Article if it finds that the submission: …] (e) indicates whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any" (authentic Spanish: "*las autoridades pertinentes de la Parte*").]

171. The distinction between paragraph (2) and paragraph (3) is legally significant. Paragraph (2) establishes formal requirements of the submission—conditions of its validity as a procedural act. Paragraph (3) establishes the factors that the Secretariat "shall consider" in recommending the development of the factual record. A requirement of paragraph (2) that is not met renders the submission formally deficient *ab initio*, irrespective of the factors in paragraph (3).

*Qui tacet consentire videtur si loqui debuisset ac potuisset*

— He who is silent, when he ought to have spoken and was able to, is taken to consent —

172. *Qui tacet consentire videtur si loqui debuisset ac potuisset*: the Submitter's silence as to prior communication to the Mexican authorities amounts to an admission that they did not make it, when they ought to and could have done so.

173. The Secretariat itself has established the applicable standard. In the Time Ceramics Determination (A24.27(2)(3)/SEM/24-001/12/DET), the Secretariat interpreted the purpose of Article 24.27(2)(e) in the following terms: the requirement exists so that the relevant authorities of the Party may be aware of the environmental concerns raised by the submission before it is filed with the CEC, and so that those authorities may have the opportunity to act in the administrative sphere before the Secretariat assesses admissibility.

174. This standard—established by the Secretariat itself, and binding upon it by virtue of the principle *venire contra factum proprium*—requires more than public knowledge of the problem: it requires a specific written communication addressed to the competent authority.

175. In Submission SEM-26-002, the Submitter provides no document constituting that prior written communication to Conagua, Profepa, Semarnat or any other Mexican environmental authority with jurisdiction over the matter. The circumstance that the Tijuana River problem is publicly known—and that various Mexican agencies have acted upon it—does not satisfy the threshold of Article 24.27(2)(e): diffuse institutional knowledge is not equivalent to the specific written communication that the provision requires.

*Res inter alios acta alteri nocere non debet*

— A thing done between others ought neither to benefit nor to harm a third party —

176. *Res inter alios acta alteri nocere non debet*: the actions of third parties before different authorities cannot substitute for the procedural burden that the Agreement imposes on submitters before the Mexican authorities.

177. The logic of the requirement is transparent: before activating the international mechanism of public scrutiny, the Agreement requires that the Submitter has given the authorities of the Party a real, concrete and documented opportunity to address their concern. Failing to do so deprives the SEM procedure of its subsidiary function and turns it into an instrument of first resort, a circumstance that Article 24.27 does not authorize and that the Secretariat cannot validate.

### *III.A.3. The submission does not identify the specific environmental law whose effective enforcement it alleges is being omitted—Article 24.27(3)(c) [sic]*

178. The Secretariat, in Determination DET1 of 25 February 2026, purported to treat the requirement of Article 24.27(2)(e) as satisfied by a standard of "governmental knowledge" inferred from the bilateral IBWC instruments and the Bárcena–Zeldin MOU. Mexico rejects that standard as legally incorrect: the text of the Agreement requires that the submission "indicate whether the matter has been communicated in writing to the competent authorities [sic]"—not an institutional knowledge inferred from bilateral documents of another nature. An instrument concluded between Mexico and the United States for purposes of border cooperation does not constitute a written communication from Coastkeeper to the Mexican environmental authorities: the subjects, the object and the purpose are different. The Secretariat committed an error of normative substitution in equating public documents with the particularized notification that the Agreement requires of submitters. This erroneous reasoning of the Secretariat, which Mexico formally challenges, cannot be consolidated through the Party's silence: *qui tacet consentire videtur*.

179. Mexico's position is formally placed on the record: the Secretariat applied a standard that disfigures the text of the Agreement and that, if consolidated as precedent, would empty the requirement of Article 24.27(2)(e) of content for all future submissions under CUSMA.

180. For the rest, and in the alternative, the documentary record confirms that the Mexican authorities themselves—Conagua and Profepa—did receive and formally address a public complaint filed in 2019 by Mexican environmental organizations concerning the situation of the San Antonio de los Buenos WWTP. The official response of Conagua and of Profepa to that complaint, and the inspections and administrative proceedings arising from it, demonstrate that the citizen complaint mechanism in Mexico works and that the Mexican authorities act when they are duly notified. That the Submitter was incapable of filing a communication of its own with the Mexican authorities—and had to rely on the actions of third-party Mexican organizations—shows that Coastkeeper did not itself discharge the procedural burden that Article 24.27(2)(e) imposes on it.

181. The third vector of inadmissibility concerns the normative quality of the instruments that the submission identifies as the "environmental law" whose effective enforcement is allegedly omitted. Article 24.27(3)(c) [sic] [xx] of CUSMA requires the Secretariat to consider whether the submission "identifies the environmental law of which the failure to enforce is asserted."

The question is: what is "environmental law" within the meaning of Article 24.1 of CUSMA?

182. Article 24.1 of CUSMA defines "environmental law" for Mexico in precise and circumscribed terms:

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[xx The quoted language is found in Article 24.27(2)(c).]

"Environmental law means any law or regulation of a Party, or provision of a law or regulation of a Party, the primary purpose of which is the protection of the environment or the prevention of a danger to human, animal or plant life or health through: […] For Mexico: an Act of Congress or regulation promulgated pursuant to an Act of Congress […]" (Article 24.1, CUSMA, emphasis added). [sic] [xxi]

183. The expression "an Act of Congress or regulation promulgated pursuant to an Act of Congress" has a precise constitutional correlate in the Mexican legal order. Only two classes of normative instrument satisfy this definition:

(a) **Laws in the formal sense**: those enacted by the Congress of the Union in the exercise of the powers conferred on it by article 73 of the Constitution. The National Waters Law (LAN), the General Law on Ecological Equilibrium and Environmental Protection (LGEEPA) and the Federal Environmental Liability Law (LFRA) are laws in this sense. They are, beyond doubt, "environmental law" under Article 24.1.

(b) **Regulations in the strict constitutional sense**: those issued by the President of the Republic in the exercise of the regulatory power enshrined in article 89, subsection I, of the Political Constitution of the United Mexican States, which confers on the President the power to "promulgate and execute the laws enacted by the Congress of the Union, providing in the administrative sphere for their exact observance". The Regulation to the LAN and the Regulation to the LGEEPA on Hazardous Waste are examples of regulations in this constitutional sense.

184. The Mexican Official Standards (NOMs) do not satisfy this definition. Their constitutional and legal basis differs substantially from that of the instruments described. NOMs are issued under the Quality Infrastructure Law—an ordinary law of horizontal scope—by the competent agencies of the Federal Executive through national consultative standardization committees, not by the President of the Republic in the exercise of his constitutional regulatory power. The Supreme Court of Justice of the Nation has consistently established that NOMs are administrative provisions of infra-regulatory rank. They are not "regulations promulgated pursuant to an Act of Congress" within the meaning of Article 24.1 of CUSMA.

185. Submission SEM-26-002 repeatedly invokes NOM-001-SEMARNAT-2021 as the normative instrument whose effective enforcement Mexico allegedly omits. That NOM is not "environmental law" within the meaning of Article 24.1 of CUSMA. **The Secretariat cannot entertain an alleged failure to enforce an instrument that the Agreement expressly excluded from its scope.**

*Expressum facit cessare tacitum*

— What is expressed takes priority over what is implied —

186. *Expressum facit cessare tacitum*: in defining "environmental law" as "an Act of Congress or regulation promulgated pursuant to an Act of Congress", the Agreement implicitly

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[xxi The authentic English text of USMCA/CUSMA Article 24.1 reads: "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: … [list of (a), (b), and (c)]".]

brought to an end the possibility of including other normative instruments. This maxim has its limits, however: the mechanical application of the principle *expressio unius est exclusio alterius* is warranted only where it is appropriate in light of the text, the context and the object and purpose of the treaty. In the present case, the clarity of the definition in Article 24.1, its specificity for Mexico and its symmetry with the analogous definitions for Canada and the United States confirm that the exclusion of NOMs is intentional and requires no further interpretation: it is the text itself.

187. Article 24.27(3)(d) of CUSMA requires the Secretariat to assess whether the submission "indicates that the matter has been communicated in the terms of Article 24.27(2)(e)" [sic].[xxii] This provision operates at two levels: the formal—the submission must indicate whether the communication was made—and the substantive—the communication must have taken place and the Party's Response, if any, must be reported.

188. Submission SEM-26-002 satisfies neither of the two levels. As to the formal level: the Submitter does not identify in its written submission any concrete act of written communication addressed to the competent Mexican environmental authorities—Conagua, Profepa or Semarnat—in respect of the specific omissions they allege. The mere reference to Mexico's awareness of the binational Tijuana River problem does not constitute the "written communication" that the Agreement requires. General institutional knowledge and specific formal communication are distinct concepts, and the Agreement requires the latter.

189. As to the substantive level: the available Mexican domestic remedies have not been exhausted. The National Waters Law and the General Law on Ecological Equilibrium and Environmental Protection provide for formal mechanisms of citizen complaint before Conagua and Profepa respectively. The Office of the Federal Attorney for Environmental Protection operates a system of public environmental complaint that generates administrative files, inspection proceedings and, where applicable, detailed records open to challenge. The Federal Law on Administrative Litigation Procedure provides for annulment proceedings before the Federal Court of Administrative Justice to challenge deficient or absent administrative acts. None of these avenues has been used by the Submitter in respect of the Mexican authorities.

190. The argument that exhaustion of domestic remedies is not an express requirement of Article 24.27(3) is formally correct but functionally irrelevant: Article 24.27(2)(e) requires that the submission indicate whether the matter was communicated in writing to the competent authorities and what their Response was. That requirement presupposes a minimum of prior interaction with the national authorities which the Submitter has omitted. Formal exhaustion of domestic remedies and prior communication to the authorities are conceptually distinct, but both point to the same logic: the SEM mechanism is an instrument of last resort, not of first.

*Ultra posse nemo obligatur*

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[xxii Article 24.27(3)(d) reads in full: "(d) the submission is not drawn exclusively from mass media reports."]

— No one is obliged to do more than he can —

191. *Ultra posse nemo obligatur*: Mexico cannot be obliged to satisfy a standard of "effective enforcement" in respect of notifications it never received and of administrative acts whose absence was never challenged domestically.

192. It is pertinent at this point to invoke the precedent of the Coastkeeper record before the authorities of the United States: Coastkeeper filed formal and precise complaints with the EPA, the IBWC and the County of San Diego, exhausted the administrative procedure, brought judicial actions before the United States federal courts and arrived at a Settlement Agreement.

193. That entire prior course is exactly what Article 24.27(2)(e) of CUSMA requires by way of prior communication—in the sense of formal and documented interaction with the competent authority—in respect of the Mexican side of the matter. Not having done so, the Submitter failed to meet the requirement that the Agreement itself imposes as a condition of access to the SEM mechanism.

194. Assuming without conceding that NOM-001-SEMARNAT-2021 could eventually qualify as "environmental law" within the meaning of Article 24.1 of CUSMA—which Mexico expressly rejects for the reasons set out in the preceding paragraphs—submission SEM-26-002 would still not satisfy the standard of "non-effective enforcement" that Article 24.4(1) requires.

195. The CUSMA standard of effective enforcement is not satisfied by the mere demonstration that a specific operator exceeds the parameters of a standard at a given moment: it requires establishing a sustained or recurring course of action or inaction on the part of the authorities **directed at obtaining trade or investment advantages** (Article 24.4(1), CUSMA) [sic].[xxiii] The evidence that the Submitter itself presented in order to satisfy Article 24.27(3)(c) [redacted] demonstrates exactly the contrary: that the Mexican authorities received citizen complaints and responded with official acts, inspections and proceedings. That is the correct functioning of a system of effective law enforcement, not evidence of its omission.

196. In addition, NOM-001-SEMARNAT-2021 establishes discharge parameters applicable to the normal operating conditions of a plant. The San Antonio de los Buenos WWTP operate [redacted] which constitutes the legally provided mechanism for cases in which an operator of public infrastructure requires a process of progressive improvement in order to attain the established parameters.

[redacted] is evidence that Conagua effectively enforced the law, used the instrument that the law itself provides for

[xxiii] Article 24.4(1) reads "No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties…"]

these situations, and is monitoring the improvement roadmap. To say that Mexico does "not effectively enforce" NOM-001 when CESPT [redacted] n.

***III.A.4. The submission lacks a private basis of action—Article 24.27(3)(e) [sic] and the de minimis rule***

198. Article 24.27(3)(b)—which the submission does not identify as the applicable factor, but which is determinative—provides that the Secretariat shall consider whether the submission "raises matters whose advancement would contribute to the objectives of this Chapter" [sic].

*Ubi eadem est ratio, ibi idem ius esse debet*

— Where there is the same reason and equity, the same law should be established —

199. *Ubi eadem est ratio, ibi idem ius esse debet*: where the same reason applies, the same law must follow. A submission that does not establish the trade nexus likewise cannot demonstrate that its advancement will contribute to the objectives of a chapter whose commercial teleology is manifest.

200. The objectives of Chapter 24 are exhaustively defined in Article 24.2 of CUSMA:

> "The objectives of this chapter are: (a) to promote mutually favourable trade and environmental policies; (b) to promote high levels of environmental protection and the effective development and enforcement of environmental laws and policies; and (c) to strengthen the capacities of the Parties to address trade-related environmental issues, including through cooperation, in the furtherance of sustainable development" (Article 24.2, CUSMA, emphasis and subparagraphs added for ease of comprehension) [sic].[xxiv]

201. Textual analysis reveals that two of the three objectives—subparagraphs (a) and (c)—have trade as an essential component. Subparagraph (a) speaks of policies "mutually favourable" to trade and the environment; subparagraph (c) is expressly confined to "trade-related environmental issues". Only subparagraph (b) formulates an environmental protection objective in terms that are not explicitly commercial. To read Article 24.27(3)(b) as though the only objective of the Chapter were (b) is to read one third of the text and suppress the other two thirds.

202. This selective reading of the objectives is precisely the error that the Secretariat has committed systematically not only in this case but in the handling of every SEM Submission that has been analysed under CUSMA. In its Determinations DET1 and

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[xxiv The authentic text of Article 24.2(2) reads:

> The objectives of this Chapter 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.]

DET2, the Secretariat assessed whether the submission raises matters whose advancement would contribute to the objectives of the Chapter by referring exclusively to environmental protection—subparagraph (b)—without considering the trade nexus that subparagraphs (a) and (c) require.

*Nemo auditur propriam turpitudinem allegans*

— Let no one be heard who alleges his own wrongdoing —

203. *Nemo auditur propriam turpitudinem allegans*: the Secretariat cannot invoke its own fragmentary reading of the objectives to justify its competence in respect of submissions that do not demonstrate the trade nexus.

204. Submission SEM-26-002 does not demonstrate how its advancement would contribute to the trade objectives of Chapter 24. It identifies no goods or services traded bilaterally that are affected. It points to no investments that have been discouraged by the alleged failure to enforce. It proposes no cooperation mechanisms directed at strengthening Mexico's capacity to address trade-related environmental issues. Instead, it seeks to have the Secretariat validate the narrative of an organization that has already obtained a favourable Settlement Agreement before the United States authorities and that submits the Mexican side of the same problem to an international procedure without having exhausted—or even initiated—the corresponding administrative avenue in Mexico.

**III.A.5. Textual and systematic analysis of Article 24.27(3) of CUSMA confirms the mandatory character of the admissibility requirements**

205. Textual, contextual and systematic analysis of Article 24.27(3) leads to an unequivocal conclusion: the factors it sets out are conditions of admissibility of a mandatory character, not criteria of convenience that the Secretariat weighs in its discretion. But the admissibility examination goes beyond the literal terms of Article 24.27: it also includes the limits of competence that the Agreement sets for the Secretariat as an organ of an international organization.

206. The CEC—and its Secretariat—have only the powers that CUSMA and the Environmental Cooperation Agreement confer on them. The Secretariat cannot endow itself with additional powers through an expansive interpretation of its own functions. Where the Agreement intended to confer powers, it did so expressly; where it kept silent, the competence does not exist.

207. The argument that the Secretariat has adopted broad interpretations of its competence in the past without objection from the Parties—a form of acquiescence—is not legally tenable, for six concurrent reasons:

**First:** acquiescence as a source of international obligations operates between States, not between a State and an international entity such as the CEC; it further requires *opinio juris*, that is to say a response expressing disagreement or objection in relation to the conduct of another State—the conviction that the abstention is legally obligatory. Tolerance of the Secretariat's previous interpretations does not establish that the Parties considered those interpretations legally correct.

**Second:** the CUSMA regime contains express mechanisms for the production of complementary normative material—the interpretations of the Free Trade Commission under Article 31.3(b) of the Vienna Convention on the Law of Treaties [sic] —which the Parties have not activated to confirm the Secretariat's broad interpretations. Had the Parties wished to enshrine a broad interpretation, they would have used those mechanisms.

**Third:** the practice under the NAAEC—the predecessor regime—is not relevant to the interpretation of CUSMA where CUSMA expressly modified the analogous provisions. The principle *ejusdem generis* cannot serve to import a more permissive standard that the Agreement in force expressly rejected.

**Fourth:** the Secretariat's Determinations DET1 and DET2 in the present file are not binding precedents. They are procedural acts of an organ subordinate to the CEC Council, not decisions of an international tribunal enjoying the authority of *res judicata*. The Secretariat cannot cite its own prior determinations as the source of its competence: *nemo iudex in causa propria*.

**Fifth:** even if it were accepted, on the supposed hypothesis, that the Secretariat has some margin of appreciation in assessing the factors of Article 24.27(3), that margin cannot extend to the redefinition of the field of application of Article 24.4(1)—which is the provision that fixes the threshold of the trade nexus—because that Article operates at a normative level superior to that of the SEM mechanism.

**Sixth:** the Nazas Determination (A24.28(1)/SEM/25-001/31/DET, 10 April 2026) offers a definitive argumentative mirror. At paragraph 36 of that Determination, the Secretariat stated that "the Agreement does not authorize the termination of a submission on the basis of economic or strategic considerations, social benefits or development orientations".[xxv] If the Agreement limits the grounds on which the Secretariat may terminate a submission—closing competence—then a fortiori the Agreement limits the grounds on which the Secretariat may continue a proceeding—opening competence—beyond what the text authorizes. The same logic of strict adherence to the text of the Agreement that the Secretariat applied in the Lower Nazas River Basin Submission in order to defend submissions must be applied in this file in order to delimit its own competence. The Secretariat cannot be stricter with the text when it favours it than when it constrains it: *ex turpi causa non oritur actio*.

208. The conclusion of the textual, contextual, teleological and competence-based analysis is unequivocal: the Secretariat lacks authorization to recommend the development of a factual record in the present proceeding. Submission SEM-26-002 does not satisfy the three vectors of inadmissibility that Article 24.27 of CUSMA establishes with meridian clarity. *Pacta sunt servanda* (Article 26 of the VCLT): the Agreement must be performed in good faith. Good faith in respect of the agreed text, not good faith built upon an interpretation that disfigures it.

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[xxv The quoted passage is translated from the Spanish of this Response.]

### *III.A.5.1. Comparison with the NAAEC regime confirms the more restrictive character of USMCA/CUSMA*

209. Article 24.27 of CUSMA represents an evolution from Article 14 of the NAAEC, and that evolution is relevant to the interpretation of the admissibility requirements. The Parties negotiated CUSMA with full knowledge of the practice developed under the NAAEC, and decided to maintain and in some cases strengthen the admissibility requirements of the SEM mechanism. That decision of normative policy must be respected by the Secretariat in applying Article 24.27.

210. One significant difference between the NAAEC and CUSMA on this point is the elimination of the Secretariat's autonomous "review of facts" mechanism. Under the NAAEC, the Secretariat had a certain capacity to develop factual analyses of its own; under CUSMA, the Secretariat's role is more clearly confined to the assessment of the submission in accordance with the factors of Article 24.27(3). This restriction of the Secretariat's mandate implies that the threshold of admissibility is more rigorous under CUSMA than under the NAAEC, and that the Secretariat's determinations must be more strictly grounded in the factors of paragraph (3) and in the evidence presented by the Submitter.

211. The Secretariat's DET1 and DET2 in the present proceeding do not respect this restriction. In multiple passages, the Secretariat goes beyond the assessment of the factors of Article 24.27(3) to make appraisals of its own concerning Mexican environmental law, the management of the PTAR SAB, and border water quality that are not supported by evidence presented by the Submitter and that the Secretariat developed autonomously. This excess of the Secretariat's mandate is an independent overreach that vitiates the determinations challenged.

### *III.A.5.2. The Secretariat's Determinations DET1 and DET2 contain legal and factual errors that invalidate their conclusion*

212. The Secretariat's Determinations DET1 and DET2 in the present proceeding do not merely commit errors of fact: they commit structural errors of law which, if not identified, will perpetuate the misunderstanding and mishandling of the SEM mechanism under CUSMA on the part of the body that conducts it, the CEC Secretariat and in particular the Legal and SEM Unit.

213. **First: the error in the construction of the "effective enforcement" standard.** The Secretariat equates the existence of discharges exceeding the parameters of a NOM—an instrument which, as was demonstrated in subsection III.A.3, is not "environmental law" within the meaning of Article 24.1—with the "non-effective enforcement" that Article 24.4(1) proscribes. But the "non-effective enforcement" that the Agreement defines is not a private party's environmental non-compliance: it is the systemic and recurrent failure of the authorities to enforce the law. The equation "exceeded discharge = non-effective enforcement" is legally incorrect and suppresses the element of a "sustained or recurring course of action or inaction" that Article 24.4(1) expressly requires.

214. **Second: the error of omitting the Compliance Program as a defining element.** DET1 and DET2 document discharges exceeding the NOM limits, [redacted] in international and in Mexican environmental law, the tool that authorities use precisely in order to "effectively enforce" the law in respect of operators facing technical and financial constraints. To ignore it is tantamount to applying a standard of "instantaneous compliance" that no environmental enforcement regime—Mexican, United States or Canadian—contemplates.

215. **Third: the error of ignoring the trade nexus as a *conditio sine qua non*.** DET1 and DET2 do not analyse in any passage whether the conduct at issue affects trade or investment between the Parties within the terms of Article 24.4(1) and footnote 4 thereto. This omission is due to the Secretariat having come to interpret those provisions of CUSMA that require no interpretation in a manner that always favours it; that is to say, the Secretariat operates the SEM Process in a legally erroneous manner—put differently, it is labouring under a false appreciation of reality. A body that does not verify its own competence before exercising it acts *ultra vires*. The Secretariat proceeded without establishing the threshold that the Agreement imposes as a condition of its own action.

216. The correction of these errors cannot be supplied by the Secretariat's favourable interpretation: it must come from the strict application of the text of the Agreement. The SEM mechanism under CUSMA is more demanding than its predecessor under the NAAEC; the Secretariat must apply the standard that governs today, not the one that governed yesterday.

### III.A.6. The trade–environment argument and the paradox of SEM-26-002: Mexico as the Party that genuinely defends the objectives of Chapter 24

217. The most persistent criticism in the literature of international trade law is that free trade agreements subordinate environmental protection to trade liberalization, generating a race to the bottom in environmental standards in which competitive advantage is obtained at the expense of the environment. That criticism—developed from the NAFTA debates through to analyses of the environmental impact of the WTO agreements—holds that trade agreements create incentives for governments to weaken their environmental standards in order to attract investment or compete in international markets. Chapter 24 of CUSMA was designed to avert that risk: its Article 24.2 establishes the objective of "promoting mutually favourable trade and environmental policies" and "promoting high levels of environmental protection and the development of environmental legislation and policies.
218. What Submission SEM-26-002—in the political and environmental context documented in this Response—reproduces with unintended precision is exactly the logic that Chapter 24 sought to prevent: trade litigation as an instrument of asymmetric environmental pressure against the Party that complies.

219. The country whose government signed Executive Order 14162 withdrawing from the Paris Agreement on 20 January 2025; which ordered a review of withdrawal from the Commission for Environmental Cooperation on 7 January 2026, characterizing it as

"ineffective and harmful"; which on 4 September 2026 ordered an assessment of the elimination of federal protections for the Mexican gray wolf—a transboundary species that is the subject of bilateral cooperation—for the benefit of private ranching interests; is the country from which the environmental mechanism of CUSMA is activated in order to subject Mexico to international scrutiny for alleged omissions in wastewater management.

220. The CEC Secretariat, by processing this submission without rigorously examining the trade nexus, the Submitter's true purpose and the geopolitical context, turns the SEM mechanism into the instrument of asymmetric pressure that Chapter 24 sought to avoid: a forum from which private actors of the country with the lesser demonstrable environmental commitment press the Party that has laid before its Congress the comprehensive renewal of its environmental legislation, that has invested millions of pesos in wastewater treatment infrastructure, and that keeps its commitments active under all the multilateral environmental agreements from which the government of the Submitter's country has withdrawn.

221. Mexico assumes in the present proceeding exactly the posture that Article 24.2 of CUSMA establishes: that of the Party that defends the integrity of the system of environmental cooperation against its instrumentalization as a tool of private strategic litigation. **The objectives of Chapter 24 are not served by a mechanism that scrutinizes the one who complies while the context of the Submitter's country systematically dismantles the frameworks of international environmental protection.** They are served by the rigorous application of the requirements of Article 24.27, which is exactly what Mexico requests.

222. The principle *Nemo auditur propriam turpitudinem allegans* also translates into this: one who has withdrawn his government from the principal mechanisms of international environmental protection cannot invoke, through private actors, that same system of protection in order to press the Party that remains committed to it.

**III.B. In the alternative, and without conceding the admissibility of the submission, Mexico has fully complied with its obligations of effective enforcement of environmental law in the matter of wastewater**

223. The present argument is made strictly in the alternative. Mexico denies that submission SEM-26-002 is admissible and requests its termination on the grounds set out in Section III.A. Should the CEC Secretariat nevertheless entertain the supposed hypothesis that the submission meets the threshold of admissibility—a supposition that Mexico does not concede—the documentary evidence demonstrates compellingly and incontrovertibly that **Mexico has effectively enforced its environmental law in the matter of wastewater management in the Tijuana–San Diego border region.**

224. The applicable standard is Article 24.1 of CUSMA, which defines "environmental law" and establishes the obligation of "effective enforcement".[xxvi] That standard does not demand perfection: it demands that the Party make a genuine, sustained and good-faith effort to enforce its environmental rules. Article 24.4(2) complements this definition by recognizing that each Party has the right to exercise "reasonable discretion" [sic] in its regulatory and compliance actions, including the prioritization of resources and the adoption of gradual instruments such as Compliance Programs. Mexico has done exactly this.

*III.B.1. Conagua has fully exercised its powers of regulation, authorization and oversight in the matter of wastewater discharge*

225. The National Water Commission is the competent authority in the matter of national waters under articles 4, 9 and 88 of the National Waters Law. In the specific sphere of wastewater discharges, Conagua has the exclusive power to grant discharge permits, to establish the conditions of the permitted discharge, and to supervise compliance with those conditions. Submission SEM-26-002 contends that Conagua has not exercised these powers. The documentary evidence demonstrates exactly the contrary.

226. Conagua granted, and has kept up to date, the discharge permits corresponding to the Tijuana Sewerage System operated by the State Public Services Commission of Tijuana (CESPT). These permits establish the effluent quality parameters in accordance with NOM-001-SEMARNAT-2021—which is the applicable Mexican official standard—and define the monitoring and reporting conditions to be observed. The existence and continuing validity of these permits is direct evidence that Conagua has exercised its regulatory powers in exactly the terms that the National Waters Law requires.

227. [redacted]

228. Submission SEM-26-002, in asserting that CESPT does not comply with the discharge limits of NOM-001-SEMARNAT-2021, [redacted] **their argument of "non-effective enforcement" would collapse, because it is precisely the instrument that**

[xxvi] Article 24.1 is the definitions provision of Chapter 24. The obligation of effective enforcement is in Article 24.4(1).]

**establishes that Mexico is enforcing its environmental law effectively, using the tools that that same legislation contemplates for situations of this kind.**

229. [redacted] None of this appears in submission SEM-26-002 or in the Secretariat's DET1 and DET2, which reveals the partiality and incompleteness of the Secretariat's analysis.

> *II.B.2 [sic]. Profepa has exercised its powers of inspection and oversight within the limits established by the Mexican legislation in force*

230. The Office of the Federal Attorney for Environmental Protection is the authority competent for the inspection and oversight of compliance with federal environmental rules under article 169 of the LGEEPA. Its powers in the matter of wastewater discharges are concurrent with those of Conagua: while Conagua regulates the discharge through the permit system, Profepa inspects environmental compliance in the broad sense, including verification that discharges are not causing harm to the environment within the terms of article 6 of the Federal Environmental Liability Law.
231. The record of the SEM-26-002 process establishes that Profepa responded to the Submitter's request for information confirming [redacted] inspections carried out in the relevant period, as well as one public complaint in process filed in 2025 (DET2, §18). Of those inspections, one corresponds [redacted], which demonstrates that Profepa's inspection activity is not confined to a single regulated party. Submission SEM-26-002 omits this fact and contends that Profepa has not acted.
232. [redacted] which demonstrates that Profepa has responded to non-compliance with the instruments provided for in the LGEEPA.

[redacted] As regards the possible commission of environmental offences within the terms of Article 416 of the Federal Criminal Code, Profepa acted in accordance with the principle of *ultima ratio* that governs criminal law in general and environmental criminal law in particular. Article 416 defines the offence of unlawful discharge of hazardous materials or contaminants into bodies of national waters, but the offence requires that the discharge be made "without a permit" [sic]. CESPT operates under a discharge permit granted by Conagua [redacted]

234. Submission SEM-26-002 contends that the Government of Mexico ought to have instituted criminal proceedings against the operators of the treatment infrastructure. That

contention reveals a profound lack of acquaintance with Mexican and international environmental criminal law in this field and with the principle of legality that governs the exercise of criminal prosecution. The Federal Public Prosecutor's Office cannot bring criminal charges where the elements of the offence are not established, and in the present case the element of "discharge without a permit" is not established because the discharge occurs under a regime of authorization in force. To contend otherwise would be to require the Government of Mexico to violate the principle of criminal legality—a fundamental constitutional guarantee under article 16 of the Political Constitution of the United Mexican States—in the name of an expansive interpretation of environmental law that no formal legal system can sustain.

*III.B.3. Bilateral cooperation with the United States demonstrates Mexico's commitment to a comprehensive solution to the transboundary problem*

235. The management of transboundary wastewater in the Tijuana–San Diego region is, by definition, a problem requiring bilateral cooperation. The causes of the problem—the discharge of wastewater into the Pacific Ocean and the border water bodies—have components on both sides of the border: the insufficient capacity of the Mexican treatment infrastructure, the insufficient capacity on the United States side (the South Bay International Wastewater Treatment Plant has consistently operated below its maximum capacity), and the complex hydraulics of the transboundary basin, which make wastewater flows bidirectional depending on climatic and rainfall conditions.

236. Mexico has participated actively in the existing bilateral cooperation mechanisms. The International Boundary and Water Commission (IBWC) is the pre-eminent institutional forum for the bilateral management of shared water resources, established by the 1944 Treaty between Mexico and the United States. In the period relevant to the present submission, Mexico and the United States have negotiated and adopted IBWC Minute 328 (19 July 2022), which establishes a bilateral framework for addressing transboundary wastewater discharges and includes **a financial commitment by Mexico** of approximately USD 144 million for investment in infrastructure. That commitment is not rhetorical: it is backed by allocated federal budget and by verifiable physical progress.

237. IBWC Minute 333, adopted on 15 December 2025, deepened the framework of cooperation established by Minute 328 with 13 specific resolutions and the establishment of a permanent Bilateral Working Group for the monitoring of commitments. The adoption of this Minute, barely months before the close of the period for receiving comments in the present SEM proceeding, demonstrates that bilateral cooperation is dynamic, continuous and directed at concrete results—it is not a declaratory posture but an active operational mechanism.
238. The Memorandum of Understanding signed on 24 July 2025 by the Minister of Environment and Natural Resources, Alicia Bárcena Ibarra, and the Administrator of the United States EPA, Lee Zeldin, raises bilateral cooperation to the highest political and institutional level. This MOU is not merely a bureaucratic agreement: it is the expression of the political will of the highest levels of both governments to address the transboundary wastewater problem in a coordinated manner and with the necessary

resources. Submission SEM-26-002 does not mention this MOU, which once again evidences the partiality of the narrative presented to the Secretariat.

239. As regards investment in treatment infrastructure, the San Antonio de los Buenos Wastewater Treatment Plant (PTAR SAB) [redacted] et. That work, completed in 2024, significantly increases the treatment capacity of the Tijuana system and directly reduces the quantity of untreated wastewater that may reach the border water bodies. The existence and completion of this investment—documented in the Federal Expenditure Budget and in Conagua's public works records—is incompatible with the submission's narrative that Mexico is "promoting non-compliance" with its environmental law.

*III.B.4. Article 24.4(4) of USMCA/CUSMA delimits the scope of Mexico's obligation and excludes any obligation to manage the infrastructure on the United States side*

240. Article 24.4(4) of CUSMA expressly provides that "no provision of the present Chapter shall be interpreted as empowering the authorities of a Party to carry out activities directed at the enforcement of environmental legislation in the territory of another Party" [sic].[xxvii] This provision has a direct implication for the present case: Mexico may be assessed under Article 24.27 only in respect of the enforcement of its own environmental law in its own territory.
241. Submission SEM-26-002, however, contends that Mexico is responsible for the wastewater discharges that occur as a result of the interaction of the hydraulic infrastructure on both sides of the border. Part of the discharges affecting the beaches of San Diego and the border water bodies come from flows that originate in, or pass through, the United States hydrological system—specifically through the Tijuana River, whose basin has components in both countries—and that are the result of the inadequate capacity of the South Bay IWTP on the United States side. Mexico cannot be held responsible, under Article 24.27 of CUSMA, for the management of the infrastructure on the United States side.

242. The operation of the South Bay International Wastewater Treatment Plant is the responsibility of the United States International Boundary and Water Commission (IBWC) and of Veolia—the private company that operated the plant under contract with the IBWC and that was a party to the litigation culminating in Coastkeeper's Settlement Agreement.

243. The Settlement Agreement demonstrated that there are operational deficiencies on the United States side; that the private operator of the United States plant reached an agreement with Coastkeeper by paying attorneys' fees and undertaking certain communication actions; and that Coastkeeper, satisfied with that outcome on the United States side, directed its next legal action towards Mexico.

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[xxvii USMCA/CUSMA Article 24.4(4) reads: "Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party."]

244. This sequence, supported by the assertions and allegations made during the suit against the IBWC and Veolia in the United States courts—a matter which, as has already been stated, the Submitter has made generally known—is a problem involving the responsibility of various actors of its own country, and the supposed hypothesis advanced by Coastkeeper of holding Mexico responsible for what has not been done on the United States side makes the submission factually incorrect and legally untenable.

### *III.B.5. The Federal Environmental Liability Law as the element defining the threshold of actionable damage*

245. The analysis of Mexico's obligation to enforce its environmental law effectively cannot be undertaken without considering the Federal Environmental Liability Law. That law establishes the regime of environmental liability in Mexico and, crucially, that "damage to the environment" is conditional on the responsible party not holding permits to carry out the activities, or having acted with intent, its action causing damage to the environment; this condition delimits the threshold that exists in liability of a criminal type, a situation that does not exist in the present case, since there are legal instruments signed by both countries determining joint actions to address this problem and currently in operation.
246. Moreover, article 6 of the LFRA is of particular relevance to the present case. That provision establishes that damage to the environment is not deemed to exist where emissions, discharges, dumping or other forms of contamination do not exceed the maximum permissible limits established in the applicable Mexican official standards. In the case of wastewater discharges, those limits are established in NOM-001-SEMARNAT-2021.
247. [redacted] And if no damage to the environment exists in the legal sense, there exists no obligation of remediation, no obligation of aggravated administrative prosecution, and—*a fortiori*—no obligation of criminal prosecution under Article 416 of the Federal Criminal Code.
248. Submission SEM-26-002 and the Secretariat's Determinations do not cite article 6 of the LFRA. That omission is revealing: had the Submitter or the Secretariat analysed the Mexican normative framework in its entirety—including article 6 of the LFRA—they would have reached the conclusion that the standard of "damage to the environment" that triggers the more onerous obligations of Mexican environmental law is not met in the present case, [redacted].
249. This does not mean that the Government of Mexico is indifferent to water quality in the border receiving bodies. [redacted] the commitments of IBWC Minute 328, [redacted] demonstrate that Mexico is actively investing in improving the quality of the treated effluent.

250. **But the legal argument is clear** [redacted] **in accordance with the applicable legislation do not constitute "damage to the environment" within the meaning of article 6 of the LFRA**, and therefore do not generate the more onerous obligations of environmental law that the Submitter contends Mexico has failed to meet.

### *III.B.5.1. Article 6 of the LFRA and its interaction with the system of Compliance Programs*

251. The interaction between article 6 of the LFRA and the system of Compliance Programs of the National Waters Law creates a coherent normative framework that protects operators of wastewater treatment infrastructure who are acting in good faith to achieve full compliance with the standards. That framework recognizes the reality that the construction of treatment infrastructure requires time and resources, and that during that period of transition the operator cannot be treated as though it were acting unlawfully.

[redacted]

254. It is also the response most compatible with the principle of sustainable development that informs Chapter 24 of USMCA/CUSMA: instead of drastically sanctioning an operator of public infrastructure that cannot comply with the standard because the infrastructure has not yet been built, the Mexican system provides an orderly path towards full compliance that maximizes the probability that that compliance will be sustainable in the long term.

### *III.B.6. Analysis of the National Waters Law and the scope of Conagua's powers*

255. The National Waters Law (LAN) is the central normative instrument of water law in Mexico. The LAN establishes the legal regime applicable to national waters, including wastewater discharged into receiving bodies having the character of national waters. In order to understand the scope of Mexico's obligations under Article 24.27 of USMCA/CUSMA in the matter of wastewater, it is necessary to understand with precision the system of competences and obligations that the LAN establishes.

256. The LAN gives Conagua the status of superior body of a technical, normative and consultative character of the Federal Government in the matter of the management of

national waters. In the specific sphere of wastewater discharges, article 88 of the LAN provides that natural or legal persons generating discharges of wastewater into receiving bodies that are national waters or national property require a discharge permit issued by Conagua. That permit must establish, among other elements, the particular conditions of the discharge, the parameters and their maximum permissible values, the maximum discharge flow, and the monitoring and reporting obligations.

[redacted]

258. Article 88 Bis of the LAN establishes the figure of the Compliance Program as a mechanism for cases in which the discharger cannot immediately attain the conditions established in its discharge permit owing to technical or economic limitations requiring investment in infrastructure. The Compliance Program establishes a calendar of commitments, partial targets and investment milestones that the discharger must meet, and while it is in force the discharges made within the transitional limits established in the Program are deemed lawful. Conagua supervises compliance with the Program by means of periodic inspections and review of the monitoring reports that the discharger must submit.

259. [redacted] **s exactly the exercise of "effective enforcement of environmental law" that Article 24.1 of USMCA/CUSMA requires** [sic]**.**[xxviii] **The CEC Secretariat cannot ignore this exercise of powers and conclude that Mexico has not effectively enforced the LAN.**

***III.B.6.1. Constitutional article 115 and the distribution of powers in the matter of sanitation***

**260.** Subsection III of article 115 of the Political Constitution of the United Mexican States confers on the municipalities the power and responsibility to provide the public services of drinking water, drainage, sewerage, and treatment and disposal of their wastewater. That constitutional attribution is part of Mexico's federal design, which distributes competences among the federation, the states and the municipalities according to the principle of subsidiarity: functions that can be performed efficiently at the level closest to citizens should be the responsibility of that level of government.

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[xxviii USMCA/CUSMA Article 24.1 is the definitions provision]

**261.** The constitutional attribution of sanitation competences to the municipal level does not create a vacuum of federal responsibility: it creates a distribution of responsibilities in which the federation—through Conagua and Semarnat—establishes the applicable quality standards and regulates the discharge permit system, while the municipalities—directly or through bodies such as CESPT—provide the sanitation service within the federal regulatory framework. Conagua regulates and supervises; CESPT operates and complies under that regulatory framework. This distribution of competences is consistent with the constitutional design and cannot be characterized as "inadequate" by the CEC Secretariat, because it has no power to disparage the political system of a country—all the more so when in the United States this system operates in a similar manner, between the federal and state orders of government.

**262. The Secretariat has no authority to pronounce on the constitutional design of the distribution of competences in the matter of sanitation in Mexico.** This is a sovereign decision of the Parties, reflected in their constitutional texts, which Article 24.4(4) of USMCA/CUSMA explicitly protects. No provision of Chapter 24 may be interpreted as calling into question Mexico's sovereign decisions as to how it organizes its federal system of environmental government.

### *III.B.7. The bilateral commitments under the La Paz Agreement as additional evidence of effective enforcement*

**263.** The Agreement between the United Mexican States and the United States of America on Cooperation for the Protection and Improvement of the Environment in the Border Area, known as the La Paz Agreement, was signed on 14 August 1983 and constitutes the fundamental framework of bilateral environmental cooperation in the border area. That Agreement establishes mechanisms of cooperation in multiple environmental areas, including water quality, and has been implemented through a series of Technical Annexes addressing specific problems of transboundary environmental management.

**264.** The Border 2025 Program, implemented jointly by the United States EPA and Mexico's Semarnat under the La Paz Agreement, is the most recent instrument of implementation of that Agreement. This Program establishes specific targets for environmental cooperation in the border area, including water quality targets that are directly relevant to the problem of transboundary wastewater. Mexico's active participation in the Border 2025 Program—through Semarnat, Conagua and the corresponding state and municipal authorities—is evidence that Mexico is meeting its bilateral environmental commitments, not only the unilateral ones established in its domestic legislation.

**265.** The progress reports of the Border 2025 Program submitted by Mexico systematically document the actions carried out, the resources invested, and the results achieved in the matter of water quality in the border area. These reports, which are public documents available on the websites of the EPA and of Semarnat, provide a comprehensive view of the Mexican effort at environmental improvement at the border that contrasts markedly with the narrative of "inaction" that submission SEM-26-002 promotes. The CEC Secretariat is under an obligation to consider this public evidence before issuing determinations asserting that Mexico is not effectively enforcing its environmental law.

**266.** Mexico's participation in the Border 2025 Program also demonstrates that bilateral environmental cooperation is producing concrete results. The binational water quality reports show improvements in some quality parameters in the border water bodies during the period of implementation of the Program. These improvements are not the result of submission SEM-26-002—which was filed long after these improvements began to be recorded: they are the result of the investments made by Mexico in treatment infrastructure and of the bilateral cooperation under the La Paz Agreement. The credit for these improvements belongs to the institutional bilateral mechanisms that have been functioning effectively, not to a litigant seeking to claim credit for results that were produced by other actors.

## III.C. The purpose of the submission is economic and strategic, not environmental—*Principium Cardinale* of the Submitter

**267.** Mexico's third argument is complementary to the two preceding ones and is directed at revealing the instrumental nature of the present proceeding. Mexico demonstrates below that submission SEM-26-002 is not a genuine expression of citizen participation in the process of supervising compliance with the environmental commitments of USMCA/CUSMA, but is rather the most recent iteration of a strategy of environmental litigation that Coastkeeper has deployed over years with a primarily economic purpose.

### *III.C.1. The Settlement Agreement establishes that Coastkeeper's purpose is to obtain litigation fees, not to address the Tijuana River problem*

268. In 2021, Coastkeeper filed a civil complaint in the federal courts of the Southern District of California against the United States International Boundary and Water Commission (IBWC) and against Veolia, the private company operating the South Bay International Wastewater Treatment Plant under contract with the IBWC. The complaint alleged that the plant's discharges violated the United States Clean Water Act and caused harm to the border water bodies and to the beaches of San Diego and Tijuana.

269. The outcome of that litigation is revealing. After years of judicial proceedings, Coastkeeper reached a Settlement Agreement with the defendants. The terms of the Settlement Agreement, as publicly reported and as set out in the filings in the litigation itself, include no substantive obligation of clean-up of the Tijuana River: they do not order the construction of new infrastructure, do not establish deadlines for improving effluent quality, do not create remediation funds, and do not require the clean-up of contaminated sediments or the restoration of degraded habitats. Instead, the Settlement Agreement provides for the payment of attorneys' fees to Coastkeeper's representatives, and for the defendants' undertaking to make certain social media posts on the subject.

270. **This outcome—attorneys' fees and tweets instead of clean-up of the Tijuana River—is the fingerprint of the model of strategic environmental litigation that Coastkeeper has perfected.** Had Coastkeeper's genuine purpose been the remediation of the environmental problem, it would have negotiated a Settlement including commitments to invest in infrastructure, timetables for improving effluent quality, and mechanisms of independent supervision of compliance. Instead, it negotiated an agreement that provides

immediate income to its legal representatives and media visibility to the organization, with no verifiable environmental impact.

271. The legal implication of this fact is significant for the present proceeding. Article 24.27(3)(e) [sic] [xxix] of USMCA/CUSMA requires the Secretariat to assess whether the submission "appears to be directed at promoting the enforcement of environmental law rather than at harassing industry".

272. The Settlement Agreement is direct evidence that Coastkeeper's primary purpose is not the improvement of the environmental quality of the border water bodies, but the obtaining of economic and institutional benefits derived from litigation. This does not necessarily mean "harassment of industry" in the strict sense, but it may be inferred that the purpose of the submission is not genuinely environmental in the sense that the SEM mechanism requires.

*III.C.2. The forum shopping establishes that the SEM submission is a continuation of the United States strategic litigation*

273. Forum shopping consists in the strategic selection of the jurisdiction or forum most favourable to the litigant's interests, irrespective of which forum is naturally competent to hear the case. In the context of transboundary environmental law, forum shopping acquires an additional dimension when it is used to put pressure on actors or governments that were not parties to the original litigation, taking advantage of the mechanisms of international cooperation in order to continue a dispute that was resolved unsatisfactorily for the litigant in the domestic fora.

274. **The chronology of Coastkeeper's actions reveals a clear pattern of forum shopping.**

275. First, Coastkeeper litigated against the IBWC and Veolia in the United States federal courts. That litigation was "resolved" by means of a Settlement Agreement which did not establish, in any of its terms, that the Tijuana River problem would be addressed by the United States authorities.

276. Second, and not by reason of having been defeated in the United States courts, but because—having voluntarily chosen, in coordination with the IBWC and Veolia, a Settlement Agreement that privileged fees over the addressing of the environmental problem of the Tijuana River by the United States of America—which demonstrated that the United States actors may bear an alleged responsibility but that that responsibility could be discharged by attorneys' fees and social media posts—, Coastkeeper filed submission SEM-26-002 against Mexico, now directing the focus of the pressure towards the actor that had not been duly reached by the United States litigation.[xxx]

277. This sequence reveals that the SEM submission does not arise from an independent, good-faith assessment of Mexico's compliance with its obligations in the matter of wastewater, but from frustration with the outcome of the United States litigation and from

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[xxix Article 24.27(3) has no subparagraph (e).]

[xxx The sentence is broken in the original. It is rendered here as closely as the structure allows.]

the search for a new forum in which to continue the pressure. The SEM mechanism was not designed to provide this kind of continuation of litigation: it was designed to channel genuine citizen concerns about the environmental compliance of the governments of their own countries, not to provide a forum for informal review of judicial outcomes in the United States.

278. The use of the SEM mechanism as an instrument of forum shopping has systemic consequences that go beyond the present case. If the CEC Secretariat allows a submission such as SEM-26-002 to prosper—a submission filed by an organization that has already obtained a Settlement Agreement on the United States side and that now seeks to press the Government of Mexico with the same set of facts—it will be establishing a precedent that will transform the SEM mechanism into an instrument of strategic litigation available to any organization wishing to use international political pressure in order to obtain what it could not obtain through domestic litigation.

279. **This would completely denature the mechanism and would undermine the confidence of the Party Governments in the integrity of the USMCA/CUSMA system of environmental cooperation.**

*III.C.3. The incongruity between the SEM narrative and the narrative of the United States litigation exposes the instrumental character of the submission*

280. A comparison between the arguments that Coastkeeper presented to the United States courts in its complaint against the IBWC and Veolia, and the arguments it presents to the CEC Secretariat in submission SEM-26-002, reveals fundamental inconsistencies that expose the instrumental nature of the submission.

281. In the United States litigation, Coastkeeper argued that the wastewater discharges affecting the beaches of San Diego are principally the result of operational deficiencies of the South Bay IWTP—the United States plant—and of the insufficient treatment capacity of the international wastewater system. That argument was sufficiently persuasive for the IBWC and Veolia to reach a Settlement Agreement, which implies that the defendants implicitly acknowledged that there was a foundation for Coastkeeper's assertions as to their responsibilities.

282. In submission SEM-26-002, by contrast, Coastkeeper argues that the discharges affecting the beaches of San Diego are principally the result of the incapacity of the Mexican wastewater treatment system and of the inaction of the Mexican authorities. **This narrative is radically different from the one presented in the United States litigation: it shifts the origin of the problem from the United States plant to the Mexican system, and it shifts responsibility from the United States operators to the Government of Mexico.**

283. This inconsistency cannot be explained as the result of new evidence or of a more refined understanding of the problem: the transboundary hydrological problem has not changed substantially between the United States litigation and the filing of the SEM submission. The most plausible explanation—and the only one compatible with the evidence as a whole—is that Coastkeeper adapts its narrative to the forum in which it is litigating,

emphasizing the responsibility of whichever actor is in the dock in each particular proceeding. Before the United States courts, responsibility was principally that of the United States; before the CEC Secretariat, responsibility is principally Mexico's. This narrative adaptation is the hallmark of strategic litigation and is incompatible with the good-faith exercise of the SEM mechanism.

284. The CEC Secretariat should not be complicit in this strategy. The integrity of the SEM mechanism—and the confidence of the Party Governments in it—depends on the Secretariat assessing submissions with the analytical rigour needed **to distinguish between the genuine exercise of environmental citizen participation and the instrumental use of the mechanism for ends that are foreign to it.** In the present case, that distinction is clear: submission SEM-26-002 is the most recent manifestation of a strategy of strategic environmental litigation that does not merit the institutional backing of the CEC.

285. For all of the foregoing, submission SEM-26-002 must be terminated. Termination is the legally correct outcome both on the primary argument of inadmissibility and on the alternative analysis of the merits, and it is also the outcome that preserves the integrity of the SEM mechanism as a genuine instrument of environmental cooperation under USMCA/CUSMA.

*III.C.4. The forum shopping doctrine in international environmental law and its application to the SEM mechanism*

286. Forum shopping—the strategic selection of the forum most favourable to the litigant's interests—is a practice recognized and studied in international procedural law. In the context of transboundary environmental law, forum shopping acquires a particular dimension because transboundary environmental problems typically involve multiple jurisdictions and multiple actors who may be the subject of different types of proceedings in different fora.

287. International legal doctrine has developed principles for identifying and limiting abusive forum shopping. Among these principles are: international *lis pendens*, which precludes the simultaneous handling of the same case in multiple international fora; the doctrine of abuse of process, which allows international fora to reject proceedings that are used for purposes incompatible with their mandate; and the principle of *res judicata* in the broad sense, which precludes the review in one forum of decisions adopted by another forum in respect of the same facts and the same parties.

288. None of these principles is directly applicable in its strictest formulation to the present case, because the United States Settlement Agreement and submission SEM-26-002 involve different parties—the IBWC and Veolia in the former, the Government of Mexico in the latter—and fora of a different nature—a United States civil court and the SEM mechanism of USMCA/CUSMA. The spirit of these principles, however—that a litigant may not go on indefinitely seeking fora in which to raise the same set of facts until it finds one that gives it the ruling it did not find in the earlier ones—is fully applicable to the present case.

289. The CEC Secretariat cannot be indifferent to the sequence of fora used by Coastkeeper. The integrity of the SEM mechanism requires the Secretariat to ask itself whether the submission before it is the genuine exercise of citizen participation that Article 24.27 contemplates, or whether it is the continuation of a litigation strategy that has already obtained what it could obtain in the fora where it was directly applicable. In the present case, the answer to that question is clear: Coastkeeper obtained a Settlement Agreement on the United States side that provided it with attorneys' fees and publicity; it now seeks to press the Government of Mexico with the same facts because the Government of Mexico is the actor that remains outside the direct reach of the United States litigation. This is the definition of excessive forum shopping in the context of transboundary environmental law.

290. The implication for the present proceeding is that the Secretariat must examine the purpose of the submission with greater scrutiny than it has applied hitherto. A litigant that has reached a Settlement in one forum and that immediately transfers its activity to a new forum on the basis of the same facts bears the additional burden of demonstrating that the new forum is the appropriate one for the type of remedy it seeks, and that that remedy could not have been obtained in the previous forum.

291. Coastkeeper has not discharged that burden in submission SEM-26-002: it does not explain why the SEM mechanism is the appropriate forum in which to seek remediation of the transboundary wastewater problem after having reached an agreement with the United States operators, or why that remedy could not have been included in the terms of the United States Settlement Agreement, when there exists a political and legal system of national and international instruments of cooperation between the two countries to address this problem, and one that is currently functioning.

## IV. SPECIFIC REBUTTAL OF THE SECRETARIAT'S ASSERTIONS IN DOCUMENTS DET1 AND DET2

292. This Section rebuts directly, specifically and on reasoned grounds each of the assertions that the CEC Secretariat made in its Determinations of Eligibility and of Continuation of the Process (DET1 and DET2). Mexico rejects the Secretariat's methodology, which uncritically adopted the Submitter's narrative without examining the available documentary evidence, without correctly applying the legal standards of Article 24.27 of USMCA/CUSMA, and without considering the applicable Mexican normative and institutional framework in all its complexity.
293. Each rebuttal is structured at two levels: first, the direct denial of the assertion ("It is false that…") with the evidence establishing the falsity of the Secretariat's assertion; second, the alternative argument ("Assuming, without conceding…") demonstrating that even on the supposed hypothesis that the assertion were partially correct, it could not sustain the continuation of the proceeding within the terms of Article 24.27 of USMCA/CUSMA. This structure reflects the analytical rigour that the defence of the Mexican State demands and that the Secretariat omitted from its analysis.

**IV.A. Rebuttal of the assertion that Mexico has not effectively enforced the National Waters Law in the matter of discharge permits**

**IT IS FALSE THAT MEXICO HAS NOT EFFECTIVELY ENFORCED THE NATIONAL WATERS LAW IN THE MATTER OF WASTEWATER DISCHARGE PERMITS IN THE BORDER REGION**

**It is false that Mexico has not effectively enforced the National Waters Law:**

294. The Secretariat's assertion that Mexico has not effectively enforced the National Waters Law (LAN) in the matter of wastewater discharge permits lacks any factual or legal foundation. Article 88 of the LAN provides that every discharge of wastewater into receiving bodies that are national waters requires the prior permit of Conagua, and that that permit shall establish the parameters and conditions of the discharge. Conagua has exercised this power fully and in documented form in respect of the wastewater discharge operated by the State Public Services Commission of Tijuana (CESPT).

295. The discharge permits granted by Conagua to CESPT are in force, have been updated in accordance with the entry into force of NOM-001-SEMARNAT-2021, and establish with precision the quality parameters required of the treated effluent, the maximum authorized flows, the authorized discharge points, and the monitoring and reporting obligations. The documentation of these permits, including their conditions and the updates made, is held by Conagua and has been made available to the Secretariat to the extent that its requests for information so required.

296. The effective enforcement of environmental law by Conagua is evidenced when it has exercised its powers of regulation, authorization and oversight in a genuine and sustained manner, and that this responds to its commitment to the implementation of the legal framework applicable in the matter.



**Assuming, without conceding, that there were deficiencies in Conagua's supervision:**

300. Even on the supposed hypothesis, which Mexico does not concede, that there were some deficiency in Conagua's supervision of CESPT's discharge permits, that could not sustain the Secretariat's assertion that Mexico is "failing to comply with its obligation of effective enforcement of environmental law" within the terms of Article 24.27 of USMCA/CUSMA.

301. The standard of Article 24.1 of USMCA/CUSMA requires a systematic and sustained pattern of non-enforcement directed at obtaining trade advantages—not isolated deficiencies of supervision in a context of infrastructure in the process of expansion. Deficiencies of supervision, if they existed, would be matters of internal administrative management that do not reach the threshold of Article 24.27.

302. In addition, Article 24.4(2) of USMCA/CUSMA explicitly protects Mexico's right to "exercise discretion in respect of regulatory and compliance actions, and to take decisions as to the allocation of resources" [sic].[xxxi] [redacted] **The Secretariat cannot substitute its own appraisal of what the compliance priorities ought to have been for Conagua's technical and legal judgment, irresponsibly exceeding its powers and setting itself up as a supranational authority.**

**IV.B. Rebuttal of the assertion that Profepa has not exercised its powers of inspection and sanction**

**IT IS FALSE THAT PROFEPA HAS FAILED TO EXERCISE ITS POWERS OF INSPECTION AND OVERSIGHT IN THE MATTER OF WASTEWATER MANAGEMENT IN THE BORDER REGION**

**It is false that Profepa has failed to exercise its powers of inspection:**

303. The Secretariat's assertion that the Office of the Federal Attorney for Environmental Protection (Profepa) has not exercised its powers of inspection and oversight in the matter of wastewater management in the Tijuana region is factually incorrect. [redacted]

304. These proceedings are not symbolic or paper exercises: they are formal inspection proceedings that required the assignment of specialized technical personnel, the carrying out of site visits, the taking of water samples, the analysis of quality parameters in an accredited laboratory, the drawing up of inspection records, and the commencement of

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[xxxi The authentic English of Article 24.4(2) reads: "The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of enforcement resources with respect to other environmental laws determined to have higher priorities."]

the corresponding administrative proceedings where the results of the inspection so warranted.

305. [redacted]

**IV.C. Rebuttal of the assertion that Mexico has not taken measures to remedy the transboundary pollution**

**IT IS FALSE THAT MEXICO HAS NOT ADOPTED CONCRETE AND SUBSTANTIVE MEASURES TO ADDRESS THE PROBLEM OF TRANSBOUNDARY WASTEWATER DISCHARGES**

**It is false that Mexico has not taken concrete measures:**

306. The assertion that Mexico has not adopted concrete measures to address the problem of transboundary wastewater discharges ignores a robust set of documented actions that the Government of Mexico has implemented in recent years. That assertion reveals either an incomplete analysis of the available information, or the consequence of the Secretariat's deliberate decision to adopt the Submitter's unilateral narrative without testing it against factual reality.

307. The measures adopted by Mexico are of multiple kinds and span the spheres of investment in infrastructure, regulation and supervision, bilateral cooperation and inter-institutional coordination. In the sphere of investment in infrastructure, the most significant work is the expansion of the San Antonio de los Buenos Wastewater Treatment Plant (PTAR SAB), Phase 1 of which—[redacted]—was executed and completed in 2024. This investment is not a future promise: it is a work already executed that has increased the treatment capacity of the Tijuana system significantly and verifiably.

308. The PTAR SAB has a history of continuous investment reflecting the Government of Mexico's sustained commitment to the improvement of wastewater treatment infrastructure at the border. Phase 1 of the recent expansion is additional to earlier investments in equipment modernization, improvement of treatment processes, and expansion of the hydraulic capacity of the conveyance lines. These investments taken together represent thousands of millions of pesos of the Mexican federal budget dedicated specifically to addressing the problem that submission SEM-26-002 contends Mexico is ignoring.

309. In the sphere of bilateral cooperation, IBWC Minutes 328 (2022) and 333 (2025) represent formal and verifiable commitments by the Government of Mexico to continue investing in infrastructure and to coordinate its actions with the United States authorities in order to address the transboundary problem comprehensively. The commitment of approximately USD 144 million documented in Minute 328 is not an arbitrary figure: it arises from a binational technical analysis of the investment needs for addressing the

problem of transboundary discharges and was negotiated with the United States side in a good-faith process.

310. The Bárcena–Zeldin Memorandum of Understanding (July 2025) raises these commitments to the highest political level, demonstrating that the Government of Mexico regards the transboundary wastewater problem as a foreign policy priority and not as a minor matter of local administrative management. This level of political attention—Mexico's Minister of Environment and Natural Resources and the Administrator of the United States EPA—is incompatible with the submission's narrative that Mexico is ignoring the problem.

**Assuming, without conceding, that the measures adopted were insufficient:**

311. On the supposed hypothesis, which Mexico does not concede, that the measures adopted were insufficient to resolve the problem of transboundary discharges completely, the insufficiency of the measures is not equivalent to "non-effective enforcement of environmental law" within the terms of Article 24.27 of USMCA/CUSMA. The USMCA/CUSMA standard does not require Mexico to resolve the problem completely within a determined period: it requires Mexico to enforce its environmental law effectively, which Mexico is doing.

312. The problem of transboundary wastewater discharges is, as the Submitter made publicly known and made known before the judicial authorities of its own country, the responsibility of the United States of America as regards full compliance with the commitments for genuinely addressing the Tijuana River problem in San Diego.

**IV.D. Rebuttal of the assertion that NOM-001-SEMARNAT-2021 is not being enforced**

**IT IS FALSE THAT NOM-001-SEMARNAT-2021 IS NOT BEING ENFORCED IN THE PRESENT CASE**

**It is false that NOM-001-SEMARNAT-2021 is not being enforced:**

313. NOM-001-SEMARNAT-2021 is the Mexican Official Standard establishing the maximum permissible limits of pollutants in wastewater discharges into national waters and property. That standard entered into force on 11 January 2022 and replaced the earlier NOM-001-ECOL-1996, establishing stricter quality parameters in several respects. The Secretariat's assertion that this standard is not being "enforced" in the context of CESPT's discharges requires a more careful analysis than the Secretariat offers in its determinations.

[redacted] NOM-001-SEMARNAT-2021 is enforced through Conagua's discharge permit system. When Conagua grants a discharge permit, the conditions of the permit reflect the limits established in the applicable NOM [redacted]

315. The distinction between "the standard is not enforced" and "the standard is not fully complied with because the infrastructure is in the process of expansion" is fundamental. If a standard is not enforced, that means it is not invoked by the competent authorities, does not condition the permits granted, and does not determine the obligations of the regulated parties. If a standard is not fully complied with, that means the regulated parties are bound by it but have not yet attained the parameters it establishes, and that the authorities are managing the process of attaining that compliance by means of the available instruments. In the present case, NOM-001-SEMARNAT-2021 is fully enforced in the first of these senses: Conagua invokes it, CESPT is bound by it, [redacted]

316. In addition, it is relevant that article 6 of the Federal Environmental Liability Law provides that damage to the environment is not deemed to exist where emissions or discharges do not exceed the limits established in the applicable Mexican official standards. [redacted] The Secretariat cannot assess Mexico's compliance with its obligations of effective enforcement without taking this fundamental provision of Mexican environmental law into account.

**Assuming, without conceding, that there were failures to comply with the NOM:**

317. Even if it were conceded—which Mexico denies—that there are discharges exceeding the limits of NOM-001-SEMARNAT-2021 in a manner that article 6 of the LFRA does not cover, that does not automatically constitute a failure by Mexico to comply with its obligation of effective enforcement under Article 24.1 of USMCA/CUSMA. For that to occur, it would have to be demonstrated that Mexico has not exercised its powers of regulation, inspection and sanction in the face of those discharges—which is exactly what Sections III.B, IV.A and IV.B of this Response demonstrate to be false.

318. The existence of failures to comply with an environmental standard in the territory of a State is not equivalent, in any international legal system, to that State having violated its obligation of effective enforcement of that standard. If that were the standard, no State would be capable of meeting its international environmental commitments, because in the territory of every State there are failures to comply with environmental standards to some degree. The correct standard is the one that Article 24.1 of USMCA/CUSMA [sic] establishes: a sustained pattern of non-enforcement having the purpose or effect of promoting trade or investment by reducing levels of environmental protection.[xxxii]

[[xxxii] The standard described is not in USMCA/CUSMA Article 24.1.]

**IV.E. Rebuttal of the assertion that Mexico has not criminally prosecuted the environmental offences related to the discharges**

**IT IS FALSE THAT MEXICO HAS FAILED IN ITS OBLIGATION TO PROSECUTE UNLAWFUL WASTEWATER DISCHARGES CRIMINALLY WHERE THE OFFENCE IS ESTABLISHED**

**It is false that Mexico has failed to prosecute environmental offences criminally:**

319. Article 416 of the Federal Criminal Code defines the offence of unlawful discharge of contaminating substances into bodies of national waters. That offence requires for its constitution that the discharge be made "without holding the corresponding permits or authorizations issued by the competent federal authority" [sic] or that it be made "in contravention of the applicable legal or regulatory provisions" [sic], or that the person act with intent [sic]. The definitional element of "discharge without a permit" or "in contravention of legal provisions" is essential: without it, there is no offence within the terms of Article 416 of the CPF.[xxxiii]

320. In the present case, CESPT's discharges do not constitute the offence under Article 416 of the CPF for a legally clear reason: CESPT operates under a discharge permit in force, granted by Conagua in accordance with article 88 and related provisions of the National Waters Law, [redacted] establishing the transitional conditions of the discharge during the period of expansion of the treatment infrastructure. A discharge occurring under the terms of a permit in force [redacted] is not a discharge "without a permit": it is an authorized discharge, subject to conditions, compliance with which is being supervised by Conagua.

321. Profepa and the Office of the Attorney General of the Republic have correctly applied the principle of legality—a constitutional guarantee under article 16 [sic] of the CPEUM—in refraining from commencing criminal proceedings where the elements of the offence are not established. That principle prohibits criminal prosecution where the facts do not fall within the offence provided for by law. To contend that Mexico must commence criminal proceedings against CESPT—[redacted]—would be to require the Mexican authorities to violate the principle of criminal legality in order to satisfy the expectations of a United States organization.

322. The principle of *ultima ratio* in criminal law—which establishes that the criminal response must be reserved for cases in which other legal responses are insufficient—reinforces this conclusion. Where administrative environmental law provides adequate instruments for managing [redacted]—the activation of criminal law is unnecessary, disproportionate and contrary to correct legal technique. The Secretariat cannot contend that criminal law is the only admissible instrument of environmental enforcement.

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[xxxiii Article 416 does not contain the quoted language.]

323. The Coordination Agreement between Profepa and the FGR, published in the Official Gazette of the Federation on 13 October 2004, [redacted] establish the institutional mechanisms for coordination between the environmental inspection authorities and the criminal prosecution authorities.

324. These instruments exist precisely in order to ensure that where the results of Profepa's or Conagua's inspections reveal facts that may constitute environmental offences, the information is channelled to the competent criminal authorities. The existence of these coordination mechanisms—and their application in practice—is evidence that the Mexican system of environmental law enforcement is designed to articulate the administrative and criminal response in a coordinated manner, not in isolation.

**Assuming, without conceding, that there were merit for criminal prosecution:**

325. On the supposed hypothesis, which Mexico does not concede, that there were facts capable of constituting the offence under Article 416 of the CPF, the decision whether or not to commence a criminal investigation is a discretionary power of the Federal Public Prosecutor's Office, protected by Article 24.4(2) of USMCA/CUSMA and by the principle of the autonomy of the prosecutorial function.

326. **Mexico gives notice that the CEC Secretariat is exceeding its powers and therefore has no authority to document, investigate or order Mexico to commence specific criminal investigations:** to do so would be an intervention in the exercise of sovereign powers going beyond the mandate of Article 24.27 of USMCA/CUSMA and would violate Article 24.4(4), which prohibits the provisions of Chapter 24 from being interpreted as authorizing the authorities of a Party to enforce environmental law in the territory of another Party. ### IV.F. Rebuttal of the assertion that the Mexican institutional structure is inadequate to address the problem

## IT IS FALSE THAT THE MEXICAN INSTITUTIONAL FRAMEWORK IS INADEQUATE TO ADDRESS THE PROBLEM OF TRANSBOUNDARY WASTEWATER

**It is false that the Mexican institutional framework is inadequate:**

327. The CEC Secretariat insinuates in its determinations that the Mexican institutional structure for addressing wastewater discharges is inadequate, that there is a duplication of functions among Conagua, Semarnat and Profepa that generates gaps of responsibility, and that the constitutional design of competences in the matter of water and sanitation—which confers on the municipalities responsibility for the public services of drinking water, drainage and sewerage under article 115 of the Political Constitution—creates an institutional vacuum that impedes the effective enforcement of federal environmental law; conduct in which the Secretariat exceeds its powers and, irresponsibly and without foundation, criticizes a sovereign political and legal system that has been functioning for more than 160 years[1] and that has evolved symmetrically with the United States federal system.

328. These assertions are incorrect. The Mexican institutional framework for the management of water and wastewater is a complex but coherent federalized system, designed to respect the constitutional principle of the distribution of competences among the federation, the states and the municipalities. The fact that the system is complex does not mean that it is inadequate: it reflects the political and constitutional reality of a federal State in which competences are distributed among different levels of government, each with its own responsibilities and resources, just as in the United States.

329. As regards article 115 of the Political Constitution of the United Mexican States, which confers on the municipalities the power and responsibility to provide the public services of drinking water, drainage, sewerage, and treatment and disposal of their wastewater, that constitutional provision does not create a vacuum of responsibility: it creates a clear attribution of responsibility to the municipal level, with the mechanisms of vertical coordination necessary to ensure that compliance with federal standards is enforceable against the municipal or para-municipal entities providing the service. CESPT—the State Public Services Commission of Tijuana—operates in accordance with this constitutional distribution of competences, and is subject both to federal regulation by Conagua in the matter of discharge permits and to state and municipal supervision of service quality.

330. Nor does the concurrence of Conagua, Semarnat and Profepa in the regulation and supervision of wastewater discharges generate a vacuum: it generates a layered system of supervision that is characteristic of mature regulatory frameworks in environmental matters. Conagua regulates the discharge through the permit system and the compliance program; Semarnat establishes the applicable Mexican official standards (NOMs); and Profepa inspects environmental compliance in the broad sense. Each institution has defined competences, and the instruments of inter-institutional coordination [redacted]

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[1] Political Constitution of the Mexican Republic of 1857.

[redacted]—ensure that actions are coherent and not duplicated.

331. In the specific case of the Tijuana–Tecate–Ensenada border region, the International Boundary and Water Commission (IBWC) adds an additional layer of bilateral coordination that is essential to the management of a problem which, by its transboundary nature, cannot be resolved unilaterally by either country. The active participation of the IBWC—through Minutes 328 and 333 and the Bilateral Working Group—demonstrates that the Mexican institutional framework is effectively integrated into the bilateral system for the management of the problem.

**Assuming, without conceding, that there were institutional deficiencies:**

332. Even if it were accepted—which Mexico denies—that the Mexican institutional framework has deficiencies of coordination or of capacity, that does not constitute the type of conduct with which Article 24.27 of USMCA/CUSMA is concerned. Institutional deficiencies are a development problem that the CEC's cooperation mechanisms are designed to address through technical assistance, exchange of best practices and institutional strengthening projects. They are not the object of the factual record mechanism, which is reserved for cases of deliberate policy of non-enforcement of environmental law for commercial ends. The confusion between these two types of situation is a grave methodological error of the Secretariat in its determinations DET1 and DET2.

## IV.G. Rebuttal of the assertion that Mexico has not demonstrated concrete actions to improve water quality

### IT IS FALSE THAT MEXICO CANNOT ESTABLISH CONCRETE AND VERIFIABLE ACTIONS TO IMPROVE TREATMENT INFRASTRUCTURE AND BORDER WATER QUALITY

**It is false that Mexico has not established concrete actions of improvement:**

333. The assertion that Mexico has not demonstrated concrete actions to improve border water quality disregards a set of verifiable investments, works and bilateral commitments that demonstrate exactly the contrary. The fact that submission SEM-26-002 does not cite these actions—and that the Secretariat ignored them in its determinations—does not mean that they do not exist; it means that the Secretariat's analysis is incomplete and partial.

334. [redacted]

335. The additional treatment capacity generated by Phase 1 of the expansion of the PTAR SAB not only increases the volume of wastewater that can be treated before discharge: it

also improves the resilience of the system in the face of intense precipitation events that have historically overloaded treatment capacity and generated emergency discharges towards the Tijuana River and the coast. The improvement of resilience is an essential component of addressing the problem, because a significant proportion of the discharge events affecting the beaches of San Diego are not the result of deficient normal operation but of treatment capacity being exceeded during storm events—situations in which no sewerage system in the world can treat 100% of the flow received.

336. In the sphere of water quality monitoring, Mexico has increased the frequency and coverage of its programs for monitoring water quality in the border receiving bodies. The data generated by these monitoring programs—available in the records of Conagua and of the IBWC—show the evolution of water quality parameters at established measurement points, make it possible to assess the impact of the investments made, and provide the technical basis for decision-making on future investments. The existence and operation of these monitoring programs is evidence that Mexico is following the evolution of the problem and directing its actions in light of the results.

337. The Border 2025 Program, implemented jointly by the United States EPA and Semarnat under the La Paz Agreement, includes specific commitments to improve water quality in the border region and mechanisms for binational monitoring of progress. Mexico's active participation in this program—and the progress reports that Mexico submits periodically under the La Paz Agreement—are further evidence that Mexico is adopting a proactive, evidence-based approach to addressing the transboundary wastewater problem.

338. The conclusion is unequivocal: Mexico has adopted concrete, verifiable and documented actions to improve treatment infrastructure and border water quality. San Diego Coastkeeper's assertion that Mexico has not demonstrated such actions is factually incorrect and reflects an incomplete analysis of the available evidence. That error is sufficient in itself to call into question the soundness of the factual bases on which the Secretariat grounded its recommendation to continue the proceeding.

**Assuming, without conceding, that the improvements were insufficient:**

339. Even if it were accepted—which Mexico expressly denies—that the improvements achieved are insufficient to resolve the problem of transboundary discharges completely, the insufficiency of the improvements is not equivalent to "non-effective enforcement of environmental law" within the terms of Article 24.27 of USMCA/CUSMA. USMCA/CUSMA does not guarantee perfect results: it guarantees that the Parties will effectively enforce their environmental law through the genuine and good-faith exercise of their powers of regulation, inspection, supervision and sanction. Mexico has done exactly this, with results that are positive although still insufficient to resolve completely a problem that is, by its magnitude and history, one of the most complex environmental challenges of the North American border region.

340. The complexity of the problem and the history of insufficient investment that created it cannot be imputed to the present Government of Mexico as though they were the result of a deliberate policy of non-enforcement of environmental law, when the Submitter itself

publicly documented that the United States has not complied with the effective enforcement of its own environmental law.

## IV.H. Rebuttal of the Secretariat's position regarding the scope of its own mandate under Article 24.27

### IT IS FALSE THAT THE CEC SECRETARIAT HAS POWERS TO ASSESS MEXICO'S ENVIRONMENTAL POLICY BEYOND THE PARAMETERS ESTABLISHED IN ARTICLE 24.27(3) OF USMCA/CUSMA

**It is false that the Secretariat has the broad mandate that its determinations presuppose:**

341. The Secretariat's Determinations DET1 and DET2 presuppose a mandate of assessment broader than that which Article 24.27 of USMCA/CUSMA confers. The Secretariat acts as though it had the power to assess Mexico's environmental policy on wastewater comprehensively, to pronounce on the sufficiency of the investments in infrastructure made, to judge the suitability of the legal instruments used by Conagua and Profepa, and to determine whether the compliance priorities chosen by the Mexican authorities are the correct ones. None of these powers is contemplated in Article 24.27 of USMCA/CUSMA.

342. The Secretariat's mandate under Article 24.27 is specific and limited: to assess whether the submission filed meets the eligibility factors established in paragraph (3), and, where it does, to recommend to the Council whether a factual record should be developed. The Secretariat is not an organ of review of the environmental policy of the member countries of USMCA/CUSMA; it is not an environmental tribunal with power to order corrective measures; it is not an audit body for the institutional management of the Parties' environmental agencies. In fact, the Secretariat conducts itself as a quasi-judicial technical body for the assessment of the admissibility of citizen submissions, with the specific and limited mandate that Articles 24.27 and 24.28 establish.

343. When the Secretariat goes beyond this mandate—as it does in its determinations DET1 and DET2 by requesting a Party Response that does not meet the minimum threshold required by Article 24.27 of USMCA/CUSMA, in order to assess through that Party Response the sufficiency of the actions of Conagua and Profepa going beyond what the evidence presented by the Submitter is capable of sustaining—the Secretariat violates the principle of attributed competence that governs the conduct of international bodies. International bodies have only the competences conferred on them by the Parties through the relevant constitutive instrument; any action exceeding those competences is *ultra vires* and cannot serve as the foundation for binding decisions.

344. This overreach has practical consequences. If the Secretariat may assess in its discretion the adequacy of the Parties' environmental policies beyond the factors of Article 24.27(3), the SEM mechanism becomes an instrument of general supervision of national environmental policies that none of the Parties authorized when negotiating USMCA/CUSMA. The Parties negotiated a specific mechanism for the admissibility of citizen submissions, not a mechanism for the general assessment of policies. The Secretariat must act within the mandate conferred on it.

**Assuming, without conceding, that the Secretariat had a broader mandate:**

345. Even if it were accepted—which Mexico expressly denies—that the Secretariat has a mandate broader than that established in Article 24.27, that mandate would have to be exercised with the analytical rigour necessary to guarantee the fairness of the procedure. In particular, the Secretariat would have to: (a) take into account all the relevant evidence, including the evidence of the actions of the Mexican authorities that Mexico has documented; (b) apply the correct legal standard of Article 24.1 of USMCA/CUSMA, not a standard of its own constructed out of the Submitter's narrative; and (c) guarantee Mexico's right of defence by providing real and meaningful opportunities to respond to the Secretariat's assessments before these are consolidated into determinations.

346. None of these conditions has been satisfied in the present proceeding. The Secretariat issued DET1 and DET2 without adequately considering what Chapter 24 itself requires, for instance by incorrectly applying the standard of Article 24.1. These procedural shortcomings are, in themselves, additional reasons for terminating the proceeding. The Secretariat's response is already known to Mexico: an interpretation of the text of USMCA/CUSMA tailored to its own ends. The Secretariat interprets what requires no interpretation.

**IV.I. Analysis of NOM-001-SEMARNAT-2021 and its correct application to the facts of the case**

347. NOM-001-SEMARNAT-2021, published in the Official Gazette of the Federation on 11 January 2022 [sic], established new maximum permissible limits for pollutants in wastewater discharges into national waters and property, replacing the earlier NOM-001-ECOL-1996. This standard is the central technical parameter applicable to CESPT's discharges and, consequently, the principal reference point for assessing whether the discharges are within or outside the limits that Mexican law establishes.
348. NOM-001-SEMARNAT-2021 establishes two [sic] types of limit: the Maximum Permissible Limits (LMP) for use in agricultural irrigation and the LMP for urban public use. The limits applicable to CESPT's discharges depend on the characteristics of the receiving body of the discharge. In the case of discharges going to the Tijuana River and eventually to the Pacific Ocean in the border coastal zone, the applicable limits are those that the standard establishes for use in agricultural irrigation or for discharge into surface water bodies, depending on the classification of the receiving body under Conagua's National Inventory of Water Bodies.

349. NOM-001-SEMARNAT-2021 includes transitional provisions recognizing that immediate compliance with the new limits may not be feasible for all dischargers, particularly for those operating existing infrastructure that was designed to meet the standards of the earlier rule. [redacted] and confirm that the Mexican legislature and regulatory authorities have recognized the need to provide reasonable periods for compliance with more demanding standards.

350. The application of NOM-001-SEMARNAT-2021 to CESPT's case must be undertaken by considering: (a) the specific limits that the standard establishes for the type of discharge and the type of receiving body concerned; (b) the specific parameters in which CESPT's discharge may not attain those limits; (c) the parameters in which CESPT's discharge does attain the limits; and (d) [redacted].

*IV.I.1. The parameters for which CESPT meets the NOM limits are omitted by the submission*

351. Submission SEM-26-002 focuses essentially on the supposed hypothesis that the parameters of CESPT's discharges exceed the limits of NOM-001-SEMARNAT-2021, omitting to mention the parameters for which CESPT does attain those limits. This omission produces a distorted picture of the real situation: instead of presenting a balanced analysis of which parameters are met and which are not, and to what extent, the submission selects only the information that supports its narrative of generalized non-compliance.

352. Analysis of the monitoring data available in Conagua's records reveals that the effluent treated by the PTAR SAB meets or betters the limits of NOM-001-SEMARNAT-2021 in a series of important parameters, including certain indicators of suspended solids and of secondary treatment. [redacted]

353. This distinction between primary and secondary treatment parameters—where CESPT performs better—and tertiary treatment parameters—where performance is lower—is relevant because it shows that the non-compliance is not generalized but specific to the parameters requiring technology that has not yet been installed. [redacted]. Partial non-compliance is evidence of the gap between the capacity of the existing infrastructure and the more demanding standards of the new rule; it is not evidence that Mexico is not effectively enforcing its environmental law.

*IV.I.2. NOM-001-SEMARNAT-2021 as a requirement reasonably attainable within the period* [redacted]

354. An additional consideration that the Secretariat's analysis omits is the assessment of [redacted] having regard to the programmed investments. The technical answer is in the affirmative: the expansion of the PTAR SAB

contemplates the installation of tertiary treatment technology that will enable the plant to attain the NOM limits in the parameters currently deficient.

### IV.J. Analysis of the Profepa–FGR Agreement and the [redacted] evidence of institutional coordination

355. One of the arguments of submission SEM-26-002 is that the Mexican institutions are not adequately coordinated with one another to address the wastewater problem, and that this lack of coordination results in gaps in law enforcement. That assertion is incorrect and disregards the existing instruments of inter-institutional coordination.

356. The Collaboration Agreement between Profepa and the Office of the Attorney General of the Republic, published in the Official Gazette of the Federation on 13 October 2004, establishes the formal mechanisms of coordination between the environmental inspection authority and the criminal prosecution authority. That agreement defines the procedures for referring matters from Profepa to the FGR where the results of an environmental inspection reveal possible criminal conduct, the documentation requirements that must accompany such a referral, the FGR's response times, and the mechanisms for joint monitoring of the matters referred.

357. The existence of this Agreement and its practical application in cases where possible environmental offences are detected is direct evidence that the Mexican institutional system is designed to articulate the administrative response and the criminal response in a coordinated manner.

[redacted]

[redacted]

**IV.K. Analysis of shared responsibility in the context of the transboundary hydrological basin of the Tijuana River**

360. A central element that submission SEM-26-002 systematically ignores is the shared responsibility for the problem of wastewater discharges affecting the border coastal zone. The hydrological basin of the Tijuana River is a transboundary basin that includes territories of Mexico and of the United States, and the wastewater flows that eventually reach the Pacific Ocean in the border area are the result of the interaction of the hydraulic infrastructure of both countries, of the rainfall conditions of the basin, and of the capacity of the treatment systems on both sides of the border.

361. On the United States side, the South Bay International Wastewater Treatment Plant (SBIWTP) receives and treats wastewater coming from Mexico through the connection installed in accordance with the IBWC Minutes. The treatment capacity of this plant for secondary treatment has not been sufficient to handle the flows generated during intense precipitation. During these events, the SBIWTP operates in overload conditions resulting in discharges of untreated or partially treated wastewater towards the Pacific Ocean. These discharges on the United States side contribute significantly to the contamination of the beaches of San Diego that submission SEM-26-002 attributes exclusively to Mexico.

362. Coastkeeper's litigation against the IBWC and Veolia—the private operator of the SBIWTP—is evidence that the Submitter recognizes the responsibility of the United States side in the problem. When Coastkeeper sued the IBWC and Veolia, it argued that operational deficiencies of the SBIWTP were a significant cause of the contamination of the beaches of San Diego. That argument was sufficiently convincing for the IBWC and Veolia to reach a Settlement Agreement. The narrative that Coastkeeper constructed in the United States litigation—responsibility of the United States side—is incompatible with the narrative it constructs in submission SEM-26-002—exclusive responsibility of the Mexican side.

363. Article 24.4(4) of USMCA/CUSMA is direct on this point: no provision of Chapter 24 authorizes the authorities of a Party to enforce environmental law in the territory of another Party. Mexico cannot be held responsible for discharges originating in the sewerage system of the city of San Diego, for the operational deficiencies of the SBIWTP, or for the wastewater flows entering the Tijuana River from United States territory during intense precipitation events.

364. Submission SEM-26-002 does not confine its analysis to Mexico's responsibility for the discharges originating in the Mexican sewerage system; instead, it presents the problem holistically and attributes to Mexico responsibility for the transboundary problem as a whole, including the components on the United States side. That attribution of responsibility is legally incorrect and cannot be accepted by the Secretariat.

365. Bilateral cooperation through the IBWC and the La Paz Agreement exists precisely because the Government of Mexico and the Government of the United States recognize that the transboundary wastewater problem is a shared problem requiring shared solutions. The solution to the problem cannot be that Mexico be declared in breach of its

obligations under USMCA/CUSMA while the United States side of the problem is the object of a private Settlement Agreement whose terms include no commitments to clean up the Tijuana River, or the coasts of Imperial Beach that the Submitter identified. The correct solution is to continue and deepen the bilateral cooperation that is already producing positive results, not to aggravate the problem with a quasi-contentious procedure that damages the relations of cooperation.

**IV.L. Mexico's investment as evidence of environmental good faith incompatible with the assertion of "non-effective enforcement"**

366. A final consideration that the Secretariat's analysis ignores completely is the financial dimension of Mexico's commitment to improving wastewater treatment infrastructure. Investment in environmental infrastructure is the costliest and most concrete way of demonstrating a government's commitment to improving environmental quality: it requires the allocation of scarce budgetary resources, tendering and contracting processes, construction and commissioning time, and long-term operational maintenance. **It is not a declaration of principles or an abstract commitment: it is money invested in physical works with verifiable results.**

367. Mexico has invested, and continues to invest, significant budgetary resources in improving wastewater treatment infrastructure in the Tijuana border region. The expansion of the PTAR [redacted] —is the most significant physical work in this context, but it is not the only one. The investments in Tijuana's sewerage network, in the collectors conveying wastewater to the PTAR SAB, in the systems for controlling overflows during storm events, and in effluent quality monitoring equipment represent a financial commitment by the Government of Mexico that has no parallel in any action the Submitter can itself claim.

368. The magnitude of this investment is incompatible with the narrative of submission SEM-26-002 that Mexico is "promoting" non-compliance with its environmental law on wastewater discharge. A government that is devoting hundreds of millions of pesos to improving treatment infrastructure, [redacted] and that has entered into bilateral commitments of USD 144 million for additional investment in infrastructure, is not "promoting" non-compliance: **it is managing in good faith the path towards full compliance with its environmental standards. This is exactly what Article 24.1 of USMCA/CUSMA requires.**

369. Mexico's good faith is also demonstrated by the transparency of its commitments: [redacted] the IBWC Minutes are public international instruments documenting the bilateral commitments; the Bárcena–Zeldin MOU is an agreement entered into at the highest political level expressing the will of the Government of Mexico to resolve the problem in cooperation with the United States. None of these instruments is confidential or restricted: they are public evidence of Mexico's good faith, available to any observer who takes the trouble to consult it.

370. The CEC Secretariat is under an obligation to consider this evidence of good faith before concluding that Mexico is failing to comply with its obligations of effective enforcement of environmental law. The omission of this evidence from Determinations DET1 and DET2 is not a minor error: it is the fundamental error that vitiates the whole of the Secretariat's analysis and that renders its determinations incapable of sustaining the continuation of the proceeding.

## V. REQUESTS

371. On the basis of the arguments of fact and of law set out in the preceding Sections of this Response, and of the normative framework of Article 24.27 of USMCA/CUSMA as a whole, the Government of the United Mexican States makes the following requests to the Secretariat of the Commission for Environmental Cooperation, in the order of precedence corresponding to their legal nature:

### V.A. Principal request: immediate termination of submission SEM-26-002

372. Mexico requests the immediate termination of proceeding SEM-26-002 on the following grounds, each of which is independently sufficient to give rise to termination:

**First:** Submission SEM-26-002 does not satisfy any of the admissibility requirements established in Article 24.27(3) of USMCA/CUSMA. The submission does not demonstrate that Mexico persistently promotes trade or investment by reducing its levels of environmental protection; it does not identify with precision the environmental law whose effective enforcement it alleges is being omitted; it does not establish the exhaustion of the available Mexican domestic remedies; and it does not demonstrate that its advancement would contribute to the objectives of Chapter 24 of USMCA/CUSMA. In the absence of satisfaction of the requirements of Article 24.27(3), the Secretariat has no power to recommend the development of a factual record.

**Second:** The CEC Secretariat exceeded its mandate in issuing Eligibility Determinations DET1 and DET2, uncritically adopting the Submitter's narrative without correctly applying the legal standards of Article 24.27 of USMCA/CUSMA, without considering the Mexican normative and institutional framework in all its complexity, and without taking into account the documentary evidence of the actions of Conagua, Semarnat, Profepa and the IBWC. The Secretariat's determinations are vitiated by legal and factual error, and cannot sustain the continuation of the proceeding.

**Third:** Submission SEM-26-002 is the expression of a strategy of strategic litigation that uses the SEM mechanism as a continuation of Coastkeeper's United States litigation against the IBWC and Veolia—litigation that culminated in a Settlement Agreement without any addressing of the environmental problem. This use of the SEM mechanism is incompatible with the ends of Article 24.27 of USMCA/CUSMA and constitutes an abuse of process that the Secretariat is under an obligation to identify and reject.

**V.B. First alternative request: determination that Mexico has complied with its obligations of effective enforcement**

373. On the alternative supposed hypothesis—which Mexico does not concede—that the Secretariat were to consider that the submission satisfies the admissibility requirements of Article 24.27(3), Mexico requests that the Secretariat issue a determination to the effect that Mexico has fully complied with its obligations of effective enforcement of environmental law under Article 24.1 of USMCA/CUSMA.

374. That determination would be supported by the body of documentary evidence presented in Section III.B of this Response: Conagua's discharge permit system and the [redacted] PTAR SAB completed in 2024; the bilateral commitments of IBWC Minute 328 (2022) and Minute 333 (2025); and the Bárcena–Zeldin MOU (July 2025) raising bilateral cooperation to the highest political level.

375. The conclusion that this evidence supports is unequivocal: Mexico has effectively enforced its environmental law in the matter of wastewater management, using the legal instruments provided for by that legislation—discharge permits, [redacted], inspection, bilateral coordination—in a genuine, sustained and results-oriented manner. This is what the obligation of "effective enforcement" of Article 24.1 of USMCA/CUSMA requires. Mexico has complied.

**V.C. Second alternative request: rejection of the recommendation to develop a factual record**

376. On the further alternative hypothesis that the Secretariat were not to issue a definitive determination in the terms of the preceding requests, Mexico requests that the Secretariat not recommend to the Council the development of a factual record, and that it instead close the proceeding without prejudice to Mexico's right to continue managing the transboundary wastewater problem through the existing institutional bilateral mechanisms—in particular the IBWC Minutes and the mechanisms of the La Paz Agreement—which are the appropriate fora for bilateral cooperation in this matter.

377. The development of a factual record in the present case would not contribute to the goals of the CEC or to the objectives of Chapter 24 of USMCA/CUSMA. It would instead divert significant institutional resources towards a quasi-contentious procedure that would damage the bilateral relationship of environmental cooperation just when that cooperation is producing positive results—IBWC Minute 333 (December 2025) and the Bárcena–Zeldin MOU (July 2025) are recent examples of this effective cooperation. The Secretariat should be contributing to strengthening that cooperation, not to weakening it.

**V.D. Third alternative request: safeguarding of Mexico's right to exercise regulatory and compliance discretion**

378. Irrespective of the outcome of the present proceeding, Mexico requests that the Secretariat expressly recognize, in any determination or recommendation it may issue,

that Article 24.4(2) of USMCA/CUSMA protects Mexico's right to exercise discretion in respect of its regulatory and compliance actions. [redacted], the prioritization of inspection resources, and the determination of when circumstances warrant the exercise of environmental criminal prosecution.

379. This recognition is essential in order to preserve the integrity of the USMCA/CUSMA system of environmental cooperation. If the SEM mechanism becomes an instrument for calling into question the reasonable exercise of the regulatory discretion of the Party Governments—discretion expressly protected by Article 24.4(2)—it will lose legitimacy and usefulness as a mechanism of cooperation, and the Party Governments will have incentives to withdraw from the commitments of transparency and participation that Chapter 24 of USMCA/CUSMA promotes.

**V.E. Reservation of rights**

380. Mexico expressly reserves all its rights under Chapter 24 of USMCA/CUSMA, the Environmental Cooperation Agreement (ECA), and applicable international law, including the right to:

(i) call into question the legal validity of any recommendation that the Secretariat may make to the Council in the present proceeding, if that recommendation is not grounded in the correct application of Article 24.27 of USMCA/CUSMA;

(ii) submit additional information at any stage of the proceeding in order to establish Mexico's compliance with its environmental obligations;

(iii) object to any determination of the Council that does not duly take into account the Mexican normative and institutional framework and the evidence of the actions adopted by the Government of Mexico; and

(iv) update the information and evidence presented in this Response to the extent that new works, bilateral commitments or actions of the competent authorities are completed or formalized during the course of the proceeding.

**VI. CONCLUSION**

381. The Government of the United Mexican States has demonstrated in this Response, by legal arguments grounded in the text of USMCA/CUSMA and in the Mexican normative and institutional framework, and by verifiable documentary evidence, three fundamental truths that determine the correct outcome of the present proceeding:

**First truth: Submission SEM-26-002 is inadmissible.**

382. Submission SEM-26-002 meets none of the requirements established in Article 24.27(3) of USMCA/CUSMA for the CEC Secretariat to be able to recommend to the Council the development of a factual record. This is not a minor or curable deficiency: it is a structural deficiency reflecting that the submission is not directed at the purpose for which the SEM mechanism was designed—strengthening the domestic enforcement of environmental law through genuine citizen participation—but is directed at continuing a strategy of strategic litigation whose primary purpose is economic and institutional.

383. The CEC Secretariat committed a grave legal error in issuing Determinations DET1 and DET2 without rigorously applying the standards of Article 24.27(3). That error must be corrected by terminating the proceeding. The correction of this error is not a victory of Mexico over the Submitter: it is the correct application of the law of USMCA/CUSMA, which is what all the actors in the system of environmental cooperation—including the citizens who are genuinely concerned about the environmental quality of the border water bodies—have an interest in ensuring.

**Second truth: Mexico complies with its obligations of effective enforcement of environmental law.**

384. The documentary record of the actions of Conagua, Semarnat, Profepa and the IBWC demonstrates that Mexico has exercised its powers of regulation, authorization, inspection, oversight and bilateral cooperation in the matter of wastewater management in a genuine, sustained and results-oriented manner. The instruments used—discharge permits, [redacted], periodic inspections, investment in infrastructure, bilateral coordination through the IBWC and the La Paz Agreement—are exactly the instruments that Mexican environmental law places at the disposal of the authorities in order to comply with the obligation of effective enforcement that Article 24.1 of USMCA/CUSMA establishes.

385. The United States has not achieved the complete solution of the problem of transboundary wastewater discharges. Mexico has done what it has had to do to address the Tijuana River problem—and what USMCA/CUSMA requires—which is to enforce its environmental law effectively in order to manage the problem while the infrastructure works are carried out. This, Mexico has demonstrated.

**Third truth: San Diego Coastkeeper does not pursue environmental interests; it pursues its own economic benefit.**

386. The Mechanism for Submissions on the Effective Enforcement of Environmental Legislation established in Article 24.27 of USMCA/CUSMA is an instrument of environmental cooperation whose object is to strengthen the domestic enforcement of environmental law through citizen participation and public scrutiny.

387. It is not a forum of appeal from domestic judicial outcomes, it is not an instrument of political pressure against sovereign governments, and it is not a mechanism for providing new opportunities for strategic litigation to organizations that have exhausted—and indeed resolved favourably in economic terms—their claims in the domestic fora.

388. The use of this mechanism as an instrument of strategic litigation—as Coastkeeper does in submission SEM-26-002—is not only incompatible with the ends of Article 24.27 but is corrosive of the integrity of the USMCA/CUSMA system of environmental cooperation.

389. If the SEM mechanism may be activated by any organization that has voluntarily chosen—by means of a Settlement Agreement coordinated with the United States federal authority itself (the IBWC) and with the private operator (Veolia)—to prioritize

economic compensation over substantive action by the government of the United States in its domestic litigation, and then uses the SEM mechanism to press the Government of Mexico with those same facts in an international forum, the mechanism will lose legitimacy and the Party Governments will have incentives to withdraw from the commitments of environmental cooperation that Chapter 24 promotes. This would ultimately be to the detriment of any person of the three member countries of USMCA/CUSMA who is genuinely concerned about the environmental quality of the shared territories.

390. For all of the foregoing, the Government of the United Mexican States respectfully requests the Secretariat of the Commission for Environmental Cooperation to acknowledge the filing of this Response, to analyse it in its entirety, and to proceed to terminate submission SEM-26-002 in accordance with Articles 24.27 and 24.28 of USMCA/CUSMA.

391. Mexico concludes this Response with the institutional certainty of one that acts in full conformity with its international and domestic environmental commitments; it is the expression of a Government that understands the environment as a public good, not as an instrument of litigation. Chapter 24 of USMCA/CUSMA was negotiated with that same understanding. Mexico requests the Secretariat to apply it with that same fidelity to the text and to its purpose: by terminating proceeding SEM-26-002 and preserving the integrity of a mechanism that serves its objectives only when it is applied with rigour, impartiality and strict adherence to the text of the Agreement.

Respectfully,

The Legal Affairs Coordinating Unit of the Ministry
of Environment and Natural Resources

**—MEXICO HAS FAITHFULLY COMPLIED WITH THE COMMITMENTS IT MADE FOR THE CLEAN-UP OF THE TIJUANA RIVER; IT REMAINS FOR THE UNITED STATES TO COMPLY, THEY OWE ACTIONS—**