



Reference number and submission name (to be assigned by the Secretariat):

Submission Form Part I-Identification

About this form

This form guides you on how to prepare a Submission on Enforcement Matters (SEM) under Article 24.27 of the new [USMCA/CUSMA](#) Trade Agreement, effective July 1, 2020.

To prepare your submission, **read carefully the [instructions](#)** on how to fill-out this form. Once completed, send it by email to sem@cec.org along with any attachments or links to download them.

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- You may disclose my personal information. If you are an individual, your email and postal addresses will not be made public.
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Identification of the [Person of a Party](#) filing the submission.

A. Submitter(s) (individual). Fill this section if you are an individual. If you are an enterprise, use **section B**.

1. Last name:

2. First name:

3. Citizenship (or country of permanent residency):

4. Address:

5. Telephone:

6. E-mail:

B. Submitter(s) (enterprise). Fill this section if you are an enterprise of a Party, including a NGO.

7. Name of the entity:

San Diego Coastkeeper (“Coastkeeper”)

8. Represented by:

Phillip Musegaas, Executive Director

9. Place of incorporation, date and/or registration number:

San Diego Coastkeeper is a nonprofit public benefit organization incorporated under the laws of the California on January 20, 1995.

10. Address:

8305 Vickers Street, Suite 209, San Diego, CA 9211

11. Telephone:

619-609-0860

12. E-mail:

phillip@sdcoastkeeper.org

If there are more submitters, [click here](#) to download another Part I form.

Part II-Representative(s)

If the Submitter(s) has no representative or no leading organization, please go to Part III.

C. Leading organization. Fill below if the Submission is led by one or more organizations.	D. Representative of the Submitter(s). Fill below if you have a legal representative
<p>13. Name:</p> <p>14. Represented by:</p> <p>15. Place of Incorporation, date and or registration:</p> <p>16. Address:</p> <p>17. Telephone:</p> <p>18. E-mail:</p>	<p>19. Is the representative also one of the Submitters? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>20. Last name:</p> <p>21. First name:</p> <p>22. Citizenship (or country of permanent residency):</p> <p>23. Address:</p> <p>24. Telephone:</p> <p>25. E-mail:</p>

If there is more than one leading organization, [click here](#) to download Part II of this form.

Part III-Your Submission

E. Party of Concern. Please identify the location of the issues and environmental laws raised in your submission. Your submission could address more than one party and its environmental laws.

26. To which Party(s) are you addressing your submission?

Canada.

Mexico.

United States.

F. Environmental law.

27. The Submitter must identify the applicable provision of the statute or regulation, as defined in [Article 24.1](#) of the USMCA/CUSMA. Prepare a numbered list of the statute(s) or regulation(s) and include the applicable provisions.

Law	Specific Articles or Provisions
Political Constitution of the United Mexican States (CPEUM) ¹	Articles 1 (paragraphs 1, 2, and 3), 4 (paragraphs 6 and 8), 17 (paragraph 1), and 25 (paragraph 1)
General Law of Ecological Balance and Environmental Protection (LGEEPA) ²	Articles 15 (Sections IV and XVII), 88 (Sections I, II, and IV), 89 (Sections II, V, and VI), 92, 93, 117 (Sections I, II, III, and IV), 118 (Section V), 121, 122 (Section I), 123, 124, 129, 130, 132, 133, 161, 170 (Sections I and II, and last paragraph), 171, 172, and 182
National Water Law (LAN) ³	Articles 44 (paragraph 3), 86 (Sections IV and V), 88 (paragraph 1), 88 Bis (Sections I, II, IX, and X), 89 (paragraph 3), 91 Bis 1, 92 (Sections I, II, and its last two paragraphs), 93, 94, 95, 96 Bis, 96 Bis 1, 118 Bis 2, 118 Bis 3, 119 (Sections I, XV, and XVII), 120 (paragraph 1), 122 (Section I), and 123 Bis 1
Federal Law of Environmental Responsibility (LFRA) ⁴	Article 76
Federal Law of the Sea (LFM) ⁵	Article 2
Mexican Navigation and Maritime Commerce Law ⁶	Articles 10, 11, 13 (paragraphs 1, 2, and 3), 14, 18, 24, 25, 27, 28 (Section III), 53, and 54 (paragraphs 2 and 4)
National Code of Penal Procedures (CNPP) ⁷	Article 222 (paragraphs 2 and 3)
Federal Penal Code (CPF) ⁸	Articles 416 and 421 (Sections I, II, and V)

¹ Constitución Política de los Estados Unidos Mexicanos, <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>.

² Ley General del Equilibrio Ecológico y la Protección al Ambiente, <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGEEPA.pdf>.

³ Ley de Aguas Nacionales, <https://www.diputados.gob.mx/LeyesBiblio/pdf/LAN.pdf>.

⁴ Ley Federal de Responsabilidad Ambiental, https://www.diputados.gob.mx/LeyesBiblio/pdf/LFRA_200521.pdf.

⁵ Ley Federal del Mar, <https://www.diputados.gob.mx/LeyesBiblio/pdf/124.pdf>.

⁶ Ley de Navegación y Comercio Marítimos, https://www.diputados.gob.mx/LeyesBiblio/pdf/LNCM_071220.pdf.

⁷ Código Nacional de Procedimientos Penales, <https://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP.pdf>.

⁸ Código Penal Federal, <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPF.pdf>.

Official Mexican Standard NOM-001-SEMARNAT-2021 (NOM-001)	Articles 1 (paragraphs 1 and 2) and 10
American Convention on Human Rights (ACHR)	Articles 1 and 2
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	Articles 1, 2, and 11
Rio Declaration on Environment and Development (DRMAD)	Principles 1, 2, 16, 18, and 27
1983 La Paz Agreement (Agreement Between the United States and Mexico on Cooperation for the Protection and Improvement of the Environment in the Border Area)	Articles 1, 2, 6, and 9

Table 1: Summary of Laws and Provisions the Government of Mexico has Failed to Implement or Enforce

Context Regarding Applicability of the Above-Named Laws

1. Political Constitution of the United Mexican States (CPEUM)

Article 4 of Mexico’s supreme law of the land guarantees human rights to health and a healthy environment. Article 27 grants the Nation the right to regulate private property and natural resources “for the social benefit” in order to “preserve and restore the ecological balance” and “prevent the destruction of natural elements and any damage to property that may be detrimental to society.”

2. General Law of Ecological Equilibrium and Environmental Protection (LGEEPA) and Ley de Aguas Nacionales (LAN)

LGEEPA is Mexico’s foundational environmental law which aims to protect and restore ecological balance and sets environmental protections to accomplish this goal. Article 15 of the LGEEPA establishes the guiding principles of Mexico’s national environmental policy, which are binding upon all authorities and private actors. Among these are the principles of prevention,⁹ the polluter pays,¹⁰ environmental responsibility,¹¹ and remediation.¹²

⁹ The principle of prevention in Section II, imposes a mandatory duty on both the State and private actors to act before environmental harm occurs, addressing pollution’s causes rather than merely its effects.

¹⁰ The principle of “polluter pays” is set forth in section VI and is complemented by section VII regarding environmental responsibility. These provisions establish that those who cause environmental harm are obligated to bear the costs of prevention, mitigation, control, and remediation measures, ensuring that such costs are not shifted to society. The Supreme Court has recognized that this principle has legal foundation in Article 15 of the LGEEPA and is directly linked to the obligation to restore the affected environment.

¹¹ *Id.*

¹² The principle of remediation, contained in section VIII, is interpreted together with sections II, VI, and VII and provides that actions necessary to restore altered or degraded environmental conditions must be carried out by the party responsible for the harm, in accordance with the law and other applicable provisions. Remediation is restorative, not punitive, and constitutes a duty of the responsible party to reestablish ecological balance.

The LAN, enacted in 1992, establishes the legal framework for the management, use, preservation, and control of Mexico's national waters, including surface water and groundwater. It addresses wastewater through its water quality protection and pollution control requirements. The LAN designates CONAGUA as the primary federal agency responsible for regulating discharges into national waters, granting permits for wastewater discharges, monitoring compliance with water quality standards, and issuing sanctions for violations. Permits issued under the LAN specify discharge quality limits, including pollutant concentrations, volumes, and other discharge conditions.

The principles and criteria articulated in both the LGEEPA and the LAN are binding legal mandates, not merely programmatic or voluntary guidelines. Both the LGEEPA and the LAN employ mandatory language, stating the Executive "shall observe" certain principles of environmental policy (Articles 15 and 14 Bis 5 respectively). As such, these principles *must* be adhered to. This language further imposes an obligation of result, meaning the responsible authorities must take active steps to *actually achieve* the effective protection of resources, rather than simply demonstrating diligence in their efforts.

Jurisdiction over the transboundary pollution generated by Mexico with consequences extending to the United States and its marine waters lies within the indeclinable and exclusive purview of the Federal Government of Mexico. Such jurisdiction is affirmed and grounded in the nature of the affected "National Waters" and "National Assets," and a legal mandate prohibiting environmental harm to third nations. The affected water resources and territory are, by definition, National Assets. Article 27 of the CPEUM, the LAN, and the General Law of National Assets¹³ govern the rivers, streams, and their riverbeds, as well as the federal zones and the waters that serve as a boundary to the national territory or cross it into another country (such as the Tijuana River), declaring them Federal property and asserting jurisdiction throughout their entire extent.

These duties and jurisdictions of the federal government are reinforced by the principle of transboundary ecological responsibility and environmental policy. The LGEEPA explicitly establishes that it is in the interest of the nation that activities carried out within the national territory do not affect the ecological balance of other countries (LGEEPA, Article 15, Section XVII). This mandate is complemented by Article 5, Section IV, of the LGEEPA, which grants the federal government the authority to formulate and conduct national policy on environmental pollution, including that originating from a border zone.

The LGEEPA's principle of prevention¹⁴ and the criteria for water quality management in the LAN together create mandatory regulatory requirements including an absolute legal prohibition against discharging wastewater in excess of maximum permissible limits, Normas Oficiales Mexicanas (Official Mexican Standards known as "NOMs") into National Waters.¹⁵ Thus, while the LAN sets the legal basis, the technical limits and monitoring requirements are defined in secondary regulations and NOMs. For environmental matters, the primary agencies responsible for defining and enforcing relevant NOMs are SEMARNAT, CONAGUA, and PROFEPA.

¹³ Ley General de Bienes Nacionales, <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGBN.pdf>.

¹⁴ LGEEPA Art. 15 (II).

¹⁵ NOMs are mandatory technical regulation that sets requirements for products, processes, and services that may pose a risk to human health, ecological life, or the environment. Unlike voluntary standards (NMX), adherence to NOMs is legally required for all entities operating within Mexico, whether domestic or foreign.

NOM-001-SEMARNAT-2021 (NOM-001) established new, stricter limits for pollutants in wastewater discharged into national waters. It also expanded the definition of “national waters” to include rivers, oceans, and soil. NOM-001 places a non-discretionary duty upon the discharger to treat wastewater to specific standards before intentionally discharging its effluent, or allowing wastewater to spill leak, or otherwise enter national waters.

a. Specific LAN Provisions

The LAN sets forth requirements for municipal or state operators of public wastewater systems. LAN Articles 88 (paragraph 1), 88 Bis (Sections I, II, IX, X), and 89 (paragraph 3) require strict adherence to discharge permit requirements, continuous compliance with NOMs, and the adequate maintenance of wastewater collection and treatment infrastructure. LAN Article 91 Bis 1 requires dischargers to report chronic or accidental wastewater flows.

Article 92 of the LAN both empowers and requires CONAGUA to order the suspension of activities resulting in discharges that fail to comply with NOMs. If an entity subject to a suspension order fails to comply with that order, Article 122 (Section I) goes one step further and requires the permanent or temporary closure of that polluting entity. LAN Article 93 expressly *requires* federal authorities to cancel or rescind permits for egregious and repeat violations. Federal agencies have failed to do so.

LAN Article 94 requires CONAGUA to intervene and take over the operation of a wastewater treatment system when its deficient functioning may cause serious harm to public health or the environment. The Government of Mexico’s enforcement powers are set forth in LAN Articles 119 (Sections I, XV, XVII), 120 (paragraph 1), and 123 Bis 1.

b. Specific LGEEPA Provisions

When untreated wastewater is discharged to National Waters in violation of the aforementioned prohibitions and water quality standards, the LGEEPA’s principle of responsibility *requires* the responsible authority to impose sanctions, *and* order the comprehensive remediation and restoration of the affected aquatic ecosystem.¹⁶

Article 161 of the LGEEPA grants enforcement powers to Mexican environmental agencies with the objective of ensuring compliance with environmental laws, and preventing harm to the environment. Articles 170, 171, and 172 *require* PROFEPA to use its enforcement powers to close sources of pollution sources or suspend polluting activities when there is an imminent risk of severe environmental damage or a danger to public health.

¹⁶ Article 15 of the LGEEPA, in sections II, VI, VII, and VIII, establishes an integrated framework in which prevention imposes the duty to anticipate harm, responsibility and the polluter pays principle require the responsible party to bear the costs of any damage and preventive measures, and remediation ensures the restoration of environmental conditions, thus closing the cycle of prevention, responsibility, and repair. This interrelationship reflects a systemic approach to environmental policy, consistent with Articles 4 and 27 of the Mexican Constitution, which recognize the human right to a healthy environment and the sustainable management of natural resources. Accordingly, these principles are binding, enforceable, and immediately applicable, forming the legal basis of federal environmental policy and the environmental responsibility of both authorities and private actors.

LGEEPA Articles 15 (IV, XVII), 88 (I, II, IV), 89 (II, V, VI), 92, 93, and 161 set forth various enforcement authorities, including financial penalties and other coercive enforcement tools. For example, the polluter pays principle set forth in Article 15 (Section IV), requires the party causing environmental damage to assume the costs associated with remediating the harm.

Articles 117 (Sections I, II, III, IV), 121, 122 (Section I), 123, 124, 129, and 130 of the LGEEPA further establish clear and unambiguous prohibitions on discharging or infiltrating pollutant-laden wastewater into national water bodies without the prerequisite level of treatment, or in excess of maximum permissible pollutant limits.

Finally, LGEEPA Article 132 and the LFM Article 21 require the SEMARNAT to coordinate with the Secretariat of the Navy (SEMAR)¹⁷ and other agencies to prevent and control pollution in Mexican maritime zones.

3. Mexico's Criminal and Civil Liability Framework: National Code of Penal Procedures (CNPP), Federal Penal Code (CPF), & Federal Law of Environmental Responsibility (LFRA)

Article 222 (paragraphs 2, 3) of the CNPP mandates that public servants, upon knowledge of a probable crime, must immediately report it to the Public Prosecutor's Office. This duty is echoed in Article 54 (paragraphs 2, 4) of the LFRA, which specifically obligates SEMARNAT and the PROFEPA to file a complaint when they become aware of environmental crimes.

The SEMARNAT, PROFEPA, CONAGUA, and SEMAR, all possess the legal jurisdiction and authority—and consequently, a statutory mandate—to file formal complaints (*denuncias*) or criminal indictments (*querellas*), or to officially notify the federal prosecutor's office, the Attorney General of the Republic (FGR),¹⁸ of the commission or probable commission of crimes, including environmental offenses.^{19,20}

Likewise, the internal regulations of these agencies delegate certain duties related to notifications and prosecutions. The Internal Regulations of SEMARNAT²¹ and of CONAGUA²² assign these

¹⁷ Secretaría de Marina.

¹⁸ Fiscalía General de la República.

¹⁹ LGEEPA, Articles 169 and 182; LAN, Articles 9, Section XLIX; 12 Bis 6, Section XXXI; 14 Bis 4; and 223 Bis 1; the Organic Law of the Mexican Navy (LOAM), Article 2, Section V, subsection a; and the Organic Law of the Federal Public Administration (LOAPF), Article 30, Section IV, subsection b, second paragraph and Section VII.

²⁰ The Secretariat of the Navy possesses a clear and compelling statutory mandate for the prevention, control, and investigation of pollution within federal marine waters—including the pollution ultimately caused by the discharge of raw wastewater and other liquid contaminants. This mandate also extends to the application of sanctions for non-compliance. However, with respect to the specific subject matter of this petition, SEMAR has failed to exercise this critical legal mandate, thereby abdicating its duty to address the pollution issues at hand. This legal obligation is established across several core Mexican statutes, including: LGEEPA Articles 130 and 161 of; Articles 30, Sections IV, V, VII, XII Ter, XIX, and XXIV, and 32 Bis, Section XXIV of the Organic Law of the Federal Public Administration (LOAPF); Article 2, Section V, of the Organic Law of the Mexican Navy (LOAM); and Article 21 of the Federal Law of the Sea.

²¹ Articles 52, Section XXIV; 59, Section XXVII; 74, Section XXVII; 76, Sections III and XXVII; and 80, Sections XV and XVI.

²² Articles 14, Section XVII; 24, Section II, subsection c, and Section X; 45, Section X; 76, Sections XXII and XXIII; 78, Section XVII; and 87, Section XIV.

powers and responsibilities. Collectively, these statutes and regulations establish an enforceable legal duty for these federal agencies to act decisively when they encounter evidence of criminal activity in their respective areas of oversight. Similar legal obligations are established across several core Mexican statutes, including: Articles 130 and 161 of the LGEEPA; Articles 30, Sections IV, V, VII, XII Ter, XIX, and XXIV, and 32 Bis, Section XXIV of the Organic Law of the Federal Public Administration (LOAPF); Article 2, Section V, of the Organic Law of the Mexican Navy (LOAM); and Article 21 of the Federal Law of the Sea.

Article 416 of the Federal Criminal Code establishes a penalty of imprisonment from one to nine years and a fine of 300 to 3,000 days' wages for any person who unlawfully discharges, deposits, or infiltrates—or authorizes or orders the discharge or infiltration of—wastewater, chemical or biochemical liquids, waste, or pollutants into federal soils, subsoils, marine waters, rivers, basins, reservoirs, or any other bodies or courses of water, thereby causing or risking damage to natural resources, flora, fauna, water quality, ecosystems, or the environment.

a. LRFA

The LRFA establishes that its precepts are matters of public order and social interest, and that its purpose is the protection, preservation, and restoration of the environment and ecological balance to ensure the human right to a healthy environment enshrined in Article 4 of the Constitution. In this context, the responsible federal agencies function as the guarantors of this human right. The LRFA Articles 10, 11, 13 (paragraphs 1, 2, 3), 14, 18, 24, 25, 27, 28 (Section III), 53, and 54 (paragraphs 2, 4) establish the frameworks for environmental liability, obligating the responsible party to repair the damage or pay compensation. Furthermore, the LRFA dictates that damages to the environment, and any expenditures made by the public administration for the repair or restoration thereof, must be reimbursed to the Federal Government from the responsible party.

The LRFA explicitly empowers PROFEPA with the authority to initiate and carry out legal actions based on violations of environmental laws and regulations.²³ When the law not only authorizes but assigns a specific agency with the authority to bring legal liability claims in order to protect the public interest and guarantee certain constitutional rights, the exercise of that action becomes obligatory—particularly in severe cases where environmental damage is clear, measurable, and there is a causal link to the conduct of public or private entities.

Mexico's Supreme Court of Justice of the Nation has consistently held that the right to a healthy environment demands an effective duty of protection, restoration, and reparation from the authorities. The Court has emphasized that government actions under the environmental liability regime cannot be limited merely to administrative surveillance or sanction, but must deploy judicial mechanisms for repair and enforcement, particularly in situations of severe and detectable environmental damage.

4. Treaties

Article 133 of the CPEUM states that treaties signed by the President, and with the approval of the Senate, constitute the supreme law of the entire Union. Thus, upon being ratified, international treaties are integrated into the domestic legal system and are binding on all

²³ LRFA Article 28, Section III.

authorities in Mexico.²⁴ Therefore, international treaties on environmental matters possess the same force and requirements as a federal provision from Congress. Their compliance is not subject to the discretion of the Executive or the agencies responsible for their application, particularly in matters involving human rights and environmental protection.

Article 1 (paragraphs 1, 2, and 3) of the Constitution reinforces this interpretation by ordering all authorities to promote, respect, protect, and guarantee the human rights recognized both in the Constitution and in the international treaties to which the Mexican State is a party. CPEUM Article 17 (paragraph 1) provides for effective judicial protection and access to justice. Therefore, the commitments assumed by Mexico in international instruments related to the protection of the environment, biodiversity, natural resources, and sustainable development—such as the Convention on Biological Diversity, the Basel Convention, or the Paris Agreement—form part of Mexico's domestic legal framework and judicial authorities.

The Inter-American Court of Human Rights (IACHR) has clarified that the duty to prevent significant transboundary environmental damage is derived from the American Convention on Human Rights (ACHR) rights to life (ACHR Article 4.1) and personal integrity (ACHR Article 5.1). As such, the above-mentioned CPEUM provisions are inextricably linked to the Mexico's obligations under the IACHR and ACHR.

Furthermore, Mexico is a party to the Inter-American Human Rights System and, consequently, is subject to the ACHR and the jurisprudence of the IACHR, including its advisory opinions. Advisory Opinion OC-23/17 establishes that member States have the duty to guarantee the right to a healthy environment, recognized as a human right, linking environmental protection with the protection of fundamental rights such as life, health, and personal integrity. This obligation is not limited to national territory, but extends to the prevention of significant harm that may affect other countries, which explicitly includes transboundary contamination. The Mexican State is therefore obligated to adopt all necessary measures to prevent activities within its jurisdiction from causing environmental harm to other countries, such as the United States, when there is a plausible risk of serious or irreversible damage, even without absolute scientific certainty.²⁵

²⁴ In the Mexican legal system, there is no separation between what is known in international doctrine as "hard law" and "soft law." The Constitution makes no distinction between "hard" or "soft" international treaties. When Mexico joins and formally ratifies a treaty, that treaty becomes binding on all Mexican authorities, insofar as those commitments develop or complement the constitutional right to a healthy environment and the protection of natural resources. Hence, so-called "soft law" instruments, such as declarations and principles, acquire full legal force within Mexican law when they have been assumed, incorporated, or invoked by the State as part of its international commitments or its domestic legislation. In environmental matters, this occurs frequently: for instance, the Declarations of Rio are not merely guidelines, but rather sources of obligation, as they set apply principles of environmental law recognized by the Constitution. The Mexican government is thus legally required to interpret and execute the provisions of this formally ratified treaty. Stated another way, whether a treaty is legally binding on Mexican authorities does not derive from a "hard law" or "soft law" label, but whether Mexico has formally adopted them in the exercise of its sovereignty, and that their contents are directly linked to human and legal rights protected by its Constitution.

²⁵ Advisory Opinion OC-23/17 on the Environment and Human Rights (Series A No. 23). San José, Costa Rica: Inter-American Court of Human Rights, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf.

OC-23/17 also establishes an obligation to notify potentially affected States when a risk of significant transboundary environmental damage is identified, as well as to consult and negotiate in good faith regarding preventive and corrective measures. Finally, OC-23/17 requires mitigation, repair, or compensation for harms that have already occurred, as well as guaranteed access to information, opportunities for public participation, and access to justice.

Articles 1, 2, 6, and 9 of the 1983 La Paz Agreement, the foundational bilateral agreement for border environmental cooperation, require the Parties cooperate to protect and improve the environment and to adopt necessary measures to control pollution.

Principle 2 of the Rio Declaration obliges States to take proactive measures to avoid environmental degradation, particularly when the damage is foreseeable, severe, and permanent. Principle 16 mandates that the cost of pollution be borne by the polluter, ensuring environmental restoration or compensation. Principle 10 requires access to justice and effective enforcement and judicial protection associated with environmental laws. Principles 18 and 27 require international cooperation, good faith, and transparency.

G. Statement of facts.

28. Make sure that you make reference to the elements listed in this [checklist](#).

Please ensure that the information you enter in this section does **not exceed the 15-page limit**. Review your text accordingly. Use the space below to include a succinct account of facts. Please number each paragraph for ease of reference. You may use hyperlinks to reference supporting information.

1. Please see attached Statement of Facts.

H. List of accompanying documents.

29. Include full and legible copies of documents referred in your submission. Hyperlinks to download the documents are admissible too. Use the space below to list the documents in the order cited in your submission. Do not include statutes or regulations cited in your submission.

1. Please see attached Annexes B through G.

STATEMENT OF FACTS

I. Mexico's Routine Wastewater Infrastructure Failures Result in Spills and Discharges of Millions of Gallons of Untreated Sewage Each Day

The magnitude of the Tijuana sewage crisis cannot be overstated. The constant leaks, spills, and intentional discharge of billions of gallons of raw sewage annually have caused an ongoing human health, economic, and ecological disaster on both sides of the U.S.-Mexico border. South San Diego Bay beaches have remained closed for over 1,500 consecutive days, dating back to December 8, 2021.¹ Moreover, in addition to water and soil contamination presenting imminent public health risks, recent studies have confirmed what local communities have long feared: that sewage pollutants, including pathogens, viruses, and hydrogen sulfide, are constantly aerosolized, directly impacting the air they breathe.² Wastewater pollution is also choking the life out of the Tijuana River Valley and coastal ecosystems. Researchers have routinely documented ecological dead zones in the Tijuana Estuary, an internationally vital wetland protected under the Ramsar Convention.³

This crisis didn't happen overnight. It is the byproduct of Tijuana's urban and industrial growth fueled in part by U.S. trade policies, combined with decades of mismanagement, under-investment, infrastructure neglect, and enforcement failures dating back to the 1930s. In 1944, Mexico and the United States entered a treaty to address transboundary water pollution issues, creating the U.S. International Boundary and Water Commission (USIBWC) and La Comision Internacional de Limites y Aguas (CILA), each with a predominant coordinating role regarding wastewater infrastructure on its respective side of the international border. Over the years, the two countries have entered into numerous subsequent agreements,⁴ and although Tijuana's wastewater system has been upgraded several times, it has never kept up with Tijuana's rapid growth.

The transboundary sewage crisis is not limited to episodic wet-weather events. Rather, it persists chronically year-round. Sewage generated in the Tijuana metropolitan area evades capture and treatment every day through multiple pathways including: (a) leaks and spills from an incomplete and unmaintained sewage collection system; (b) unpermitted housing without *any* sewage connections; (c) unfinished, nonfunctioning private wastewater systems; and (d) the intentional discharge of captured sewage due to radically insufficient systemwide capacity constraints.

¹ California Coastal Commission Memorandum, *Tijuana River Pollution Crisis in San Diego County* (Sept. 29, 2023), <https://documents.coastal.ca.gov/reports/2023/10/W6b/W6b-10-2023-appendix.pdf>; California Regional Water Quality Control Board, San Diego Region, Executive Officer's Report (Nov. 13, 2024) at 4, https://www.waterboards.ca.gov/sandiego/publications_forms/publications/docs/executive_officer_reports/2024/eor_11_13_2024.pdf.

² Benjamin Rico et al., Heavily polluted Tijuana River drives regional air quality crisis, 389 *Science* eadv1343, fig. 3 (2025), <https://doi.org/10.1126/science.adv1343>.

³ Ramsar Convention Secretariat, Tijuana River National Estuarine Research Reserve, Ramsar Site No. 1452 (designated February 2, 2005), available at <https://rsis Ramsar.org/ris/1452>; see also Lisa A. Levin et al., *Consequences of Mouth Closure and Hypoxia-Induced State Changes in Low-Inflow Estuaries: Benthic Community and Trait-Based Response*, 46 *Estuaries & Coasts* 2128 (2023).

⁴ Minute No. 270 (April 30, 1985); Minute No. 283 (July 2, 1990); Minute No. 296 (April 16, 1997); Minute No. 298 (December 2, 1997); Minute No. 320 (October 5, 2015); Minute 328 (July 19, 2022); Minute 333 (December 15, 2025).

An estimated 57% of the sewer mains in Tijuana’s sanitation system are failing due to insufficient maintenance, resulting in chronic leaks and overflows.⁵ Unpermitted informal settlements lacking proper sewerage connections throughout the region present another source of untreated wastewater into the Tijuana River, effectively creating an open sewer which stretches through the heart of Tijuana and into the United States.⁶ Mexico’s 2020 CILA-commissioned study identified the need for \$728 million USD to bring Tijuana’s infrastructure to adequate operational condition, yet this investment remains largely unfunded and unimplemented, demonstrating Mexico’s systemic enforcement failures.⁷

As a result, significant volumes of wastewater—measured in millions of gallons per day—reach the environment via three primary pathways: (1) through the Tijuana River, which constantly directs untreated sewage into the United States, polluting the Tijuana River Valley and Estuary (TRVE), which ultimately flows to the ocean at the mouth of the river in Imperial Beach, California; (2) through multiple northward flowing canyons along the international border west of the main stem of the Tijuana River, which also flow into the TRVE and ultimately into the ocean; and (3) through the Tijuana sewage collection system which pumps wastewater to San Antonio de los Buenos Creek, where the vast majority of it bypasses treatment entirely, and is discharged directly onto the beach and into the surf zone at Punta Bandera, Mexico.

As discussed in detail below, these continuous discharges violate multiple provisions of Mexican federal environmental laws and its international obligations. Yet for decades, the Government of Mexico has failed to implement and enforce these laws. Given the severity of the human health, ecological, recreational, and economic crisis at hand, this situation demands change.

A. Tijuana’s Inadequate Wastewater System

The wastewater system currently in place to manage Tijuana’s sewage largely stems from IBWC Minute 283, signed by the U.S. and Mexico in 1990, over thirty-five years ago. Notably, Minute 283, Section 16, stipulates that Mexico must not allow untreated water to enter the Tijuana River. *Figure 1* (see Annex C) shows Minute 283’s elaborate system of pumps, collectors, pipelines, and treatment plants designed to capture, divert, treat, and discharge the city’s wastewater. Notably, *Figure 1* does not reflect two recent improvements. First, the South Bay International Wastewater Treatment Plant (SBIWTP), owned and operated by USIBWC on the U.S. side of the border, now has the capacity to treat up to 35 million gallons per day (MGD) of wastewater, before discharging treated effluent three miles into the ocean via the South Bay Ocean Outfall. Second, the San Antonio de los Buenos Wastewater Treatment Plant (SABTP) currently treats 18 MGD. However, that treated effluent is then mixed with approximately 22-32 MGD of

⁵ Ismael Aguilar Benitez, *Programas de Saneamiento Urbano en la Frontera Norte de México y el Enfoque de Economía Circular* [Urban Sanitation Programs on Mexico’s Northern Border and the Circular Economy Approach], 25 Estudios Fronterizos (2024), <https://doi.org/10.21670/ref.2419155>.

⁶ *Id.* at 14.

⁷ International Boundary and Water Commission (IBWC) & Comisión Internacional de Límites y Aguas (CILA), *Formulación del Programa de Saneamiento de la Frontera Norte a Nivel Gran Visión* (Formulation of the Northern Border Sanitation Program at a Grand Vision Level) (hereinafter “2020 CILA”), Figure 1 (Tabla 1) p. 11, http://www.cila.gob.mx/syca/SUIF/PSFN_IF00_General_00_Informe.pdf.

completely untreated wastewater, which discharges directly onto the beach at Punta Bandera via SAB Creek.⁸

Furthermore, since the completion of the Minute 283 infrastructure in approximately 1997, the population in the Tijuana metropolitan area has more than doubled from 1 million to approximately 2.3 million people, adding tremendous pressure to an already crumbling system.⁹ Unfortunately, due to inadequate funding, deferred maintenance, systemic neglect, and a lack of enforcement, nearly every piece of infrastructure shown in *Figure 1* has broken down or failed at some point.¹⁰ For example, the SAB Plant was completely inoperable from 2020 until April 2025, so all wastewater that was pumped to the SABTP and SAB Creek was discharged into the ocean as raw sewage for multiple consecutive years.¹¹ Again, this completely untreated wastewater is discharged directly onto the beach and into the surf zone, where shoreline waves and currents both aerosolize pollutants, as well as direct pollutants north or south along the coast, depending on the prevailing currents and season.¹² Many critical infrastructure components in Mexico remain in a state of disrepair, as shown in *Figure 2* (see Annex C).¹³ Indeed, the Insurgentes Collector—a critical sewer pipe in Tijuana that previously experienced a major failure in 2017—collapsed again on January 15, 2026, resulting in the discharge of about 11.5 MGD of sewage into the Tijuana River until repairs were completed three days later.¹⁴

In July 2025, the United States and Mexico entered into a Memorandum of Understanding (2025 MOU) outlining specific actions, priorities, and deadlines for both countries to address the Tijuana sewage crisis, including completion of outstanding Minute 328 infrastructure projects.¹⁵ As the SABTP is now back online, most of the remaining projects identified for prioritization in the 2025 MOU focus on rehabilitating collectors, interceptors, and pump stations. The ongoing

⁸ See Annex D, USIBWC Presentation, *San Diego-Tijuana Sanitation Infrastructure* (Aug 13, 2025).

⁹ Instituto Nacional de Estadística y Geografía [National Institute of Statistics and Geography] (INEGI), General Census of Population and Housing (2000, 2020), <https://en.www.inegi.org.mx/>.

¹⁰ See Minute No. 328: Sanitation Infrastructure Projects in San Diego, California – Tijuana, Baja California for Immediate Implementation and for Future Development (July 19, 2022) (*hereinafter* "Minute 328"), <https://www.ibwc.gov/wp-content/uploads/2022/11/Min328.pdf>; Memorandum of Understanding between the United Mexican States and the United States of America on Addressing the Sanitation and Environmental Crisis in the Tijuana–San Diego Region (July 24, 2025) (*hereinafter* "2025 MOU"), <https://www.epa.gov/system/files/documents/2025-07/proy-mde-semarnat-epa-23jul25-ing-rev2-us-rev-24jul25rev-clcsc.pdf>.

¹¹ USIBWC, South Bay International Wastewater Treatment Plant Updates, San Diego's Citizens Forum (Feb. 13, 2025), <https://ibwc.azurewebsites.net/wp-content/uploads/2025/02/Binder1.pdf>.

¹² Rico et al., *supra* note 2; see also Scripps Inst. of Oceanography & S. Cal. Coastal Ocean Observing Sys. (SCCOOS), *Pathogen Forecast Model (PFM)*, <https://pfmweb.ucsd.edu/> (modeling aerosolization and coastal transport of pollutants based on wave action and currents) (last visited Jan. 23, 2026).

¹³ Status of Statement of Intent and Minute 328 Projects Portal, USIBWC, [https://gisportal.ibwc.gov/agsportal/apps/instant/sidebar/index.html?appid=042ae0c0255b4dd0a6364581ef55ef5e](https://gisportal.ibwc.gov/agsportal/apps/instant/sidebar/index.html?appid=042ae0c0255b4dd0a6364581ef55ef5e;); see also 2025 MOU, *supra* note 10. Per the 2025 MOU, Mexico is tasked with rehabilitation of the Insurgentes Collector, Matadero Pump Station, Laureles Pump Station 2, Poniente Interceptor, Oriente Interceptor, Collector Carranza, backup power supply for PB1, upgrades to the Arturo Herrera and La Morita WWTPs, Phase II of International Collector rehabilitation, repairs to the Antiguo Force Main, a lift station and force main from Sainz Canyon to Arturo Herrera, and enclosure of the open wastewater channel from PB1 to SABTP.

¹⁴ Teri Figueroa, *Tijuana Wastewater Pipe Repairs Completed in 3 Days, Ending River Discharge*, San Diego Union-Trib. (Jan. 19, 2026), <https://www.sandiegouniontribune.com/2026/01/19/tijuana-wastewater-pipe-repairs-completed-in-3-days-ending-river-discharge/>.

¹⁵ 2025 MOU, *supra* note 10.

inoperability of these components results in of the daily discharge of millions of gallons of raw sewage through leaks and spills. While the 2025 MOU requires Mexico to complete all Minute 328 projects by December 31, 2027, Submitters remain skeptical of Mexico's ability and willingness to abide by this deadline, given its repeated failures over many years to fund, maintain, and rehabilitate its wastewater infrastructure despite committing to do so under multiple prior IBWC Minutes.

At present, the binational wastewater system can only treat approximately 53 MGD of wastewater (18 from the SABTP and 35 from the SBIWTP). Two additional Mexican facilities, the Arturo Herrera and La Morita wastewater treatment plants, each treat approximately 6 MGD, but currently discharge their treated effluent back into the Tijuana River, where it mixes with untreated sewage and other pollutants and thus requires retreatment. By contrast, the total wastewater generated in the Tijuana Metropolitan area is currently estimated at approximately 75-85 MGD, and could be significantly higher.¹⁶ In August 2025, USIBWC reported that while the SABTP treats 18.26 MGD, it received approximately 45 MGD of wastewater, leaving over 25 MGD untreated, which is ultimately discharged at Punta Bandera.¹⁷

That said, the status of the entire system, and the volume and location of wastewater spills and discharges, are highly dynamic. For example, unprecedented flows were recorded in the main stem of the Tijuana River throughout most of the 2024 dry season, hovering around 40 MGD, stemming largely from an infrastructure failure at the Punto de Bombeo de Control Integral Lomas de Agua (PBCILA).¹⁸ After PBCILA was repaired, flows in the river dropped to approximately 5 MGD. However, the repair of PBCILA did not result in the removal of 35 MGD of wastewater from the environment. It simply diverted approximately 30-35 MGD of wastewater from the main stem of the Tijuana River to SAB Creek, where only a fraction of that volume is treated by the SABTP. PBCILA has again been offline since about November 10, 2025, to allow USIBWC to repair Junction Box 1 (JB-1) at the SBIWTP.¹⁹ While this work was estimated to be completed within 2-3 weeks, it remains ongoing as of the date of this Submission. As a result, dry weather wastewater flows in the Tijuana River have remained at around 40 MGD in recent months.²⁰

Significant volumes of wastewater also flow into the TRVE via Matadero Canyon (immediately south of Smuggler's Gulch) and Los Laureles Canyon (immediately south of Goat Canyon). These canyons are natural stormwater drainageways. Wastewater from the majority of development across the land area tributary to these canyons is supposed to be pumped to the

¹⁶ See Annex D, USIBWC Presentation, *San Diego-Tijuana Sanitation Infrastructure* (Aug 13, 2025).

¹⁷ Cal. Reg'l Water Quality Control Bd., San Diego Region, Special Meeting at 25:05 - 25:21 (Aug. 27, 2025), <https://www.youtube.com/live/-ZJJD1WAHFQ>.

¹⁸ Rico et al., *supra* note 2; *cf.*, U.S. Env'tl. Prot. Agency, Final Programmatic Environmental Impact Statement for USMCA Mitigation of Contaminated Transboundary Flows Project (Nov. 2022) at 1-13, <https://www.epa.gov/system/files/documents/2022-11/Programmatic%20Environmental%20Impact%20Statement.pdf> (according to 2016-2019 data, an average of approximately 10 MGD of wastewater escaped the Tijuana metropolitan area wastewater collection system and flowed into the Tijuana River).

¹⁹ See Annex E (Email from ██████████, Water Resource Control Engineer, San Diego Regional Water Quality Control Board (Jan. 8, 2026).

²⁰ USIBWC, *Water Data Portal: Tijuana River Flow Data*, <https://waterdata.ibwc.gov/AQWebportal/Data/Dashboard/8> (last visited Jan. 23, 2026).

SABTP via the Matadero, Los Laureles 1, and/or Los Laureles 2 Pump Stations.²¹ However, the Matadero and Laureles 2 pump stations have been offline for years.²² While the USIBWC operates various canyon collectors as a failsafe to intercept and divert excess canyon flows from reaching the TRVE, these USIBWC collector systems frequently fail as they were never intended to be the primary diverters of wastewater from Tijuana.²³ As a result, millions of gallons of untreated wastewater has flowed from the Matadero and Los Laureles Canyons into the TRVE in just the past two years.²⁴

II. Transboundary Impacts to Public Health, the Environment, and the Economy

A. Public Health Impacts

The Tijuana wastewater contamination has created a severe and persistent public health crisis affecting many thousands of residents on both sides of the border.²⁵ The Tijuana River watershed is classified as an impaired water body under the U.S. Clean Water Act due to contamination by untreated sewage, industrial waste, and urban runoff resulting from inadequate infrastructure and enforcement failures in Mexico.²⁶ Impacted waters contain extremely high concentrations of bacteria, viruses such as SARS-CoV-2 and Hepatitis B/C, antibiotic resistant bacteria and hundreds of chemicals including pesticides, solvents, and flame retardants.²⁷ Soil analysis has found over 170 hazardous compounds including arsenic, cadmium, PAHs, PCBs, and banned pesticides like DDT.²⁸ The public health threats from such pollution are extremely concerning. As one frightening example, [REDACTED], a [REDACTED] [REDACTED] researcher who published academic studies [REDACTED], was hospitalized due to sepsis from anti-biotic resistant bacteria after collecting water samples in the river to test them for pathogens, and lost a kidney before her health improved.²⁹

²¹ U.S. Env'tl. Prot. Agency, USMCA Feasibility Analysis: Project 4 - Canyon Collectors (Dec. 2021), https://www.epa.gov/system/files/documents/2021-12/usmca-feasibility-analysis_project-4_canyon-collectors.pdf.

²² Minute 328, *supra* note 10; USIBWC, Status of Statement of Intent and Minute 328 Projects Portal, *supra* note 13.

²³ Cal. Reg'l Water Quality Control Bd., San Diego Region, *USIBWC Spill Events and Transboundary Flow Events from Mexico into the San Diego Region*,

https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/sewage_issue.html (last visited Jan. 23, 2026).

²⁴ *Id.*

²⁵ See One Coastal Cmty., *Data Dashboard*, <https://onecoastalcommunity.org/data-dashboard/> (last visited Jan. 23, 2026).

²⁶ Paula E. Stigler Granados et al., Tijuana River Contamination from Urban Runoff and Sewage: A Public Health Crisis at the Border (San Diego State Univ. Sch. of Pub. Health, White Paper, Feb. 13, 2024) (hereinafter "2024 SDSU White Paper"), https://www.sdsu.edu/_files/tijuana-sewage-contamination-public-health-crisis-white-paper-021424.pdf.

²⁷ See 2024 SDSU White Paper *supra* note 26.; see also Paula Stigler Granados et al., San Diego State Univ. Sch. of Pub. Health, White Paper: Health Impacts in Residents Exposed to Tijuana River Pollution (July 2025) (hereinafter "2025 SDSU White Paper"), <https://tjriver.sdsu.edu/wp-content/uploads/sites/109/2025/07/White-Paper-Health-Impacts-in-Residents-exposed-to-Tijuana-River-Pollution-7.24.25.pdf>; see also, Annex F, San Diego Coastkeeper water quality monitoring data for the Tijuana River Valley (Nov. 2024 – Dec. 2025).

²⁸ 2024 SDSU White Paper *supra* note 26.

²⁹ Philip Salata, Home Sick: Illness and Uncertainty in the Tijuana River Valley, *inews* (Dec. 19, 2025), <https://inews.org/2025/12/19/home-sick-tijuana-river-san-diego-illness/>.

Research has documented that pathogens and toxic chemicals from untreated sewage become aerosolized from contaminated water and sediment, creating airborne exposure pathways extending far beyond direct water contact.³⁰ This air pollution includes spikes in hydrogen sulfide 4,500 times what is typical for an urban area³¹ triggering public health officials to launch programs to provide local residents with in-home air filters.³² On July 22, 2025, the San Diego County Board of Supervisors renewed its proclamation for the existence of a county-wide local emergency due to the Tijuana River sewage crisis for the 17th consecutive time.³³

Untreated sewage contamination has resulted in more than 1,500 nearly consecutive days of beach closures in Southern California, affecting Imperial Beach, Coronado, and other San Diego County beaches—representing one of the longest and most severe beach closure runs in the history of the United States.³⁴ Mexican beaches have experienced similar contamination, with documented closures from 2022 through 2025 in Tijuana and Playas de Rosarito.³⁵ In July 2025, the Tijuana City Council closed beaches and public restrooms in Playas de Tijuana due to sewage spills.³⁶

B. Environmental Impacts

The Tijuana River Estuary, designated as a Ramsar Wetland of International Importance, represents one of the few remaining coastal wetlands in southern California. The region has lost over 90% of its wetlands between the 1780s and 1980s, making the estuary an irreplaceable ecological resource. The Tijuana River National Estuarine Research Reserve has been severely impacted by continuous untreated sewage influx, threatening decades of conservation efforts and the critical habitat it provides for numerous endangered and threatened species.

Untreated sewage causes oxygen depletion from decomposition of organic matter, nutrient loading causing eutrophication and excessive algal growth, and bacterial contamination rendering waters unsuitable for aquatic life, recreation, and shellfish harvesting. Real-time monitoring confirms persistent sewage contamination during dry weather, preventing ecosystem recovery. Fish kills have been well-documented, with dramatic declines in both fish populations and diversity, threatening the entire food web. The estuary serves as critical stopover habitat for

³⁰ Rico et al., *supra* note 2.

³¹ *Id.*; see also Scripps Inst. of Oceanography, Tijuana River's Toxic Water Pollutes the Air, <https://scripps.ucsd.edu/news/tijuana-rivers-toxic-water-pollutes-air> (last visited Jan. 23, 2026).

³² Lauryn Schroeder, *Thousands of Air Purifiers Delivered to South Bay, but Residents and Officials Push for Concrete Solutions*, San Diego Union-Trib. (Dec. 8, 2025), <https://www.sandiegouniontribune.com/2025/12/08/thousands-of-air-purifiers-delivered-to-south-bay-but-residents-and-officials-push-for-concrete-solutions/>.

³³ San Diego County Bd. of Supervisors, *Enhancing Regional Efforts and Federal Advocacy to Advance Solutions to the Tijuana River Sewage Crisis*, Agenda Item 17 (Sept. 9, 2025), <https://www.sandiegocounty.gov/content/dam/sdc/bos/agenda/sop/09092025%20General%20Legislative%20Session%20SOP.pdf>.

³⁴ *Id.*; see also County of San Diego, Tijuana River Valley Sewage Crisis Environmental Dashboard, <https://southregion.resilienthub.org/> (last visited Jan. 23, 2026); see also, San Diego County Beach & Bay Water Quality Monitoring Program, historical data available at <https://www.sdbeachinfo.com/#> (last visited Jan. 23, 2026).

³⁵ One Coastal Cmty., *Data Dashboard*, *supra* note 25.

³⁶ Tijuana City Council, *Municipal Government Closes Public Restrooms in Playas de Tijuana Due to Sewage Spill* [Clausura Gobierno Municipal baños públicos en Playas de Tijuana por derrame de aguas negras] (July 3, 2025), <https://www.tijuana.gob.mx/noticiaDependencia.aspx?idComunicado=35315>.

migratory birds along the Pacific Flyway, and contamination threatens these species during vulnerable migration periods.

Contamination extends to Pacific Ocean coastal waters, with untreated sewage discharging at Imperial Beach and Punta Bandera. Pathogens and contaminants bioaccumulate in marine organisms throughout the food web, from filter-feeding shellfish to predatory fish and marine mammals. For example, bottle nosed dolphins were documented to have died from sepsis caused by a bacteria which is transmitted through contact with feces or urine in contaminated water, food or soil.³⁷ Shellfish contamination creates food security concerns, making areas unsafe for commercial harvesting and eliminating traditional fishing grounds relied upon by coastal communities.

C. Economic Impacts

Repeated beach closures have caused substantial tourism revenue losses affecting hotels, restaurants, surf shops, and other beach-dependent businesses in Imperial Beach, Coronado, and throughout San Diego County.³⁸ These closures particularly impact revenues during peak tourist seasons. Mexican coastal communities face similar economic impacts, with closures in Tijuana and Playas de Rosarito from 2022 to 2025 during peak tourism seasons.³⁹

Property values in affected coastal communities have depreciated as the crisis has persisted, harming homeowners' equity and reducing the tax base for local governments.⁴⁰ Sewage contamination has closed or restricted shellfish harvesting areas, eliminating income for commercial fishermen and reducing locally harvested seafood availability. The crisis results in serious economic harm that compounds the already resource-limited circumstances of communities like San Ysidro and Imperial Beach, which are characterized as having a majority of residents who are economically marginalized with elevated risk of chronic diseases compared to surrounding cities in San Diego County.⁴¹

The United States has been forced to expend substantial public resources on emergency response, cleanup activities, water quality monitoring, beach posting, public notifications, health advisories, and epidemiological studies to mitigate impacts of sewage crossing the border from

³⁷ 2024 SDSU White Paper, *supra* note 26.

³⁸ See San Diego County Bd. of Supervisors, *supra* note 33.

³⁹ See Tijuana City Council (July 3, 2025), *supra* note 36; see also General Secretariat of Government, State Executive Power of Baja California. (July 27, 2020). State Emergency Declaration for Ecological Sanitary Phenomenon in the area known as the Tijuana-Rosarito Coastal Collector [Special Issue No. 44, Official Gazette of the State of Baja California], <https://wsxtbc.ebajacalifornia.gob.mx/CdnBc/api/Imagenes/ObtenerImagenDeSistema?sistemaSolicitante=PeriodicoOficial/2020/Julio&nombreArchivo=Periodico-44-CXXVII-2020727-N%C3%9AMERO%20ESPECIAL.pdf&descargar=false>.

⁴⁰ See San Diego County Bd. of Supervisors, *supra* note 33; see also *Nearly 1K Imperial Beach Residents Join Lawsuit Over Sewage Crisis Affecting Health and Property Values*, ABC 10News (Apr. 18, 2025), <https://www.10news.com/news/local-news/south-bay-news/nearly-1k-imperial-beach-residents-join-lawsuit-over-sewage-crisis-affecting-health-and-property-values> (reporting residents cite "devalued homes and diminished quality of life").

⁴¹ 2024 SDSU White Paper, *supra* note 26 (discussing environmental justice concerns and elevated health risks in San Ysidro and Imperial Beach communities).

Mexico. These expenditures represent costs that would not be necessary if Mexico effectively enforced its environmental laws.

III. Argument: The Mexican Government has Failed to Implement and Enforce Multiple Applicable Environmental Laws and Regulations

The Government of Mexico's decades-long failure to adequately capture, control, and treat Tijuana's wastewater constitutes a sustained, recurrent, and systemic failure to implement and enforce its own federal environmental laws in violation of Article 24.4(1) of the USMCA. Mexico's acts and omissions are ongoing and continuous, resulting in severe, persistent, and cumulative pollution that has caused an environmental and public health crisis, crippled local economies, and hampered trade and investment between the United States and Mexico.

The Government of Mexico has failed to implement and/or enforce numerous provisions of its own Constitution, federal laws, and international obligations.⁴² These failures span across multiple agencies and the entire enforcement spectrum, including investigation, sanctions, reparation and remediation, coercive prevention, and prosecution. This has rendered functionally ineffective the entire regulatory scheme that was designed to deter and prevent the discharge of raw sewage into the environment, perpetuating this environmental, human health, and economic catastrophe.⁴³ As such, the agencies tasked with managing and maintaining Tijuana's wastewater system have been allowed to operate with impunity. This grave situation warrants the development of a factual record by the CEC to clarify the multifaceted issues associated with the Tijuana sewage crisis, so that the Mexican Government and the international community can finally develop and implement enduring solutions.

A. Agencies, Responsibilities, and Roles of the Federal Government of Mexico

Multiple federal agencies are tasked with the implementation and enforcement of Mexico's federal laws governing wastewater management, environmental protection, and public health. The institutional architecture for wastewater regulation and enforcement in Mexico is led by the Ministry of Environment and Natural Resources (SEMARNAT). SEMARNAT oversees two primary deconcentrated agencies: the National Water Commission, known as CONAGUA (Comisión Nacional del Agua), and the Federal Attorney for Environmental Protection, known as PROFEPA (Procuraduría Federal de Protección al Ambiente). While CONAGUA and PROFEPA are separate agencies, SEMARNAT serves as their ultimate supervisor with the final responsibility to ensure these agencies fulfill their legal mandates. Generally, SEMARNAT oversees environmental protection and develops entire programs and policies, including setting maximum allowable pollutant limits for wastewater discharges (*e.g.*, NOM-001-SEMARNAT-2021). CONAGUA possesses the water-law authorities assigned under the National Waters Law (LAN). It serves as the primary technical water authority and holds a non-discretionary legal mandate to manage national water resources, issue discharge permits, and investigate violations. PROFEPA serves as the federal environmental enforcement arm that conducts inspections and

⁴² See generally, Response to Question 27, *supra*.

⁴³ Auditoría Superior de la Federación [Federal Audit Office], Performance Audit of the National Water Commission (Audit 0106-A): Oversight of Wastewater Discharge Regulation and Enforcement Effectiveness (2023), https://www.asf.gob.mx/Trans/Informes/IR2023c/Documentos/Auditorias/2023_0106_a.pdf.

applies enforcement tools under the General Law on Ecological Equilibrium and Environmental Protection (LGEEPA). PROFEPA holds a mandatory, non-discretionary responsibility to inspect and sanction environmental violations, which includes the legal duty to impose security, precautionary, and emergency measures, such as the temporary or total closure of polluting sources when there is an imminent risk of severe environmental damage.

B. Operation and Maintenance of the Tijuana Wastewater System

The primary agencies involved with managing Tijuana's wastewater include CONAGUA, the local public utility Comisión Estatal de Servicios Públicos de Tijuana (CESPT), and the Comisión Internacional de Límites y Aguas (CILA), a federal agency as well as the Mexican section of the binational IBWC. CONAGUA is involved in funding and coordinating major infrastructure projects for wastewater treatment and diversion. CESPT is responsible for local water and sewage services, including treatment plants like the SABTP. CILA coordinates with its U.S. counterpart on treaty-related water matters, including the bi-national border infrastructure. These agencies are responsible for coordinating with the U.S. EPA and the USIBWC on binational infrastructure including pump stations, collectors, pipelines, and treatment plants to manage wastewater generated in the Tijuana metropolitan area.

C. The Government of Mexico's Lack of Enforcement Actions

Despite acute federal-level awareness of the systemic failures and deficiencies detailed in Sections I and II, *supra*, there is little to no information or evidence documenting meaningful enforcement actions by relevant authorities within the Mexican government to conduct investigations, issue sanctions or penalties, issue closure orders, require remediation, coercively compel infrastructure improvements, file complaints or court proceedings, or otherwise require compliance with Mexico's applicable environmental laws. The citizen submission mechanism does not require submitters to conclusively prove that no enforcement action has ever occurred, nor does it require exhaustive proof of every enforcement measure that was not taken. Such a requirement would be inconsistent with both the object and purpose of the SEM process and with the Secretariat's consistent practice.

In environmental administrative law, negative facts—such as the absence of effective enforcement—are rarely proven through direct evidence. They are established through context: the persistence of environmental harm over extended periods; repeated governmental acknowledgment of the problem; the continued operation of non-compliant infrastructure; and the absence of enforcement outcomes that would normally be expected if the law were being applied effectively. Where contamination persists for years despite known legal obligations and governmental awareness, the reasonable inference is that enforcement tools have not been applied effectively.

This evidentiary pattern is clearly reflected in the instant Submission. Mexican federal authorities have long been aware of deficiencies in the Tijuana wastewater system and of their environmental impacts, as reflected in official communications, technical assessments, binational coordination mechanisms, and successive plans and programs. Yet, despite this sustained

awareness and engagement, there is no corresponding record of enforcement outcomes commensurate with the scale and duration of the Tijuana wastewater crisis.

Furthermore, Mexican jurisprudence recognizes that in environmental disputes, there is a profound asymmetry of information and a probatory difficulty for citizens facing Mexico's administrative apparatus. Pursuant to the binding precedent established by the Supreme Court of Justice of the Nation (SCJN) in Jurisprudence 1a./J. 131/2025 (11a.), the legal burden of proof must lie with the federal government. This means that the authorities—possessing the technical means, the records of inspections, and the regulatory oversight—bear the responsibility to prove they have effectively enforced environmental laws. The Government of Mexico cannot benefit from its own lack of transparency; under this judicial standard, the absence of public records regarding sanctions or corrective actions constitutes a failure of the authority to discharge its burden of proof.⁴⁴

D. Violations of Federal Laws and the Government of Mexico's Failures to Implement and Enforce

1. Political Constitution of the United Mexican States (CPEUM)

The Government of Mexico's systemic failures results in the discharge of tens of millions of gallons of raw sewage directly into creeks, rivers, and the ocean each day. Extensive evidence indicates local, state, and federal governments have failed to fund and maintain Tijuana's wastewater infrastructure, thus allowing rampant contamination and destruction of natural and public trust resources, including the Tijuana River, Tijuana Estuary, numerous beaches, and marine ecosystems,⁴⁵ directly violating a core duty under Article 27 of the Constitution. Furthermore, millions of people are forced to effectively live, work, and/or recreate near or in an open sewer, thereby exposing local populations to raw sewage, toxic chemicals, and dangerous pathogens. As recent research has established, these pollutants and pathogens are being continuously aerosolized, which significantly threatens human health.⁴⁶ Thus, the Government's failure to ensure Tijuana's wastewater is adequately managed and treated breaches Mexico's constitutional guarantee to a healthy environment under Article 4.

2. General Law of Ecological Equilibrium and Environmental Protection (LGEEPA) and Law of National Waters (LAN)

The routine and pervasive infrastructure failures of the Tijuana wastewater collection system result in the leaks, spills, and intentional discharges of millions of gallons of raw sewage each day. The constant flow of untreated wastewater into the Tijuana River, and the intentional diversion and discharge of 22-32 MGD of sewage directly onto the beach at Punta Bandera,

⁴⁴ Suprema Corte de Justicia de la Nación [Supreme Court of Justice of the Nation], Tesis Aislada No. 2030809, Semanario Judicial de la Federación, <https://sjfsemanal.scjn.gob.mx/detalle/tesis/2030809> (last visited Jan. 23, 2026).

⁴⁵ See generally, Section II *supra*.

⁴⁶ 2025 SDSU White Paper, *supra* note 27.

represent massive and persistent violations of NOM-001, and the aforementioned articles of the LGEEPA and the LAN.⁴⁷

a. Failures to Enforce LAN Provisions

The operators of the Tijuana wastewater system have failed to comply with permits and NOMs, adequately fund and maintain the system, and timely report spills and chronic sewage flows for decades. While certain rehabilitation projects are planned or underway, dozens of critical projects remain unfunded, and have been stuck in “early planning stages” for years.⁴⁸ Even if all of the projects enumerated in Minutes 328 and 333 are completed, and all of that planned and existing infrastructure was functioning flawlessly, Tijuana would still discharge approximately 10-20 million gallons of raw sewage directly onto the beach at Punta Bandera every day. As such, Tijuana’s failing wastewater system is currently causing serious harm to public health and the environment, and will continue to do so for the reasonably foreseeable future.

Despite such ongoing violations and harms, the Government of Mexico has failed to utilize its enforcement powers.⁴⁹ This includes systemic failures to issue suspension and/or closure orders; cancelling or rescinding permits for egregious and repeated violations; intervention and assumption of control over the wastewater treatment system; and adequately funding, maintaining, repairing, and upgrading Tijuana’s failing wastewater infrastructure. These collective failures of Mexican federal agencies are direct violations of the LAN’s core mandates, and demonstrate that the regulatory framework established by the LAN has been effectively ignored and dismantled by the Government of Mexico’s systemic inaction. As such, the Mexican federal agencies’ inaction perpetuates to the ongoing transboundary sewage crisis.

b. Failures to Enforce LGEEPA Provisions

Despite severe environmental damage and threats to public health, Mexican federal authorities have likewise failed to comply with many of the LGEEPA’s nondiscretionary enforcement duties specifically required to prevent such harms. These include, but are not limited to, failures to impose sanctions or other financial penalties; order comprehensive remediation and restoration of affected ecosystems; closure or suspension of polluting activities; and coordination with SEMAR to prevent pollution in Mexican maritime zones.⁵⁰

3. Mexico’s Criminal and Civil Liability Framework: National Code of Penal Procedures (CNPP), Federal Penal Code (CPF), & Federal Law of Environmental Responsibility (LFRA)

The Government of Mexico has contravened its own criminal and civil liability framework effectively granting judicial impunity to the operators of Tijuana’s wastewater system. The severe, ongoing environmental contamination caused by the leaks, spills, and discharges of millions of gallons of raw sewage every day, constitutes a crime as defined in Articles 416 and

⁴⁷ See generally, Response to Question 27, *supra*.

⁴⁸ USIBWC, Status of Statement of Intent and Minute 328 Projects Portal, *supra* note 13.

⁴⁹ Enforcement powers are set forth in LAN Articles 119 (Sections I, XV, XVII), 120 (paragraph 1), and 123 Bis 1.

⁵⁰ See generally, Response to Question 27, *supra*.

421 (Sections I, II, V) of the Federal Penal Code (CPF). As noted in Section IV, *infra*, the Government of Mexico is aware of the facts surrounding Tijuana's sewage crisis. However, despite their knowledge and awareness, Mexican federal agencies have failed to report suspected or probable crimes; failed to file formal complaints (denuncias) or criminal indictments (querellas); and failed to notify the FGR of such crimes. The FGR's Annual Activity Reports for 2021 through 2024 contain no record of investigations (carpetas de investigación) or prosecutions related to the illegal discharge of raw or untreated sewage into federal and marine waters in and around the greater Tijuana metropolitan area, despite the public and persistent nature of such acts.⁵¹

Numerous laws establish an enforceable legal duty for federal agencies to act decisively when they encounter evidence of criminal activity in their respective areas of oversight.⁵² The Government of Mexico's failure to comply with the many explicit, non-discretionary reporting and prosecution obligations ensures the severe environmental contamination goes uninvestigated, unprosecuted, and ultimately unpunished, all but ensuring the crisis continues unabated.

Even assuming that the FGR is aware of the multitude of crimes and environmental liabilities associated with the Tijuana sewage crisis, that office has failed to exercise its prosecutorial powers and/or conduct the necessary investigations into such matters. Taken together, these acts and omissions by the environmental and prosecutorial authorities have created a state of impunity that effectively nullifies the application of Article 416 of the Federal Criminal Code and represents a continuing failure to effectively enforce Mexico's environmental laws, in violation of Articles 24.4 and 24.27 of the USMCA.⁵³

As the LFRA explicitly empowers PROFEPA with the authority to carry out legal actions against environmental violations, and Mexico's Supreme Court has consistently held that the constitutional right to a healthy environment demands effective enforcement of environmental laws, PROFEPA's authority to bring environmental liability claims is a nondiscretionary duty. Unfortunately, the Government of Mexico has failed to initiate any civil or administrative liability proceedings to quantify and demand reparation, restitution, and compensation associated

⁵¹ Fiscalía General de la República [Federal Attorney General's Office], Informe Anual de Actividades 2024 (Jan. 2025), https://stastdgv2portfgr032.blob.core.windows.net/transparencia/InformesActividades/INFORME_ANUAL_FGR_2024.pdf; *id.*, Informe Anual de Actividades 2023 (Jan. 2024), https://stastdgv2portfgr032.blob.core.windows.net/transparencia/InformesActividades/INFORME_ANUAL_FGR_2023_FINAL.pdf; *id.*, Informe Anual de Actividades 2022 (Jan. 2023), https://stastdgv2portfgr032.blob.core.windows.net/transparencia/InformesActividades/Informe_Anual_2022_y_Ane_xos.pdf; *id.*, Informe Anual de Actividades 2021 (Jan. 2022), https://stastdgv2portfgr032.blob.core.windows.net/transparencia/InformesActividades/Informe_Anual_FGR_2021.pdf.

⁵² See generally, Response to Question 27, *supra*.

⁵³ The Mexican Government criminal prosecution this environmental offense is functionally non-existent, creating a system of systemic impunity. The FGR procedural opacity conceals the actual number of investigations, charges, or convictions related specifically to illegal raw wastewater discharges and entirely fails to disaggregate efforts by specific municipality, such as Tijuana. This absence of granular, verifiable data on specific contamination crimes or locations directly hinders public and international accountability. Without evidence of sustained prosecution, the criminal provisions in the matter are rendered inert, effectively establishing that the economic and environmental cost of continuing to pollute is minimal, thus guaranteeing impunity for systemic polluters.

with Tijuana’s sewage crisis. PROFEPA’s continuous failure to use these LFRA mechanisms directly violates the law’s requirements and undermines its purpose, effectively shielding polluters from legal and financial responsibility and ensuring public resources and ecosystems remain polluted.

4. Treaties

Upon ratification, international treaties are integrated into Mexico’s domestic legal system with the same force as federal provisions issued by the Congress. Therefore, Mexico’s failures to abide by its international obligations also constitute failures to implement and enforce its own federal laws. Unfortunately, Mexico’s failure to adequately address Tijuana’s sewage crisis runs afoul of numerous international treaty obligations.⁵⁴ The Government of Mexico’s failure to prevent and remediate damages, as evidenced by the continuous sewage discharge into the Tijuana River which flows into the United States, constitutes a severe transboundary environmental hazard, which has already caused serious harm to human and environment health within the United States.

First, the Government’s failure to investigate, sanction, prevent harm, and remediate damages, in the context of a years-long, ongoing, well-documented human health and environmental catastrophe, reflects a clear violation of the human rights standards protected by the Inter-American System including provisions of the IACHR, AHCR, and PCADH.

Second, the Government of Mexico has also failed to notify the United States of infrastructure failures and sewage spills in violation of treaty provisions such as the La Paz Agreement and OC-23/17.⁵⁵ One notable example occurred following heavy storms in December 2016 and January 2017, when the Insurgentes/Oriente collector collapsed on January 1, 2017. The USIBWC received multiple complaints of wastewater odors in the Tijuana River Valley beginning in early February 2017 and requested information from CILA several times regarding the source. On February 23, 2017, CILA finally formally notified USIBWC that the collector had collapsed and that approximately 143 million gallons of untreated sewage had been released into the Tijuana River, *nearly two months after the incident*.⁵⁶ This catastrophic discharge event resulted in miles of coastline in south San Diego County to be polluted with sewage and high levels of fecal bacteria. This pattern of delayed notification and lack of transparency has continued to undermine binational efforts to address cross-border sewage contamination.⁵⁷

Third, federal agencies’ systemic failures to report and prosecute effectively deny access to justice and judicial protection associated with environmental laws in violation of treaties such as the Rio Declaration.

⁵⁴ Section 4 of the Response to 27, *supra*.

⁵⁵ USIBWC, Report of Transboundary Bypass Flows into the Tijuana River (Mar. 31, 2017), https://www.ibwc.gov/wp-content/uploads/2023/08/Report_Trans_Bypass_Flows_Tijuana_033117.pdf.

⁵⁶ *Id.*

⁵⁷ See Minute No. 333: Comprehensive Actions to Address the Border Sanitation Problem at San Diego, California – Tijuana, Baja California (Dec. 15, 2025) (hereinafter “Minute 333”) (directing the Commission to develop a new binational Tijuana River spill notification protocol), <https://www.ibwc.gov/wp-content/uploads/2025/12/Min333English1Sided.pdf>.

The repeated and ongoing failures of the Government of Mexico to implement and enforce its own constitutional rights, environmental laws, and international obligations, constitutes a systemic pattern of non-compliance, which has ultimately caused a severe transboundary human health and environmental crisis, as well as escalating trade tensions between the United States and Mexico.

IV. The Matter has been Communicated to Relevant Authorities

The Mexican government's awareness of the Tijuana wastewater crisis is sustained, institutional, and documented through multiple formal channels. Mexican federal agencies have made explicit public acknowledgments through CONAGUA (acknowledging in March 2019 that coastal waters were "highly contaminated" with beach closures since January 2018),⁵⁸ SEMARNAT (announcing the July 2024 MOU),⁵⁹ the Secretariat of Foreign Affairs (welcoming Minute 328),⁶⁰ and CILA planning documents diagnosing structural system failures and transboundary impacts.⁶¹ The 2020 CILA study quantified \$728 million USD needed for adequate infrastructure (which has not been allocated nor received) demonstrating federal-level acknowledgment of systemic failures.⁶²

The February 2017 Insurgentes/Oriente collector collapse exemplifies governmental awareness without enforcement response.⁶³ When the Insurgentes/Oriente collector collapsed, CILA formally notified USIBWC that approximately 143 million gallons of untreated sewage had been released into the Tijuana River. Despite this catastrophic event, resulting in clear public health and environmental violations, Submitters are unaware of any federal enforcement actions taken against responsible parties.

Further, despite diligent efforts, Submitters have found no evidence of effective federal investigations, sanctions, facility closures, suspension orders, safety mandates, remediation orders, or criminal prosecutions. The absence of any documented enforcement actions raises serious doubts that the Mexican Government is implementing and enforcing its environmental laws. The systemic and chronic nature of the contamination itself constitutes compelling evidence of such failure to enforce. Under Mexican law, the government bears an obligation of result to ensure environmental protection. The daily discharge of millions of gallons of untreated

⁵⁸ CONAGUA (March 2019 letter): Comisión Nacional del Agua, Organismo de Cuenca Península de Baja California, Official Letter B00.807.02.4.-0428 (Mar. 25, 2019).

⁵⁹ SEMARNAT (July 2024 MOU announcement): Secretaría de Medio Ambiente y Recursos Naturales, Autoridades Ambientales de México y Estados Unidos Firman Acuerdo para Atender Situación Sanitaria y Ambiental en Frontera Tijuana-San Diego (July 24, 2024), <https://www.gob.mx/semarnat/prensa/autoridades-ambientales-de-mexico-y-estados-unidos-firman-acuerdo-para-atender-situacion-sanitaria-y-ambiental-en-frontera-tijuana-san-diego>.

⁶⁰ Secretariat of Foreign Affairs (Minute 328): Secretaría de Relaciones Exteriores, Mexico and US Welcome the Entry into Force of IBWC Minute 328 (Nov. 8, 2023), <https://www.gob.mx/sre/prensa/mexico-and-us-welcome-the-entry-into-force-of-ibwc-minute-328?idiom=en>.

⁶¹ Comisión Internacional de Límites y Aguas, Formulación del Programa de Saneamiento de la Frontera Norte a Nivel Gran Visión (2020), http://www.cila.gob.mx/syca/SUIF/PSFN_IF00_General_00_Informe.pdf; Comisión Internacional de Límites y Aguas, Informe Especial – Tijuana (2020), http://www.cila.gob.mx/syca/SUIF/PSFN_IF01_Tijuana_A_Informe.pdf.

⁶² 2020 CILA, *supra* note 7.

⁶³ USIBWC, Report of Transboundary Bypass Flows, *supra* note 55.

wastewater—occurring continuously for decades despite full governmental awareness—unequivocally demonstrates that this obligation has not been fulfilled, in violation of Article 24.4(1) of the USMCA.

V. Reasonable Actions have been Taken to Pursue Private Remedies

Extensive binational institutional engagement over decades demonstrates that reasonable actions have been taken to pursue available remedies. As the CEC Secretariat has recognized, the private remedies requirement is interpreted broadly and may be satisfied through complaints, claims, or concerns raised by third parties, communities, and governmental entities through administrative channels and binational mechanisms.

Concerns have been communicated repeatedly through the IBWC-CILA framework. The USIBWC has maintained decades of routine communications with CILA regarding wastewater flows; infrastructure construction, operation, and failures; and environmental impacts, including formal notifications of contamination events, such as the February 2017 collector collapse.⁶⁴ IBWC Minutes 328 represents formal binational acknowledgment of Tijuana’s wastewater infrastructure inadequacy, and a commitment to improve and rehabilitate such infrastructure.⁶⁵ However, the 2025 MOU documents that many Minute 328 commitments remain unfulfilled, with Mexico committing to “completion of the remaining Minute 328 projects by December 31, 2027.”⁶⁶ However, the majority of these projects remain unfunded. The subsequent adoption of Minute 333 signed in December 2025 further evidences the Government of Mexico’s awareness of ongoing problems, as well as knowledge of specific solutions to such problems.⁶⁷ However, despite these numerous Minutes and routine communications between USIBWC and CILA, Tijuana’s sewage crisis continues, due in significant part to Mexico’s failure to implement and enforce its own environmental laws.

Community-level engagement and sustained binational advocacy efforts are evidenced by citizen complaints to Mexican federal authorities. On January 12, 2026, Submitters made requests to multiple Mexican federal agencies, as well as Baja California state agencies, regarding information related to the Tijuana pollution crisis.⁶⁸ The CEC process does not require that private remedies be exhausted or successful—only that reasonable efforts have been made. The extensive record of binational communications, formal Minutes, governmental acknowledgments, infrastructure commitments, citizen complaints, and community engagement spanning decades amply demonstrates reasonable actions. The persistence of violations despite these efforts underscores the absence of federal enforcement of the multiple Mexican environmental laws described herein. As such, Submitters respectfully request the development of a factual record on this matter.

⁶⁴ USIBWC, Report of Transboundary Bypass Flows, *supra* note 55; *see also* USIBWC, Status of Statement of Intent and Minute 328 Projects Portal, *supra* note 13.

⁶⁵ Minute 328, *supra* note 10.

⁶⁶ 2025 MOU, *supra* note 10.

⁶⁷ Minute 333, *supra* note 57.

⁶⁸ *See* Annex G, Requests submitted pursuant to the General Law of Transparency and Access to Public Information via Mexico’s Plataforma Nacional de Transparencia.