

30 May 2008

COUNCIL RESOLUTION: 08-01

Instruction to the Secretariat of the Commission for Environmental Cooperation regarding the assertion that Mexico is failing to enforce Articles 1, 2, 5, 18, 78, 79, 80, 83, 88, 89, 133, 157, 161, 162, 163, 164, 165, 167, 168, 169 and 170 of the General Law on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*) and 3 of its Environmental Impact Regulations (*Reglamento en materia de impacto Ambiental*); 1, 2, 3, 4, 7 and 9 of the National Water Law (*Ley de Aguas Nacionales*) and 2 of its Regulations; as well as Article 44 of the Internal Regulations of the Secretariat of the Environment and Natural Resources (*Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales*) (SEM 03-003).

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) regarding submissions on enforcement matters and preparation of factual records;

CONSIDERING the submission filed on 23 May 2003, by the *Fundación Lerma-Chapala-Santiago-Pacífico A.C.*, *Sociedad Amigos del Lago de Chapala A.C.*, *Instituto de Derecho Ambiental, A.C.*, residents of the community of Juanacatlán, Jalisco, *Comité Pro-Defensa de Arcediano A.C.*, *Amigos de la Barranca, A.C.*, *Ciudadanos por el Medio Ambiente, A.C.*, *AMCRESP, A.C.*, and *Red Ciudadana, A.C.*, and the response provided by Mexico on 30 March 2004;

HAVING REVIEWED the notification of 15 May 2005, submitted to the Council by the Secretariat, recommending the development of a factual record with respect to the submission;

MINDFUL that Mexico notified the Secretariat, in accordance with Article 14(3) of NAAEC, that there were three administrative proceedings, one of which has since been closed, and one judicial proceeding pending resolution;

ALSO MINDFUL that Mexico notified the Secretariat that it considers that the

subject of water distribution should not be the subject of a submission as it is not environmental law as defined by Article 45(2) of NAAEC;

FURTHER CONSIDERING that it was clarified to the Secretariat in the Party's response that the Lerma-Chapala-Santiago-Pacífico basin comprises an area of 190,438 km² and represents 13 percent of Mexican territory, which does not coincide with the area covered by the allegations of the submission, since those allegations address the Lerma-Chapala watershed (Lerma subregion), corresponding to one part of the basin located in the state of Jalisco;

HEREBY UNANIMOUSLY

INSTRUCTS the Secretariat to develop a factual record in accordance with the above-noted considerations, as well as Article 15 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, except in the following ongoing proceedings: 120/2003 (*Guadalupe Lara Lara*), 41/2004 (*Sociedad Cooperativa de Producción Insurgentes de la Isla de Mezcala, S.C.L.*) and 67/2004 (*Guadalupe Lara Lara*);

REQUESTS the Secretariat to describe actions undertaken by Mexico in compliance with the regulations cited in the title of this decision, but to refrain from including any form of assessment of the effectiveness of the Party's policies or legislation;

FURTHER REQUESTS that the Secretariat limit the factual record to the area containing the Arcediano dam, within the Lerma-Chapala watershed (Lerma subregion) in the State of Jalisco, as identified in the Submission;

ALSO REQUESTS the Secretariat to refrain from consideration of legislation, or provisions thereof, primarily addressing issues of water distribution;

DIRECTS the Secretariat to provide the Parties with its overall work plan for gathering relevant facts and with the opportunity to comment on that plan, and

FURTHER DIRECTS the Secretariat to consider, in developing a factual record in respect of allegations that the Party is failing to enforce the aforementioned sections of its law, the relevant facts since the entry into force of the NAAEC on 1 January 1994. Facts prior to 1 January 1994 may be included if necessary for the development of the history presented in the factual record and if directly related to the submission.

APPROVED IN THE NAME OF THE COUNCIL:

David McGovern
Government of Canada

Enrique Lendo Fuentes
Government of the United Mexican States

Scott Fulton
Government of the United States of America