

## **Reasoning for the Council's instructions on submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*)**

Consistent with its commitment to transparency and its capacity as the governing body of the Commission for Environmental Cooperation (CEC), with the responsibility to oversee the processing of submissions on the effective enforcement of environmental law (the “SEM process”) filed prior to 1 July 2020, and through the procedures established by the North American Agreement on Environmental Cooperation (NAAEC), the Council of the CEC (the “Council”) hereby makes public its reasons for instructing the Secretariat to prepare a factual record for submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*).

### **1. Secretariat's NAAEC Article 15(1) notification**

In its NAAEC Article 15(1) notification, issued 30 September 2020, the Secretariat informed the Council that the preparation of a factual record is warranted for the Submitters' assertions of alleged failures to effectively enforce the following legal provisions:

- A. Article 28 paragraphs I and XIII of the General Ecological Equilibrium and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA), with respect to the preparation of an environmental impact statement for the Tangram-I and Nerita-I wells;
- B. LGEEPA Article 88 paragraph III, with respect to sustainable water use, and
- C. LGEEPA Article 170, with respect to the taking of safety measures.

### **2. Council's instruction to the Secretariat**

By means of Council Resolution 23-05, annexed, the Council unanimously instructed the Secretariat to prepare a factual record for submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*), specifically to address alleged failures to effectively enforce LGEEPA Article 88 paragraph III, with respect to sustainable water use, and LGEEPA Article 170, with respect to the taking of safety measures. In conformity with paragraph 10.4 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”), the Council hereby presents the reasoning behind this instruction.

### **3. Explanation of the Council's reasoning**

#### **A. LGEEPA Article 28 paragraphs I and XIII, on the preparation of an environmental impact statement for the Tangram-I and Nerita-I wells**

The Council observes the Submitters' assertions that the environmental authorities did not enforce compliance with the obligation to file an environmental impact statement for the Tangram-I and Nerita-I wells, located in the municipality of Los Ramones in the state of Nuevo León (see p. 2 of the revised submission). Furthermore, the Council takes into consideration the information provided by Mexico in its Party Response (see pp. 8-12) with respect to the environmental impact statement filed in the regional modality for the “Proyecto integral Cuenca de Burgos 2004-2022” (Burgos Watershed Masterplan 2004-2022), the recitals set out in administrative decision no. S.G.P.A./DGIRA.DEI.2440.04 (see pp. 13-52, Appendix 2), as well as the Secretariat's determination (see paragraph 51) with respect to the existence of an Environmental Impact Statement (EIS) filed in accordance with LGEEPA Article 28.

The Council further takes note of the Secretariat's recommendation for the preparation of a factual record regarding compliance with the public participation requirements and acknowledges Mexico's statement that matters relating to public consultation and publication of a project excerpt in a widely circulated newspaper are regulated by LGEEPA Article 34 and Articles 37, 40, 41, and 43 of the Environmental Impact Regulation to the LGEEPA, not by LGEEPA Article 177 as stated by the Submitters (see p. 7 of the revised submission), or by LGEEPA Article 28 paragraphs I and XIII, as noted by the Secretariat (see paragraph 52 of its notification).

Notwithstanding the foregoing, the Council notes that Mexico, in its Party Response, clarified the issue of publication and reported that pursuant to LGEEPA Article 34, the filing of the EIS for the "Burgos Watershed Masterplan 2004-2022" was published in the ecological gazette of the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—SEMARNAT), for consultation and that no requests for public consultation were made during the assessment process (see pp. 12 and 13 of the Party Response).

Therefore, the Council<sup>1</sup> observes that the Government of Mexico has submitted the relevant information; and further observes that the matters raised by the Secretariat revolve around alleged deficiencies in the EIS rather than around the content of LGEEPA Article 28 paragraphs I and XIII.

For the foregoing reasons, the Council<sup>2</sup> considers that the preparation of a factual record with respect to LGEEPA Article 28 paragraphs I and XIII is not warranted.

#### **B. LGEEPA Article 88 paragraph III, with respect to sustainable water use**

The Council observes that Mexico, in its Party Response, provided relevant information on the Tangram-I and Nerita-I wells, located in the municipality of Los Ramones, Nuevo León; and takes into consideration the Secretariat's determination that the Tangram-I and Nerita-I wells do not hold concessions for the exploitation of national property because they are not in the phase of extracting hydrocarbons (see paragraph 89 of the Secretariat's recommendation).

The Council agrees with the Secretariat's recommendation that preparing a factual record would serve to obtain information on the activities carried out prior to the explorative phase in accordance with LGEEPA Article 88 paragraph III, in view of the guiding criteria set out by that legal provision for sustainable water use and its requirement that the environmental authorities consider the protection of soils, wooded and forested areas; the maintenance of basic water flows, and the recharge capacity of aquifers when assessing and approving environmental impact.

For the foregoing reasons, the Council instructs the Secretariat to prepare a factual record with respect to LGEEPA Article 88 paragraph III.

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<sup>1</sup> The United States does not make this observation.

<sup>2</sup> The United States supports the full scope of the Secretariat's NAAEC Article 15(1) notification, issued 30 September 2020, to develop a factual record for submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) on the Submitters' assertions relating to Mexico's alleged failure to effectively enforce Article 28, paragraphs I and XIII of the LGEEPA, Article 88, paragraph III of the LGEEPA, and Article 170 of the LGEEPA.

**C. LGEEPA Article 170, with respect to the taking of safety measures**

The Council agrees with the Secretariat's recommendation concerning safety measures as provided by LGEEPA Article 170, relating to the temporary partial or total closure of pollution sources; the seizure of materials, wastes, or products, and neutralization or any similar action to prevent ecological disequilibrium or grave harm or deterioration of natural resources. The Council takes note of Mexico's statement that the Tangram-I and Nerita-I wells are not currently operating and did not proceed to the hydrocarbon extraction phase.

For the foregoing reasons, the Council instructs the Secretariat to prepare a factual record with respect to LGEEPA Article 170.