WILDLANDS LEAGUE
A chapter of the Canadian Parks and Wilderness Society

October 23, 2003

Gustavo Alanis-Ortega, Chair
Joint Public Advisory Committee
North American Commission for Environmental Cooperation
303 rue St. Jacques Ouest, Bureau 200
Montreal Quebec
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Dear Mr. Alanis-Ortega,

Re: Further comments on Articles 14 and 15

Congratulations on the high quality of the October 2 meeting in Montreal. It was enlightening and inspiring, and I feel fortunate to have been able to participate.

In my earlier written comments (September 12, 2003) to JPAC regarding the citizen submission process, I stressed the importance of maintaining a timely, open and equitable process, free from political manipulation by the Council. In light of the October 2 discussions, I would like to add the following points:

1. For the submission process to be open to the citizens, it has to be *doable* by the citizens. This means that requirements about the information that has to be submitted by citizens have to be reasonable in terms of costs and human resources. The Ontario Logging file, to which the Wildlands League is a party, has cost the non-profit organizations involved tens of thousands of dollars so far to obtain the necessary information. First, we had to obtain and analyze enough data so as to attempt to avoid the restricted scope situation that occurred in the US Migratory Birds file (i.e. providing data on a wide range of non-enforcement situations, rather than just one or two examples, so as to ground an allegation of widespread non-enforcement). Second, we had to obtain the additional information requested by Council, most of which was not even available at the time of the original submission. This, in my opinion, is a far too heavy burden to be carried by groups like my own (and an even greater burden for the average citizen), and is a strong disincentive to public participation, particularly when, as in this case, the recommendations of the Secretariat are likely to be overturned by the Council. I believe that the final JPAC report should emphasize that this is supposed to be a *citizen* submission process. If procedural and financial hurdles to participating remain as high as recently set by the Council, the process could no longer be legitimately termed a *citizen-friendly* process. I also believe that the final report should recommend that submissions that utilize a limited number of examples (as was the case for the four completed factual records under review) are sufficient for proceeding with a factual record regarding widespread non-enforcement. The Secretariat's factual record development process (not a Council resolution) is the appropriate forum for subsequently determining how wide-ranging an inquiry will be conducted. If an inordinate amount of information is required at the outset just to try to get past the Council resolution stage, citizens will become reluctant to use the process, and the credibility of the process and CEC will be undermined.

2. I disagree strongly with those participants (the minority) who felt that by limiting the scope of the investigations the Council was putting forth an acceptable compromise position. These yes/no answers (i.e. a 'no' disguised as a 'yes') are not an acceptable compromise. They result in a lack of clarity about the issues under investigation. Or worse, the key issue being put forward by the public (e.g. issues of widespread non-enforcement) is lost altogether.

3. An example of an acceptable compromise to scoping, in light of the comments made by Randy Christensen of the Sierra Legal Defence Fund, might be the approach taken in the B.C. Hydro case. In this case, the Secretariat sought input from the submitters and Canada about limiting the scope of the investigation. This approach adequately addressed the issues because the group was able to ensure that a sufficient number of highly pertinent specific cases were included in the investigation. In addition, the role of the Secretariat throughout this scoping exercise and the production of the factual record was open and transparent, and thus very much in keeping with the goals of the CEC regarding public participation. If the scope of investigations has to be narrowed in the future, then I recommend that an approach like that taken in the B.C. hydro case be adopted: i. ensure adequate participation of the group making the submission; ii ensure that an adequate number of highly pertinent examples are included; and iii. ensure that it is the expert Secretariat that makes the decisions on the ultimate scope of the investigation after it is decided that a factual record will be prepared.

4. I agree with the participants at the October 2 meeting that transparency of decision-making is key to the success of the citizen submission process. Dialogue with the Council around Articles 14 and 15 should be encouraged, and to this end, JPAC should seek responses from the Council about the issues at hand as well as explanations from the Council about the decisions that it arrives at. Concerns about political interference are undermining the credibility of the CEC, and if credibility is to be restored, the Council will have to be fully accountable to the public about the role that it plays.

Thank you once again, for inviting further comments on the citizen submission process. I truly appreciate the role that JPAC is playing to ensure that public participation in the CEC is meaningful.

Yours sincerely,

Anne Bell, Ph.D.
Acting Executive Director