

ExO NAFTA Case Background

The primary permit required to advance the ExO Phosphate project was an environmental permit from SEMARNAT. However, SEMARNAT rejected the permit in April 2016.

In response, ExO challenged the decision in Mexico's highest Administrative Court (TFJA) which unanimously ruled that SEMARNAT's denial of the permit was arbitrary and unlawful. This marked the first time in 20 years that the 11-member tribunal reached a unanimous decision. The TFJA ordered SEMARNAT to conduct a comprehensive review of the permit and the scientific evidence it had overlooked. Despite this ruling, SEMARNAT issued a press release stating it would reject the permit again, which it did six months later. ExO is now challenging this unlawful decision once again before the TFJA.

Odyssey filed a NAFTA Claim to protect its rights, safeguard its significant investment in the project, and defend shareholder value after SEMARNAT's refusal to comply with Mexican law and the court's order.

In January 2019, Odyssey filed a Notice of Intention (NOI) to file a claim against Mexico under Chapter XI of the North American Free Trade Agreement (NAFTA). In April 2019, the company filed a Notice of Arbitration (NOA).

[On September 4, 2020, Odyssey filed the First Memorial](#) in the case brought against Mexico under NAFTA on its behalf and on behalf of subsidiary Exploraciones Oceánicas (ExO), alleging that Mexico wrongfully denied environmental approval of the ExO Phosphate project in breach of NAFTA. Odyssey seeks damages of more than \$2.3 billion, including interest from April 2016 to the date of the First Memorial's submission. A press release from Odyssey can be found [here](#).

Odyssey's legal team, consisting of specialized international arbitration lawyers from Cooley LLP and King & Spalding LLP, handled the case. All filings related to the case were accessible through the [International Centre for Settlement of Investment Disputes \(ICSID\) website](#).

After three years of preparation and multiple written filings, including documentary evidence plus reports and statements from 20 experts and witnesses, the Tribunal heard directly from Odyssey, select experts and witnesses during a NAFTA Tribunal hearing in January 2022. During the hearing, Odyssey's legal team also had the opportunity to cross-examine Mexico's witnesses. The hearing was not public, which precludes Odyssey from reporting or commenting on them further.

[In September 2022, Odyssey submitted its post-hearing brief](#), marking the final substantive submission in the case.

Odyssey cannot predict the outcome of the arbitration, but the company remains confident in the merits of its case.