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## **Law To Share Oil Revenues In Guatemala Ecologically Unsound And Constitutionally Flawed; Critics Include President Alvaro Colom**

*by LADB Staff*

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Guatemala's Congress overrode a presidential snub to pass a law creating the Fondo Nacional de Petroleo (Fonpetrol). On its face, the fund purports to divide up royalties from oil-drilling operations in the country so that communities where the exploration and drilling occur, as well as other constituencies usually left out on payday, can share in the distribution of wealth. But there is more to it. Critics warn of environmental disaster, free rein in perpetuity to the oil companies, unconstitutionality. Opponents pressed President Alvaro Colom to veto the bill that staggered out of the legislature after months of deal making. Irritated by the landing on his desk of a bill that locks his Environmental and Natural Resources Ministry in mortal combat with his Energy and Mining Ministry, Colom let the bill lay untouched until, according to Article 179 of the Constitution, it was returned to the Congress for that body to see to its passage and publication into law. Colom dismissed the bill from his sight with the statement, "We've decided to miss the deadline and allow Congress to approve the law. I leave this in the hands of the lawmakers. They should know why they mixed things up." Colom's action was consistent with statements he made in December, when he said that he would neither sign nor veto. "Let the Congress take charge of this thing they did," he said. Congress president Roberto Alejos, in whose hands the bill came to rest, said, "The deadline for the executive to issue a statement on Fonpetrol has expired, and Congress must now publish the bill. However, it is important for Congress to be well-aware of its implications, which is why I am calling an emergency session for Jan. 26." Alejos is a member of the governing Unidad Nacional de Esperanza (UNE). What it does, to and for whom Part of what Fonpetrol does is to change the way oil royalties are divided. Under the legislation, 5% is to go to the departmental development councils (Consejo de Desarrollo Departamental). Departments in which there are actual oil operations get 20%, plus another 3% for environmental protection. The other 72% goes into the general fund. The law also extends drilling contracts for 15 years, including those in the Xan oil field extending into the Laguna del Tigre Nature Reserve in the Peten that were to expire in 2010, and that is where the ministerial collision occurs. A report from the Consejo Nacional de Areas Protegidas (CONAP) says the environmental law already on the books clearly requires that, upon expiration of the existing contract, there can be no renewal in this protected area, and that restriction includes retroactive extension of the license in place. Fonpetrol would extend a 1983 license. CONAP executive secretary Claudia Santizo said her organization had informed the presidency of these issues and of a technical analysis done at Laguna del Tigre confirming water pollution and fish contamination, as well as an accelerating rate of deforestation from the increased activity in the area. It was on this point, the extension of contracts, that Fonpetrol proponents lost Colom. When the law passed in the legislature last November with the support of the UNE delegation, Colom had agreed to it on the understanding that the extensions would be omitted. "My exact instruction was that Fonpetrol should pass, but without the subject of concessions," he said. "And, in the end, they inserted it." Newspaper reports at the time spelled out the protected-area issue, specifically noting the 2010 expiration of the existing contract, naming the contract holder as the French company

Perenco, and stating that it could not be renewed upon expiration. UNE Deputy Manuel Baldizon challenged Colom's version of the story. He told the media that he had been told at a meeting with the president's economic Cabinet to include the extensions in the bill. But more recently it has been pointed out that Baldizon's brother Salvador, also a deputy, is a main proponent of the bill and that these Peten deputies stand to benefit hugely from gushers of money that the combination of royalties and contract extensions will bring their ecologically sensitive region. Fonpetrol's likely next stop Where it all goes from here is uncertain, but the constitutional aspects of the case suggest movement in the direction of a high court. Yuri Giovanni Melini, director-general of the Centro de Accion Legal Ambiental y Social de Guatemala (CALAS), said back in November, "We hope that the president vetoes the law. If he doesn't do it, we are going to consider action in the Corte de Constitucionalidad (CC), because there is a violation of Article 64 of the Constitution." If CALAS wins its case and the contracts are allowed to expire, then the disposition of the existing Perenco operation becomes an issue. Melini has criticized oil deals in the past because, he said, the state gets too little of the profit, and many others have agreed. It has been reported that, in the case of expiration, all Perenco infrastructure would revert to the state, which, say these commentators, could administer the operations more to the public benefit. As of the end of November last, the Perenco operation has produced 4.72 million barrels of crude, of which 93% is in the Xan field, and for which the company paid out US\$142.2 million in royalties.

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