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Supreme Court Validates Private Contracts for State-Run Oil Company PEMEX

by *Carlos Navarro*

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In a decision that has an important impact on Mexico's petroleum industry, the Suprema Corte de Justicia de la Nación (SCJN) has validated President Felipe Calderón's proposals to allow the state-run oil company PEMEX and its subsidiaries to enter into agreements and contracts with private companies. In reaffirming the government's right to hire private contractors to conduct incentive-based tasks on behalf of the oil company, the high court threw out legal challenges from a handful of members of the Chamber of Deputies to a PEMEX reform law approved overwhelmingly by Congress in 2008 ([SourceMex, Oct. 29, 2008](#)).

In its ruling, the high court held that the plan proposed by Calderón did not violate Article 62 of the PEMEX Law, which would prohibit the oil company from paying private contractors with natural resources or directly with oil revenues. This means that the company will have to become creative with its payment to contractors. Under the 2008 law, PEMEX is only allowed to enter into contracts with companies that agree to accept cash as payment.

The restriction did not stop critics from lashing out at the court for the decision, which they said was evidence that the justices had "amnesia about history" and that there was nothing to prevent foreign entities from finding loopholes in the 2008 law that would ultimately allow them to gain some control of Mexico's natural resources.

The congressional challenges, particularly from the center-left opposition, had raised the same question, arguing that the rules gave too much control of the industry to the private sector ([SourceMex, April 7, 2010](#)).

The court's ruling disagreed with this premise. "I declare the constitutional controversy resolved," said Chief Justice Guillermo Ortiz Mayagoitia as he announced the court's decision on Dec. 6.

Decision gives government legal certainty

Calderón administration officials were pleased with the SCJN's decision, which they said would allow PEMEX to move forward with hiring private companies to conduct needed exploration and extraction activities, which the oil company was unable to perform because of a lack of capital and technological expertise. "The corresponding articles of the PEMEX law were declared constitutional, which gives us much more legal certainty," said Energy Secretary Georgina Kessel. In addition to Article 62, the court resolved questions related to Articles 21, 22, and 23 of the PEMEX law, which addressed procedural matters.

There were several maneuvers before 2008 to open PEMEX activities to the private sector, particularly the multiple-service contracts introduced by ex-President Vicente Fox in 2002 ([SourceMex, June 26, 2000](#)). These contracts were used primarily for extracting natural gas in the Burgos Basin in northeastern Mexico. Some members of Congress had also proposed to challenge the legality of these contracts, but in the end legislators decided not to pursue a constitutional challenge ([SourceMex, April 21, 2004](#)).

Those contracts were very limited in their ability to attract capital to the Mexican oil industry, so Calderón and legislators from his Partido Acción Nacional (PAN) and the Partido Revolucionario Institucional (PRI) pushed a new form of contract in the 2008 PEMEX reform law, which was supported by some legislators from the center-left Partido de la Revolución Democrática (PRD). The new integrated-service contracts offer greater financial incentives and guarantees to private contractors because of their promise of flat per-barrel fees and reimbursement of a percentage of recovery costs.

The reforms to PEMEX took on a greater sense of urgency in 2008 because of mounting evidence during the past several years that the country's oil reserves had begun to fall significantly, especially at the Cantarell Oil Field ([SourceMex, March 7, 2007](#)). Mexico's oil production has declined from about 3.4 million barrels a day in 2004 to just under 2.6 million bpd in January-September of 2010. In September 2008, PEMEX estimated production at slightly more than 2.8 million bpd, which at that time was its lowest level in 10 years ([SourceMex, Sept. 24, 2008](#)). This estimate came just weeks before Congress approved the reforms allowing greater private-sector participation in the state-run oil company.

The new regulations will make it easier for PEMEX to hire outside contractors to conduct exploration activities in the deep waters of the Gulf of Mexico. Brazil's state-run oil company Petrobras is prominent among the companies mentioned as possible contractors in deepwater exploration ([SourceMex, Aug. 26, 2009](#)). PEMEX director Juan José Suárez Coppel said other multinational companies like British Petroleum and Shell are also expected to participate in deepwater contracts that the company will begin offering in 2012.

In the near term, PEMEX is planning to begin accepting bids in February 2011 for three onshore, mature oil fields in Tabasco state. These projects are more likely to draw interest from smaller companies than from the large multinational oil companies, Suárez Coppel said in an interview with the US business television network CNBC.

Columnists criticize court for failing to uphold constitutional principles

There was little initial outcry from opposing legislators about the SCJN decision, but a handful of columnists criticized the court.

"The Supreme Court forgot the very clear intent of Article 27 of the Mexican Constitution, which reserves exploitation of hydrocarbons exclusively for the Mexican state and prohibits contracts and concessions," Eduardo Andrade wrote in a column dated Dec. 7 and distributed by , which publishes and several other newspapers around the country. "The authors of this constitutional article had foreseen the possibility that, through the hiring of third parties, a strategic sector of the economy would be transferred inappropriately to the private sector."

Andrade went on to say that it was precisely because multinational companies had found ways to circumvent the decisions of the Mexican courts that former President Lázaro Cárdenas nationalized the petroleum industry in 1938.

Nationally syndicated columnist Manú Dornbierer raised concerns that Mexico's commemoration of its bicentennial would be remembered by "the surrendering of the country's oil riches to gringo oil companies and other private entities."

Dornbierer criticized recent administrations, starting with ex-President Carlos Salinas de Gortari, for failing to take the appropriate measures to strengthen the oil industry in Mexico, such as constructing refineries and other needed infrastructure. "Since 1993, [Carlos Salinas] and his foreign partners have benefited from petroleum...and at the same time made us more dependent on them."

But not all columnists and editorial writers were as critical of the SCJN's decision. "One can question whether these integrated-service contracts are the best mechanism to reactivate production and boost reserves," Mexico City-based energy industry analyst David Shields said in a piece published in the Mexico City daily newspaper . "But this would imply unnecessarily reopening the purposes and the results of the [2008] energy reform. This reform was approved by the three major political parties, and the new scheme is compatible with the industrial model of petroleum contracts that the country implemented from the inception of the North American Free Trade Agreement."

-- End --