



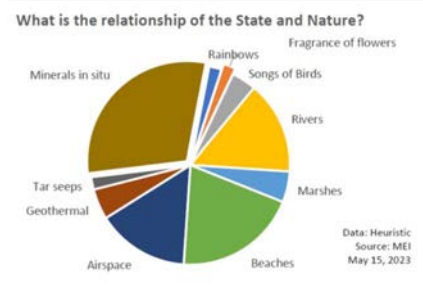
Houston, July 7, 2023
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CURRENT AND PROSPECTIVE INVESTORS in Mexico’s mining sector (to include hydrocarbons) are confronted by a minerals regime that is starkly at variance with the one in place in the immediate neighbor to the north. Investors ask, *How to make sense of this difference?*

A high-level approach would be to ask about the differences in the way minerals in situ are treated in civil and common law. In a civil law regime, those minerals are deemed to be the property of the State. The miner from the private sector is seen in the popular mind and narrative in Mexico as a trespasser on public land.

It would follow that commercial exploitation of mineral deposits is best carried out by public institutions. In this way, there is a philosophical foundation, not an economic one, for the need for state-owned oil and lithium companies. This conclusion is a Mexican one; it is not one that during three centuries of successful mining operations in its American colonies did the idea of a royal mining company occur to the Spanish Crown.



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At the law school (*Facultad de Derecho*) of Mexico’s National University on May 9, 2023, a visiting lecturer asked the students to think about the state’s relationship to Nature, noting that sovereignty in most cases (sunsets, for example) does not apply (Fig. 1). He tried to convince them to question the mineral philosophy of constitutional Article 27.

In this report, we consider how current laws harmfully restrict the production of energy resources, and suggest ideas for fresh thinking about energy market designs.

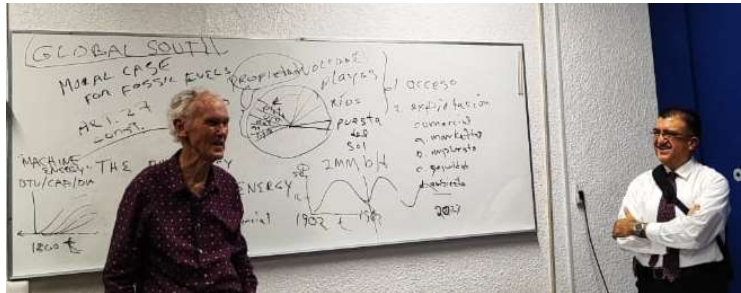
MEXICO ENERGY INTELLIGENCE™ (MEI) is a digital newsletter based in Houston since 1996 and published by market analyst and historian George Baker. We monitor the oil and electricity industries, analyzing in law, regulation, policy, and institutional governance from the perspective of regulated market solutions. Institutional subscribers are oil and technology companies, regulators, trade associations, law firms and university libraries. Reports are distributed commercially by paid subscription and online purchase.

INTRODUCTION

In this section, we try to frame the topics and issues to be addressed in this report.

Lecture on energy philosophy at the UNAM

STUDENTS IN AN ENERGY LAW CLASS at Mexico’s National University (UNAM) on May 9, 2023, were given an impromptu lecture by George Baker, who, early in his career, had been a Fulbright Scholar at the UNAM’s School of Philosophy and Letters. The presentation was in Spanish with the title “The Philosophy of Mineral Energy” (See photo).

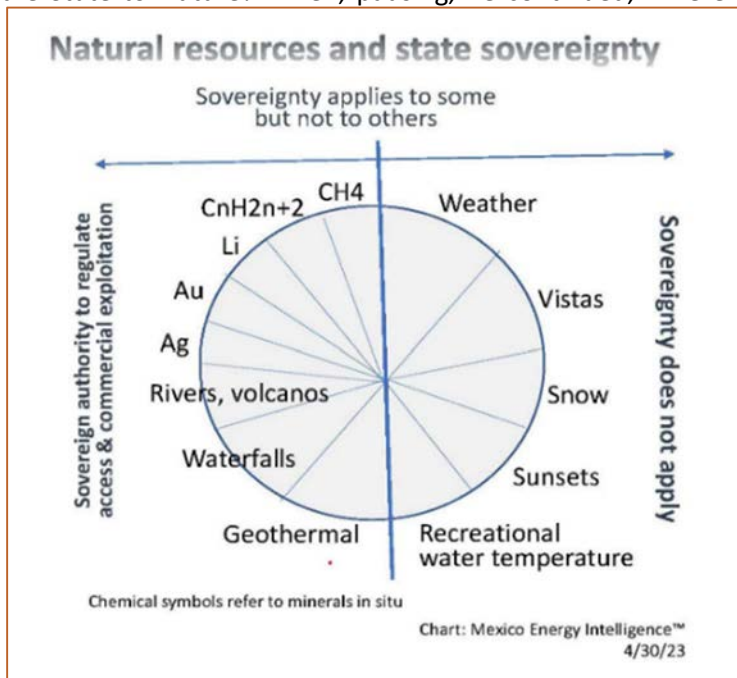


--Let a circle represent Nature, he began, drawing a circle on the blackboard. “Let’s ask the general question, *What is the relationship of the State to Nature?*” Then, pausing, he continued, “There would seem to be no general answer to that question.”

--Consider a sunset, a rainbow, the call of birds, and the colors of flowers. We could name thousands of features and elements of Nature that are outside the authority of the State.

--But when we come to rivers, harbors, beaches, and airspace, things change (Fig. 2). Here, two principles apply:

1. The State, by virtue of eminent domain, has the authority to set the rules of access.



2. The State has the authority to establish rules of commercial exploitation, including matters of safety, environmental protection, and fiscal obligations.

Principles of mining regulations

The night class was terminated by the instructor without a period for student comments or questions. Were there to be a follow-up lecture about minerals in situ, as deposited by Nature, six additional principles would be proposed:



REPORT TITLES RELATED TO MEXICO'S LEGAL AND CONSTITUTIONAL FRAMEWORK

Year	Topic	File #	Pages	Chart
2023				
Jun 15, 23	Ideas for Mexico's Energy Reform, 2024-36: Sorted by degree of difficulty	961	23	5
	<p>This report presents 48 ideas in summary form for consideration in Mexico's next energy reform, which will begin in earnest only in a post-AMLO environment. We group these ideas by their degree of difficulty of implementation: Easy, Difficult, More Difficult, and Unthinkable. An idea that resurfaces in different contexts is the curtailing of presidential discretionary language and authority in the energy sector. In the category of unthinkable is the de-Cardenization of the national energy narrative. Annex A is a decree from 1934 that establishes a stock-issuing public/private integrated oil company with a governance model that merits attention in future reforms.</p>			
2022				
Oct 13, 22	Rethinking the Mexican Upstream, Part IV: How the Risk Miscalculations of Article 27 Bedevil Oil Policy	10094	18	0
	<p>This report presents a list of questions that should have absorbed the attention of lawmakers and oil executives in 1917. These questions address the measures needed to expand investment in oil and gas exploration, production and midstream and downstream infrastructure. Mexican authorities underestimated the risks they were taking: Mexico needed the oil companies more than the oil companies needed Mexico. The outcome was a lost century of national development.</p>			



Report titles related to Mexico's legal and constitutional framework

Year	Topic	File #	Pages	Chart
2018				
Aug 20, 18	Urging MORENA to be More Ambitious: Ideas for an expanded agenda for energy policy	878	10	3
	<p>This report urges the incoming MORENA administration to be more ambitious in its planning for the energy sector. We list two dozen topics grouped in to six categories: Corporate governance and culture, downstream regime, legal, regulatory oversight, social and environmental policy and upstream regime. We observe that insofar at the recovery of oil and gas production depends on the success of non-Pemex operators, the new administration should pay careful attention to take measures to favor their success. Annex A is a statement of how we visualize the energy and environmental future of Mexico and about our role in shaping it.</p>			
Jul 16, 18	Reimagining the Mexican Constitution: Ideas for 2024	10053	9	0
Sep 04, 18	<p>This report began as a search in the Mexican constitution for any precept that would prevent the development of a secondary market in upstream leases, that is, new investors in existing leases. Outside of Mexico, such a market is driven by the legal divisibility of a lease by area or depth. Inside Mexico, the contract area in leases issued by the National Hydrocarbon Commission (CNH) is not divisible. The main impediment is a requirement in Art. 27 that the State have "direct dominion" over lands and waters. We urge consideration of unifying the minerals and hydrocarbon regimes based on the figures of concession and farmout.</p>			
2010				
Dec 08, 10	Pemex Regulations vs. the Constitution	100069	8	2
	<p>The Mexican Supreme Court ruled on December 2 and 7, 2010, that the complaints of unconstitutionality by the Chamber of Deputies in diverse matters relating to Pemex were unfounded. These court rulings seem to give Pemex the legal green light to proceed with a strategy at the heart of the Energy Reform of 2008 to attract operating companies to serve as contractors in diverse areas, including mature fields and deepwater. In this report, we explore the question, Are there still areas where Pemex's program is vulnerable to further legal challenges?</p>			

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