

## Mining Law Reforms - Nationalization of Lithium.

*by Pablo Arandia.*

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JUNE 15, 2022 YEAR 17 | NO. 01

# Mining Law Reforms - Nationalization of Lithium.



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The plenary session of the Mexican Senate approved the reform to the Mining Law submitted by President Andrés Manuel López Obrador (AMLO), whose purpose is to establish that lithium is a national patrimony and that its exploration, exploitation, and use are exclusively in charge of the State.

**Natural resources -such as lithium- within the Constitution of the United Mexican States (CEUM).**

Although the initiative submitted by AMLO consists of a reform to the Mining Law, Article 27 of the CEUM already stipulates the following:

> *The Nation is in direct control of all the natural resources of the continental shelf and the submarine bases of the islands; of all minerals or substances that in veins, mantles, masses, or deposits, constitute deposits whose nature is different from the components of the land, such as minerals from which metals and metalloids used in industry are extracted.*

Likewise, the CEUM establishes that the public domain of the Nation is inalienable and imprescriptible and that the exploitation, use and/or harnessing of the resources in question by individuals or companies incorporated under Mexican law may only be carried out through concessions granted by the Federal Executive Branch, in accordance with the rules and requirements established in the applicable laws, except in matters of radio broadcasting and telecommunications, which will be granted by the Federal Telecommunications Institute[1].

On the other hand, it is important to point out that the president himself declared during his morning conference on June 26, 2020[2], that the nationalization of lithium was not necessary because in accordance with article 27 of the CEUM, the nation's domain of natural resources that are in the soil and in the subsoil of the Mexican territory, is established.

**The reform of the Mining Law**

The submitted initiative declares the exploration, exploitation and/or use, specifically of lithium, to be of public interest, and therefore no concessions, licenses, agreements, permits, assignments, or authorizations in this area will be granted to any private individual, whether Mexican or foreign[3].

*"...it is important to point out that the president himself declared during his morning conference on June 26, 2020[2], that the nationalization of lithium was not necessary because in accordance with article 27 of the CEUM..."*

In that sense, the initiative sent by AMLO argues that the Mining Law and its previous reforms have promoted an economic orientation in favor of large mining companies, both national and foreign to the detriment of the fundamental rights of Mexicans, being mainly violated the indigenous communities, agrarian population centers, the environmental protection[4], as well as the principles set forth in Articles 25, 26, 27 and 28 of the CEUM, in relation to the economic model established therein.

In other words, it could be affirmed that the purposes of the Mining Law in force are not reconcilable with the CEUM

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*1.- Article 27 of the Political Constitution of the United Mexican States, paragraph 6.*
*2.- Morning Conference/AMLO June 26, 2022; min. 36:31-45:15. https://www.youtube.com/watch?v=BtW3s1BPcZE.*
*3.- Initiative of the Federal Executive with draft decree reforming and adding various precepts of the Mining Law; Statement of Motives, pg. 4; 17 abr anexo IV.qxd (diputados.gob.mx)*
*4.- Initiative of the Federal Executive with draft decree reforming and adding various precepts of the Mining Law; Statement of Motives, pg. 2; 17 abr anexo IV.qxd (diputados.gob.mx)*

or with international human rights treaties, since the extractive policies do not respect the populations, the territories of indigenous people, nor nature[5].

The draft decree states that almost 60% of Mexican territory is under concession for mining activities and the holders of the concessions speculate with them in the national and international financial market to the detriment of the territorial rights of native peoples and national interests[6], as follows:

> *It is time to stop this dispossession of the nation and put the wealth of the subsoil at the service of the Mexican people. Such is the case of lithium and other minerals that, as science and technology evolve, will become strategic for the country's development*[7].

**What does the reform say about lithium?**

The reform initiative exposes that Mexico has important lithium reserves, which must be preserved for the benefit of the general interest and not of national or foreign commercial interests.

Likewise, within the initiative it is argued that, in recent years, lithium has gained importance in technological and economic terms due to its characteristics, since it is the lightest mineral and has multiple applications in the daily life of modern society. As an example, lithium is currently used in the manufacture of airplanes and trains, in the production of batteries in general, in laptops, telephones and different digital devices, as well as in the ceramic and glass industry to produce lubricating greases, in the smelting of polymers, among other uses[8]. Likewise, the draft decree also highlights that lithium carbonate is used in the treatment of bipolar disorder and in the treatment of various mental illnesses[9].

For all of the above, the reform proposes to reserve to the Nation the exploration, exploitation, and use of lithium in all its economic value chains and, therefore, private capital is prohibited from participating in mining allocations related to lithium.

Given the approval of the reform to the Mining Law, some data to consider are that according to the organization GeoComunes[10] and the U.S. Geological Survey[11], Mexico is in 10th place out of 15 countries with lithium in its territory, with 1.7 million tons of the mineral; however, Mexico does not have proven lithium production or reserves, since according to GeoComunes, there are 36 projects in the country under concession to 10 companies, but these are not yet exploiting the mineral[12].

Finally, it is important to emphasize that the approval of the reform to the Mining Law contravenes the United States-Mexico-Canada Agreement (USMCA), since lithium is not included within the annex of reservations for specific topics and, specifically, for the exploration, exploitation, and use exclusively for Mexico; as a consequence of the above, if the Mexican government wants the exclusivity of lithium, the USMCA would have to be reopened, which would imply a risk for the country for an issue that is not worth it.

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*5.- Idem.*
*6.- Idem.*
*7.- Idem.*
*8.- Initiative of the Federal Executive with draft decree reforming and adding various precepts of the Mining Law; Statement of Motives, pg. 3; 17 abr anexo IV.qxd (diputados.gob.mx)*
*9.- Idem*
*10.- GeoComunes. (2021). The lithium: the new commercial dispute; pg.8. May 2022, from GeoComunes/REMA/Mining Watch Canda; https://geocomunes.org/Analisis_PDF/Litio_Informe_Final_Enero2021.pdf?fbclid=IwAR1N5KlBsT98B7DANxgSDYK1aRH9_iapRQHXC-PGFM5eVY_bbpVb_TPEhPY*
*11.- Mineral Commodity Summaries 2022. (January 2022). Lithium. US Government; https://pubs.usgs.gov/periodicals/mcs2022/mcs2022-lithium.pdf*
*12.- GeoComunes. (2021). The lithium: the new commercial dispute; pg.13. May 2022, from GeoComunes/REMA/ Mining Watch Canada; https://geocomunes.org/Analisis_PDF/Litio_Informe_Final_Enero2021.pdf?fbclid=IwAR1N5KlBsT98B7DANxgSDYK1aRH9_iapRQHXC-PGFM5eVY_bbpVb_TPEhPY*

### UK kicks off talks on modern trade deal with Mexico.

The International Trade Secretary today launches negotiations on a new UK-Mexico Free Trade Agreement (FTA) alongside her Mexican counterpart in London. Mexico is a massive market for UK exporters. Its expanding population means demand for imports is set to grow by 35% by 2035.CUK negotiators will look to go further in areas like services and technology, boosting a trade relationship already worth over £4 billion. *www.gov.uk/government/news/uk-kicks-off-talks-on-modern-trade-deal-with-mexico 20/05/2022.*

### The Navy wants more than $7.8 billion pesos to take care of mega-projects.

The Secretariat of the Navy submitted two projects to the Investment Unit of the Ministry of Finance, requesting 7,834 million 75,163 pesos to build naval facilities with which it intends to strengthen security against organized crime in areas where works of the administration of President Andrés Manuel López Obrador are, such as the Inter-Oceanic Corridor and the Dos Bocas refinery. "The economic growth derived from the development of the hydrocarbon industry represents a potential factor in the increase of activities related to crime (theft of hydrocarbons, vessels, extortion, kidnapping and acts that may attempt against the activities of the oil platforms)", indicates a cost efficiency analysis of which MILENIO has a copy. *www.milenio.com/politica/marina-7-800-mdp-cuidar-megaobras 24/05/2022.*

### Federal Government completes militarization of customs throughout the country.

Last December 21, when reforming the National Customs Agency (ANA) Regulations, president López Obrador had left to the Ministry of National Defense (SEDENA) the coordination of the 21 border customs and that of the Felipe Ángeles International Airport (AIFA), to the Ministry of the Navy (SEMAR) he put it in charge of the 17 maritime customs and that of the Mexico City International Airport (AICM), and to the ANA, he left it to coordinate the remaining nine. A new amendment to the Regulation, published on May 24, leaves the management of these nine customs offices also in the hands of the SEDENA. SEDENA and SEMAR will participate in the management of the trust fund provided for in Article 16 of the Customs Law, which prior to the creation of the ANA was controlled and used by the Tax Administration Service (SAT) to finance its technological operation. This trust is the second largest of the Federal Government, with a balance of 45 thousand 983 million pesos at the end of March. They will participate as responsible units in the management of trusts that receive these funds, without being given the power to create such financial instruments on their own. *www.diario.mx/nacional/completa-gobierno-federal-militarizacion-de-aduanas-en-todo-el-pais-20220524-1933930.html 24/05/2022.*

### Unconstitutional to protect life from conception: SCJN.

The Supreme Court of Justice of the Nation (SCJN) reiterated that it is unconstitutional for the states of the Republic to legislate to protect human life from conception in order to limit the rights of pregnant women, as was proposed in the constitution of Nuevo Leon. The Court indicated that such reforms violate women's reproductive rights. "It is and will continue to be the constitutional duty of this court to grant the broadest and most progressive protection of the human rights of all women and pregnant women in order to eliminate structural and legal barriers that have prevented the absolute, full and free enjoyment of fundamental, sexual and reproductive rights," said Minister Loretta Ortiz Ahlf. Since September 2021, the Court declared it unconstitutional for states to protect in their laws the right to life from conception with jail time for those who abort, as contemplated in the Constitution of Sinaloa. *www.eluniversal.com.mx/nacion/scjn-in-constitucional-proteger-la-vida-desde-la-concepcion 26/05/2022.*

### Mexican oil companies' revenues soar on rising crude oil prices.

Even with the collection loss that the government would have during 2022 derived from the fiscal stimulus to the Special Tax on Production and Services (IEPS) on gasoline and diesel, the net additional income from a higher oil price would total 89,747 million pesos (million pesos). Assuming that the average price of the Mexican mix during 2022 will be equal to the price on March 10, 2022 (102.49 dollars per barrel) and considering that the average price of the Mexican mix used in the General Economic Policy Criteria 2022, to estimate oil revenues is 55.1 dollars per barrel, we obtain an additional oil revenue of 643 thousand 941 million pesos. *www.elfinanciero.com.mx/economia/2022/05/27/petroleras-en-mexico-disparan-sus-ingresos-por-la-subida-del-crudo/ 27/05/2022.*

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