

University of Miami Law School
Institutional Repository

University of Miami Inter-American Law Review

1-1-1998

Argentina

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

Recommended Citation

Argentina, 29 U. Miami Inter-Am. L. Rev. 373 (1998)

Available at: <http://repository.law.miami.edu/umialr/vol29/iss1/13>

This Legal Memorandum is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

LEGAL MEMORANDA

EDITOR'S NOTE

"Legal Memoranda" is a regular section of the Review devoted to reports from corresponding law firms throughout the Hemisphere. The reports are compiled by the Review, but their accuracy is represented by the corresponding firms, to which all inquiries should be directed.

We appreciate the contributions of the corresponding law firms and invite other firms interested in participating in this section to contact us.

ARGENTINA

ENERGY AND MINING BULLETIN

I. MINING

Rocky Mountain Mineral Law Foundation Special Institute on Mineral Development in Latin America to take place in Santiago de Chile

On November 3-4, 1997, the Rocky Mountain Mineral Law Foundation will hold its first ever Special Institute outside the United States and Canada. The program is called Mineral Development in Latin America and will take place at the Hyatt Regency hotel in Santiago de Chile.

The program will cover a broad variety of important legal issues currently confronting mining and mineral exploration com-

panies in Latin America, such as Reform and Modernization of Mining Codes, Joint Venture Transactions and Issues, Confidentiality and Areas of Mutual Interest, Financing of Mining Projects, Taxes and Structuring of Investments, Payment for Government Services and Fees, Privatization of State-Owned Mining Companies, Arbitration, Environmental Impact Statements, Liability for Pre-Existing Conditions and Reclamation Obligations.

The Institute is coincident with a mining boom in Argentina, resulting from successful privatization and deregulation policies and special mining tax benefits implemented in the country, as well as a strong attempt from Presidents Frei and Menem to develop an integrated policy for transboundary mining projects (see separate article).

Further information about the Foundation and the Institute may be obtained by calling (1 303) 321 8100 or fax (1 303) 321 7657.

Argentina and Chile seek Mining Integration

Based on the Agreement for Economic Integration No. 16 and its Protocol No. 3 on Mining Cooperation, Complementation and Integration, both signed between the Governments of Argentina and Chile on August 2, 1991, these two countries have entered into two "Facilitation Protocols" dealing with two particular transboundary mining projects: "El Pachon" and "Pascua Lama."

"El Pachon" is located in the Province of San Juan, Argentina, and IV Region of Chile. This mine would be operated from the Chilean side; for this purpose it needs a road, a tunnel, and electricity and water supply facilities to be built. Currently, the project is developed by Pachon Transportes y Servicios Limitada in Chile, and in Argentina by Pachon S.A. Minera, both subsidiaries of Compañía Minera San José S.A.

"Pascua-Lama" is made up of several mining fields in the Province of San Juan, Argentina, and in the Province of Huasco, III Region, Chile. This project aims at exploring one or more of those fields, in the Argentine or Chilean side, or both. Currently, the project is developed in Chile by Compañía Minera Nevada S.A., and in Argentina by Barrick Exploraciones Argentina S.A., both subsidiaries of Barrick Gold Corporation, based in Toronto, Canada.

The two Facilitation Protocols are similar, and deal with the following matters:

- The activities necessary to develop the project will take place within an area including both Argentine and Chilean territory, called the Operations Area, which shall be defined in UTM in an attachment to the Protocols;

- A single path will be defined to enter into the Operations Area in the territory of each country; it shall be possible to either enter or to leave any of the countries through those paths.

- A control station, to register all persons, equipment, and goods to enter the Operations Area, will be established in the territory of each country, but outside the Operations Area.

There will be no restrictions in the Operations Area to the circulation of persons, equipment and goods. Persons, equipment, and goods, however, shall leave using the same path through which they entered.

Mining companies responsible for the project will be allowed to use telecommunications equipment, planes, and helicopters and to establish temporary landing facilities in the Operations Area.

Disputes between the countries regarding the project will be solved by arbitration as established in the Second Protocol between Argentina and Chile.

Presidents Menem and Frei are currently trying to extend the framework of these Facilitation Protocols to the whole international boundary between Argentina and Chile.

II. NATURAL GAS AND PIPELINES

Presidents Menem and Frei inaugurate Gas Andes Pipeline

On August 7, in Santiago, Chile, President Carlos Menem of Argentina and President Eduardo Frei of Chile each opened a four-inch valve to supply Argentine natural gas to fuel a ceremonial flame, officially bringing Gasoducto GasAndes into service. The opening of the valves was the culmination of a day of ceremonies on both sides of the Andes mountain range, celebrating the inauguration of the U.S.\$325 million, 463-kilometer natural gas pipeline. Menem and Frei gave the order to initiate the flow of Argentine natural gas from La Mora compressor sta-

tion in the province of Mendoza, Argentina.

This historic project marks the first major natural gas pipeline to cross the Andes, the first natural gas pipeline to serve Santiago, Chile, and an important source of export earnings for Argentina.

Three and a half years from conception to start-up, the pipeline was completed on schedule and within budget by a trilateral partnership made up of NOVA Corp.(Canada), Chilenger S.A.(Chile), Metrogas S.A.(Chile), and Compania General de Combustibles S.A.(Argentina).

The GasAndes pipeline is a cornerstone in Chile's national effort to improve air quality in the Santiago region by introducing clean-burning natural gas. GasAndes is also the first of several export pipelines that will give Argentina substantial export earnings. GasAndes was completed without any form of government guarantees or financing.

GasAndes was conceived as an integrated energy project, including a twenty-four-inch diameter pipeline, gas supply to four power generation facilities in Chile and a vastly expanded distribution system in Santiago.

The Metrogas local distribution system in Santiago will be the initial client for GasAndes, taking 1.7 million cubic meters of gas per day. Metrogas has begun an eight year U.S.\$300 million expansion and upgrade of Santiago's local distribution system.

Chilenger opened Chile's first gas-fired power plant, the 370 megawatt Nueva Renca facility, in October 1997. The Renca plant, situated in the northwest section of Santiago is now taking 1.7 million cubic meters per day. GasAndes volumes are projected to rise to 6 million cubic meters per day by the year 2000 and to 19 million cubic meters per day by the year 2016.

The primary construction contractors for the project were Techint and McKee del Plata of Buenos Aires. *Arca Ingenieria y Construcciones* of Buenos Aires, Argentina provided project engineering.

The pipeline successfully met a host of technical challenges including altitudes reaching 3700 meters, 39 river crossings, including a 12-meter-deep crossing below the Rio Maipo, the construction of a 246-meter tunnel in the community of San Alfonso, Chile, the detonation of more than 74,000 kilograms of explo-

sives to prepare the right of way, construction on slopes of up to 60-degree gradients, and the welding together and x-raying of 29,470 sections of 12-meter-long, 24-inch diameter steel pipe.

Pipeline from Buenos Aires to Montevideo could reach Sao Paulo

ANCAP, the Uruguayan oil company, has contacted Argentina's YPF to discuss extending to Brazil the gas pipeline currently planned between Buenos Aires and Montevideo.

If an agreement is reached, the region could be linked with a gas ring going from Bolivia to Sao Paulo, Sao Paulo to Porto Alegre, Porto Alegre to Montevideo, and finally to Buenos Aires.

ANCAP has already entered into an agreement with Petrobras to study the feasibility of the 800 km gas pipeline, and now seeks to include YPF into the project.

The construction of the Buenos Aires-Montevideo part of the gas pipeline will be offered to tender in a bidding process scheduled to begin shortly. The total length is some 230 km, of which 42 km shall be under the Rio de la Plata, and the total estimated cost is an approximate U.S.\$100 million. Works for the gas pipeline could start as soon as early 1998.

The extension to Brazil of the gas pipeline would cost an additional U.S.\$160 million, and it would gain access to the Brazilian market at a competitive cost.

The Bolivia-Brazil pipeline will be some 3,000 km long and will cost around U.S.\$2.5 billion. Works have already begun from both ends; an additional U.S.\$3 billion in Brazil only are expected to be invested in related facilities, such as generation plants.

The Buenos Aires-Montevideo gas pipeline will depart from Punta Lara, a town south of Buenos Aires and go through the Uruguayan departments of Colonia, San José, and Canelones to arrive finally in Montevideo.

III. OIL AND GAS

Argentina Exploration Plan to be reshaped

The Argentine Secretary of Energy, Mr. Mirkin, announced at the Argentina Oil & Gas Expo that the Government is contemplating modifications in the Argentina Exploratory Plan to

encourage exploration in high-risk areas. Argentina has twenty-five sedimentary basins, of which only five are currently producing hydrocarbons. Although no elaboration was made, the major changes would consist in reducing the minimum amount of work units to carry out, reducing the surface canon as well as introducing tax benefits. The Argentina Plan, launched in 1991, establishes a system that allows the periodic call for bids for Exploration Permits over areas previously listed by the government which were subject to abandonment or relinquishment to the Federal Government, and in which no declaration of commerciality (of hydrocarbons) was made by the permit holder. The Argentina Plan bidding rounds are held at the Secretariat of Energy the last working day of every odd month.

Among the tools to improve the Argentina Plan being analyzed by Mr. Mirkin are the reduction of royalties and canons, the extension of tax benefits of Mining Promotion Law to oil and gas, and a more flexible exploration framework and schedule, particularly for off-shore blocks.

Results of latest Argentina Plan Bidding Round (1/9/97)

Area	Company	Work Units	Investment
CNQ-27A: Río Negro Norte	Alberta Energy	3398	U.S.\$37,340,000
CNQ-31 Puesto Galdarme	Alberta Energy Total Austral	4070 974	not available
CNQ-16A Lago Pellegrini Este	Petrolera Argentina San Jorge	5039	U.S.\$25,195,000
ACAMBU CO A	Alberta Energy	not available	U.S.\$8,150,000
CNO-1 Santa Victoria	C.G.C.	not available	U.S.\$4,340,000
CAM2A/S UR	Sipetrol/YPF	8238	U.S.\$41,190,000
	Total/Bridas Deminex	4310	not available

Argentina Plan: opening of bids postponed

The Undersecretary of Fuels Eng Alberto Fiandesio announced to participants on September 15, 1997, that the bidding terms of the Call for Bids (Bid Round No. 33), scheduled for September 30, 1997, shall be consolidated with the one scheduled for November 28, 1997.

Chauvco acquired by Pioneer

A press release dated September 3, 1997 indicated that the board of Directors of Chauvco Resources Ltd. unanimously approved, subject to the subsequent approval of the shareholders, a transaction consisting of:

- an exchange of Chauvco common shares for shares of the Pioneer Natural Resources Company;
- a spin off of Chauvco Resources International Ltd. to Chauvco shareholders thereby creating a new publicly traded international oil and gas exploration and production company;
- a planned shareholder rights subscription designed to fund Chauvco's anticipated capital requirements represented by its 20% ownership in the Alliance Pipeline project.

Pioneer Resources invests in Neuquen province

Officials from Pioneer Resources, the newly created oil company resulting from the merger between Mesa and Parker & Parsley, met last week with the governor of Neuquen, Mr. Felipe Sapag in order to inform the budgeted investments for 1998 in the province through Chauvco Resources Argentina. Approximately U.S.\$100 million will be destined to the development of the blocks that the company has in the Province.

Amoco-Bridas: a new company is born

Amoco, and its recently acquired company Bridas S.A.P.I.C. will create a new corporation named Pan American Energy, in which Amoco will have a 60% of the participation interest and Bridas the remaining 40%.

IV. ENVIRONMENT

Hazardous Wastes Laws: Ms Alsogaray to delegate powers

On September 10, 1997, the National Secretariat of Natural Resources and Sustainable Development signed an agreement

with the Secretariat of Environmental Policy of the Province of Buenos Aires, which provides for the coordination of the application of their hazardous and special wastes laws, and the harmonization of their requirements.

The Agreement aims at clarifying jurisdiction problems on the application of the National Hazardous Wastes Law No. 24,051, and the Special Wastes Law No. 11,720 of the Province of Buenos Aires. Thus, provincial jurisdiction shall apply to the generation, manipulation, storage, transport, treatment, and final disposal of hazardous or special wastes when such activities take place within the territory of the province. Industries performing these types of operations and registered with the national registry, may request to be removed from such registry.

National jurisdiction shall apply to three particular cases: (i) to hazardous or special wastes destined to be transported outside provincial territory; (ii) to hazardous or special wastes which might affect people or the environment beyond provincial territory a decision that is discretionary to the National authority; and (iii) when sanitary or safety measures adopted for activities related to hazardous or special wastes have such economic impact that it is deemed advisable to uniform them throughout the national territory. The reason of the latter is to grant effective competitiveness to industries bearing the burden of such measures.

Other matters addressed by the Agreement are: (i) acceptance of validity by the provincial authority of environmental certificates issued by the National authority in compliance with Law No. 24,051, who shall homologate them with the special authorization required by Law No. 11,720; and (ii) national participation of 10% on the tax imposed by means of Law No. 11,720 to industries located in provincial territory.

V. BRIEF NEWS

Mendoza privatizes Electric Company

The Government of the Province of Mendoza announced that the international call for bids for the purchase of the provincial energy company will be made in November 1997. This privatization is supposed to transfer assets for over U.S.\$200 million. The interested parties will have the opportunity to tender their bids between March and April 1998.

Electricity protocol between Argentina and Brazil

The Governments of Brazil and Argentina have entered into an Agreement in order to unify their electricity market. Free competitiveness between generators, no state subsidy, and prices based only on costs are the main objectives of both countries. They will also encourage the construction of systems that will connect electricity between both countries.

Brazil: Petroleum market open to international companies

Brazil recently passed Law No. 9478, which establishes that oil monopoly is no longer in Petrobras' hands. It is estimated that due to privatizations of this sector over U.S.\$30 billion in investments should be generated over the next five years. Petrobras will keep the control of a 10% of the twenty-nine exploitation basins.

However, the principal obstacle for foreign investments could be the strong tax charges over assets for risky operations.

Brazil considers integration with Latin America through the Natural Gas market under two different centers: Bolivia and Argentina, and in the North through the Crude Oil market with Colombia and Venezuela.

Meanwhile, Argentina is still the largest oil supplier to Brazil, with an export quota of over U.S.\$658.2 million, between January and August 1997, which represents an increase of a 20% over 1996 exports.

Castrol in increase lubricants market share in Argentina

The English company Castrol is trying to obtain a larger share of the lubricants market, the most sought-after business by companies dedicated to fuels; lubricants have annual sales in Argentina for U.S.\$800 million. Although this figure for sales is smaller than that of fuels, the margins are substantially higher, even double.

Demand for lubricants increased 8% during the last two years, mostly due to the increase in the number of vehicles sold and added sales to industries.

Castrol has been in Argentina for twenty-five years; it has world annual sales of U.S.\$5 billion, but only U.S.\$20 million are sold in Argentina.

Even when competition against local large producers is harsh, Castrol has secured for itself a remarkable position in the lubricants for motorcycle business: it holds a strong 40% of the market.

Among the market at large, however, Castrol's share rises to a mere 3%, although they intend to expand to 10% in the next five years, as sources from the company said.

Castrol currently packages oil in Argentina, and it plans to manufacture it locally in the near future; they currently own seven facilities in Latin America.

New fares for the use of oil buoys in Austral and San Jorge Basins

Upon request of the operator TOTAL, the Secretariat of Energy has issued Resolution No. 351/97 approving the maximum fares applicable to the use of buoys and handling of crude oil in the Rio Cullen maritime terminal, province of Tierra del Fuego, at U.S.\$4.45 per cubic meter (exclusive of VAT). The increase was based on the region's adverse geographic and climatic conditions, resulting in the necessity of providing additional services to loading and operations.

The Secretariat has also approved through Resolution No. 350/97 to raise U.S.\$0.98 per cubic meter the current fare for the use of buoys and handling of crude oil at Caleta Cordova and Caleta Olivia, at the Gulf of San Jorge. The raise would allow the operator of both terminals, Termap S.A., to install two new oil buoys and ancillary facilities for the operation of oil tankers up to 150,000 tons. The San Jorge basin, where the terminals are located, is the second largest producing basin of Argentina, at 46,500 cubic meters a day.

Argentine Depository Certificates created

On September 1, 1997, General Resolution 291 of the CNV (the Argentine securities commission) came into effect implementing the creation of Argentine Depository Certificates (CEDEAR). The resolution provides that clearing houses and financial entities licensed to operate in Argentina may seek the CNV's authorization for the creation of programs for the issuance of CEDEAR, which consist of certificates representing deposits of securities issued by companies not authorized to carry out public offering in Argentina.

CEDEAR may only represent securities from companies authorized to carry out public offerings in Brazil, Uruguay, Paraguay or Chile (or in any market supervised by an entity which has entered into a Memorandum of Understanding with the CNV to such effect).

The new regulation provides for two types of issuance programs: (a) programs sponsored by the issuing bank or clearing house and (b) non-sponsored programs. In both cases the issuer must comply with the CEDEAR reporting requirements and the insider trading rules of the CNV.

In the case of sponsored programs, the issuer of the underlying securities shall obtain "public offering status" under the rules of the CNV pertaining to CEDEAR and also become subject to the above mentioned reporting requirements and insider trading rules.

The passing of General Resolution 291 has been perceived as the CNV's reaction to the increasing volume of securities from Argentine issuers that are being traded through similar instruments outside of Argentina, and has been welcomed by analysts as a regulation that will further stimulate the growing local capital markets.

Maciel, Norman, Martelli & Beretta

Buenos Aires