

Enrique Muñoz Guízar, Georgina Jimena Zavala

The General Water Law and Amendments to the National Water Law

On December 11, 2008, the Decree enacting the General Water Law (*Ley General de Aguas*) (the “**LGA**”) and amending, adding, and repealing several provisions of the National Water Law (*Ley de Aguas Nacionales*) (the “**LAN**”) was published in the Official Gazette of the Federation.

Context of the Reform

The purpose of the enactment of the LGA is to comply with the constitutional mandate of February 8, 2012, which amended Article 4 of the Constitution, and provides constitutional protection to the human right to water and sanitation.

Key Features of the LGA

The LGA addresses the following fundamental issues:

- *Guarantee of access to water:* It sets out the actions to be taken by the authorities at all three levels of government to guarantee access to, provision of, and sanitation of water for personal and domestic consumption.
- *Equitable and sustainable use:* It establishes the basic principles and procedures for access to, and the equitable and sustainable use of water resources, as well as their interdependence with other fundamental rights.
- *Distribution of competencies:* It sets forth clear rules for the distribution of competencies between federal, state, and municipal authorities, as well as the territorial district authorities of Mexico City.
- *Water culture:* It includes a section dedicated to the promotion of water culture, which seeks to raise awareness of the importance of water to people’s lives and dignity; promote the rational and efficient use of this resource, and encourage social participation for its conservation.
- *Community systems:* It formally recognizes community water systems.

Main Reforms to the LAN

The reforms seek to eliminate the mercantilist approach to the treatment of concessions. The following are the most significant changes that may impact your business operations:

1. Elimination of the Transfer of Water Rights

The regime for the transfer of water rights between individuals has been abolished, and changes in the use of concession titles have been eliminated. The rights covered by concessions and allocations may not be transferred.

Reassignment Procedure

An expedited reassignment procedure has been established for preferential rights that arise from transfers of ownership, mergers, or spin-offs of commercial or civil companies and inheritance rights. Such reassignments must be completed within a period not exceeding 20 business days.

As a result of the reassignment, a new concession title will be issued in favor of the person who can prove ownership, representation, or succession rights, while retaining the same volume and use, as well as the remaining term of the title subject to reassignment.

Important: CONAGUA reserves the right to analyze the reserve fund in order to issue the new concession title; therefore, mere compliance with the assumptions will not constitute grounds to automatically authorize the reassignment.

Additionally, the possibility of provisionally supplying volumes of water to third parties (previously provided for in Article 23 bis) has been eliminated, and this practice will now be sanctioned with a fine of up to 30,000 Units of Measure and Update (*Unidades de Medida y Actualización*) (UMAS).

2. Water Responsibility

The LAN provides for the concept of water responsibility, which is defined as “*responsible water management and good practices by the Water Authority, concession holders, assignees, permit holders and users in general to improve the management, exploitation, use, reuse, modernization of irrigation systems or efficient and sustainable use of national water; without exceeding volumes of water greater than those granted, in order to maintain the hydrological balance of the basins and aquifers*”.

This concept has been included as one of the criteria to be considered when authorizing an extension of a concession title. Although there is a definition of water responsibility, it is ambiguous, so it will be up to the arbitrator to determine whether a concessionaire has acted with water responsibility, as long as the Seventh Transitional Provision, which establishes that the Water Authority must regulate the sources, criteria, and procedures, has not been complied with. However, it does not establish a deadline for compliance with such obligation.

3. National Water Reserve Fund

The LAN provides for the creation of a National Water Reserve Fund, which will be made up of: (i) water sourced from the expiry of concession or assignment titles; (ii) water sourced from the transfer of volumes in favor of CONAGUA; and (iii) water linked to the preference of rights.

Although the LAN establishes a preemptive right for the transfer of concessions, the volume is not immediately passed on to the new holder, but rather is accounted for in the National Water Reserve Fund. The rules governing the operation, functioning, and integration of the National Water Reserve Fund are yet to be issued through the regulations.

4. Modification of the Payment of the Guarantee Fee

Previously, a concessionaire could avoid the termination of its concession by paying the guarantee fee as many times as it deemed necessary. Following the reform, this prerogative may only be exercised twice, i.e., it will only be possible to opt for the payment of the guarantee fee for 4 consecutive years.

The Second Transitional Provision establishes the obligation to issue a new regulation for the determination and payment of the guarantee fee for the non-expiration of national water rights.

5. Regulation of Rainwater

The LGA defined rainwater harvesting systems as those mechanisms that allow the collection, filtration, treatment, and storage of rainwater that falls on the roof or deck for its subsequent use and exploitation in the dwelling or building.

The reforms to the LAN establish that CONAGUA will promote the implementation of rainwater harvesting systems for personal, domestic, and family agricultural and livestock use, but that rainwater harvesting systems for uses other than those mentioned above must be authorized.

6. Water Crimes

The transfer of national water for profit, with the knowledge that such water was illegally extracted, as well as the alteration, diversion, or obstruction of the channels, vessels, currents or flows of national water when this directly affects hydrological conditions or endangers people's lives or the safety of their property or vital ecosystems, is a crime.

Recommendations

In view of these significant reforms, we recommend the following:

- Review current concession titles to evaluate the impact of the new provisions, especially regarding their validity and expiration.
- Implement water responsibility practices that can be documented and verified by the Water Authority.
- Plan in advance for any reassignment of rights that may arise from a corporate restructuring or property transfer.
- Evaluate the use of the guarantee fee to avoid forfeiture procedures, in view of the new restriction that limits to two the number of times that a concessionaire may pay the guarantee fee.
- Ensure regulatory compliance to avoid penalties and water crimes.

We are available to analyze the specific impact of these reforms on your business operations and provide you with the necessary legal advice to ensure compliance with the new regulations.

Contacts



Enrique Muñoz Guízar

Environment Counsel

enrique.munoz@perezllorca.com

T. +52 55 5202 7622

Offices

Europe ↗

Barcelona
Lisbon
Madrid

Brussels
London

Americas ↗

Bogotá
Mexico City
New York

Medellín
Monterrey

Asia-Pacific ↗

Singapore

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