

Legal Alert



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WATER CODE REFORM IN CHILE

Main proposals in the Water Code Reform

The discussion about reforming the Water Code emerged on 2011 as a cross cutting initiative of all political parties in Chile. Changes in the economic development of the country and climate changes in the last decade created further challenges that could not be addressed with the current water regulations. Furthermore, Chile's need to equate its water legislation with other countries members of the OECD became evident. The proposed reform pretends to amend the Water Code, which has been in effect since 1981, in order to address the problem of lack of water resources in several basins. Thus, intensifying the public water regime and reinforcing the faculties of the Administration in the constitution and limitation of water rights.

The main proposed amendments to the Water Code are the following:

1. Loss of the ownership of the water use right:

Until now, the Water Code grants to the owners of water rights, the use of water at no cost and in perpetuity. The Chilean State cannot deny a request for right of use that meets legal requirements. Besides, the Administration does not have sufficient resources to regulate the use and exercise of this right, except in scarcity situations. In this context and considering the limitations of availability given by natural conditions, the Administration requires broader powers to ensure better use and allocation of water resources. In this sense, the first transitory article of the bill states that the water rights that are already granted are "*existing rights*", without mentioning that the holders have the ownership over them. The power to dispose on the right is eliminated, however it leaves unclear whether it is possible to transfer or mortgage them.

2. Water use right as essentially temporary:

According to the current Water Code, the water use right is perpetual to its holder. However, the reform bill proposes to establish a maximum extension of 30 years for the water right, which are renewable unless the General Water Authority accredits the non-exercise of the right. If the non-use is proven and the water right is consumptive, it will expire in 4 years from the date of its granting. If it is non-consumptive, it will expire in 8

years. Likewise, if the public deed of constitution of the water right is not duly registered in the Water Property Register, the right will expire within 60 days since its granting.

3. The Administration may limit the exercise of water rights based on the "public interest":

The bill reform aims to provide the Administration with the faculties to temporarily reduce and temporarily redistribute the water rights. The foregoing, to reduce the damages resulting from drought in cases where there is shortage area declared by the President of the Republic or, in cases where serious deficiencies are credited to fulfill the subsistence function of water. This point has been controversial since "public interest" is not defined in the law. The indetermination of the concept will generate great uncertainty to right holders, who will not know in advance the grounds that the Administration may invoke to limit their rights.

4. Setting of priority water uses:

The reform bill also categorizes water uses in: (i) subsistence uses, which guarantees human consumption and sanitation; (ii) Eco systemic preservation and (iii) productive uses. These categories must be considered when constituting and limiting a water right.

Under the proposed regulation, if in a period of six months there are two or more requests for water rights use on the same waters and with no possibility of satisfying them all, those related with subsistence uses will be given preference. The General Water Authority must respect the priority order when providing the reduction or redistribution of water, when the public interest requires so.

5. Impact on old water rights not regularized:

The new provisions sets a time limit of one year to regularize the old water rights that are being used by other persons than their holders, or those rights which have not been registered at all. Actually, the Code does not set a deadline for the regularization, which implies that very few users want to undergo to this procedure. The need to reform the Water Code has become evident, since the current water allocation model has generated a number of difficulties in relation to primary supply and social development, as well as availability risks and environmental balance of water sources.

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