

Alert | Environmental



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Mexico’s National Water Law – The Ministry of Finance and Public Credit Authorizes the Payment of Government Fees to Avoid Reduction or Cancellation of Authorized Water Volumes

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On October 9, 2019, Mexico’s Deputy Ministry of Revenue (*Subsecretaría de Ingresos*) of the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*, “SHCP”) published the Official Letter number 349-B-521 (the “Official Letter”) on the Federal Official Gazette (*Diario Oficial de la Federación*). Pursuant to applicable Mexican regulations, a water concession title may be totally or partially cancelled if the title holder ceases to use or exploit the totality of the water volumes authorized under such concession for a period of two consecutive years.

With such determination, concessionaires and title holders for the use and exploitation of national waters are now aware of the guarantee quotas to avoid the expiration of national water rights when the volume of water granted is not used for two consecutive years.

Expiration

In accordance with Article 29 Bis 3, Section VI of the National Water Law (*Ley de Aguas Nacionales*), expiration is one of the causes for termination of a concession title or assignment concerning unused water volumes.

The National Water Commission (*Comisión Nacional del Agua*, “CONAGUA”) is entitled to initiate a cancellation procedure when the concessionaires or title holders cease to use or exploit the totality of the authorized water volumes under such concession or assignment for a period of two consecutive years. The cancellation shall only apply to the unused water volumes.

Non-Expiration Fee

The non-expiration fee was created to prevent the partial or total expiration of a concession title or assignment and to preserve the authorized volume of national waters.

Additionally, a title holder shall pay the non-expiration fee before transferring the concession title to a third party in order to maintain the total authorized water volume by the concession title.

The non-expiration fee shall be paid to the Mexican Federal Treasury.

Payment of the Non-Expiration Fee

Pursuant to the Regulations for the Determination and Payment of the Non-Expiration Fee (*Reglamento de la Ley Para la Determinación y Pago de la Cuota de Garantía de No Caducidad de Derechos de Aguas Nacionales*) (the “Regulations”), if after the two-year period, a title holder has ceased to use or exploit, in whole or in part, the authorized water volume, such title holder shall submit a written notice to CONAGUA to inform them of its intention to pay the non-expiration fee within at least 15 days prior to the expiration of such period. Such title holder shall pay to CONAGUA the non-expiration fee within the first 15 business days following the end of the two-year period.

The notice to CONAGUA must be filed with the form authorized by the Tax Administration Service (*Servicio de Administración Tributaria*) (the “Form”). In accordance with Article 5 of the Regulations, the Form must include the following information:

1. The commencement and expiration dates of the two-year period that correspond to the non-expiration fee payment;
2. The concession title or award to which the payment will be made; and
3. The volume of national waters that were not used or exploited, and that served as the basis for the calculation of the non-expiration fee.

If said notice is not submitted to CONAGUA, or if the above-referenced information is not included in the Form, it will be assumed that the concessionaire or title holder will cease to use or exploit the unused national water volumes not included in the Form. CONAGUA can initiate an expiration procedure of the concession title for the unused portion of water.

In accordance with Article 6 of the Regulations, if CONAGUA finds that the concessionaire or title holder paid an incorrect amount, CONAGUA will inform them of such mistake by specifying the volume of natural waters that is not used and the correct amount to be paid within the following two years, counted from the

date of submission of the Form, or after the presumed date that the concessionaire or title holder ceased to exploit or use the volume of national waters not included in the Form. The relevant amount shall be paid voluntarily within 15 business days of receipt of the notice.

If the title holder fails to pay the correct amount within the established term, CONAGUA may initiate an expiration procedure. If the concessionaire or title holder continues to use or exploit such unauthorized volumes, it may be subject to a fine of up to MX\$1,689,800.00 for the fiscal year 2019.

In accordance with the Official Letter, the payment of the non-expiration fee must be made online through the Declar@gua Statements and Electronic Payment System (*Sistema de Declaraciones y Pago Electrónico*), or at the banks authorized by the SHCP for such purpose, under code 700174, “Non-expiration fee for national waters rights (CONAGUA-SEMARNAT)”.

Authorized Non-Expiration Fees

Pursuant to the Official Letter, the SHCP authorized the following standards to determine the amount of the non-expiration fees:

Use	Water availability zone ¹							
	Surface Water				Ground Water			
	1	2	3	4	1	2	3	4
Water from surface sources or extracted from the subsoil, except from the sea:	18.5528	8.5411	2.8004	2.1415	24.9993	9.6766	3.3693	2.4491
Water from surface sources, or extracted from the subsoil, except from the sea, for the following use...								
Drinking water:	0.5513	0.2643	0.1320	0.0656	0.5755	0.2653	0.1496	0.0696
Hydroelectric generation:	0.0063	0.0063	0.0063	0.0063	0.0063	0.0063	0.0063	0.0063
Aquaculture:	0.0045	0.0022	0.0010	0.0004	0.0048	0.0022	0.0010	0.0004
Water springs and recreational centers:	0.0135	0.0074	0.0035	0.0013	0.0161	0.0079	0.0038	0.0015

¹ Pursuant to the Mexican Federal Fees Law (*Ley Federal de Derechos*).

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