

Legal Alert | National Waters: New Regulations on the Non-Forfeiture Guarantee Fee

Category: Environment and Water, Legal Alerts, Practices Areas

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Concessions and assignments of national waters may be terminated, in whole or in part, through a declaration of forfeiture by the competent authority if the corresponding national waters are not exploited, used or utilized for two consecutive years.

To prevent such termination and preserve the full volume of water granted under a concession or assignment, the National Waters Law provides for the payment of a non-forfeiture guarantee fee (the “Guarantee Fee”) as one of the mechanisms to interrupt the forfeiture period.

This mechanism is subject to a specific regulatory framework established under the Regulations for the Determination and Payment of the Non-Forfeiture Guarantee Fee for National Water Rights.

As part of the recent reforms to Mexico’s national water regulatory framework, on August 4, 2026, **new** Regulations for the Determination and Payment of the Non-Forfeiture Guarantee Fee (the “Regulations”) were published, replacing the regulations previously issued on May 27, 2011.

The new Regulations significantly modify the rules governing the interruption of forfeiture. Among other changes, they limit the number of times unused water volumes may be protected through payment of the Guarantee Fee, align the calculation of the two-year forfeiture period with the quarterly water rights payment periods, and grant the National Water Commission (CONAGUA) greater authority in approving requests to interrupt forfeiture.

¿What Has Changed?

- The two consecutive years are now calculated based on the last eight completed calendar quarters during which the concessioned or assigned water volume has not been used.
- The Guarantee Fee may only be paid once initially and, thereafter, on two additional occasions (whether consecutive or not) throughout the entire term of the concession or assignment title, including any extensions. The Regulations refer to these subsequent opportunities as renewals.
- For these subsequent requests, titleholders must provide a justification explaining both the reasons for the lack of use and the need to preserve the unused water volumes during the relevant two-year period. As a result, CONAGUA is granted broader discretion in determining whether such renewals should be authorized, creating additional legal uncertainty.
- The new application procedure requires strict compliance with filing deadlines, payment requirements and administrative follow-up.
- Proceedings relating to the payment of the Guarantee Fee initiated prior to the entry into force of the Regulations will continue to be processed under the legal provisions in effect at the time they were filed.
- The 2026 Regulations will apply only to concession or assignment titles that complete a full two-year period of total or partial non-use of national waters.

Robust water governance, supported by active oversight from boards of directors and implemented throughout all levels of an organization involved in water consumption, will be essential to preserving unused water volumes and mitigating the risk of losing water use rights.

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