

# New Desalination Law: Chile establishes the first comprehensive framework for the use of seawater

## I. GENERAL CONTEXT

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Law No. 21,813 (the “Law”), which regulates the use of seawater for desalination, was published. Its purpose is to regulate the development of desalination projects, strengthen water security, support adaptation to climate change and safeguard biodiversity and the sustainable use of marine and coastal ecosystems. The Law also creates a National Desalination Strategy and establishes a special regime for the granting, exercise, oversight, sanctioning, renewal, forfeiture and termination of desalination concessions.

The Law also introduces a particularly relevant legislative development: it expressly recognises the right to extract and use seawater for desalination. Although the intake of seawater for desalination projects was already legally possible in Chile under the general maritime concessions regime, until now there had been no express regulation recognising it within a specific statute governing the activity.

The Law also amends Law No. 19,300 on the General Environmental Framework, introducing a specific trigger that requires desalination projects to undergo environmental assessment before the Environmental Impact Assessment System (“SEIA”).

This development has not occurred in isolation. On 5 December 2025, the Urban Development Division issued Circular DDU 529, which established interpretative criteria on the urban-planning regulations applicable to desalination projects. Among other matters, the Circular classified these projects as sanitary infrastructure for the purposes of Article 2.1.29 of the General Urban Planning and Construction Ordinance (“OGUC”), regardless of the final destination of the water; confirmed the admissibility of networks and alignments; distinguished the regime applicable to works located in urban and rural areas; and required an industrial classification to be obtained.

Taken together, the Law and DDU 529 show that Chile is taking firm steps towards a more explicit, coherent and predictable regulatory framework for desalination.

## II. MAIN PILLARS OF THE LAW

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### a) National Desalination Strategy:

The Law creates a National Desalination Strategy as a long-term planning instrument that will guide where, how and for what purposes desalination projects will be developed in Chile. It will be approved by supreme decree of the Ministry of Public Works (“MOP”), also signed by various ministries, following a proposal prepared by the General Water Bureau (“DGA”), and must be reviewed and updated every six years. Its preparation must also include a public participation stage of at least sixty days.

The Strategy must take into account:

- Strategic water-resource plans for river basins.
- Territorial planning instruments.
- The National Coastal Policy.
- Environmental and climate-change policies and plans.
- Development plans agreed between the SISS and sanitation companies.

Its content also includes criteria for identifying the areas most suitable for intake, conveyance and desalination projects, as well as bays or areas in which it is recommended to avoid brine discharges.

### b) Special regime for concessions:

A special regime is created for desalination concessions, which may be granted by the competent ministry by supreme decree, following a favourable report from the DGA, for a maximum term of 30 years, renewable once only. These concessions comprise rights of use over national assets located within part of the coastal zone, in order to extract and use seawater for desalination purposes, including its treatment, conveyance and final disposal.

The Law expressly provides that the concession does not confer ownership over the assets comprised in it and enables the holder to carry out, at its own cost, study, construction, operation, maintenance and improvement activities for the associated works.

### c) Statutory desalination easement:

The Law creates a statutory desalination easement, which allows the concessionaire or holder to build and operate the desalination plant, convey desalinated or saline waters and carry out conveyance and final-disposal works through third-party properties. It also provides for the possibility of requesting any easements under the Water Code that may be applicable.

The easement is created after, and as ancillary to, the granting of the concession and may be established voluntarily (by public deed) or judicially (through summary proceedings). During the proceedings, the court may authorise provisional use of the easement, provided that the applicant provides sufficient security. The public deed or court decision must be registered with the relevant Real Estate Registrar, and the owner of the servient property will be entitled to compensation.

#### d) Oversight and sanctions:

The Law entrusts the DGA with oversight and the sanctioning of breaches of the conditions for granting and exercising concessions, as well as compliance with the instructions, resolutions and technical circulars issued in relation to desalination. Breaches are classified as minor, serious and very serious, with fines of up to approx. USD 9,500,000 in the most severe cases. Repeated very serious breaches may constitute grounds for forfeiture.

#### e) Express trigger for entry into the SEIA:

The Law establishes a new express trigger for entry into the SEIA by inserting a new letter t) into Article 10 of Law No. 19,300 on the General Environmental Framework, relating to industrial-scale desalination plants and projects involving intensive seawater extraction.

The practical application of this new category will depend in particular on how the concepts of “industrial scale” and “intensive extraction” are defined or

interpreted, matters that will probably require further development in the SEIA regulations.

This is a significant amendment because, although desalination projects had already been undergoing environmental assessment in practice, this was normally based on other SEIA entry categories, such as port or maritime works, pipelines, liquid-waste discharges, industrial facilities or other associated works.



### III. ROLE OF DGA:

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The DGA is assigned an important role within the new regulatory framework. It will be responsible for preparing the proposed National Desalination Strategy; issuing the technical report required for the granting of concessions; ruling on the compatibility of the project with the National Strategy and with strategic water-resource plans for river basins; reviewing flows, uses, intake and discharge points and brine characteristics; and determining, where applicable, the contribution for human consumption and/or sanitation. It must also maintain an inventory of plants and facilities in the public water cadastre.

This technical report will be binding on the competent ministry and, where the report is unfavourable, the concession may not be granted. Nevertheless, the Law provides that, if the DGA does not issue its report within the statutory period, the competent ministry may dispense with it, thereby preventing administrative inaction alone from indefinitely paralysing the procedure.

### IV. CONTRIBUTION FOR HUMAN CONSUMPTION AND LEGAL NATURE OF DESALINATED WATER:

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One of the most sensitive aspects of the Law is the DGA's power to require, as a condition for the granting or exercise of a concession a contribution of up to 5% of the desalinated-water production capacity for human consumption and/or sanitation, in the case of projects whose main purpose is not that use. In order to determine whether this requirement applies, the DGA must consult the SISS or the Rural Sanitation Services Sub-directorate of the Directorate of Hydraulic Works (DOH), as applicable, regarding water availability in the localities close to the project.

That contribution must be remunerated at least at marginal cost, as determined by the corresponding sanitation authority through a transparent calculation system.

### V. EXISTING MARITIME CONCESSIONS:

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Maritime concessions granted before the Law enters into force will maintain the conditions under which they were granted for as long as the term for which they were granted remains in force. In that sense, the Law does not automatically alter the original legal regime applicable to pre-existing concessions.

Notwithstanding the foregoing, those concessions will be subject to the provisions of the titles relating to oversight, sanctions, termination and forfeiture. In addition, their holders may request amendment or renewal under the new regime.

## VI. GRANTING PROCEDURE:

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The granting procedure provides for a coordinated assessment among different bodies of the Administration.

Once the consolidated report of the competent ministry has been issued, it must be sent to the DGA, which may request information from the Directorate General of Public Works, the Public Works Concessions Office, the relevant Regional Government, the SISS and the Rural Sanitation Services Sub-directorate.

The Law also provides for a mechanism to tender competing applications in the event of overlap or incompatibility.

## VII. PENDING REGULATORY DEVELOPMENT:

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The Law provides for regulatory development that will be particularly relevant to its implementation. Among other matters, a regulation must be issued on the procedure for preparing the National Desalination Strategy; a Ministry of Public Works regulation is envisaged to determine the criteria according to which the contribution of desalinated water for human consumption and/or sanitation may be required; a regulation governing the granting of concessions and a regulation governing the closure of facilities.

The first transitional provision also distinguishes the time limits for issuing regulations: the regulation relating to the National Strategy must be issued within 18 months of publication of the Law, while the other regulations must be issued within one year.

## VIII. ENTRY INTO FORCE:

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The Law will enter into force eighteen months after its publication, except for the provisions relating to the National Desalination Strategy, whose entry into force will depend on the issuance of the regulation governing its preparation procedure.

The other regulations must be issued within one year of publication of the Law.

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