

REGULATION ON THE DESIGN, CONSTRUCTION AND OPERATION OF HYDRAULIC WORKS IS AMENDED

Decree No 131 of the Ministry of Public Works, published in the Official Gazette on September 15, 2021 (the "Decree No 131"), comes to amend DS No 50 / 2015 (the "Decree No 50"), Regulation of Article 295 paragraph 2° of the Water Code, which establishes technical conditions to be met in the design, construction and operation of hydraulic works of Article 294, consisting, among others, in dams or reservoirs with a capacity greater than 50 thousand m³ or whose wall is more than 5 meters high or aqueducts that carry more than 2 or 0.5 m³/second, depending on their location, to be granted by the General Water Directorate (the "DGA").

Concepts

The definition of "commissioning" is introduced, characterized as the set of operational tests to verify that the works and elements that compose them comply with the characteristics of functionality, performance, and safety, established in the definitive project previously approved by the Service, and that are developed during the construction process and prior to the request for its reception.

Likewise, the definition of "work reception" is modified from being only a review, to a procedure that verifies that the definitive project has been built according to the approval and that it does not affect third parties' rights.

Digitization of the file

The amendment introduces the obligation to present the project's background information entirely in digital form, in the format established by the DGA. The files must be accompanied by a conductive report and in an individual manner to facilitate their consultation.

Provisional authorization of operation

Notwithstanding the reception of all the works that make up the

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definitive project, Decree No 131 introduces the possibility for the DGA to provisionally authorize the operation of the project, upon request of the owner at the time of requesting the reception. This authorization will last as long as the review of the background of the reception request is pending.

To grant the authorization, it must be accredited that the water use rights that will be exercised with the works are in accordance with them, in terms of the catchment and/or restitution points and that the loading has been satisfactorily completed, when applicable.

Deadline for requesting the reception of the work

The amendment also establishes that the DGA must set a maximum term within which the owner must request the reception of the work, which term may be extended, at the request of a party, before the expiration of the original term, for justified reasons and if the construction in progress of the work has been demonstrated. Failure to make the request within this term makes it impossible to request the provisional operation of the work.

In addition, Decree No 131 introduces the obligation to inform the starting date of the commissioning.

Execution and reception of the works

Decree No 131 establishes that the works are in execution as long as the construction of the project is not completed, that is, as long as the reception of all the works has not been requested before the DGA. The above modifies the understanding that the works are in execution as long as they do not have the resolution of the DGA declaring their reception.

Thus, the reception of the works must be requested to the DGA once the construction of the project has been completed and the commissioning has been concluded, when applicable, thus verifying that the works and elements complied with the functionality, performance, and safety characteristics.

Validity

The owners of projects that have project approval and construction authorization prior to the entry into force of Decree No 131 and that do not have works acceptance and operation authorization, when submitting to the procedure, may opt for the rules of Decree No 50 or

Decree No 131.

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