

\_\_\_\_\_, in the exercise of the power that grants me the fraction II of Article 71 of the Constitution of the United Mexican States, pursuant to Article II section 55 of the Regulation for the Internal Governance of the General Congress of the United Mexican States, I present to this Honourable Assembly, this Drinking Water and Sanitation Law Initiative, based on the following:

## **EXPLANATORY MEMORANDUM**

### **I. THE OBJECTIVES OF THE LAW INITIATIVE**

In compliance with the legal framework in force in the national territory, from the Constitution of the United Mexican States to the Organic, Municipal and similar laws, as well as the Federal District Government, have the obligation and function to providing drinking water and sanitation public services. Through the aforementioned services, basic quality of life and sanitation are provided, ensuring access to safe drinking water; promoting social and economic development of localities by providing water with quality and continuity for the supply for productive activities; as well as respecting the right of the society to enjoying a clean environment and the health of ecosystems; by ensuring wastewater properly being collected, treated and disposed in the natural environment. In addition to these and considering the fundamental right of access to drinking water, the municipalities in the country should count on the minimum quality required for the provision of drinking water for consumption, hygiene and the economic development of their inhabitants; however, the vast majority of municipalities do not have the capacity to provide them on a continuous, efficient and quality manner.

The drinking water and sanitation sector has been characterised by diversity and variation in public policies, in addition to a wide heterogeneity of criteria and guidelines resulting from the lack of a comprehensive framework for regulating and promoting the development of services that

directs the guidelines to favour the appropriate drinking water supply, wastewater removal and sanitation. Even in the case of plausible criteria and guidelines, accepted and used without the support of a public policy founded under a solid and stable legal framework, the sector is in a constant vulnerability faced with the permanent possibility of changes in policies, programmes, criteria and regulatory or fostering mechanisms.

In this context, significant achievements have been certainly achieved, especially on the expansion of coverage in the drinking water supply and sewerage distribution services, as well as in the design and construction of major works that supply our major population centres. However, in addition to a persisting and important lag in the wastewater collection and treatment capacity, the administrative performance of most Mexican drinking water and sanitation utilities still leaves much to be desired, providing the population water with poor quality on an intermittent manner, with inadequate metering, billing and collection, resulting in substantial loss of water and economic resources associated with its use and sanitation. In addition to the deficiencies in the resource management, causing a shortage and contamination of drinking water sources, with the corresponding increased operation costs, there is a lack of a coherent and stable policy to foster development of services, as well as an institutional framework that enables an ambiguous distribution of responsibilities and an acute decapitalisation of the sector.

Contamination and overexploitation of water sources, the lagging replacement of infrastructure and the need to ensuring better standards of water quality for the population, represent an increasingly challenge for the localities in our country. Moreover, the national economy, primarily based on industrial and service activities mostly situated in urban areas, may soon be severely compromised if the trend of unsustainable operation of urban drinking water and sanitation systems is not reversed. Summing up, the drinking water and sanitation services performance track record in Mexico places our society in an extremely vulnerable position faced with health, economic activities and environmental quality risks. It is urgently needed to implement the required changes to give the subsector the essential

elements to ensure a sustainable access to safe drinking water and sanitation services for the population.

There are particularly two fundamental causes of the current situation. Firstly, the transfer of responsibilities to municipal level formalised with the amendment of Article 115 of our Constitution in 1983, which was not accompanied by a gradual and coherent process oriented under an explicit and consistent public policy that fostered its technical, financial and institutional capacities. Similarly, there is no specific legal framework of national scope for the development of the subsector, since the National Water Law, regulated in the Constitutional Article 27, is focused primarily on the management of such water, namely, to the proper preservation of its availability and quality, as well as its efficient allocation through the management of certificates and permits associated; the said Law entitles authority; in a collateral manner only, to the federal authority to define criteria on the execution of federal funding actions as well as to promote municipal users participation in the integrated management of the resource. This has been attributed to some extent, to the fact of the absence of the necessary conditions to establish the articulation of a stable, long term and effective policy to promote sustainable water and sanitation services.

Secondly, the efforts initiated in the mid-90s to implement, in the states and municipalities, an institutional scheme based on the establishment of municipal utilities as decentralised entities with legal entity and own patrimony, have not been crystallized in an effective institutional arrangement that ensures society the access to water in the best possible quality and price. The utilities are subject to various control or regulation fields: in regards to the management of the resource, it is under the authority of the National Water Commission; regarding sanitary regulations, it is mainly the Ministry of Health who coordinates the verification and sanction of the legal framework; in the environmental aspects, the municipal entities interact with the federal and state environmental authorities. However, the guaranty for the citizen of a service that considers in a balanced manner the quality of this service – which water quality is included in – with affordability, equity and proportionality, is not properly founded.

This initiative seeks to provide to the drinking water and sanitation subsector a consistent public policy that addresses simultaneously the two aspects aforementioned. On the one hand, defining a framework to promoting the establishment and preservation of financial, human and institutional capacities in the utilities, on the other, establishing a regulatory framework that enables a clear delineation of responsibilities as well as of the processes to determine both the objectives to be met by systems and the resources that will be put at their disposal to achieve it.

In this sense, regulation means the establishment of a set of induction and coordination regulatory mechanisms that, on the one hand, establishes the characteristics of institutional fields involved in water supply and sanitation service, and on the other, defines the mechanisms and procedures to verify compliance with performance criteria of utilities, without encroaching on its operational and management independence. The intention is to introduce stability and efficiency in the interaction of users, Federal District, State and Municipal authorities and utilities, directing the natural dynamics of their interactions without hindering it.

Certainly, it is incumbent on the City Councils to know and approve budgets and fees of the utilities, while the State Congresses are able, in some cases, to reject tariff structure proposals that they consider deficient in terms of equity and proportionality. However, given the technical complexity of systems management and the difficulty to know in detail the information regarding their operation, the municipalities, local congresses and the Assembly of the Federal District, conduct, in practice, a very limited regulatory role. Hence, the need to implementing an effective regulatory framework that respects the required spaces for long-term sustainability of utilities, ensuring an appropriate balance between quality and price of the municipal drinking water and sanitation services.

In this context, it is of utmost importance to establish a leading regulation that favours an effective coordination of the three levels of government of the Mexican State, that articulates and bases the national legal framework to regulate the provision of drinking water and sanitation public services;

defines guidelines and criteria to be taken by the various stakeholders and makes sustainable the water supply with quality, time and opportunity to the end user in the benefit of a social and human development that respects the environment.

## **II. CURRENT ENVIRONMENT OF THE DRINKING WATER AND SANITATION SUBSECTOR.**

As of this decade, the Mexican state has considered water as a matter of national security, since it is an increasingly scarce and polluted resource; access to water has been defined as an inalienable right, and the integrated management of water resources as a shared responsibility of the three levels of government and of the society. Water planning and management pose a major challenge for both to the governments and to the scientific community and society at large, whose solution should be achieved on an integrated, decentralised and participatory manner.

There is uneven water availability in Mexico resulting from its diverse geographical features, which hinders its sustainable use. In addition, the demand for this vital resource has been increasing due to economic and population growth, causing overexploitation of aquifers, mainly in areas that have low or no water availability. The determination of available resources and the regulation, supervision and sanctions for its use and preservation, tasks that fall primarily under the federal authority, are properly founded by the National Water Law. Today, the legal framework envisages the participation of federal entities, municipalities and organised users in the integrated management of the resource, a task in which significant challenges persist. The decline in the resource availability has particularly involved greater investments to extract and convey water to the population centres, increasing their cost and worsening the decapitalisation of systems, generated by a persistent backlog of tariff structures.

Furthermore, overexploitation of groundwater, which supplies 70% of the population and 62% of the industry, according to Conagua statistics, has

led to the increasing presence of concentrations parameters that exceed the limits established by the water quality standards, standards that are also becoming more stringent. The need to preserve supply sources has simultaneously led to wastewater discharges standards and biosolids control that involve an increasing level of investment and operational complexity. Mexican utilities are increasingly pressured by the need to comply with health and environmental regulations.

At the same time, the institutional framework has not allowed the establishment of operational and financial self-sufficiency conditions in the utilities, which are subject to the continuous intervention of the federal, state and municipal authorities in the criteria definition for the design and construction of systems – mainly due to the implementation of mixed-resources–, in structuring its government organs and even in their operating and commercial decisions. The lack of clear processes for a balanced definition of tariff structures consistent with the results expected by society and municipal authorities represents a critical factor in the issues facing the subsector.

All these problematic issues prevent utilities from operating self-sufficiently, mainly due to the lack of a legal framework that provides a legal guideline for their effective operation. This weakness is reflected in the diversity of structures, working procedures and performance levels of the utilities, including the group of utilities that could be considered more efficient at a national level. The lack of an integrated regulatory framework, in addition to the absence of a national public policy on water and sanitation, results in a lack of continuity in policies and actions applied on public utilities, and in the case of private utilities, in an uncertainty reflected in cost overruns that are transferred to the service provided,. Particularly, for concessions to operate the services or investments, the lack of legal certainty causes a lack of interest in the sector and little use of private capital and entrepreneurial experience.

Moreover, the end user of drinking water and sanitation services is equally vulnerable, for the most part, for the reasons stated in the previous

paragraph, of not having clearly defined what it might be demanded as minimum quality of service in exchange for the paid monthly fee, considering it is a function that is monopolistic by nature.

The problematic issues of the sub-sector associated with drinking water supply, sewerage and wastewater treatment, as well as the impact they have on national life, makes it necessary for a more effective resource management that takes into account the interests of all stakeholders and favours its effective organisation. It must be taken into account that water and sanitation services management is a basic tool in the promotion of health, quality of life and thus, on human development with profound links and social implications.

Thereby, the utilities face problematic issues characterised by:

- a) Insufficient budget;
- b) Unjustified tariff-cross subsidies;
- c) Lack of real rates,
- d) Lack of long-term planning;
- e) Fixing rates influenced by political factors,
- f) Lack of customer service-oriented organisational and management models
- g) Lack of professionalism of staff and employees due to the administrative changes in the city councils
- h) Asymmetries in the criteria for operation, organisation and performance of utilities of the same State

### **III. - PROBLEMATIC ISSUES OF THE GENERAL LEGAL FRAMEWORK.**

Even as the current legal framework of the water sector has been modifying in response to the constant demographic changes and social needs, it is worth mentioning that the reform of the national water law fails to rectify the

need for a regulatory framework that supports the strengthening and sustainable operation of the subsector. The federal public administration primarily tends to the management of the resource, and its participation in promoting the development of the drinking water subsector is limited. Moreover, the amendment made in 1983 to the Constitutional Article 115, the need to ratify the federal pact was omitted by ignoring the importance of fully incorporating the States of the Federation to perform functions in supporting the provision of drinking water and sanitation services, since then these are the responsibility of municipal authorities, through a utility, in most cases.

While it is true that there are federal and state laws regulating the water sector in some aspects, it is also true the absence of a national integrated regulatory framework for the drinking water and sanitation services, a situation that has generated differences in the criteria for the provision of services between the municipalities in the same State, in addition to the increasing disputes on the resource between municipalities, derived from the aforementioned management deficiencies.

This lack of clarity in the regulatory framework of the institutional roles to be assumed by three levels of government, faced with an overview undefined by a national policy, as mentioned above, results in restrictions on public and private financial participatory schemes for service delivery, which impacts negatively on the citizen that requires these services.

Derived from the above, the role of the State and the Federal District Government is limited, in most cases, to be only a consultant in the field, in the absence of a regulatory framework that ensures the resource and the investments needed to have efficient and autonomous utilities. State entities are constituted, at best, simultaneously as promoter agencies for the development of municipal systems, providing them with budgetary, technical and legal support, as well as indirect regulators by implementing differential-subsidy criteria, metering and publication of indicators or direct participation in project approval, budgets and tariff structures. This dual role of regulator and promoter exacerbates institutional ambiguity that is

reflected in a lack of clarity, for the citizens, on locating specific and enforceable responsibilities.

In this context, it can be pointed out that a legal instrument, consistent with constitutional provisions, is needed to establish a state public policy with clear and precise guidelines on roles and responsibilities to tend to the drinking water and sanitation systems and services for the benefit of Mexican society. It is therefore urgent and necessary to generate a regulatory system of this kind.

Such purpose is pursued in the initiative the Drinking Water and Sanitation Law Initiative contains, considering the will, resources, aspirations and demands in the three levels of government and in the society, in this highly important matter, thereby creating the necessary conditions to comply with the obligation of the State to systematically promote access to safe drinking water, especially in rural and marginalised urban areas.

It is important to emphasise that this Law Initiative is essential to direct the initiatives promoted by local legislatures and the Federal District Legislative Assembly, aimed at establishing clear criteria for the conception and structuring of utilities, its financial system and identifying the conditions under which the provision, verification and regulation of services must comply with. This way, state laws in this field will consider the necessary elements to effectively promote the increase and preservation of adequate levels of physical and commercial efficiency in the systems. Similarly, the existence of a federal regulatory framework will shape the establishment of consistent and complete local public policies for the subsector. In a similar way, it is worth noting that the purpose of the Law Initiative is also, in regards to the States and the Federal District autonomy, to reinforce their competence with the objective to promote reforms in their regulations of the subsector, where these regulations, through its regulatory mechanisms, are coordinated with the federal public policy.

#### **IV. PARTICULAR LEGAL FRAMEWORK.**

The social spirit of decentralisation of the national life provided in paragraph c) of section III of Article 115 of the Constitution of the United Mexican States is very clear in stating that: "Municipalities shall be responsible for public services of drinking water, sewerage, wastewater treatment and disposal." Therefore, it is undoubtedly that the functions necessary for the provision of drinking water and sanitation services have been fully conferred on the municipalities through their authorities. However, the implementation of decentralisation has led to disparity in the provision and schemes of water supply and sanitation services in an efficient and sustainable manner, leading to unequal access of the citizens to a basic service for their development. Hence the need for the proposed regulation includes, in addition to a regulatory framework, a set of consistent and coherent policies to promote the strengthening of the utilities capacities and through the implementation of planning and long term investment frameworks, for their healthy and sustainable operation.

In support of the aforementioned, the Article 115 provides that: "Without prejudice to its constitutional competence in performing the functions or provision of the services assumed, the municipalities will observe the provisions of the federal and state laws." From this it follows that the Legislator has the faculty to legislate in the federal and state levels in relation to the functions and service delivery by municipalities, monopolistic activity by nature and vital for the social and economic development of the country when that should become convenient for reasons of public and social interest, as is the case of the subsector.

Similarly, Article 122 of the Constitution of the United Mexican States stipulates, with respect to the Federal District, the correlation concerning the authority for providing public services.

As mentioned above, it is indubitably the need for a Regulatory Act of paragraph c) section III of Article 115 of the Constitution of the United Mexican States to regulate the provision of drinking water and sanitation services that clearly respects the autonomy of the States, Federal District

and Municipalities, establishing the concurrence of the three levels of government in their respective field of competence, which shall be complementary to Article 28 of the Constitution, which establishes that "the subjection to public services regimes shall adhere to the provisions of the Constitution and can only be conducted through Law. "

This way, this Law Initiative establishes regulatory criteria that, given the lack of competition in the sector (due that, in practice, the service is delivered exclusively by the municipal authority pursuant to constitutional requirements), seeks to guarantee a fair relationship between quality and price of services.

Thus, due to its nature and pursuant to Article 28 of the Constitution aforementioned, the provision of drinking water, sewerage, wastewater treatment and disposal services, is in practice monopolistic, establishing besides that the subjection to public services regimes shall adhere to the provisions set forth in the General Constitution and can only be carried out under law. Both reasons make incontestable the feasibility, besides the need based above, to issue a legal and general ordinance with national scope in terms of drinking water, enabling the proper distribution of competence between the different spheres of government, ensuring the development and proper regulation of the provision of such services under a national policy aimed at the sustainability of the subsector and the utilities that operate in it for the benefit of society.

It should not be overlooked that is of public interest, and an obligation of the Federation, States, Federal District and Municipalities, within their functions, to plan, regulate and provide drinking water and sanitation services for their improvement, under the principles of continuity, regularity, quality, coverage and efficiency, as well as to expand service coverage particularly in rural and marginalised urban areas. Therefore, we must improve the legal and institutional framework of the water subsector as well as the sewerage and sanitation services, not the least the participation of organised civil society stakeholders from the private sector.

Consistent with the policies of decentralisation of government, and as aforementioned, the municipalities provide the services but there is a lack of a proper legal framework to coordinate the participation, coordination and co-responsibility of the different levels of government for the benefit of marginalised sectors, to promote access to safe drinking water and sanitation development-oriented and under social and economic consistent criteria.

In compliance with the aforementioned, the existence of a national policy, based on a legal framework for the sector, cannot be deferred, through the articulation of the legal scaffolding on water, which provides the legal tools that are essential to establishing, in the mentioned national policy, the key guidelines to regulate and finally lay the foundations that foster the consolidation of utilities. National policy that must be intelligently protected by issuing a law on the drinking water subsector to counteract institutional vulnerability conditions of these agencies, and establish utilities technically and financially self-sufficient, respecting the autonomy of States, Federal District and Municipalities, with long-term planning, regulated by appropriate state organs that establish multi-annual structures and tariff ranges with a marginal cost criteria, inflation updating, and customer service-oriented.

Consequently, our country needs to improve and update its legal framework in relation to drinking water and sewerage and sanitation services. It is therefore essential for the country to count on a drinking water and sanitation law, whose provisions are of public order and social interest, and whose objective is to create a legal basis for reform and progress in the water supply and sanitation subsector, according to the following guidelines:

- To clearly define, in compliance with our Magna Carta, the roles, links and responsibilities to be performed by the three levels of government, including, where appropriate, the concurrence of the private sector;
- To particularly define the sphere of action and competence of the Municipalities according to the thought of the Legislator provided in the Constitutional Article 115 and designate, in accordance to the

Federal Pact, true powers to the States, whose subsidiary and solidary involvement is essential to progress in the expansion, improvement and management of drinking water and sanitation services in the country.

- To establish respect for the human right of access to drinking water, thus giving the authority the necessary mechanisms to prevent waste and encourage efficient water use and its proper economic value, particularly when allocated for sumptuary and productive uses;
- To fill the gaps and bring order to the private sector's diverse participation in the total or partial provision of drinking water and sanitation services;
- To define the different access routes to financing works, equipment, facilities and other investments, as well as for the healthy and sustainable operation and management of the drinking water and sanitation utilities;
- To establish clear rules regarding the various means of integration, structure, organisation, operation, management indicators and accountability of utilities and agencies providing drinking water and sanitation services.
- To define in general the minimum acceptable conditions in the national territory for the provision of water and sanitation services in urban and rural areas, with continuity, regularity, quality, coverage, efficiency, reliability, care and fair price;
- Based on the previous point, to define the minimum basic indicators to characterising and determining the quality of drinking water and sanitation services, determined by the assessment of the continuity, regularity, wastewater physicochemical characteristics, coverage and efficiency of such services;
- To establish basic principles for wastewater assessing, and,
- To establish basic principles for determining the various costs and effective tariff systems to ensuring the sustainability of the utilities providing drinking water and sanitation services.

## V. CONTENTS OF THE PROPOSAL.

For the aforementioned reasons, it is required to effectively addressing the serious state in which the provision of water and sanitation services is in most of the country, strengthening the links the provision of drinking water and sanitation services entails in health, welfare and sustainable social development, contributing to implement a regulatory framework that generates the necessary tools to support the transformation of the water sector including the regulation of the drinking water subsector as a new function of the Mexican State, which is lacking in that sense, considering the existence of activity of a monopolistic nature that ostensibly requires to regulate relations among the different stakeholders by ensuring a proper relationship between quality and price of services and a balanced relationship between users, authorities and utilities, regardless of the legal nature of the latter.

That is why we are submitting the following initiative containing the Drinking Water and Sanitation Law Initiative, consisting of six titles:

- Title I. Fundamental Principles
  - Title II. Regulatory Framework
  - Title III. Operation and Regulation of the Provision of Services
  - Title IV. Of The Goods for the Provision of Services
  - Title V. Of Training, Technology and Certification
  - Title VI. Of Assessments and Penalties
- Transitory Items

1. Title I “**Fundamental Principles**” contains within its articles, two chapters:

Chapter I called "**Purpose and Concepts**," considers the purpose of the Law Initiative, the material and spatial scope, as well as the obligated

subjects. It is worth noting that, given the significance posed by the intervention of the proposed regulatory organ for each state, all obligated subjects directly linked with the sub-sector where mentioned in the article on obligated subjects, including the state regulatory organs and municipal utilities. Additionally, it also includes the concepts of the terminologies whose definition is important to prevent ambiguity on their interpretation, and simultaneously establish them as generalised criteria for the national territory and as a basis for state legislation. This seeks to define concepts that, by their conceptualisation, will be neither ambiguous nor confusing, generating inconsistent interpretations amongst utilities of the same State.

Special mention deserves to state that the main objective of the Drinking Water and Sanitation Law Initiative, without thereby giving less importance to the other objectives, is to create regulatory conditions to drinking water and sanitation services. This not only seeks to define a regulatory framework, but to link the activity of the different levels of the Mexican State in regulating the provision of drinking water and sanitation services, creating conditions that simulate an actual competition amongst the various stakeholders, with the clear objective of ensuring the efficiency and quality of services to the population.

Likewise, this project does not intend in any way to rescind the existing functions of the federal authorities, as the scope of the project lies solely in the creation of national guidelines and criteria in the drinking water subsector, which today is lacking a national scope regulation, establishing a uniform framework for the provision of drinking water and sanitation services, mainly in its efficiency and sustainability aspects.

It is worth stressing that this project is confined to defining the most important areas for the regulation and development of the subsector by establishing the groundwork to ensure, on the one hand, the development of drinking water and sanitation services, linked to those conditions and incentives aimed at achieving physical and commercial efficiency of utilities, on the other, the defined functions for the different levels of government, Federation, States, Federal District and Municipalities, which determine the

shared responsibility in the integrated regulation of the drinking water resource and its adherent services.

Chapter II entitled "**Drinking Water and Sanitation Services,**" quotes the generalities concerning the constitutional basis of the interrelationship Federation - States- Federal District - Municipalities, in regard to drinking water and sanitation services, as well as the primarily aspects for the sustainability of water, the right of access to water and its use in general, fundamental principles necessary to defining a national policy for the water supply and sanitation subsector.

It is important to point out a primary area defined under this chapter, which is the fundamental and inalienable right of access to water, ensuring to be provided in a continuous manner and healthy conditions. This right, which protects the need to ensure access for each individual in a volume so that they can meet their consumption needs and hygiene, implies otherwise empowering the authority to set up mechanisms to guarantee cost recovery and efficient use in the productive and sumptuary uses of the resource supplied by utilities.

The drinking water and sanitation services, except for some major cities, suffer from economic and operational backlogs and lack of investment to expand its infrastructure, therefore, this situation urges the attention needed to revert an increasingly weak financial system, the development of a system in keeping with the needs and problems facing the sector, enabling to support the water resources management in relation to the challenges of a growing economy and of social demands.

Under this viewpoint, the establishment of the National Water and Sanitation Financial System is pursued in the present Law Initiative, as a mechanism to develop and promote a planned economic development of the drinking water subsector as well as providing incentives to motivate the concurrence of the private sector, including the benefit schemes to achieve efficiency and improved delivery of water and sanitation services.

The financial system will be fed by water rights, collecting fees for environmental services and the management of subsidy tools of various kinds, among other financial sources.

The financial transformation of the drinking water subsector is based on the evolution and adaptation of the resources and financial instruments use, in a planned manner and with the least possible risks, making use of fiscal instruments to define and incorporate efficiently the best investments leading to development and progress of the drinking water subsector, and even address issues of social or private investment.

The financial system shall promote an equitable allocation of financial resources for municipal utilities avoiding regressive effects and considering the prioritised allocation of resources to areas that effectively impact in the long-term sustainability development of the systems, linked to the objective verification of their performance record, with the support on information systems and indicators.

2. Title II, “**Regulatory Framework**“, includes four chapters:

Chapter I “**General Regulatory Framework for Water Services and Sanitation**”, sets out the concept of the regulatory framework and the guidelines for its constitution, as well as the significance of its application in the drinking water and sanitation services to establishing and facilitating regulation and providing the best conditions for these services users, while ensuring a sustainable delivery with optimum quality for the population needs, including their social and economic activities, regardless of the legal nature of the service provider.

Similarly, it is acknowledged the need for the provision of services through a utility, seeking the financial autonomy that reflects and ensures their own sustainability, since in many cases, the provision of services represents an economic and political burden for the municipalities as there is not enough

support from other spheres of government to encourage the development of drinking water and sanitation systems, associated with the prevailing difficulties in several federal entities to adjust the cost of services to the social reality. Low tariffs and the consequently insufficient resources maintain the deficiency in service quality, poor water quality, intermittent service, and facilities in poor condition, resulting in the users' rejection to pay for a poor and ineffective service. In any case, it is envisaged to formulate and carry out the necessary actions to foster sustainability of the utilities through regulatory accounting and financial system that links to their self-sufficiency.

Chapter II "**Federal Field**" establishes the functions of the federal government agencies, whose involvement is important for the regulatory framework of the drinking water and sanitation subsector.

Given the need for an entity whose primary function is simply to regulate the drinking water subsector, establishing guidelines and bases to unify the provision of the subsector services and its inherent sewerage and sanitation services, respecting at all times, the autonomy of the Municipalities, the Federal District and the States, it is determined, in the same manner, the creation of the National Institute of Drinking Water and Sanitation (INAPyS) as a decentralised public body with legal entity and own patrimony, which will serve as technical and regulatory entity in the drinking water and sanitation subsector at national level.

With this approach, the current limitation, in the attention given by the federal authority to the development of the subsector, will be resolved, by granting it an important intervention in the setting up of an integrated regulatory framework, as well as promoting the creation and implementation of a national public policy to align state and municipal policies in the management of water resources.

As aforementioned, the INAPyS do not replace the existing federal authorities functions, since its creation is due to introducing a regulatory entity of the subsector, which includes, in a balanced manner and within the composition of its governing body, the main stakeholders responsible of the

drinking water and sanitation services, managing at all times the financial programmes to settling the financial issues of the subsector through a national policy.

In the same manner, within the section in question, it is provided the link that INAPyS may have with the different organisations in the subsector that are interested in the promotion and sustainability of services in the country, in harmony with the objectives that this project presents.

Chapter III "**State Regulation of Drinking Water and Sanitation Services**," establishes the function of the state government agencies, which will be directly responsible for the regulation of drinking water and sanitation services.

In the same manner, the present Law Initiative, in compliance with the joint responsibility of different authorities, establishes the need for a Drinking Water and Sanitation Regulatory Agency in the States and the Federal District as a decentralised entity or agency or government agency of each State or the Federal District, preferably with legal entity, own patrimony and financial autonomy, being responsible for regulating, promoting and fostering the provision of water and sanitation services in its respective State, which shall adopt the denomination determined by the Executive Head of State or Government of the Federal District, respectively.

It is envisaged, respecting at all times the autonomy of the Federal Entities and the Federal District to govern according to the legal framework that implements their corresponding Legislature, a paragraph including the guidelines to be considered in the legal framework that the respective Legislatures implement, that prevent disparities between the various current legislations, constituting with this the unification of criteria in a framework of efficiency and sustainability of water services and sanitation.

Chapter IV "**Planning of Services**", in the clear absence of a strategic direction towards obtaining the management of the water resource and the

efficiency and sustainability of the sewerage and sanitation services, it is necessary to set up the aspects that must be considered for the proposal, drafting, implementation, execution and promotion of federal policies, plans and programmes, thus providing state governments with consistent guidelines to unify and guide the sustainable management of water services and sanitation.

The importance of the planning of services lies on defining long-term objectives to be embodied in essential reforms of the legal framework and that implement programmes of the different levels of government with consistent and integrated actions. Similarly, it is intended to define the limits and supports through which self-sufficiency of utilities can be achieved, especially for those that are less financially viable because of their size, providing the convenience of their joint operation under intermunicipal schemes.

**3. Title III, Operation and Regulation of the Provision of Services,** developed in five chapters:

Chapter I "**Of the provision of services in the municipalities and in the Federal District**", refers to the legal basis of the actors bound to comply with providing the services, Municipality and Federal District, authorised through titles of Assignment, for the use of the resource, granted by the National Water Commission. It is considered as well the possibility to authorise utilities for the provision of services in the municipalities through granting long-term titles of Concession to prevent vulnerability to management changes. A finding, that the provision of services derived from the Constitutional article 115 shall be only granted by the Municipalities and the Federal District through titles of Assignment, is also reiterated, in order to strengthen the legal function conferred, thus preventing the irregular practice of service provision by private entities within the Municipality or the Federal District, to the detriment of their public finances and autonomy.

It also integrates the legal basis to ensure that the provision of drinking water and sanitation can only be done by those who have constitutional authority, anticipating the possibility for a public or private entity to provide such service, unrelated to the holder of the authority, by granting a concession, thus ensuring a balance between the various stakeholders as well as equal conditions between the different service providers, regardless of their legal nature.

Similarly, with the aim of providing the conditions that ensure continuity, regularity, quality and coverage of drinking water and sanitation service to meet the needs of the inhabitants and the protection of the environment, it is considered the development and conservation of a Water and Sanitation Services State System in each State and the Federal District, which shall systematise and cover the far-reaching aspects for the optimal and efficient delivery of these services.

Chapter II "**Of The Conditions of Service delivery**", sets out the minimum conditions under which the services shall be provided by the utility, as well as the users' obligations and the legal instrument to govern relationships between the two. It has been considered to introduce an adhesion contract as the appropriate legal instrument between the user and the utility for the contracting of services, it shall establish the terms under which the services shall be provided, and the user shall adhere to the terms, thereby strengthening the ability to suspend service in case of default, criteria sustained by the Supreme Court of Justice, in several theses and jurisprudences. Thus, the municipal authority, through the utility, shall be able to watch over the human right to water, which protects the community as a whole, by the sanction of agents incurring in non-compliance with their function to fulfill their role in this matter.

There are problems, within the water sector, inherent to the identification, acceptance and implementation of water costing and pricing. Some fundamental aspects for the efficient operation and recovery of user fees are seriously conditioned. The privileges of keeping the continuity of providing drinking water and sanitation services have been fuelled by the

payment delinquencies of their consideration. However, it has been proposed to integrate within this chapter and with the clear objective of providing the domiciliary drinking water and sanitation service, with quality, continuity, efficiency, regularity and coverage, the obligation for the beneficiaries of the service to cover the costs derived, or in case of failing to assume the consequence of service suspension.

Self-sufficiency of services is barely promoted at present, and in some aspects, conditions are set for it to happen, but merely as an incentive in the investment distribution the water sector is in charge of. On the other hand, water exploitation concessions are granted, for urban industrial service, to private agencies in the field of established utilities, representing unfair competition for them and depriving them of strong users in terms of consumption and economic capacity, which would allow utilities to better self-sufficiency perspectives. Additionally, water exploitation concessions are also granted to private individuals to service different kinds of neighbourhood subdivisions. In this situation, it is envisaged that the provision of drinking water and sanitation services can only be granted by the Municipality or the Federal District, preferably, where necessary, through a utility, which shall exercise this function through the granting of concession for such services.

Chapter III "**Of Utilities**", establishes the provisions on the means to provide the drinking water public service: decentralised entity, coordination or partnership agreement, private grant or being directly in coordination with State or Federal Regulator Organs. The general bases under which agencies must operate shall be also established.

The municipal administration that incorporates the water and sanitation services management in its organisational structure makes it subject to its own rules of government management and makes it difficult to set up long-term programmes, know actual costs and establish a business approach in terms of service and efficiency, increases the interference of political factors in decisions and hampers the search for greater transparency and credibility before users. Noting these circumstances, it is established the preference for the utility to be an outside entity, or in the case of being a

government agency, to establish in the document regulating its creation, a sufficient period of validity to ensure the utility's investment recovery and its technical and economic sustainability, as this will also encourage private sector participation and, above all, create actual competition conditions, which would achieve the best efficiency of service delivery.

Private initiative participation will not ever happen as a social and free contribution, but in the search for a legitimate benefit on the basis of legal certainty guarantees for the long-term investments. The private initiative participation can provide lower cost services, once the capital is given under conditions that minimise the risk factor derived from the need to ensure their legitimate recovery and profit. The State must provide the user the guarantee of counting on the highest quality service at the lowest possible cost, regardless of the legal nature of the service provider, therefore, it is primarily responsible of creating conditions that minimise risk and promote stability of the agencies, as well as the possibility of long-term cost recovery, while exercising the regulatory activity required to safeguard the rights of society to access water.

It is necessary to establish that the services can be provided by any type of agency, whether government or private initiative, as long as the conditions of service and price are the best for the population. For these circumstances to happen it is necessary to have a framework that allows it, a political decision to promote it, and a payment-responsibility awareness of the population. Within this area, it is intended to set out guidelines to ensuring the investment undertaken by private initiative through a services concession title with a temporality for long enough to recover investments and the yields predicted are obtained, as in the case of Public Utilities, provided they have in return an improvement in the delivery, efficiency, quality, continuity and other aspects related to services.

Private participation is a real alternative only when the risk can be minimised, in a way that it is not transferred to the costs of services received by the population. The alternatives of experience, cutting-edge methodology, management stability and provision of risk capital are actual

contributions that the private initiative provides through its participation in the water and sanitation services management, but prior to their use, a national policy must be defined and derive from it a coherent legal framework and social response promoted with clarity and consistency with the objectives to be achieved.

Any possible coordination relationships in the provision of services should not be ignored, which can occur between different municipalities and even the Federal District, giving rise to the interregional agencies as a way to achieve the service coverage to all population, and the possible efficiency and quality improvement of these services.

Chapter IV "**Regulatory Accounting**", provides the accounting administrative, financial and management instrument that shall assist in monitoring the utilities performance as a way to unify criteria for reducing asymmetries.

It is important to establish a regulatory accounting system, a future-oriented tool that should reflect the technical, operational and commercial performance of utilities, as well as the quality of economic and financial decisions.

Additional to the above, it is also important to set out basic principles that make the accounting of transactions more transparent and consistent, to develop, on that basis, a clear methodology for tariff calculation and economic-financial analysis of the regulated company, open to the scrutiny of third parties, as well as to facilitate comparison with other regulated companies and consistent analysis of efficiency indicators. Using the accounting information will reduce quality and quantity differences of information.

Chapter V "**On the Tariff Systems**", sets out the tariff systems as a means, under which utilities will obtain the consideration of services, based on established tariff structures established by the Municipality or the

Federal District, according to guidelines and methodologies to justify the real cost of services.

It is evident the diversity of the collection degree of different municipalities, depending on this, the participation and source of the support that seek the improvement and development of the municipality in all aspects, including their provision of services.

At present, the subsector has been severely affected in the federal investment amount, as they do not cover the technical and financial needs of the utilities. It is obvious that there are inherent problems in the identification, acceptance and implementation of water costing and pricing, in addition to the insufficient payment culture of users and collection by utilities, often politically influenced.

Determining charges is transcendental for the financial life of utilities, and since it is a unilateral act of authority, self-sufficiency charges must be approved or individual budget items determined by the State or the Municipalities to achieve technically and financially self-sufficiency.

By virtue of the outlined in the preceding paragraphs, the foundations to create tariff structures and costing systems that support the revision, validation and approval of tariffs, are established, aimed at the financial sustainability of the utilities.

Likewise, under the perspective that in cases where the use of a good does not imply a cost to those who benefit from it, an efficient incentive for the beneficiary to care for and preserve the property, is lacking, and for the sole purpose of promoting the caring for water culture in those public or social charities institutions exempted from payment of service, it is established that they shall be regulated by criteria and ranges of consumption in volume and time.

4. **Title IV “Of the Good for the Provision of Services”**, comprising a single chapter called "**Works, Infrastructure, Equipment and Facilities**", which refers to the goods used by the operators for the provision of services, and to their legal nature as inalienable, not subject to embargo and indefeasible.

Like any legal entity, utilities or, in which case, the entity providing the drinking water and sanitation service, must have facilities and equipment to ensure efficient delivery of services to all aspects involved in their quality and continuity.

Similarly it is envisaged that those goods that are inherently assigned for the drinking water and sanitation service, shall have legal protection by virtue that one of the ordinances under the present Law Initiative is to lay the groundwork for a system that benefits users in ensuring the provision of services to the population, regardless of the financial situation prevailing in the utility, in addition to the fact that, being goods subject to a public service, they enjoy the legal provisions in this reference.

5. **Title V** called "**Training, Technology and Certification**", has three chapters:

Chapter I "**Training**", sets out the generalities for the permanent and sufficient learning and growth of human resources necessary for the operation of drinking water and sanitation systems.

Considering the systems improvement and efficiency, and response time to certain events that may result from changes in technology, this section considers the operations' area staff of the systems, in order to maintain a continuous training and promote the utility to be efficient and competitive in the provision of services. This arises as sometimes it is needed to either upgrade or implement information systems or infrastructure operating processes that represent significant innovations that require highly trained staff, and are inaccessible to most utilities. Given this, there must be

coordinating tools that can be made by the competent authority under this Law Initiative with renowned institutions in order to have the budgetary support required to access training.

Chapter II under the name "**Technological Development**" provides the foundation for scientific, institutional, legal, technical, administrative, economic, financial, and environmental and operational research, geared towards the operation of the drinking water and sanitation service.

Day by day, the need arises to implement cutting-edge technologies to make procedures more efficient or replace them, in order to carry out certain activity that represents an improvement in processes involving the provision of services. Thus, through these provisions is intended that the regulatory body promotes, develops and strengthens the overall scientific and technological research, focusing on the activities and functions of the utilities, in addition to encouraging the participation of resources to accomplish the above objectives.

As a first step, should be to favour the uptake of existing technology to drive adoption of cutting-edge tools appropriate to the realities and expectations of the environment of our country. Evidently, there must be a significant participation of the Federation in promoting drinking water research and technological development, including its implementation in the utilities.

Chapter III called "**On Certification**", provides for the development and promotion of the certification of personnel, projects, designs and programmes for operation and maintenance of water infrastructure.

There are several very important aspects that reflect quality and efficiency in the drinking water sector, such as volumes of wastewater treatment and implementing measures for reuse, as well as water infrastructure operation and maintenance projects, or actions aimed at improving services and customer care. This is why it is intended to officially recognise these

processes, actions, knowledge and skills in the development of the operating agencies functions.

6. Title Sixth called “**On Assessments and Penalties**”, integrates three chapters:

**Chapter I** called “**Generalities of the Assessment,**” pertains to the process of qualifying, establishing the intervention that in this process corresponds to the States, the Federal District and the Municipalities, to determine the source of support and incentives applicable to physical and commercial efficiency, its infrastructure and equipment as a means to entail an optimal service delivery and development.

Some interesting aspects to be considered for the efficient operation of water and sanitation systems are the characteristics under which they are providing services that result in the degree of users’ satisfaction as well as in the effective service delivery care. Unfortunately, some municipalities do not get sufficient budget to implement those actions to improving service delivery.

With the objective to promote the interest of utilities in achieving the above, as well as their efficient operation, it is intended to specify the basis to creating a procedure to determine the support, stimuli or incentives implementation for the service providers, through existing programmes or the implementation of others derived from the State or the Federation.

Chapter II entitled “**Assessment of Utilities**”, establishes the implementation of management indicators derived from the regulatory accounting in order for them to be evaluated according to previously published areas.

It is important to mention that utilities may access this type of incentives and stimuli, under the condition of complying with those management indicators that shall be developed by INAPyS as the specialised institution, under the criteria of preventing regressive mechanisms that accentuate the inequality

on the capacity of the utilities, based on defining the parameters required and closely linked with the efficiency of drinking water and sanitation systems.

For such effect, it is sought the impartiality in the assessment processes, it is planned that the INAPyS shall be responsible for, as well as to conducting the assessment and to determine the source of federal supports according to the authorised programmes for that purpose; moreover, the States coordination is also expected, since in view of the diversity of existing utilities, it would be impossible to conclude their assessment at a reasonable time period.

Chapter III identified as "**Of Sanctions and Means of Impugnment**" establishes the offences committed against this Law by the government agencies involved and the respective sanctions, and guarantees of legality and hearing that must prevail at all time in an administrative proceeding.

As aforementioned, the agencies responsible for carrying out the operation of water and sanitation services, can access to the said federal resources, and therefore are subject to monitoring and in a given case, to a sanction for a violation or infringement related to the benefits granted by this Law Initiative.

Sanctions must be considered within a statutory body which provides economic benefits to the subjects involved in the provision of services. It should be noted that under this Law Initiative, punishable acts from the service users have been omitted, as the States sovereignty and the autonomy of Municipalities have been respected, since the regulation of such conducts relating to the provision of services are the subject of the latter, and directly influence to those responsible of the provision of the referred services.

For the reasons and rationale aforementioned, with the purpose of establishing a legal framework for the provision of water and sanitation

services that contains the guidelines and criteria to be adopted by the three levels of government involving the health, welfare and social development of society, it is presented the following initiative that contains the Law Initiative of Drinking Water and Sanitation: