



Monterey County

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: ORD 22-025

June 07, 2022

Introduced: 5/27/2022

Current Status: Agenda Ready

Version: 1

Matter Type: Ordinance

REF220006 DESALINIZATION TREATMENT FACILITY

- a. Set June 21, 2022 at 10:30 a.m. as the date and time to consider finding that an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalinization facility would not have a significant effect on the environment and consider adoption of a Negative Declaration; and
- b. Introduce, waive first reading, and set June 21, 2022 at 10:30 a.m. as the date and time to consider adoption of an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalinization facility; and
- c. Provide direction to staff as appropriate.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Set June 21, 2022 at 10:30 a.m. as the date and time to consider finding that an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalinization facility would not have a significant effect on the environment and consider adoption of a Negative Declaration; and
- b. Introduce, waive first reading, and set June 21, 2022 at 10:30 a.m. as the date and time to consider adoption of an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalinization facility; and
- c. Provide direction to staff as appropriate.

SUMMARY/DISCUSSION:

Chapter 10.72 of the Monterey County Code addresses the construction, ownership and operation of a desalinization treatment facility. The applicable provisions of Chapter 10.72 relating to ownership and operation of desalinization treatment facilities by a “public entity” are ambiguous and subject to interpretation. On March 20, 2018, the Board referred the matter to staff, requesting that Chapter 10.72 of the County Code that regulates desalinization facilities be modified to allow development of regional facilities through a public-private partnership (Board Referral No. 2018.09, updated to Referral 2021.13). The language in Chapter 10.72 introduced an unintended ambiguity as to whether a private entity could own or operate a desalinization facility. Section 10.72.010 does not restrict potential permittees to public entities. However, Section 10.72.030(B) requires applicants to “provide assurances that each facility will be owned and operated by a public entity.”

On May 15, 2018, staff presented to the Board its findings and recommendations and requested direction from the Board to amend Chapter 10.72 to clarify ambiguous language in the provisions of Chapter 10.72 relating to ownership and operation of desalinization treatment facilities by a “public

entity”. Board direction was to amend the language in Chapter 10.72 to remove this ambiguity and to include private ownership and operation as an option.

Staff is returning now with a proposed ordinance to amend to Chapter 10.72 (**Attachments A and B**) to include private ownership and operation. This will make it possible for domestic and farm groundwater well owners to desalinate water produced from their wells for their own purposes, as well as making it possible for private capital, rather than public debt, to fund the construction of desalinization facilities of all sizes and capacities.

Removing the private ownership or operation prohibition in Chapter 10.72 will not eliminate the need for public or private interests to obtain the necessary permits under Chapter 10.72, nor eliminate requirements for land use permits under County zoning. Specific projects will thus be subject to rigorous environmental review pursuant to the California Environmental Quality Act (“CEQA”), as well as possible review and permitting by other state agencies (such as the Public Utilities Commission, the Coastal Commission, and the State Water Resources Control Board), and even federal agencies.

ENVIRONMENTAL REVIEW

The County of Monterey as Lead Agency, through Housing & Community Development (“HCD”) - Planning, prepared an Initial Study (“IS”) pursuant to CEQA to consider removing the private ownership or operation prohibition in Chapter 10.72. The Draft Negative Declaration (“ND”) was prepared in accordance with CEQA and circulated for public review from March 7, 2022 through April 6, 2022 (SCH #2022030201). The IS/ND considered whether amending Chapter 10.72 to allow private ownership or operation of desalinization facilities would have a significant impact on the environment. (**Attachment C**).

Staff identified no significant impacts from this ordinance, and therefore, found that no mitigation is required. Specifically, staff found that this ordinance: (1) will not have the potential to significantly degrade the quality of the environment; (2) will have no significant impact on long-term environmental goals; (3) will have no significant cumulative effect on the environment; and (4) will not cause substantial adverse effects on human beings, either directly or indirectly. Importantly, specific projects for desalinization facilities will separately be subject to environmental review pursuant to CEQA.

Two comments were received (**Attachments D and E**) during the public review period. In response to comments, staff has prepared a response to comments (**Attachment F**). These responses do not result in revisions to the environmental documentation that would warrant require recirculation of the IS/ND pursuant to Section 15073.5 of the CEQA Guidelines.

While this work is not directly in support of a Health Department Strategic Goal, it is in support of one or more of the ten essential public health services, specifically: 6. Enforce laws and regulations that protect health and ensure safety.

OTHER AGENCY INVOLVEMENT:

This report was coordinated with the Office of the County Counsel and Housing and Community Development.

FINANCING:

Funding for staff time associated with this project is included in the 21-22 Adopted Budgets for the departments involved. The environmental analysis was conducted under an existing on-call contract with Rincon Consulting, Inc. through the Housing and Community Development Department.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The ordinance would continue to support the Board of Supervisors Strategic Initiatives by enhancing the health and safety of Monterey County residents by providing additional water supply management opportunity, which is also an efficient and effective means to strong customer orientation.

Check the related Board of Supervisors Strategic Initiatives:

☐Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

☒Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

☒Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

☐Infrastructure:

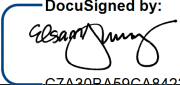
- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

☐Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Robin Kimball, Management Analyst II, 796-1297

Approved by:

DocuSigned by:

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Elsa Mendoza Jimenez, Director of Health, 755-4526

Attachments:

Attachment A - Draft Ordinance (redline)

Attachment B - Draft Ordinance (clean-signed)

Attachment C - Environmental Analysis (Initial Study and Draft Negative Declaration)

Attachment D - Ag Land Trust Letter dated April 6, 2022

Attachment E - Ms. Coppernoll email dated April 6, 2022

Attachment F - Response to Comments on Environmental Analysis