



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: 18-507

May 15, 2018

Introduced: 5/2/2018

Version: 1

Current Status: Agenda Ready

Matter Type: General Agenda Item

- a. Receive response to Board of Supervisors Referral No. 2018.09 requesting staff recommendations for amending Chapter 10.72 of the Monterey County Code relating to permitting “desalinization treatment facilities”; and
- b. Provide direction to staff to initiate amendments to Chapter 10.72 of the Monterey County Code regarding “Desalinization Treatment Facility” to:
 1. Clarify the regulatory scope of the ordinance; and
 2. Clarify ambiguous language in the provisions of Chapter 10.72 relating to ownership and operation of desalination treatment facilities by a “public entity”; and
 3. Clarify technical, managerial, and financial criteria; or
 4. Repeal Chapter 10.72 and only require permitting of the desalination facility as a water system.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive response to Board of Supervisors Referral No. 2018.09 requesting staff recommendations for amending Chapter 10.72 of the Monterey County Code relating to permitting “desalinization treatment facilities”; and
- b. Provide direction to staff to initiate amendments to Chapter 10.72 of the Monterey County Code regarding “Desalinization Treatment Facility” to:
 1. Clarify the regulatory scope of the ordinance; and
 2. Clarify ambiguous language in the provisions of Chapter 10.72 relating to ownership and operation of desalination treatment facilities by a “public entity”; and
 3. Clarify technical, managerial, and financial criteria; or
 4. Repeal Chapter 10.72 and only require permitting of the desalination facility as a water system.

SUMMARY:

Chapter 10.72 of the Monterey County Code addresses the construction, ownership and operation of a desalination treatment facility (Attachment 1). The applicable provisions of Chapter 10.72 relating to ownership and operation of desalination 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 desalination facilities be modified to allow development of regional facilities through a public-private partnership. (Board Referral No. 2018.09.) Chapter 10.72 of the County Code currently states that applicants for a desalination facility shall provide assurances that each facility will be owned and operated by a public entity. The Board Referral requested staff to evaluate if the public entity requirement could be expanded to include desalination facilities that operate under a public-private partnership model, while meeting all other requirements of Chapter 10.72.

Strictly from a public health perspective, applicants owning and operating a desalination treatment facility should possess the technical, managerial, and financial (TMF) capability to assure production of a safe, potable and reliable water supply without creating other public health risk. Staff recommends that the distinction between public or private ownership remain in Chapter 10.72 as criteria for desalination treatment facilities that are not regulated and/or permitted by the California Public Utilities Commission (CPUC) or other various state departments which regulate desalination facilities in regard to water quality, and that the regulatory scope and authority of Chapter 10.72, as a local ordinance, be clarified in relationship to state regulation of water systems and water supply facilities. Staff recommends that public-private partnership ownership of desalination facilities be considered as an option under the County's ordinance.

Staff also recommends that Chapter 10.72 be amended to clarify the TMF requirements, consistent with California State Department of Health Services TMF criteria, as applicable, and to clarify ambiguous language in the provisions of Chapter 10.72 relating to ownership and operation of desalination treatment facilities by a "public entity". This is necessary to ensure that small desalination facilities not under state oversight provide the technical, managerial and financial resources to ensure the desalination system will be properly managed and maintained to ensure safe delivery of drinking water.

DISCUSSION:

In 1989, the County of Monterey adopted Monterey County Code, Chapter 10.72, *Desalinization Treatment Facility*, for the purpose of regulating the construction and operation of desalination treatment facilities. The intent of the Health Department at the time in drafting the ordinance that enacted Chapter 10.72 (Ordinance No. 3439) was to assure that any desalination treatment facility would be capable of producing safe, potable and reliable water without creating other public health risks. Prior to enactment of Chapter 10.72, the County had received applications for residential projects proposing desalination treatment facilities to mitigate site-specific water supply constraints, although the applicants did not possess the TMF capability to sustain the proposed desalination facility. Addressing this concern, Chapter 10.72 requires that a County permit for construction of a desalination treatment facility be obtained from the Director of Environmental Health prior to securing any building permit for such a facility and that a permit for operation of a desalination treatment facility also be obtained from the Director of Environmental Health before distributing any water from the facility.

Since 1989, the regulatory framework for desalination facilities has evolved. The Central Coast Regional Water Quality Control Board is responsible for permitting the discharge from seawater desalination projects in Monterey County, through issuance of National Pollutant Discharge Elimination System permits. The Central Coast Regional Water Board also is responsible for determining whether seawater desalination projects are consistent with California Water Code section 13142.5(b), which requires use of the best available site, design, technology, and mitigation measures feasible to minimize intake and mortality of all forms of marine life.

The state Division of Drinking Water (DDW) oversees water quality requirements for seawater desalination projects that generate potable drinking water and is responsible for issuing drinking water permits for public water system projects. The Environmental Health Bureau (EHB), as the Local

Primacy Agency for the DDW, would permit public desalination water systems with less than 199 service connections and/or community water systems under state oversight or through Monterey County Code Chapter 15.08. Desalination facilities also must obtain permits or comply with regulations of other state agencies including the California Public Utilities Commission (CPUC). Accordingly, in addition to public health considerations, state pre-emption of Chapter 10.72's requirement of a permit for construction and operation of desalination facilities must be analyzed and considered.

Apart from Chapter 10.72, County's land use regulations would apply to desalination facilities proposed to be constructed in the unincorporated area of the County. Depending on the specific project, a desalination facility may also require approval by the Coastal Commission. The language in Chapter 10.72 introduced an unintended ambiguity as to whether a private entity could own or operate a desalination facility. Section 10.72.010 of Chapter 10.72 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." Our recommendation to the Board would be to provide direction to amend the language in Chapter 10.72 to remove this ambiguity and to provide direction to include public-private ownership as an option.

The Health Department seeks direction from the Board to amend Chapter 10.72 to require applicants for desalination facilities to demonstrate that they have the technical, managerial, and financial capability to own and operate such a facility. Any such ordinance should also clarify the criteria for evaluating TMF capability and clarify the regulatory scope of the ordinance to ensure consistency with state law.

The importance of the TMF capability requirement from a public health perspective is to assure that the supply of potable drinking water provided by any desalination facility under Chapter 10.72 is sustainable over time.

The Board may also consider the option of repealing Chapter 10.72, as state agencies permit the construction and design of desalination facilities and they do not consider public ownership or public-private ownership as criteria for permitting. The Environmental Health Bureau would remain the permitting agency for the water system as the State Local Primacy Agency (LPA) and/or under the Monterey County Code for small water system providers.

Any amendments to Chapter 10.72 that the Board may direct would be subject to appropriate environmental review and require drafting an ordinance to amend the County Code to be considered by the Board at a future Board meeting. Although the Board referral mentions the Deep Water Desal project, the proposed changes to Chapter 10.72 would not be with reference to any particular desalination project, as any desalination project that required County permits would be considered on its merits by the decision-maker when and if the project were before the County.

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

OTHER AGENCY INVOLVEMENT:

This report was coordinated with the offices of the CAO and County Counsel.

FINANCING:

There is no impact to the General Fund resulting from this Board Action.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

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 I, x1297

Approved by: Elsa Jimenez, Director of Health, x4621

Attachment:

Monterey County Code Chapter 10.72 is on file with the Clerk of the Board