

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 10.72 OF THE MONTEREY COUNTY CODE TO REMOVE THE PROHIBITION ON PRIVATE OWNERSHIP OR OPERATION OF A DESALINIZATION FACILITY

County Counsel Summary

This ordinance amends Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership for ownership or operation of a desalinization treatment facility set forth in County Code section 10.72.030 (B).

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS

A. Chapter 10.72 of the Monterey County Code was adopted in 1989. It requires County permits to construct and operate a “desalinization treatment facility” (also commonly referred to as a desalination facility).

B. The Chapter defines a desalinization treatment facility as “a facility which removes or reduces salts from water to a level that meets drinking water standards and/or irrigation purposes.”

C. The Chapter requires that any public or private person or entity seeking to construct a desalinization facility to obtain both a permit to construct and a permit to operate the facility.

D. County Code section 10.72.030 (B) requires that an applicant for a permit to operate a desalinization facility “provide assurances that each facility will be owned and operated by a public entity,” thus prohibiting the ownership or operation of such a facility by private interests, unless the prohibition is preempted by federal or state law or regulation.

E. The prohibition on private ownership or operation does not apply to a current proposed desalinization facility, to be owned and operated by California American Water Company, pursuant to a California Public Utilities Commission determination in that matter .

F. Because of the broad definition of a desalinization treatment facility in Chapter 10.72, Section 10.72.030 (B) prohibits private ownership or operation of not only large desalinization facilities serving many customers but also smaller facilities that could desalinate water from groundwater wells serving domestic households or farms.

G. The 180/400-foot aquifer subbasin of the Salinas Valley Groundwater Basin, adjacent to the coast of Monterey Bay, is currently in a state of “critical overdraft” as found by the State of California, and is experiencing significant levels of seawater intrusion, making many

groundwater wells in the aquifer unable to produce potable water for domestic or farming purposes.

H. The condition of the aquifer makes it imperative that solutions to the availability of potable water be found.

I. Removing the private ownership or operation prohibition in Chapter 10.72 will make it possible for domestic and farm groundwater well owners to desalinate water produced from their wells for their own purposes, and will make it possible for private capital, rather than public debt, to fund the construction of desalinization facilities of all sizes and capacities.

J. 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, 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.

SECTION 2. Section 10.72.030 of the Monterey County Code is amended to read as follows:

10.72.030 - Operation permit process.

All applicants for an operation permit as required by Section 10.72.010 shall:

- A. Provide proof of financial capability and commitment to the operation, continuing maintenance replacement, repairs, periodic noise studies and sound analyses, and emergency contingencies of said facility. Such proof shall be in the form approved by County Counsel, such as a bond, a letter of credit, or other suitable security including stream of income. For regional desalinization projects such proof shall be consistent with financial market requirements for similar capital projects.
- B. Provide a detailed monitoring and testing program in a manner and form as prescribed by the Director of Environmental Health.
- C. Submit a maintenance and operating plan in a form and matter prescribed by the Director of Environmental Health.
- D. All operators of a desalinization treatment plant shall notify the Director of Environmental Health of any change in capacity, number of connections, type or purpose of use, change in technology, change in reliance upon existing potable water systems or sources, or change in ownership or transfer of control of the facility not less than ten (10) days prior to said transfer.

SECTION 3. SEVERABILITY.

If any subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the

validity of the remaining portions of this Ordinance, which shall remain in full force and effect. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

SECTION 4. EFFECTIVE DATE.

This ordinance shall take effect on the thirty-first day following its adoption.

PASSED AND ADOPTED this ____ day of ____ 2021, by the following vote:

AYES:

NOES:

ABSENT:

Wendy Root Askew
Chair, Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

Leslie J. Girard
County Counsel