



Legislation Details (With Board Report)

File #: ORD 22-029 **Name:** Desalination Ordinance Public Hearing
Type: Ordinance **Status:** Passed
File created: 6/13/2022 **In control:** Board of Supervisors
On agenda: 6/21/2022 **Final action:** 6/21/2022
Title: REF220006 DESALINIZATION TREATMENT FACILITY
a. Find that an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalination facility would not have a significant effect on the environment and adopt a Negative Declaration; and
b. Adopt an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalination facility.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A - Draft ordinance (redline), 3. Attachment B - Draft ordinance (clean-signed), 4. Attachment C - Environmental Analysis (Initial Study and Draft Negative Declaration), 5. Attachment D - Ag Land Trust Letter dated April 6, 2022, 6. Attachment E - Ms. Coppernoll email dated April 6, 2022, 7. Attachment F - Response to Comments on Environmental Analysis, 8. Item 23 PowerPoint, 9. Completed Board Order Item No. 23, 10. Ordinance No. 5378

Date	Ver.	Action By	Action	Result
6/21/2022	1	Board of Supervisors	adopted	Pass

REF220006 DESALINIZATION TREATMENT FACILITY

a. Find that an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalination facility would not have a significant effect on the environment and adopt a Negative Declaration; and
b. Adopt an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalination facility.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

a. Find that an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalination facility would not have a significant effect on the environment and adopt a Negative Declaration; and
b. Adopt an ordinance amending Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalination facility.

SUMMARY/DISCUSSION:

Chapter 10.72 of the Monterey County Code addresses the construction, ownership and operation of a desalination treatment facility. Chapter 10.72 outlines the requirements for obtaining permits to construct and operate water desalination treatment facilities within Monterey County. Chapter 10.72 defines a desalination treatment facility as “a facility which removes or reduces salts from water to a level that meets drinking water standards and/or irrigation purposes.” Chapter 10.72 requires that any public or private person or entity seeking to construct or operate a desalination facility obtain both a construction permit and an operation permit. Section 10.72.030(B) requires that an applicant for a permit to operate a desalination 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. This prohibition applies to large desalination facilities serving many customers, and smaller facilities that could desalinate water from groundwater wells serving domestic households or farms.

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).

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 language relating to ownership and operation of desalination treatment facilities by a “public entity”. Board direction was to amend the language in Chapter 10.72 to include private ownership and operation as an option. However, due to staffing constraints and the COVID-19 pandemic the amendment of Chapter 10.72 did not occur.

On July 21, 2021, a Board Referral was made requesting that staff study a Chapter 10.72 amendment further (Board Referral 2021.13). Specifically, to amend Chapter 10.72 to allow public-private partnerships, California Public Utilities Commission (“CPUC”) regulated utilities and entities who deliver desalinated water to a public entity, a municipal water supplier and/or a CPUC regulated utility. On September 21, 2021, staff reported to the Board on options and the Board directed staff to return within three weeks with a specific proposal for the Board to consider regarding amendments to or a revocation of Chapter 10.72. On October 12, 2021, the Board directed the preparation of an initial study pursuant to the California Environmental Quality Act (“CEQA”) to study the environmental impacts of removing the prohibition on private ownership and operation of a desalination treatment facility.

Staff has now completed environmental review, as discussed fully below, and has returned to the Board with a draft ordinance for consideration. (**Attachments A and B**). The Board introduced, waived reading, and set June 21, 2022 as the date to consideration adoption of the draft ordinance.

The draft ordinance amends Chapter 10.72 to include private ownership and operation of desalination treatment facilities. This amendment 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 desalination 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 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 desalination 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 offices of the Housing and Community Development, County Counsel. The office of the County Counsel has reviewed the ordinance as to form.

FINANCING:

Funding for staff time associated with this project is included in the FY 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:

_____ Date: _____
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