



Legislation Details (With Board Report)

File #: 21-796 **Name:** Amend or rescind Chapter 10.72 Monterey Co. Code re Desal
Type: General Agenda Item **Status:** Scheduled PM
File created: 9/14/2021 **In control:** Board of Supervisors
On agenda: 9/21/2021 **Final action:**

Title: Consider providing direction regarding amendments to or rescission of Chapter 10.72 of the Monterey County Code regarding “Desalinization Treatment Facility.”

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attach A - 2019 CA Ocean Plan.pdf, 3. Attach B - MOU.pdf, 4. Attach C - Cover and ToC of Desal Planning Handbook.pdf, 5. Completed Board Order Item No. 7

Date	Ver.	Action By	Action	Result
9/21/2021	1	Board of Supervisors	continued	Pass

Consider providing direction regarding amendments to or rescission of Chapter 10.72 of the Monterey County Code regarding “Desalinization Treatment Facility.”

RECOMMENDATION:

It is recommended that the Board of Supervisors consider providing direction regarding amendments to or rescission of Chapter 10.72 of the Monterey County Code regarding “Desalinization Treatment Facility.”

SUMMARY/DISCUSSION:

Chapter 10.72 of the Monterey County Code sets forth specific requirements to build and operate a desalinization/desalination facility in Monterey County. By referral 2021.13, Supervisor Phillips sought to amend the Chapter in order to provide opportunity for public-private partnerships or other private entities to bring needed desalinization facilities to the County and augment the water supply. During further Board discussion on the referral, Supervisor Phillips requested staff and the Board consider repeal of the ordinance to allow a broader range of entities the opportunity to engage in desalination. Staff was directed to return on September 21, 2021, with either an ordinance rescinding the Chapter or further information regarding options if environmental review was necessary.

The County Counsel has conferred with the staff of the Environmental Health Bureau. It is clear that the State of California has a fairly comprehensive regulatory scheme for desalination facilities set forth in the current Ocean Plan - [Water Quality Control Plan for Ocean Waters of California](https://www.waterboards.ca.gov/water_issues/programs/ocean/docs/oceanplan2019.pdf) <https://www.waterboards.ca.gov/water_issues/programs/ocean/docs/oceanplan2019.pdf>. Relevant pages from the Plan are enclosed as Attachment A. In addition, numerous state and federal regulatory agencies and entered into a cooperative Memorandum of Agreement (“MOA”) addressing the proper siting of such facilities. A copy of that MOU is enclosed as Attachment B. Finally, the State Water Board has adopted a “Desalination Planning Handbook,” the cover and table of contents of which are enclosed as Attachment C. Nevertheless, it is currently not clear whether a wholesale rescission of the Chapter will remove appropriate local oversight of such facilities that are not covered by the Ocean Plan or the MOA, and further analysis is appropriate.

We first note that a private water company regulated by the Public Utilities Commission may construct, own, and operate a desalination facility in the County as the Commission’s regulatory authority preempts local regulation. The simplest and perhaps quickest way to provide opportunities for non-regulated private entities to participate in the construction and operation of desalination facilities is to rescind section 10.72.030 (B) which requires an applicant for a permit to construct and operate a facility to “[p]rovide assurances that each facility will be owned and operated by a public entity.” Such rescission may either be exempt from or require minimal environmental review.

The options for the Board are: 1) direct further study regarding rescission of the full Chapter and report back as early as possible with appropriate analysis; 2) direct that staff return with a rescission of Section 10.72.030 (B) only; or 3) other direction as the Board deems appropriate.

OTHER AGENCY INVOLVEMENT:

The Environmental Health Bureau has been consulted on this matter.

FINANCING:

There is no financial impact arising from providing direction to staff.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared and Approved by:

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- Attachments: Board Report
2019 California Ocean Plan
Memorandum of Understanding
Cover and table of contents of Desalination Planning Handbook