



Board Report

File #: PAR 21-006, **Version:** 1

Receive a preliminary analysis report in response to **Board Referral No. 2021.13** seeking an amendment to County Code Chapter 10.72 to expand the types of entities that can obtain a County permit to own and operate desalination facilities.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive a preliminary analysis report in response to **Board Referral No. 2021.13** and direct that staff:
 - 1) Proceed with completion of referral based on description in this report; or,
 - 2) Remove from consent and:
 - i. Proceed with completion of referral based on modifications by the Board; or,
 - ii. Return to Board with a more comprehensive analysis of referral and anticipated effort for completion; or,
 - iii. Rescind referral.
- b. Provide further direction, as appropriate.

PRELIMINARY ANALYSIS:

Referral Summary & Background:

Board Referral No. 2021.13 assigned on July 27, 2021 requests that Monterey County Code Chapter 10.72 be evaluated for amendment to expand the types of entities who would be allowed to obtain a County desalination permit. Environmental Health's interpretation of this referral is to identify options for consideration by the Board of Supervisors to establish additional potable water supply sources through desalination facilities.

Chapter 10.72 requires County permits to construct and operate a "desalinization facility." Applicants for the desalinization operations permit are required to "provide assurances that each facility will be owned and operated by a public entity." This requirement was reviewed in 2018 in response to Board Referral 2018.09 which requested staff recommendations for amending Chapter 10.72. 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.

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 require applicants for desalination facilities to demonstrate that they have the technical, managerial, and financial (TMF) 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.

Staff also recommended 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".

Board direction in 2018 was for staff to develop amendments to the language in Chapter 10.72, for future consideration by the Board, to remove this ambiguity and to provide direction to include public-private

ownership as an option. After review which included meetings with key stakeholder groups, agencies and members of the public, the request was placed on hold until reconsideration at a later date.

Proposed Project Description:

This referral requests that Chapter 10.72 of the Monterey County Code be amended for the expansion and clarification of the types of entities that can obtain a County permit under Chapter 10.72 for water desalination facilities. Staff would evaluate various options for amendment, if the Board directs staff to pursue these options. Options include:

- 1) expansion of the types of entities that can qualify for a permit under Chapter 10.72 to include public-private partnerships and other entities who can prove TMF;
- 2) eliminating the County permit requirement for water systems for which desalination proposals are evaluated and regulated by the California Department of Health Services and/or California Public Utilities Commission; or
- 3) repealing Chapter 10.72 because it is no longer necessary to the extent that state regulation has been put in place since adoption of Chapter 10.72 to accomplish Chapter 10.72's original purposes of protection of public health and safety and adequacy of TMF for desalination facilities.

Estimated Project Cost:

Cost estimate will be provided with the staff report presented to the Board of Supervisors in September.

Staffing Level Estimate:

An amendment to Chapter 10.72 will require the time and expertise of two Registered Environmental Health Specialist Supervisors (Water and Wells program supervisors), the Acting Bureau Chief and County Counsel time to review any options for consideration and a Management Analyst II to draft and coordinate administratively the staff report and public noticing. Staff will need to determine the appropriate level of environmental review under the California Environmental Quality Act depending on which option is being pursued. Preparation of environmental review will require County staff time and may require contracting with a consultant, depending on the level of environmental review. Drafting an ordinance will require staff time and County Counsel time.

Departmental Challenges:

Departmental challenges are in communicating the public health reasoning and public benefits of these recommendations and options in response to the referral as proposals to amend Chapter 10.72 are likely to engender public controversy with respects to concerns of costs, impact to wildlife and to the environment.

Proposed Response Date:

Response to this referral will be presented at a BOS date in mid-October. Staff will provide recommended options for the Board's consideration and direction.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Periodic review of Chapter 10.72 assists the County in the development of options for economic growth,

maintaining public health and sustaining natural resources and their infrastructure.

Mark a check to the related Board of Supervisors Strategic Initiatives

☒ Economic Development

☐ Administration

☐ Health & Human Services

☒ Infrastructure

☐ Public Safety

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Approved by:

Date: _____

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Attachments:

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