

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

**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”**

**5-15-18**

# RECOMMENDATION:

- A. Receive response to Board of Supervisors Referral No. 2018.09; 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.

# DESALINIZATION TREATMENT FACILITY MONTEREY COUNTY CODE (MCC) CHAPTER 10.72

- Addresses the construction, ownership and operation of a desalination treatment facility as well as permit requirements, MCC 10.72.010
- Ownership and operation of desalination treatment facilities by a “public entity” MCC 10.72.030 (b), currently states that applicants for a desalination facility shall “*provide assurances that each facility will be owned and operated by a public entity*”.
- MCC 10.72.010 and MCC 10.72.030 (b) permit and ownership/operation requirements are ambiguous and subject to interpretation
- Requires a water system permit from Environmental health director MCC 10.72.050 (b)
- Technical Managerial and Financial (TMF) water system requirements are not specified as requirements of a desalination facility to assure production of a safe, potable and reliable water supply without creating other public health risk

# STAFF RECOMMENDATIONS

- Distinction between public or private ownership remain in Chapter 10.72 as criteria for desalination treatment facilities not regulated and/or permitted by the California Public Utilities Commission (CPUC) or other various state departments which regulate desalination facilities. These would typically be small water systems.
- Public-private partnership ownership of desalination facilities be considered as an option under the County's ordinance.
- 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.
- Chapter 10.72 be amended to clarify the TMF requirements.



# FEDERAL REGULATORY AGENCIES FOR DESALINATION FACILITIES

- *Monterey Bay National Marine Sanctuary*
  - *National Oceanic and Atmospheric Administration (NOAA)*
  - *National Marine Fisheries Service (NMFS)*
  - *U.S. Army Corps of Engineers (USACE)*
  - *U.S. Coast Guard*
  - *U.S. Fish and Wildlife Service (USFWS)*
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# STATE REGULATORY AGENCIES FOR DESALINATION FACILITIES

- California Public Utilities Commission (CPUC)
- California State Lands Commission (CSLC)
- California Coastal Commission (CCC)
- State Water Resources Control Board (SWRCB)/Central Coast Regional Water Quality Control Board (RWQCB)
- California Department of Toxic Substances Control (DTSC)
- California Department of Parks and Recreation - Office of Historic Preservation
- California Department of Transportation (Caltrans) District 5
- California Department of Fish and Wildlife (CDFW)



# LOCAL REGULATORY AGENCIES COUNTY DEPARTMENTS

- Monterey County Planning and Building Inspection Departments
  - Environmental Health bureau
  - Moss Landing Harbor District
  - Monterey Bay Air resources District
  - Monterey County Public Works Department
  - Monterey Peninsula Water Management District (MPWMD)
  - Unified Pacific Railroad Company
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# OPTION TO REPEAL MCC 10.72

- 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 (EHB) 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. TMF is a significant requirement for permitting by the EHB.
- It is the EHB recommendation that the Board not repeal MCC 10.72 to maintain the original intent of a sustainable supply of drinking water supplied by water systems.



# ADDITIONAL CONSIDERATIONS

- 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 Monterey County Code to be considered by the Board at a future meeting.
- 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.
- In addition to public health considerations, state pre-emption of Chapter 10.72 and the requirement of a permit for construction and operation of desalination facilities must be analyzed and considered.

# STAFF SEEKS DIRECTION FROM THE BOARD

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.