

May 31, 2013

Hon. Henry T. Perea  
Assembly Member, 31<sup>st</sup> District  
Room 3120, State Capitol  
Sacramento, California 95814

Dear Assembly Member Perea:

Your staff asked our office to evaluate the advantages and disadvantages of transferring the Drinking Water Program (DWP) from the Department of Public Health (DPH) to a newly created stand-alone entity under the California Environmental Protection Agency (Cal-EPA), as compared to transferring it to the State Water Resources Control Board (SWRCB). Below, we provide some background on the relevant agencies, analyze the budgetary impact of moving DWP, and outline the relative advantages and disadvantages of such a transfer.

## BACKGROUND

### Overview of DPH, SWRCB, and Cal-EPA

***Federal Law Allows Flexibility in Water Agency Organization.*** The federal Clean Water and Safe Drinking Water Acts allow states significant flexibility in how they structure their water management agencies. For example, 30 states have consolidated drinking water and water quality programs in a single state entity. Some states have also consolidated their water quality-related revolving loan programs in agencies that focus solely on providing financial assistance. In California, DPH administers the federal Safe Drinking Water Act (and the parallel state statute) and SWRCB administers the federal Clean Water Act (and the parallel state statute).

***DPH.*** The DPH's programs are involved in a broad range of health-related activities, such as chronic disease prevention, communicable disease control, regulation of environmental health (including drinking water quality), and inspection of health facilities. The department's DWP regulates 7,500 public water systems (PWS) in California. (A PWS is a privately or publicly owned water system that serves more than 15 service connections or 25 people.) The DWP's activities include:

- Regulating the quality of drinking water by (1) inspecting PWS to ensure the safety of the water and security of the system, (2) issuing permits, (3) taking enforcement actions when necessary, and (4) implementing new requirements due to changes in law or regulations.

- Responding to emergencies by providing technical assistance to damaged water systems, assessing drinking water contamination, and ensuring access to safe drinking water.
- Providing financial assistance to fund safe drinking water improvements to PWS.
- Providing oversight, technical assistance, and training for local primacy agency personnel.

The total proposed expenditures for the DWP in 2013-14 is \$266 million, comprising \$44 million for state operations and \$222 million in local assistance. The proposed 2013-14 position authority for the DWP is 336 personnel-years.

**SWRCB.** The SWRCB and the nine regional boards perform a variety of activities related to the state's water resources, including:

- Regulating the overall quality of the state's waters, including groundwater, to protect the "beneficial uses" of water by permitting waste discharges into the water and enforcing water quality standards.
- Administering the system of water rights.
- Providing financial assistance to fund wastewater system improvements, underground storage tank cleanups, and other improvements to water quality.

**Cal-EPA.** The Cal-EPA was created by a Governor's reorganization plan in 1991 and coordinates the activities of several boards, offices, and departments charged with protecting environmental quality and public health. These entities generally perform regulatory functions, such as setting allowable concentrations of pollutants, issuing permits, and ensuring compliance with relevant statutes. The Cal-EPA currently consists of the following entities, under the oversight of the Secretary for Environmental Protection:

- SWRCB and the nine regional water quality control boards.
- Air Resources Board.
- Office of Environmental Health Hazard Assessment.
- California Department of Pesticide Regulation (CDPR).
- Department of Toxic Substances Control (DTSC).
- Department of Resources Recycling and Recovery (CalRecycle)—reflecting a reorganization of the state's solid waste management and recycling functions, and subsequent transfer from the Natural Resources Agency, effective July 1, 2013.

## **BUDGETARY EFFECTS OF MOVING DWP**

Below, we estimate the net additional costs to state government if DWP were transferred to a stand-alone entity and compare those costs to the scenario where DWP is transferred to SWRCB.

***Estimated Net Additional Cost if DWP Transferred to a Stand-alone Entity Is About \$6 Million Ongoing.*** Currently, the DWP operates as one piece of a larger department. The DPH's administrative division is able to realize economies of scale as executive and administrative staff—such as human relations, legal counsel, technology services, and human resources—are shared across all its various centers and programs. If the DWP became a new, stand-alone department within Cal-EPA, it would need to establish its own staff to fill these central administrative roles. These new staff would increase DWP's state operating costs.

In order to estimate the administrative costs associated with the creation of DWP as a stand-alone entity, we compared the budget and position authority of DWP to that of CDPR, a stand-alone department under Cal-EPA that is of comparable size. These two entities would be similar in structure, with one main program, rather than several disparate activities. In addition, both would have regional offices for their regulatory activities. The CDPR had executive and central administrative costs (staff and related operating expenses such as travel, information technology, and facilities) of about \$7 million in 2011-12. Accordingly, we think that operating DWP as a stand-alone entity under Cal-EPA would result in about \$7 million per year in additional costs for administration.

These additional costs would be partially offset by modest administrative savings in DPH, as that department's total central administrative workload would be reduced somewhat with the departure of DWP. We estimate these savings to be up to \$1 million per year. Thus, the net additional cost to state government of transferring the DWP to a stand-alone entity in Cal-EPA could be about \$6 million per year on an ongoing basis.

***Estimated Net Additional Cost if DWP Transferred to SWRCB Is Likely Negligible.*** While the SWRCB would likely be able to absorb much of the added administrative workload of the DWP on an ongoing basis, it is unlikely to be able to absorb all of this workload. Accordingly, we think that additional position authority costing about \$1 million per year may be required. These costs could be offset by the savings of a similar amount that DPH could realize from reduced administrative workload, as described above. Thus, the net additional ongoing cost to state government of transferring the DWP to SWRCB is likely negligible.

***One-Time Costs in Both Cases.*** There are likely to be one-time costs associated with a transfer of DWP to either a stand-alone entity in Cal-EPA or SWRCB, totaling potentially several million dollars. These costs could include relocation expenses and costs to develop or combine information technology systems.

## **ADVANTAGES AND DISADVANTAGES OF MOVING DWP TO CAL-EPA**

In a previous analysis, we identified some stakeholder concerns with the current governance structure of the state's drinking water activities and discussed potential advantages and disadvantages of transferring the DWP to SWRCB, summarized in Figure 1 (see next page). (For additional detail, see our hearing handout, *Evaluating the Potential Transfer of Drinking Water Activities From DPH to SWRCB*, which we have enclosed with this letter.)

**Figure 1**  
**Potential Advantages and Disadvantages of Transferring Drinking Water Activities From DPH to SWRCB**

Advantages	Disadvantages
Greater policy integration on water issues	Loss of some integration with public health programs
Potential for accelerated rule makings	Temporary disruption to activities
Potential for efficiencies and increased administrative capacity	Potentially increased, mainly short-term, costs
Potential for increased transparency and greater public participation	
DPH = Department of Public Health and SWRCB = State Water Resources Control Board.	

Our analysis, which follows, considers the extent to which these same advantages and disadvantages could apply when transferring the program to a stand-alone drinking water entity under Cal-EPA. We also identified areas of uncertainty where the potential for an advantage or disadvantage would depend on unknown details about how the new entity would be structured.

**Potential Relative Advantages of Transfer to Cal-EPA**

Transferring the DWP to a stand-alone entity under Cal-EPA could have several advantages when compared to transferring it to SWRCB, including: (1) less disruption to the current activities of both SWRCB and the DWP, (2) greater focus within the entity on drinking water policy and public health, and (3) potentially greater visibility for drinking water issues.

**Less Disruption to Current Activities.** As noted in our previous analysis, transferring the DWP to SWRCB could result in some temporary disruption to the activities of SWRCB as it integrated the new drinking water activities and related personnel into its existing operations, and some temporary disruption to DWP activities as DWP staff were moved from their current location into a new entity. While some disruption to DWP activities would still occur if DWP were transferred to a stand-alone entity under Cal-EPA, that disruption may be lessened to the extent that the existing DWP organizational structure remains largely intact. Thus, DWP staff would not have to adjust to significantly new management as it would if it were placed under SWRCB. In addition, SWRCB would not experience disruption to its programs because it would not be required to integrate any new activities. Furthermore, creating a new entity would avoid placing additional demands on SWRCB’s executive staff and on the board itself to develop knowledge in new areas and administer additional programs, which would occur if the DWP were transferred to SWRCB.

**Greater Internal Focus on Drinking Water Policy.** A stand-alone entity would inherently have a greater drinking water and public health focus than if the DWP were to be transferred to SWRCB. A stand-alone entity would focus exclusively on drinking water issues, whereas the SWRCB is required by statute to balance all beneficial uses of water, such as drinking water supply, agricultural supply, and environmental uses. In addition, a stand-alone entity could be headed by an individual with specific public health or drinking water engineering expertise, whereas the SWRCB board members are required by statute to have expertise in other areas of water policy, such as civil engineering or water supply. (We note that statute could be changed to require one board member to have public health expertise.)

***Potentially Greater Visibility for Drinking Water Issues.*** Transferring the DWP to a stand-alone entity could increase the visibility of drinking water issues in policy discussions. First, there would be fewer layers of administration between the DWP and the Governor (relative to placing the program under SWRCB), potentially allowing the new entity to more effectively advance its perspective on policy issues. In addition, establishing a stand-alone entity could signal that drinking water policy is a legislative priority. For example, the state has created ten conservancies as stand-alone entities in part to recognize the importance of specific geographic areas, such as Lake Tahoe and the Sacramento-San Joaquin Delta. Similarly, we note that DPH was specifically created in 2007 partly to elevate the visibility and importance of public health issues. (Public health was formerly a relatively small function under the Medi-Cal-focused Department of Health Services.) However, according to some stakeholders, public health issues have in fact received less attention from policymakers because DPH is no longer part of a larger department that can effectively advocate for adequate resources or promote its perspective. Thus, it is unclear whether a stand-alone entity would significantly increase the visibility of drinking water issues.

### **Potential Relative Disadvantages of Transfer to Cal-EPA**

Creating a stand-alone entity to house the DWP could have several disadvantages relative to moving the program to SWRCB, including: (1) less integration of drinking water with other areas of water policy, (2) increased administrative costs and reduced potential for efficiencies, and (3) less effective financial assistance programs. These disadvantages stem in part from forgoing potential benefits that could be achieved by transferring the program to SWRCB.

***Less Integration With Other Areas of Water Policy.*** Transferring the DWP to a stand-alone entity in Cal-EPA could increase coordination to some degree among drinking water activities and SWRCB's water quality and water rights activities. This is because both entities would be housed under the same agency that could provide overarching policy guidance. However, the coordination and resulting benefits would be less than if the DWP were integrated into SWRCB. For example, different decision makers would be setting policy on the quality of water supplies (such as groundwater) and the quality of drinking water. Therefore, some opportunities to recognize problems or develop innovative solutions could be lost. In addition, we heard from some stakeholders that it can be challenging to encourage communication among existing Cal-EPA departments. Finally, some opportunities to streamline and coordinate regulatory processes for entities that are currently regulated by both DWP and SWRCB could be lost.

***Increased Administrative Costs and Reduced Potential for Efficiencies.*** As described above, establishing a stand-alone entity could increase net costs by \$6 million per year because of the need for additional administrative personnel and related operational expenditures. In addition, such an entity might not achieve the same potential efficiencies through economies of scale that could result from consolidating the SWRCB's clean water and DPH's safe drinking water financial assistance programs. Both the DWP and the SWRCB support some of their activities through fees levied on water service providers. Fees charged by a stand-alone entity would likely be higher than if the DWP was housed under SWRCB in order to provide an equivalent level of service because additional funding would be required to cover the added administrative costs and lost potential for economies of scale described above. We note that the

SWRCB appears to use its existing fee authority to support program administration to a greater extent than the DWP does currently. It is unclear whether a stand-alone entity would be more or less likely than SWRCB to charge fees at rates that provide the administrative resources required to adequately run its programs.

***Less Effective Financial Assistance Programs.*** The DWP has experienced some challenges in distributing financial assistance in order to fund improvements to PWS. This has been highlighted by the recent notice of noncompliance sent to DPH from the United States Environmental Protection Agency (U.S. EPA) regarding DPH's administration of its Safe Drinking Water State Revolving Fund. It is unclear if the performance of DWP's financial assistance program would improve if transferred to a stand-alone entity under Cal-EPA with its executive leadership intact. In contrast, based on U.S. EPA's performance metrics, SWRCB is considered to effectively distribute financial assistance for a variety of purposes, such as funding improvements to wastewater systems, removing leaking underground storage tanks, and constructing projects to improve water quality. Transferring the DWP to a stand-alone entity would not allow for the economies of scale that could be provided by consolidating financial assistance programs and would hinder the new entity's ability to leverage SWRCB's expertise in distributing financial assistance.

We note that some increased effectiveness or economies of scale might be realized by transferring only the DWP's financial assistance programs to SWRCB while creating a stand-alone entity to perform drinking water regulatory activities. However, such a split structure could impair the ability of the DWP to effectively bring water systems into compliance. Currently, because the DWP can provide financial assistance to water systems in addition to taking regulatory actions, it has the ability use a "carrot-and-stick" approach to ensure compliance through a combination of incentives and penalties.

### **Key Areas of Uncertainty**

As discussed below, some other potential advantages of transferring the DWP to SWRCB could also apply to a stand-alone drinking water entity under Cal-EPA if that entity were created with a board structure similar to SWRCB's. However, as there are no specific details at this time on how the Cal-EPA entity might be structured, it is uncertain whether these potential advantages would arise.

***Transparency and Public Participation.*** The SWRCB's board structure provides for regular, structured opportunities for comments on proposed rules or other issues from all interested parties in a public process. The governance structure of a stand-alone drinking water entity would partly determine whether it could achieve the same transparency and opportunities for public participation as transferring DWP to SWRCB. For example, if the new entity had a single department head, public participation and transparency could be reduced relative to that which would be achieved if DWP were transferred to SWRCB, but if it was created to mirror the board structure of SWRCB, the same benefits might be achieved. Alternatively, opportunities for public participation could be built into the new entity, as is done with some other Cal-EPA agencies. For example, while DTSC has a departmental structure, statute provides for extensive public participation processes in connection with its operations.

***Rulemaking Speed.*** The governance structure of a potential stand-alone entity could also affect how quickly rules and regulations are adopted by that entity. The SWRCB is authorized to make some changes to rules by updating its policy handbook—an annual process that allows for public participation through board meetings and can be faster than making changes to regulations that are subject to the Administrative Procedures Act (APA), as currently are DWP’s rulemakings. If a stand-alone entity replicated the SWRCB organizational structure and developed a similar process to amend rules and policies, it could similarly accelerate rulemakings relative to the time it takes under DWP’s current structure. Without such a structure and similar processes, rulemakings could take longer than if the DWP were transferred to SWRCB to the extent they remain subject to the APA.

## CONCLUSION

***Each Model Has Advantages and Disadvantages; Some Uncertainty to Advantages of Stand-Alone Entity.*** There are potentially significant advantages and disadvantages associated with transferring the DWP to a stand-alone entity instead of SWRCB. However, some of the relative advantages of the stand-alone entity may not materialize. For example, while creating a stand-alone entity might result in greater visibility for drinking water issues, it could also have the opposite effect if the new entity were unable to effectively advocate for its perspective as a result of its relatively small size. Furthermore, there is significant uncertainty surrounding the potential for greater transparency and accelerated rulemakings in a stand-alone entity. In the absence of a board structure or another venue for public participation, transparency could be reduced at a stand-alone agency relative to a transfer to SWRCB, and APA requirements could delay some rulemakings relative to rulemakings by SWRCB under its policy handbook process.

***Policy Choice by Legislature.*** There are significant trade-offs associated with choosing between transferring the DWP to SWRCB or creating a new entity, and the preferred approach depends on what policy goals the Legislature is attempting to achieve. Creating a new entity could reduce the short-term disruption to DWP and SWRCB activities but could also reduce overall efficiency and increase costs for drinking water activities. It could also result in increased focus on drinking water issues and could potentially increase the visibility of drinking water issues, but would come at the cost of reduced opportunities to integrate drinking water with other aspects of water policy. Finally, creating a new entity might not improve the performance of drinking water financial assistance programs.

***Legislative Action Could Maximize Potential Advantages of Either Structure.*** Whichever governance model the Legislature chooses for the state’s drinking water activities, there are actions that it could take to maximize the benefits of the chosen structure. For example, the Legislature could take actions to maximize the potential advantages of transferring the DWP to a stand-alone entity by reproducing SWRCB’s organizational structure and public processes in the new entity. On the other hand, the Legislature could maximize the potential advantages of transferring DWP to SWRCB by increasing the drinking water and public health focus of the SWRCB’s board by requiring a board member to have specific expertise in those areas.

If you have any further questions or would like to arrange an in-person briefing on our response, please contact Anton Favorini-Csorba of my office at (916) 319-8336 or [Anton.Favorini-Csorba@lao.ca.gov](mailto:Anton.Favorini-Csorba@lao.ca.gov).

Sincerely,

Mac Taylor  
Legislative Analyst

Enclosure