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Evaluating the Potential Transfer Of Drinking Water Activities From DPH to SWRCB

LEGISLATIVE ANALYST'S OFFICE

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On Health and Human Services
Hon. Holly J. Mitchell, Chair





Overview of Presentation

- Overview of the Department of Public Health (DPH) and State Water Resources Control Board (SWRCB)
- Transfer Proposed to Address Concerns With DPH's Drinking Water Program
- Policy Rationales for Reorganizations in General
- Advantages and Disadvantages of Potential Transfer
- Legislative and Implementation Considerations



Overview of DPH and SWRCB



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).



The 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 DPH's Drinking Water Program (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.) In 31 counties, responsibility for regulating small PWS—systems that serve less than 200 service connections (about 4,000 statewide)—has been delegated to local agencies (referred to as local primacy agencies) under DPH's oversight. 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.



Overview of DPH and SWRCB *(Continued)*

- Providing financial assistance to fund safe-drinking water improvements to PWS.
- Providing oversight, technical assistance, and training for local primacy agency personnel.



The 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.



SWRCB's Budget Is Significantly Larger Than DWP's. The *2013-14 Governor's Budget* proposes about \$675 million and 1,500 positions for SWRCB. By comparison, the Governor's budget proposes \$355 million and 730 positions for DPH's Center for Environmental Health, of which DWP makes up the majority of expenditures.



Stakeholder Concerns Have Prompted Discussion of Governance Structure

- ☑ **Concerns With DWP.** Several concerns with the DWP have been raised by stakeholders and others, prompting an evaluation of the current governance structure of the state's drinking water activities. These include concerns that:
 - The current location of DWP—in DPH—results in a lack of integration with overall water quality management.
 - There has been a slow distribution of financial assistance by DPH for projects that enable PWS to comply with safe drinking water standards.
 - DWP's slow rulemaking process has delayed progress in meeting legislative goals, such as developing regulatory criteria for the use of recycled water, and distributing financial assistance. (The DPH has identified increasing the speed of rulemaking as a strategic goal for the department.)
 - The level of fees assessed by DWP may not be sufficient to generate adequate administrative resources.
 - The current structure of decision making in DWP may not be sufficiently transparent.

- ☑ **Drinking Water Program Transfer Proposed.** Assembly Bill 145, Perea and Rendon, which is currently being considered by the Legislature, would transfer the drinking water responsibilities of DPH to SWRCB.



Policy Rationales for Reorganizations in General

When considering a reorganization, the Legislature should evaluate the extent to which it will meet the following objectives:

- Achieve Legislative Goals and Objectives.** What priorities has the Legislature expressed in this policy area, and will the reorganization proposal help achieve those priorities? What are the intended outcomes of the reorganization?
- Increase Efficiency.** Will there be savings from the elimination of overlapping and duplicative functions or economies of scale?
- Improve Effectiveness.** Would the reorganization make the programs more effective at meeting their goals? Are the missions of the programs proposed for consolidation compatible?
- Improve Accountability.** What impact will the reorganization have on opportunities for public involvement? Can the Legislature, the Governor, and the public identify the party responsible for a decision and hold that party accountable?



Potential Advantages of Transfer

Transferring DWP to the SWRCB could have several advantages, including:

- Greater Policy Integration on Water Issues.*** Consolidating the functions of the DWP with SWRCB's water quality and water rights regulatory activities could increase the effectiveness of the state's water regulation activities by addressing water issues more comprehensively. For example, there would be a more coordinated focus on the sources of pollution and their effects on drinking water. In addition, there may be opportunities to streamline permitting processes for entities that are currently regulated by both DWP and SWRCB.

- Potential for Accelerated Rulemakings.*** 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, such as DWP's rulemakings.

- Potential for Efficiencies and Increased Administrative Capacity.*** Consolidation of the SWRCB's clean water and DPH's safe drinking water financial assistance programs could increase efficiency and increase administrative capacity through economies of scale. In addition, SWRCB appears to use its existing fee authority to support program administration to a greater extent than DPH. (For example, DPH has the authority to bill water systems for the costs associated with processing financial assistance applications, but it does not currently do so. The SWRCB, on the other hand, exercises its authority to assess fees on loan applicants.) These factors suggest that a SWRCB-administered drinking water program may be more likely to have the administrative resources required to adequately run the program and get financial assistance out the door in a timely manner.



Potential Advantages of Transfer *(Continued)*

- Potential for Increased Transparency and Greater 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.



Potential Disadvantages of Transfer

Transferring the DWP to SWRCB could have several disadvantages, including:

- Loss of Some Integration With Public Health Programs.*** Transferring the DWP away from DPH may result in a loss of some integration of drinking water activities with other public health programs, such as those that monitor infectious diseases (including waterborne illnesses) and incidences of birth defects and cancer.
- Temporary Disruption to Activities.*** Transferring the DWP to the SWRCB may result in disruptions that temporarily reduce the program's capacity to perform regulatory activities. For example, the existing relationships between DWP staff and local primacy agencies may be disrupted.
- Potentially Increased, Mainly Short-Term, Costs.*** These costs could include relocation expenses, increased personnel costs from consolidation of classifications, and costs to integrate information technology systems.



Legislative Considerations

- Shift May Not Address All Issues.*** Some factors that currently hinder the effectiveness of DWP may not be resolved by this transfer. Certain statutory restrictions will continue (unless amended or repealed). These include: (1) restrictions on what activities may be funded from fee revenues, (2) requirements to distribute a minimum percentage of financial assistance to disadvantaged communities (these cases can slow down distribution of assistance), and (3) requirements that water systems must meet a minimum size to be subject to regulation and receive public assistance funds. In addition to these statutory restrictions, very small water systems may continue to suffer from a lack of technical, financial, and managerial capacity.

- Consideration of Other Organizational Structures.*** Other structures could be considered, including:
 - Consolidating DPH's and SWRCB's water-related financial assistance programs, but leaving regulatory programs intact. These financial assistance programs could be consolidated in SWRCB or in a newly created financing authority.
 - Shifting additional environmental health responsibilities from DPH to SWRCB or the California Environmental Protection Agency.



Implementation Considerations

If the Legislature decides that moving the DWP to SWRCB is the best solution to the concerns with the current program, it may wish to address the following implementation considerations:

- Ensure Emergency Response Capacity.*** It will be important to ensure that SWRCB has the necessary authority and capacity to quickly respond to drinking water-related emergencies, and that it can efficiently coordinate with other agencies. For example, DWP staff currently work closely with local health officers to respond to emergencies when drinking water quality and supply is impaired.

- Determine Apportionment of Responsibilities Between State and Regional Boards.*** Any new drinking water responsibilities transferred to SWRCB will have to be assigned to either the state board or the regional boards. For example, certain activities may be more effectively performed by the state board than the regional boards. (Currently, DPH's district offices perform some of the activities that require close interaction with local agencies.)

- Clearly Delineate Responsibilities Between SWRCB and DPH Prior to Transition.***

- Allow Adequate Time for Transition.*** Potential disruption resulting from the transition can be minimized by allowing sufficient time to plan the transition. Additionally, the transition should occur with the start of the fiscal year.

- Require Progress Updates to Ensure Legislative Oversight.***