



Restructuring and Consolidation of Small Drinking Water Systems

**A Compendium of State
Authorities, Statutes, and
Regulations**

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The Compendium

This document contains information on restructuring and consolidation authorities for public drinking water systems. It provides an individual summary for each state by listing available statutes, regulations, or policies that encourage or require consolidation or restructuring of drinking water systems. Information or requirements contained in documents incorporated by reference into state regulations (e.g., "Ten State Standards," manuals of recommended standards for wastewater treatment plants, public water supply systems, and other water-based facilities written by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers), are not included.

This document is intended as a starting point for public drinking water systems pursuing information on restructuring and consolidation. During its development, the Environmental Protection Agency (EPA) strived to collect the most current information through coordination and consultation with states. EPA recognizes that information may change over time and recommends that drinking water systems contact their state directly to make sure they understand any applicable requirements.

This Compendium consists of three sections for your use and reference.

The first section of this document, the main body, summarizes state-specific restructuring information as provided by the state regulatory agency. Additional information was obtained from two EPA publications (*State Strategies to Assist Public Water Systems in Acquiring and Maintaining Technical, Managerial, and Financial Capacity* [EPA 816-R-01-019, July 2001] and *State Programs to Ensure Demonstration of Technical, Managerial, and Financial Capacity of New Water Systems* [EPA 816-R-01-018, July 2001]).

The remaining two sections consist of user friendly appendices:

Appendix A includes internet links to statutory or regulatory provisions for each listed state.

Appendix B includes a list of the common authority, statutory, and regulatory elements used by the states as of December 2006.

Introduction

If you are reading this document, perhaps you manage or regulate one of the more than 50,000 small community water systems in the United States and its territories. Maybe you provide technical assistance, training, or other services to these systems. You might even work for a local, state, or federal regulatory or financial agency.

No matter what you do, you probably know of small systems that provide excellent drinking water at a reasonable cost. You probably also know of small systems that are struggling to maintain operations. They, too, want to provide good service and safe water to drink. Unfortunately, some of these systems are physically run-down or exhibit poor source water quality. Most of these type systems service customers who cannot afford big rate increases to address or correct these issues. You may also know of systems that are operating with no immediate problems, but are concerned about their ability to continue providing the best possible service.

Systems that are having problems now, or those that are worried about the future, may need to evaluate all options available to them. These options may include restructuring of system/management operations, utilization of appropriate technology, financial assistance (grants or loans), training, and technical assistance. Most systems will probably find they need some combination of these options to resolve these issues.

Drinking water systems, especially those small systems which serve 3,300 or fewer customers, face a wide array of challenges in providing safe, reliable, and affordable drinking water to their customers. These challenges include adapting to new regulatory standards, the need to upgrade or replace aging infrastructure, source water availability and protection issues, and increasing budgetary constraints.

Changes to the operational, managerial, or institutional structure of a water system, commonly referred to as “restructuring,” can offer several effective options to address these challenges. Restructuring options can range from relatively minor changes in a system’s procurement processes to transferring ownership of a system through consolidation or regionalization (see Diagram #1).

Each water system is unique in its own way, resulting in no “one-size-fits-all” restructuring solutions. It is important for states and water systems to work together to choose a restructuring strategy that will be most appropriate to meet the system’s needs. The spectrum of restructuring options represents a broad, flexible array of solutions that could address the challenges faced by systems and improve the technical, managerial, and financial capabilities of most water systems.

Restructuring can improve capacity in a number of important ways:

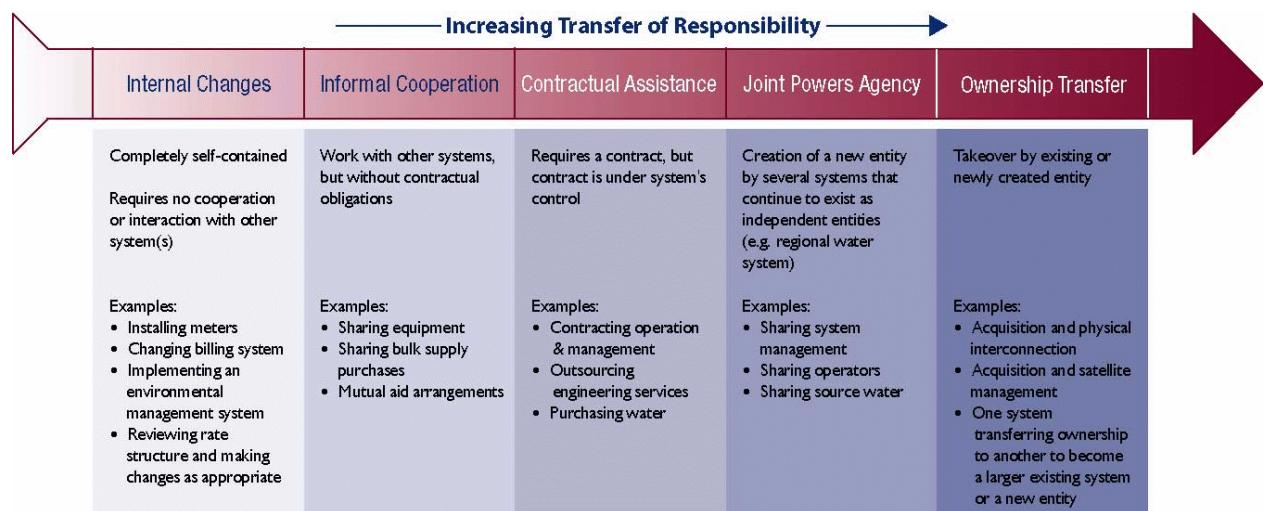
Technical capacity improvements can include increasing access to higher quality/quantity source water; sharing, upgrading, or building new infrastructure; developing more efficient treatment technologies; and opening access to a certified operator and additional expertise.

Managerial capacity improvements can include increasing expertise in water system planning/operations and enhancing systems' financial, accounting, and asset management practices.

Financial capacity improvements can include reducing costs, achieving greater economies of scale through shared services, and increasing systems access to funds through new partnerships. In addition, systems that consider consolidation or restructuring may receive preferential treatment in loan or grant programs (e.g., higher priority for Drinking Water State Revolving Fund [DWSRF] loans).

Restructuring can be an effective means to help small water systems achieve and maintain technical, managerial, and financial capacity, and to reduce the oversight and resources that states need to devote to these systems. One key mechanism that a state can use to consider and promote the use of restructuring activities is its water system capacity development program. States enact statutes or regulations that require new systems to demonstrate their need to exist or their inability to connect to a nearby existing system. A few other states require existing systems to act as mentors to new systems or takeover new systems that cannot consistently demonstrate adequate capacity.

Diagram #1: The Restructuring Spectrum



In addition to state capacity development programs, some state primacy agencies have promoted restructuring activities through collaboration between other state agencies such as the public utility or public service commissions. Examples of these relationships can be found throughout Appendix B.

Acronyms

CPCN	Certificate of Public Convenience and Necessity
CWS	Community Water System
DWSRF	Drinking Water State Revolving Fund
PWS	Public Water System
SDWA	Safe Drinking Water Act
STP	Single Tariff Pricing
TMF	Technical, Managerial, and Financial



I. Overview of State Restructuring and Consolidation Efforts

The Regulatory Commission of Alaska (RCA) can order public systems with conduits, pipes, pipelines, mains, or other distribution or transmission facilities to allow other public systems to use these facilities when public convenience and necessity require it. Use must not result in substantial injury to the owner or in substantial detriment to the provided service. The user must pay for any necessary modifications or additions and may be required to pay reasonable compensation for use of the facilities.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. The Regulatory Commission of Alaska
- B. Alaska Department of Natural Resources
- C. Alaska Department of Health and Human Services

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agencies involved with these initiatives, as listed above.



Arizona

I. Overview of State Restructuring and Consolidation Efforts

Arizona Statute provides the Public Service Commission (PSC) the regulatory power to order a public service corporation to make additions, improvements, or changes to an existing plant, and to construct new structures. If any ordered changes require joint action by two or more public service corporations, the corporations must share the cost of those changes (after notice from the PSC). If the corporations cannot agree upon an apportionment of the costs, the PSC can order the corporations to pay at a proportion determined by the PSC.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Arizona Public Service Commission
- B. Arizona Department of Natural Resources

III. Additional Information on Restructuring and Consolidation

In accordance with Arizona Revised Statute 49-357, the Department of Environmental Quality (DEQ) may allow water systems to cooperate in testing and monitoring for water contaminants if the DEQ determines that the water systems are located in the same general area and the area is hydrologically connected.

I. Overview of State Restructuring and Consolidation Efforts

The Division of Health of the Arkansas Department of Health and Human Services (DHHS) encourages regionalization, consolidation and interconnection in several ways. First, as part of their New System Capacity Development Strategy, all new systems are required to submit an engineering report detailing all available options for a new system. Those with new sources are required to evaluate all contiguous existing public water systems (PWSs) to determine if interconnection is the best option. For existing systems, all PWSs seeking non-private funding of construction projects must be reviewed by the Water and Wastewater Advisory Committee.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Division of Health of the Arkansas Department of Health and Human Services

III. Additional Information on Restructuring and Consolidation

Applicants must show through an engineering review and cost review that interconnection with an existing PWS is not the best option. Those seeking Drinking Water State Revolving Funds (DWSRF) funds are priority ranked for available loan monies if they are interconnecting, consolidating or regionalizing systems that lack technical, managerial or financial (TMF) capacity.



I. Overview of State Restructuring and Consolidation Efforts

In reference to submittals for operation permits, any new system applying for operation within the State of California must submit a technical evaluation including a characterization of water quality and an evaluation of the feasibility of consolidation.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. California Department of Health

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agency involved with these initiatives, as listed above.



I. Overview of State Restructuring and Consolidation Efforts

Technical assistance providers are normally asked to provide information to Public Water Systems on such topics as consolidation, restructuring, shared staffing arrangements, rate structure, and budgeting. These actions are part of an effort to provide systems with methods of lowering costs by sharing or partnering with other systems. Evaluation of consolidation alternatives are considered during the development of preliminary engineering reports required for DWSRF loans.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Colorado Department of Health and Environment - Water Quality Control Division

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agency involved with these initiatives, as listed above.

I. Overview of State Restructuring and Consolidation Efforts

Small water systems (serving 1,000 people or fewer or 250 service connections or fewer) must obtain a certificate of public convenience and necessity (CPCN) from the Department of Public Utility Control (DPUC) prior to any construction or expansion. These requirements do not apply to water systems owned and operated by municipalities, municipal districts, regional water authorities, and nonprofit corporations working on behalf of the municipalities for the purpose of providing water to an elderly housing project. The DPUC, in coordination with the Department of Public Health (DPH), will not issue a CPCN unless it determines that no feasible interconnection with an existing system is available.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Connecticut Department of Environmental Protection
- B. Connecticut Department of Public Health
- C. Connecticut Department of Public Utility Control

III. Additional Information on Restructuring and Consolidation

In certain circumstances, the DPUC, the DPH, a municipality served by a water company, or an organization representing 20 percent of the water system's customers can petition the court for attachment of the assets of the company and to place the company in receivership. Reasons for the petition include failure to provide water for at least five days in the preceding three months, noncompliance with water quality standards, gross mismanagement causing inadequate service, and an unwillingness or inability to provide adequate service. The receiver can petition the court for compensatory damages to be paid by any director, officer, or manager for willful misconduct or misappropriation of the system's assets or income.

The DPUC, DPH, and when necessary, the Department of Environmental Protection (DEP), can hold a hearing (after public notice) to determine appropriate actions for systems that do not possess the economic viability (based on performance measures of the system, including financial stability, physical condition and capacity, and managerial expertise) to provide safe and adequate drinking water (Connecticut DPUC State Statutes §16-262n). Acquisition of the system can be one of the appropriate actions. The DPUC must conduct this hearing upon request from a water company wanting to cease operations.

If the DPUC determines (in consultation with appropriate agencies) that acquisition is

necessary and reasonable, the DPUC will order the acquisition by the most suitable public or private entity. The acquiring entity can recover the costs of acquisition and improvements through rates and can impose a rate surcharge to recover on a current basis all costs of the acquisition and necessary improvements. The surcharge can be imposed on the customers of the acquired and the acquiring company, revised quarterly, and “designed to recover 100% of the revenues to provide a net after-tax return on investment” (Connecticut DPUC State Statutes §16-262o). Also, compensation can be provided to the acquiring company.

The revenues and expenses incurred by systems providing satellite management services (including operation, maintenance, administration, repairs, monitoring, reporting, billing, training, and the purchase of supplies and equipment) can be excluded from the rate review process. The DPUC can also provide a premium rate of return for systems voluntarily acquiring other systems or ordered to acquire other systems.



I. Overview of State Restructuring and Consolidation Efforts

The Delaware Division of Public Health (DPH) encourages consolidation, especially among PWSs experiencing compliance and operational problems. Through consolidation, some systems can increase their TMF capacity.

The Delaware DPH also promotes consolidation through its DWSRF loan program. A system applying for a DWSRF loan will receive additional points on its application towards its priority ranking if it has explored consolidation.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Delaware Division of Public Health

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agency involved with these initiatives, as listed above.



I. Overview of State Restructuring and Consolidation Efforts

Since adoption in the 1970s, The Georgia Rules for Safe Drinking Water, Chapter 391-3-5, have required privately owned community water systems (CWSs) to provide a mechanism to assure the continuity of service, such as a third party trustee. In some cases, CWS owners have entered into trust agreements with the local government in which the system is located. In other cases, the CWS owners have used non-government trustees.

Since January 1, 1998 several new rules became effective relating to the permitting of new privately owned PWSs and CWSs. These require, among other things such as the development of business plans, that the applicant: 1) evaluate the possibility of connecting to an existing local government owned and operated PWS, certifying to the Georgia Environmental Protection Division (EPD) the reasons why the system cannot connect to the existing system if such a decision is made; 2) provide written certification from the local government in which the system is located that the local government is in concurrence with the development of the privately owned CWS; 3) provide a back-up water source; and 4) execute a trust indenture or other legal agreement with the local government in which the system is located, unless documentation is provided by the local government certifying that it has no desire to act in this capacity (applies to CWSs only).

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

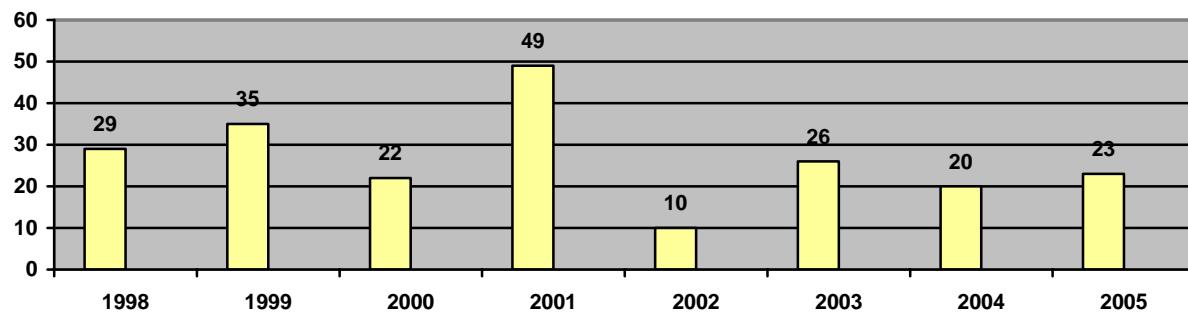
A. Georgia Environmental Protection Division

III. Additional Information on Restructuring and Consolidation

Whenever possible, EPD encourages consolidation of a water system with a nearby local government owned water system or water authority. If formal enforcement action is taken on a private water system, EPD may offer lower penalties if the water system agrees to connect to a local government owned water system or water authority within a reasonable period of time. These water systems have among the best track records for compliance and customer service, are generally larger systems, and have the TMF resources to provide safe, reliable drinking water on a consistent basis. As of June 30, 2005, a total of 217 privately owned and operated PWSs have consolidated with a nearby government owned PWS. The figure below displays the number of consolidations in Georgia each year since 1998, and indicates that an average of 27 water systems each year have successfully consolidated with a local government owned PWS or water authority.

Number of Consolidated Water Systems

Georgia EPD is expecting these numbers to increase in the near future as a result of increased financial and managerial burdens associated with complying with the recently enacted regulations.





I. Overview of State Restructuring and Consolidation Efforts

The Idaho Department of Environment Quality (DEQ) requires new systems to investigate the feasibility of obtaining water service from an established PWS. If existing water service is available, but an owner elects to proceed with an independent system, the owner must explain why this choice is in the public interest in terms of environmental protection, affordability to water users, and protection of public health.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Idaho Department of Environmental Quality
- B. Idaho Public Utility Commission

III. Additional Information on Restructuring and Consolidation

The Public Utility Commission (PUC) can deny a certificate to a small water company if it is shown that there is no need for the service or that another company whether municipal, cooperative, or investor-owned, is willing and able to provide similar or better service. A small water company is a water corporation that provides service to fewer than 300 people or proposes initially to do so, or that does not have, and does not anticipate having, more than \$50,000 annual gross revenues from water operations. The PUC cannot deny a certificate to a municipal corporation, or a mutual nonprofit or cooperative gas, electrical, water, or telephone corporation, or any other public utility organized and operated at cost and not for profit (Idaho Statutes Title 61-104).



I. Overview of State Restructuring and Consolidation Efforts

A new PWS planning to provide service in a municipality with an existing PWS must secure consent from the Indiana Utility Regulatory Commission (IURC). The Commission must hold a public hearing and, if warranted, issue a declaration that it is of the public's convenience and necessity to allow the second PWS to provide service. Municipalities operating water systems do not have to secure such declaration. A municipality may own, lease, acquire, or construct a system within the corporate boundaries of the municipality, and within a radius of six (6) miles from those boundaries or any place within the county in which the municipality is located, without the consent of any agency other than the municipal legislative body (IC 8-1.5-2-3).

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Indiana Utility Regulatory Commission
- B. Indiana Department of Environmental Management

III. Additional Information on Restructuring and Consolidation

In 2001, the state indicated that the Indiana Department of Environmental Management (DEM) may develop a program that will require or encourage the consolidation of systems incapable of maintaining adequate capacity. The DEM is considering requiring PWSs that have successfully mitigated similar issues to provide technical assistance to problem systems, and provide them with mentoring opportunities.

In addition, a new system must submit a Water System Management Plan that includes an assessment of consolidation or interconnection with other systems including a cost and benefit comparison.

Kansas



I. Overview of State Restructuring and Consolidation Efforts

The State of Kansas has a long history of encouraging local units of government to cooperate for their mutual benefit. Subsequent to the Interlocal Cooperation Act (the Act) passed in 1957, the Kansas Legislature has enacted legislation specifically directed at helping public water supply systems improve efficiency through voluntary interlocal cooperation. The following Kansas statutes provide the framework for cooperation among local units of government ranging from joint powers agreements to consolidation and acquisition.

The **Interlocal Cooperation Act (K.S.A. 12-2901 et seq.)**, passed in 1957, provides a framework that enables local units of government to work together. Eligible participants include school districts, townships, cities, rural water districts and other governmental units. The Act can be used for a variety of projects including public water supply development. Three water supply systems benefiting a total of 11 CWSs have been formed under this Act.

K.S.A. 82a-637 et seq., passed in 1969, establishes the procedures required for **Acquisition of a Rural Water District by a City**. A rural water district with service territory within the 3 mile radius of a city of the first class may petition to transfer assets and property to the city. In return the city shall operate the rural water district properties as part of the municipal functions of the city. The Statute also establishes the procedures for resolving any outstanding debt obligations of the rural water district. The petition to transfer assets and property must be signed by two-thirds of the rural water district members.

The **Public Wholesale Water Supply District Act (K.S.A. 19-3545 et seq.)**, passed in 1977, applies to municipalities, quasi-municipalities or political subdivisions of the state or any agency or instrumentality of the state or of the United States. Privately owned water distribution companies may also participate. The function of a public wholesale water supply district is to secure a source of water and treatment facilities on a scale larger than is feasible for public water suppliers acting alone, and to sell such water at wholesale to the participating public water supply systems. Kansas has 11 active public wholesale water supply districts, consisting of 102 PWSs that serve an approximate population of 126,000 people.

K.S.A. 65-163d et seq., passed in 1994, establishes the **Drinking Water State Revolving Loan Fund**. This statute requires the Kansas Department of Health and Environment (KDHE) to encourage regional cooperation. KDHE meets this requirement by awarding additional points for regional projects in the loan program priority ranking system. Four projects, benefiting 16 water systems have qualified for the additional points. One loan project consolidated 11 mobile home parks into one rural water district.

K.S.A. 82a-650 et seq., passed during the 2005 Legislative Session, establishes the procedures for **Acquisition of a Rural Water District by another Rural Water District**. This Statute allows 2 or more rural water district boards to enter into an agreement to merge into a single district. Notice of the intent to merge must be provided to the rural water district members and notice must be published in the local newspaper. Members have 60 days to submit a written petition signed by at least 10 percent of the members to request an election regarding the merger. If no petition is submitted the merger does not require a vote.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Kansas Department of Health and Environment
- B. Kansas Water Office

III. Additional Information on Restructuring and Consolidation

In addition to the above statutes KDHE encourages interlocal cooperation by providing financial assistance for regional public water supply planning. The KDHE Capacity Development Program provides 50/50 cost-share funding to study the feasibility of developing regional public water supply systems. The Kansas Water Office (KWO) also participates in regional planning efforts focused on specific areas of the state.

Kentucky



I. Overview of State Restructuring and Consolidation Efforts

Kentucky has numerous statutory and regulatory provisions regarding acquisition, voluntary and involuntary mergers, and consolidation of water systems. Since Oct. 1, 1999, Kentucky Division of Water (KDOW) has had statutory authority under Kentucky Revised Statutes (KRS) 151.634 to approve or refuse plans for all new water systems based on their ability to demonstrate TMF capability of meeting the requirements of the Safe Drinking Water Act (SDWA). Many new systems must also be approved by the Public Service Commission (PSC), which regulates water districts, combined water, gas, or sewer districts and water commissions. Excluded from PSC authority are joint commissions such as water commissions, cities, and water districts that jointly purchase, construct, extend, improve, and operate water supply sources, which require only KDOW approval.

New water districts that must secure approval from the PSC, must find that the service area of the new system cannot be served by an existing system.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Kentucky Division of Water
- B. Kentucky Public Service Commission

III. Additional Information on Restructuring and Consolidation

The KDOW has statutory authority to promulgate regulations as necessary to administer the capacity development program. Capacity of a water system is the system's ability to achieve and maintain TMF capacity. Promulgation of these regulations will strengthen the KDOW capacity development program as it assists water systems with capacity issues and provides them with options for restructuring or consolidation.

The PSC can acquire a system if it is expedient to do so. The PSC can purchase it, "and pay for it in the same manner as provided for the original construction and improvement; or may pay for it in whole or in part out of any surplus funds in possession, receipt or anticipation of receipt by the commission" (KRS Chapter 74.100 [1]). The PSC can order necessary improvements that will be paid for by an assessment against the land or from the general fund of the water district.

In addition, the PSC is authorized to initiate and carry out feasibility studies to determine the possibility of merging water districts or merging water associations into water districts. Upon completion of the study, and after a public hearing, the PSC can order the merging of water districts or associations into a single water district, and make any additional orders in connection with rates and charges. All of the commissioners from the merged district continue to serve until the expiration of their terms, at which time new commissioners are appointed. Secured debts continue to be paid under the terms and conditions of the outstanding obligations.

Water districts can also voluntarily merge by a majority vote of the membership of each board of each water district that is subject to the merger. Board members must serve for at least one year after the PSC's approval of the merger. All of the assets and liabilities are merged and the title to all real property owned by the separate districts is vested in the resulting district. Bonded obligations continue until retired.

One provision that may discourage the consolidation of small water systems is that the PSC provides an expedited rate increase process for systems with 500 or fewer customers or \$300,000 or less gross annual revenue. The shortened procedure minimizes the need for formal hearings, reduces filing requirements, and may decrease the time before the PSC renders a decision.

Louisiana

I. Overview of State Restructuring and Consolidation Efforts

The Department of Health and Hospitals' (DHH) State Health Officer can bring a civil action against a PWS to carry out the provisions of the state statutes and regulations. The court can, acting on its own, or upon application of the state health officer, appoint a receiver to collect the assets of the system if:

- The system has been abandoned or service has ceased;
- The operator of the system has failed or refused to comply with administrative orders; or,
- Circumstances necessitate the appointment of a receiver based on the state's rules.

The court, upon a showing by the system owner or operator of good cause, can dissolve the receivership. The PSC recognized that some small water systems are facing significant financial and operational obstacles, and acknowledged that these systems are not always easily acquired by larger systems. Therefore, flexible enforcement of PSC's rules and streamlined economic regulations for small systems (e.g., expedited rate-making), may be necessary to keep these small systems viable. These PSC actions may be a disincentive for consolidation or restructuring.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- C. Louisiana Department of Health and Hospitals
- D. Louisiana Public Service Commission

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agencies involved with these initiatives, as listed above.

Maine



I. Overview of State Restructuring and Consolidation Efforts

The State Drinking Water Program (DWP) has been and will continue to be committed to locating and disseminating independent research which provides information regarding the benefits and shortcomings of consolidation.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Maine Department of Health, Drinking Water Program

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agency involved with these initiatives, as listed above.



I. Overview of State Restructuring and Consolidation Efforts

The Maryland Department of the Environment (MDE) encourages consolidation, especially among PWS experiencing compliance and operational problems. MDE views consolidation as a form of assistance in increasing a system's TMF capacity.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Maryland Department of the Environment

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agency involved with these initiatives, as listed above.

**I. Overview of State Restructuring and Consolidation Efforts**

As part of its new system approval process, the Department of Environmental Quality (DEQ) requires new privately owned Community Water Systems (CWS) to submit proof of refusal to accept ownership or operational responsibility from the governing body of a city, county, village, township, or other governmental entity where the new system would be located. In addition, the owner of the privately owned CWS must stipulate (prior to the DEQ issuing a permit) to transfer the ownership and operation of the system to a governing body of a city, village, or township, or its designated public entity, if connection to the publicly-owned system becomes practicable.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Michigan Department of Environmental Quality

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agency involved with these initiatives, as listed above.

I. Overview of State Restructuring and Consolidation Efforts

The Public Supply Commission (PSC) of Mississippi can petition the Chancery Court in the county where the system is doing business to attach the assets of a privately owned water system and appoint a receiver. Petition can be made when the PSC determines that the system is unable or unwilling to adequately serve its customers; has been actually or effectively abandoned by its owner; or has management that is grossly inefficient, irresponsible, or unresponsive to the needs of its customers.

The court-appointed receiver must operate the water system so as to preserve the assets and to serve the best interests of the customers. Control of and responsibility for the water system remains with the receiver until the court determines that it is in the best interests of the customers for the system be returned to the owner, transferred to another owner, or assumed by another water system or public service corporation.

If the court determines that control of and responsibility for the system should not be returned to the legal owner, the receiver is authorized to liquidate the system's assets. The receiver is required to give preference for any transfer of ownership to any municipality within the county or to the governing authorities of the county where the system is located (provided the county has a population of 35,000-40,000 people). Preference requires the receiver to manage and operate the system for two years before a sale or transfer can occur.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Public Supply Commission of Mississippi
- B. Mississippi Department of Health

III. Additional Information on Restructuring and Consolidation

The Department of Health (DOH) encourages systems with inadequate capacity to form cooperative arrangements, including physical consolidation and administrative mergers. This can be done by increasing the number of enforcement actions, imposing administrative penalties on systems that serve customers in excess of their approved design capacity, and by reviewing plans and specifications.



The State of Missouri's Official Web Site

I. Overview of State Restructuring and Consolidation Efforts

Missouri Revised Statutes (MRS) stipulate that the Public Service Commission (PSC) can petition a Circuit Court for an order to attach the assets and appoint a receiver of a small water system (serving less than 1,000 people) that is unable or unwilling to provide safe and adequate service, has abandoned or effectively abandoned its business, or has defaulted on any financial obligation owed to a unit of state government.

The receiver must operate the system in the best interests of the customers and must attempt to preserve the assets of the system until further notice from the court. The court after a hearing, must determine whether to return control and responsibility of the system back to its owners or order the receiver to liquidate the assets of the system. (MRS § 393.145)

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Missouri Public Service Commission
- B. Missouri Department of Natural Resources - Public Drinking Water Program

III. Additional Information on Restructuring and Consolidation

The state indicated that the Department of Natural Resources' (DNR) Public Drinking Water Program (PDWP) may use future set-asides to support the regionalization and consolidation of existing systems in areas where systems have compliance problems.



I. Overview of State Restructuring and Consolidation Efforts

If the Public Utility Commission (PUC) determines (after notice and hearing) that a water system is unable to provide reasonably continuous and adequate service, the PUC can file a petition in court for the appointment of a receiver. Water systems excluded from this process are those that provide service in an area where water service is not available from a public system, cooperative corporation and association, or political subdivision. Any selected receiver has all general powers appointed to a receiver (e.g., to conduct business, contract, sell or transfer assets, etc.) and can file for bankruptcy.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Nevada Public Utility Commission

III. Additional Information on Restructuring and Consolidation

Customers of a water system regulated by a board of county commissioners can ask the board to review the adequacy of service to determine whether a receiver should be appointed. Board regulated systems are not regulated by the PUC, operated by political subdivision, or nonprofit association in which the rights and interests of all its members are equal. If the board determines a receiver is appropriate, the procedure, and the powers and duties of the receiver, are the same as stated above.

In order to receive a permit to begin operation, publicly owned systems must include as part of their permit application a plan to operate the system if the system is declared bankrupt or is placed in receivership.



I. Overview of State Restructuring and Consolidation Efforts

Under New Hampshire's Administrative Rules (NHAR), ENV-WS 372, Design Standards for Small Public Water Systems, new small water systems that serve a population of 25-1,000 people and do not provide street hydrant fire protection must submit the following for approval by the Department of Environmental Services (DES):

- **Concept letter**, including location map, proposed service area, and justification for creation of the new water system;
- **Well siting report**, for approval of well location, yield and water quality of the proposed source;
- **Business plan**, for documentation of the proposed managerial and financial capacity for operation of the new system; and,
- **Design plans**, for approval of proposed pumping, treatment, storage, and distribution facilities.

Under State Statute RSA 485:4, DES has the authority to investigate public water supplies and to require improvements to protect the public health. Under this same statute, DES is required to conduct a preliminary investigation when 10 or more people report water quality or quantity concerns for a particular water system. If, as a result of the investigation, DES concludes that a significant health or safety risk exists, the Department must perform an analysis of alternatives and may order an extension or consolidation of water supplies. If the Department determines that an extension of water service from an existing PWS is the most feasible and cost-effective alternative, that the extension is consistent with municipal master planning, rules, and policy, and that the existing PWS has adequate capacity to serve the problem area, the DES can order an existing system to allow the connection.

In addition, under RSA 374:47, the New Hampshire Public Utility Commission (PUC) may appoint a receiver, or direct its staff to take temporary action to assure continued service, when the PUC finds that a PWS (regulated by the Commission and having gross annual revenues of less than \$2,000,000), is failing to provide adequate and reasonable service and that the failure presents a serious and imminent threat to the health of the community.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. New Hampshire Department of Environmental Services
- B. New Hampshire Public Utility Commission

III. Additional Information on Restructuring and Consolidation

The PUC can also appoint a receiver or direct its staff to take temporary action if, after notice and hearing, the PUC finds that a regulated system is consistently failing to provide adequate and reasonable service. The PUC staff or the appointed receiver have the authority to access and manage all system assets and records, expend existing revenues, and commit additional resources to provide an acceptable level of service.

New Hampshire's Capacity Assurance Rules (Env-Ws 363) require that water systems with significant outstanding deficiencies develop a business plan and implement the plan once approved by DES. Often, systems with significant deficiencies will seek to connect to an existing water system, contract with professional water system operators, or to sell the water system to a reputable private water company.

In 2003, the New Hampshire adopted a grant program to encourage interconnection of PWSs to resolve problems with inadequate drinking water quantity or quality. This program provides 25 percent reimbursement of preliminary engineering, design, and construction of piping, pump stations and a portion of treatment facilities necessary for these interconnections. This program and other incentives to encourage regionalization of public water supplies were the result of a joint study conducted in 2001 by DES and PUC titled, *Regulatory Barriers to Water Supply Regional Cooperation and Conservation in New Hampshire*.



I. Overview of State Restructuring and Consolidation Efforts

Through an administrative hearing process, the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) can take actions (including acquisitions) and require expenditures (including acquisition costs) to make necessary improvements at small water systems (non-governmental systems serving fewer than 1,000 people) that are in noncompliance with water quality regulations or that have failed to comply with an order of the DEP. At the hearing, DEP must issue an Administrative Consent Order that:

- Sets forth a schedule for compliance for the acquiring entity;
- Stipulates that the acquiring entity is not liable for any fines and penalties resulting from the violations that caused the acquisition (NJ Statute §58:11-63.2 for specific rules applying to the release of liability from the discharge of hazardous substances);
- Provides for the immediate inclusion in the rates of the acquiring entity the anticipated costs of necessary improvements;
- Authorizes the acquiring entity to commence eminent domain proceedings;
- Revokes the franchise of the acquired entity; and,
- Renders the owner or operator of the acquired entity unfit to hold any other water franchise.

Compensation of the “commercially reasonable value” is provided either by agreement of the two parties or by the power of eminent domain (NJ Statute §58:11-60 2b). Upon payment of compensation, the acquiring entity obtains title to the assets free of all liens, claims, judgments, fines, penalties, and outstanding taxes; monies are to be deposited in escrow to cover these outstanding debts.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. New Jersey Department of Environmental Protection
- B. New Jersey Board of Public Utilities

III. Additional Information on Restructuring and Consolidation

Costs of acquisition and costs of improvements are eligible for state financing and expedited loan procedures. The acquiring entity can impose a different rate for the customers of the acquired system for use of the services of the acquiring system.

Failure to comply with a DEP order for acquisition or a DEP order to be acquired can result in the imposition of penalties not to exceed \$50,000 per day. In addition, the BPU can impose a penalty of \$100 per day for every day a public system fails to comply with an order of the BPU. The DEP or the BPU can also file a civil action for other relief including a temporary or permanent injunction and litigation costs.



I. Overview of State Restructuring and Consolidation Efforts

The Drinking Water Bureau (DWB) of the New Mexico Environment Department (NMED) has SDWA primacy and is the regulatory authority over PWSs. DWB staff provides a certain amount of TMF assistance to PWSs. The DWB also has multiple contract assistance providers that are very active assessing system capacity and providing TMF assistance to improve or change the way systems are managed. In addition to direct assistance, the DWB staff and its contractors deliver a considerable amount of training on a variety of regulatory TMF topics across the state.

The DWB has adopted regulations that require regionalization and capacity to be evaluated for new systems. Specifically, regulations require new systems to submit additional information for projects involving the construction of a new PWS and documents demonstrating that the PWS has sufficient TMF capacity, such as ownership accountability, staffing and organization, revenue sufficiency, credit worthiness and fiscal management.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. New Mexico Environment Department
- B. New Mexico Finance Authority

III. Additional Information on Restructuring and Consolidation

Components of DWB's water system restructuring policy encourage and support regionalization efforts by:

- Providing direct assistance for ongoing regionalization efforts through the DWB's Managerial and Financial capacity assistance contractor or the DWB staff. The DWB tries to provide assistance to approximately 3 regionalization groups at any one time. In selecting regionalization groups to assist, the DWB considers such factors as willingness to proceed by the participating systems and capacity improvements resulting from the regionalization;

- Providing or participating in workshops on regionalization; and,
- Coordinating with other programs and state agencies involved in regionalization efforts.

Requests for funding from the DWSRF get higher priority on the Comprehensive Priority List for projects that have a regionalization component.

In New Mexico, the Sanitary Projects Act (SPA) governs the formation of Mutual Domestic Water Consumer Associations (MDWCA). There are approximately 250 of these water systems in the State. They are considered public entities. Under the 2006 revisions to the SPA a new MDWCA cannot be formed if it is adjacent to a municipal water system or Water and Sanitation District that is able to provide water to the proposed service area of the new system at or below the cost of the new system.

The merging of two or more water systems may require approval by the Public Regulation Commission (PRC) if one of the water systems falls under their jurisdiction (i.e. is a privately owned system) and is not being condemned. The PRC review is guided by the principle that the merger must be in the public interest. The statutes regulating PRC water utility authority can be found in the Public Utilities Act, Chapter 62 NMSA 1978 (Articles 6 and 9).

The PRC is also authorized to “commence an action in the district court... for the appointment of a receiver to assume possession of its property and to operate its system” if it determines that “a public utility is unable or unwilling to adequately service its customers or has been actually or effectively abandoned.” Under the SPA, the NMED is empowered to “appoint and delegate authority to a representative to oversee operation of the association for a specified period.” In addition, it gives NMED the authority after a public hearing to “intervene in the operation and management with full powers, including the power to set and collect assessments from members of the association, to set and collect service charges and use the same for the proper operation and management of the association.” Such powers given to the PRC and to the NMED would only be invoked as a last resort after other attempts to work with a system to correct significant deficiencies. If invoked by NMED, as a matter of policy DWB would not be the entity to operate and manage the system, as DWB has regulatory oversight over all PWSs.

New York



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I. Overview of State Restructuring and Consolidation Efforts

The State's Capacity Enhancement Working Group recommended to the Department of Health (DOH) that it should review the law that encourages the merger of school districts to collect information for ideas on how to encourage cooperative arrangements among water systems; provide systems with grants or low interest loans for the planning, legal, and engineering activities involved in restructuring; and more actively encourage the formation of cooperatives.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. New York Department of Health

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agency involved with these initiatives, as listed above.



I. Overview of State Restructuring and Consolidation Efforts

In accordance with Oregon Revised Statutes (ORS), counties, in developing water service plans, should encourage small water systems to combine management functions and consolidate where possible. In addition, the many different types of water entities in Oregon (domestic water supply districts, people's utilities districts, water authorities or joint water and sanitary authorities, and water control and improvement districts) can enter into cooperative agreements with each other and can merge and consolidate. Mergers, consolidations, and annexations must be approved by the governing body of the districts and in general, the rights, responsibilities, obligations, and liabilities of the districts survive the merger, consolidation, or annexation and flow to the newly created entity.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Oregon Department of Human Services

III. Additional Information on Restructuring and Consolidation

A people's utilities district is a body of government that may consist of a territory within one or more counties and may consist of one or more cities, or a portion of a city, with or without an unincorporated territory. A people's utilities district provides utility services, usually electricity and water, and is formed to allow the public local ownership and control of their utility.

Where encouragement to consolidate is not effective and where immediate action is necessary to protect public health, the Director of Human Services can request an action (prior administrative procedures are not required) compelling the water supplier to cease and desist operation or to make improvements that are necessary to remove an existing or potential public health hazard. This request for action is through the District Attorney of the county where a system is located. If the system does not comply, the court can appoint a special master to operate the system.

The Special Master can use funds owed the system by customers or other revenue due to the system to make the necessary improvements. The Special Master can also sell the system as required by the court.



I. Overview of State Restructuring and Consolidation Efforts

Title 52 Pennsylvania Code (PC) Chapter § 69.701 discusses the viability of small water systems and lists some of the objectives of the PUC and the Department of Environmental Protection (DEP) as “substantially restrict[ing] the number of nonviable drinking water systems by discouraging the creation of new nonviable small systems, and at the same time, encourag[ing] the restructuring of existing nonviable small systems” (Title 52 PC Chapter § 69.701[a][3]). Title 52 PC §3.501, provides filing requirements to obtain a certificate of public convenience from the PUC. These requirements include, among other things, (a) the filing of a business plan, (b) a full description of the proposed facilities, (c) a map of the proposed service area, (d) a proposed initial tariff of rates, proposed rules and conditions of service, and (e) proof of compliance with applicable design, construction and operations standards of DEP or the county health department.

To meet these goals the PUC provides acquisition incentives, among other things, and facilitates the rate process to aid in the provision of financial assistance from PENNVEST (the state’s finance authority) to projects that incorporate or encourage comprehensive planning and restructuring. The PUC has statutory authority to order, under appropriate circumstances, the acquisition of a small, noncompliant water system by a larger system that is capable of providing safe and adequate service to all ratepayers.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Pennsylvania Public Utility Commission
- B. Pennsylvania Department of Environmental Protection

III. Additional Information on Restructuring and Consolidation

To be eligible for the incentives, an acquisition must: serve the general public interest, be conducted through arms-length negotiations, leave the acquiring system with adequate TMF capabilities, and provide the acquired system's rate payers with improved service within a reasonable period of time. In addition, the acquired system must be non-viable: in violation of a PUC statute or regulation, have failed to comply with a DEP order, and serve fewer than 3,300 customers. The purchase price of the acquisition must be fair and reasonable.

Acquisition incentives include additional rate of return basis points, the inclusion of reasonable excess acquisition costs in the rate base of the acquiring entity and amortization over 10 years, and a phased-in rate recovery for improvement costs. Additional surcharges are allowed to offset various operating costs (state tax adjustment, distribution system improvement, purchase power, and purchase water). The PUC encourages Single Tariff Pricing (STP) as an appropriate tool to facilitate regionalization.

The PUC allows short form (abbreviated) rate filing procedures for water systems with less than \$250,000 in annual operating revenues. The PUC also provides technical assistance for small systems to file a rate case, allows small systems the opportunity to use an operating ratio methodology as a rate base substitute for determining rates, allows the establishment of an emergency fund for small systems and encourages mediations and settlements to avoid the high cost of litigation.



I. Overview of State Restructuring and Consolidation Efforts

In the Public Water Supplies Systems Act (PWSSA) of 1995, Rhode Island declared that, “economy and efficiency dictate the desirability to combine small public water supply systems with other public water supply systems” (Rhode Island General Laws § 46-30-2 [5]). The State of Rhode Island General Laws §46-30-2 provides water suppliers the authority to petition an adjacent supplier for the purpose of merging or annexing.

Merger and annexation cannot occur without consent and must be accomplished through an “economically fair method” (Rhode Island General Laws § 46-30-2 [6]ii). Consent must be granted by the governing board of each entity. In the case of a municipally owned system, a vote of the majority of the entire town or city council is required and, in the case of a private supplier, consent is required of the owner of the facilities in question and the governing board of the petitioned governing agency. The annexing system must fairly and equitably allocate capital, and management and operational expenses to the annexed system (or new customers). All user charges, fees, or rates imposed as a result of the merger are subject to the approval of the PUC.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Rhode Island Public Utility Commission

III. Additional Information on Restructuring and Consolidation

The annexing system may also impose an annexation fee (not subject to PUC approval) that can be no less than ten percent (10%) of the pre-annexation rate and no more than one hundred percent (100%) of the pre-annexation rate. The annexation fee must be terminated when “the contractual obligation for amortizing the upgrading of the system petitioning annexation has been discharged or no later than thirty (30) years from the date of financing said improvements, whichever comes first” (Rhode Island General Laws § 46-30-4 [c]).

Upon the merger, the annexing system must agree to accept, and the annexed system must agree to transfer, all of the rights and benefits accrued through federal assistance or funding. In addition, the annexed system must disclose all obligations, liabilities, and pending lawsuits. The merger does not discharge, impair, or alter any contract obligations or existing bargaining units, and does not release the annexed system or its officers from any suit, action, or other proceeding lawfully commenced in relation to the discharge of official duties.

South Carolina



I. Overview of State Restructuring and Consolidation Efforts

The South Carolina Department of Health and Environmental Control (DHEC) can petition the State's Administrative Law Court to appoint a receiver for a system whose owner is recalcitrant towards regulatory requirements; if the system is privately owned, the Public Service Commission (PSC) may also be involved in this process. A relatively new agency in South Carolina, the Office of Regulatory Staff (ORS) represents the consumers in such actions and will petition the PSC to allow use of the system owner's bond with the PSC to be liquidated to fund the system's operations interim period between receivership designation and new owner designation.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. South Carolina Department of Health and Environmental Control
- B. South Carolina Public Service Commission
- C. South Carolina Office of Regulatory Staff

III. Additional Information on Restructuring and Consolidation

In addition to current state statutes, DHEC encourages water systems to utilize economies of scale by assigning a higher ranking on the DWSRF project priority list to projects involving consolidation or regionalization. To encourage a viable system to take over a non-viable system, the DWSRF program offers a one percent (1%) capacity development rate to fund system upgrades and improvements.

The DHEC can use its technical assistance funds to help systems move toward consolidating services. In 2007, South Carolina is funding an evaluation of 11 municipal water systems in two adjacent counties to determine how to proceed with a consolidation plan that will improve their TMF capacities. The Low Country Council of Governments (LCCOG) is participating in this project; it was initiated by an Economic Council of States (ECOS) grant.



I. Overview of State Restructuring and Consolidation Efforts

The Texas Health and Safety Code (THSC) §341.0315, requires the Texas Commission on Environmental Quality (TCEQ) formerly the Texas Natural Resources Conservation Commission to “encourage and promote the development and use of regional and area wide drinking water supply systems” (THSC §341.0315[b]). To help meet that end, the TCEQ requires anyone wishing to construct a new system within a municipality or within one-half mile of a district or political subdivision providing the same service, to prove that an application for service was made to the provider and that all of the provider’s requirements for service were satisfied.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

A. Texas Commission on Environmental Quality

III. Additional Information on Restructuring and Consolidation

The TCEQ can ask the State Attorney General to bring suit in state court for the appointment of a receiver to collect the assets and operate and maintain the water system when a system, among other things:

- Violates a final order of the TCEQ or allows any property owned or controlled by it to be used in violation of a final order of the Commission;
- Fails to provide adequate service or notice of public health hazards;
- Fails to maintain facilities such that a potential public health hazard may result; or,
- Displays a pattern of hostility toward or repeatedly fails to respond to the TCEQ or its customers.

The court can also appoint a receiver if it is necessary to collect fees, penalties, or interest.

The receiver can apply to transfer the required CPCN and can seek to acquire, sell, or otherwise dispose of the system's facilities. The court, after a showing of good cause by the system, can dissolve the receivership and return the assets to the system.

The TCEQ can also appoint a temporary manager for the same reasons as requesting an appointment of a receiver, or when the system has been referred to the State Attorney General for the appointment of a receiver. The TCEQ must provide the system with notice and an opportunity for a hearing unless an emergency situation exists, in which case no hearing is required.

The TCEQ can also take a water system under its supervision for gross and continuing mismanagement or for noncompliance with statutes, regulations, or TCEQ orders. The supervised system may have additional management and reporting requirements; may be required to secure TCEQ approval prior to any investment, acceptance of debt, hiring, declaration of dividends, or liquidation of assets; and may be required to place funds in an account to be used by TCEQ for system expenses.



I. Overview of State Restructuring and Consolidation Efforts

The State of Vermont Water Supply Division (VWSD) intends to contract with third party providers to identify opportunities for physical or operational consolidation of water systems and the advantages and disadvantages of consolidation. Small CWSs and schools will be evaluated.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. State of Vermont Water Supply Division

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agency involved with these initiatives, as listed above.



I. Overview of State Restructuring and Consolidation Efforts

In Virginia, both the State Board of Health (BOH) and State Corporation Commission (SCC) have receivership statutes.

Under Va. Code §56-265.13:6.1, the SCC can appoint a receiver to operate a small water system (defined as having a gross annual operating revenue of less than \$1,000,000 or owned by the property owners' association of the subdivision served by the public system), which is unable or unwilling to provide adequate service to its customers upon the petition of two-thirds of the affected customers, water system staff, or the BOH. Inadequate service includes:

- Failure to supply water service to a majority of the consumers for five days or more during the preceding three months for reasons within the control of the water and sewer system;
- Certification by the DOH that the system has not met, and is unwilling to take action to meet department standards;
- Gross mismanagement; or,
- Failure to comply with a SCC order to provide adequate service.

The receiver is authorized to take possession of the assets of the system and operate them in the best interest of the customers, make application to the SCC for temporary and permanent rate increases, and change the system's rules and regulations. Control of and responsibility for the system remains with the receiver until the SCC determines that the system can be returned to the original owners, transferred to new owners, or liquidated, whichever is in the best interest of the customers.

The State Health Commissioner can petition the circuit court for the appointment of a receiver when the Commissioner finds that the waterworks is unable or unwilling to provide adequate and safe service for any of the following reasons:

- The waterworks, (a system that serves piped water for drinking or domestic use to at least 15 public connections or an average of 25 individuals, for at least 60 days a year), can no longer be depended upon to furnish pure water;
- The waterworks has inadequate capacity to furnish pure water to its customers;
- The owner has failed to comply with an order issued by the Commissioner;
- The owner has abandoned the system and has discontinued supplying pure water to his customers;
- The owner is subject to a forfeiture order pursuant to Va. Code §32.1-174.1; or,
- The Commissioner has issued an emergency order because there is an imminent danger to the public health and welfare resulting from the operation of the waterworks or the source of the water supply.

The court, after notice and hearing, will grant the petition if it finds that one or more of the above conditions exist, that the conditions will not be remedied, and that the health and welfare of the customers will not be protected unless the court appoints a receiver. The powers and duties of the receiver are similar to those of a receiver appointed by the SCC; however, this receiver is an officer of the court and does not have specific authority (unless directed or granted by the court) to petition the SCC for temporary or permanent rate increases. The receivership can be terminated by the court on the motion of the Commissioner, the receiver, or the owner, and upon a finding that the conditions initiating the petition for the appointment of a receiver have been eliminated or resolved.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Virginia State Board of Health
- B. Virginia State Corporation Commission

III. Additional Information on Restructuring and Consolidation

In addition to the appointment of a receiver, Virginia water systems can be forced to interconnect by the Virginia General Assembly. The General Assembly reserves the right to provide for connecting any public service corporation, with other companies of the like character, at such point as may seem proper. The SCC may also require a water system to "transfer" to another water system whenever required to protect public health, welfare, or safety (VA Code § 56-249.1). The transferring public system is compensated at a rate fixed by the SCC.

Systems wanting to transfer assets or control must secure the approval of the SCC prior to acquisition or disposal of control. It is the responsibility of each company to file for approval, and the application must contain verified signatures of individuals representing all parties. Systems in this case refer to companies or government entities (excluding municipalities), that serve as public service companies to provide water or sewage treatment services to the public, as established under Va. Code § 56-232A.



Washington



I. Overview of State Restructuring and Consolidation Efforts

Washington State recognizes the importance of restructuring/consolidation and how it contributes to the state's capacity development strategy (restructuring an existing system that is having problems may be the only way to ensure that a system ultimately achieves and maintains compliance with drinking water regulations).

Washington incorporated restructuring/consolidation of existing PWSs into its overall program with the adoption of the Public Water System Coordination Act (PWSCA) of 1977 (Chapter 70.116, Revised Code of Washington). The foundation of this act is a process whereby systems identify existing and future service areas. The Coordination Act, by identifying service areas and directing water systems seeking restructuring and new water applicants to existing water systems for service, helps prevent the creation of new isolated systems within the service area of existing water system. Another critical function of the act is to ensure systems in a specific geographic region adopt consistent minimum design standards, which makes future restructuring efforts more efficient.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

A. Washington State Department of Health

III. Additional Information on Restructuring and Consolidation

The PWSCA was amended in 1991 to include the satellite management program to address requests for water service that cannot be accommodated by a direct connection to an existing water system. Washington approves Satellite Management Agencies (SMAs) that own or operate more than one PWS in specifically designated service areas (generally but not always county-wide). Newly-proposed systems, outside a water system's existing or future service area, must be owned or operated by an approved SMA. If no SMA is available to provide service, the new system is obligated to receive SMA service in the future if it has problems.

In Washington, funding plays a crucial role in achieving successful restructuring efforts. As in many states, restructuring/consolidation projects are eligible to receive loans from the state's DWSRF. In addition, in 2003, the Washington state legislature allocated \$4 million to create a Water System Acquisition and Rehabilitation Program (WSARP) to provide grants to allow municipal water systems to acquire and rehabilitate systems with water quality problems that pose a public health risk. The legislature allocated an additional \$2 million for the program in 2005.

Lastly, when a system is unwilling or unable to achieve compliance and where voluntary restructuring/consolidation efforts are not available, Washington State has a receivership law that allows the state to petition the court to take temporary control of a failing water system and direct that system to a receiver. Receivers have broad authority to operate and maintain the system, make needed system improvements, impose reasonable assessments on water system customers, and receive reasonable compensation for the cost of provide service. Where no receiver is available, the local county is the receiver of last resort. Systems placed under receivership are generally operated for one year by the receiver. During this time, in addition to operating the system, the receiver assists the state and local government in developing a disposition plan for the system that examines the options for long term operation of the system.

West Virginia



I. Overview of State Restructuring and Consolidation Efforts

The West Virginia Bureau of Public Health (BPH) assists PWSs in the development of partnerships by encouraging consolidation or merger options through funding infrastructure improvement projects (e.g., DWSRF) and through compliance or enforcement actions. The Public Service Commission (PSC) of West Virginia will use its authority to help systems pursue consolidation. In areas with economic and demographic challenges, the BPH will develop incentives for satellite management or other types of regionalization. All West Virginia drinking water projects using any state agency funding (including DWSRF) are reviewed and approved by the West Virginia Infrastructure and Jobs Development Council (IJDC). The IJDC approval process includes reviewing all viable alternatives, including consolidation. Any project where consolidation is a viable alternative is referred to the IJDC Consolidation Committee. The BPH and PSC are Consolidation Committee voting members. When the Consolidation Committee and IJDC determine consolidation is the most viable, cost effective alternative, only this alternative will be approved for funding.

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. West Virginia Bureau of Public Health
- B. Public Service Commission of West Virginia
- C. West Virginia Infrastructure and Jobs Development Council

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agencies involved with these initiatives, as listed above.



I. Overview of State Restructuring and Consolidation Efforts

Section 236 of Wyoming's Public Service Commission's Rules (PWSCR) requires that utilities such as water systems that interfere or may interfere with one another coordinate and take steps to eliminate the interference. (Interference is not defined in the PWSCR.) If the interference is caused by a new system, the owner of the new system must pay for the correction and mitigation of any interference. The rules require systems in "close proximity" of each other, to coordinate in the planning stage to minimize interference or the potential for interference (Wyoming Chapter II General Regulations §236[c]).

II. State Agencies Directly Involved with Restructuring and Consolidation Efforts

- A. Wyoming Public Service Commission

III. Additional Information on Restructuring and Consolidation

For further information, please contact the state agency involved with these initiatives, as listed above.

Appendix A: Links to State Statutes and Regulations

Information included in the table represents information provided by each state. For additional information, please contact your state agency.

State	State Statutes	State Regulations
AK	http://www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx01/query=[group+chapter4205!3A]/doc/{@1}/hits_only?	http://www.state.ak.us/rca/reqs/AS42.05.html
AZ	http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=40 http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=49	
CT	http://www.dpuc.state.ct.us/DPUCInfo.nsf/DPUC%20State%20Statutes?OpenView&Start=1&Count=30&Expand=1#1	http://www.dpuc.state.ct.us/DPUCInfo.nsf/DPUC%20Regulations?OpenView&Start=1&Count=30&Expand=1#1
GA	http://www.gaepd.org/Documents/rules_exist.html	http://www.gaepd.org/Documents/rules_exist.html
ID		http://www2.state.id.us/adm/adminrules/rules/ida58/0108.pdf http://www2.state.id.us/adm/adminrules/rules/ida31/3601.pdf
IN	http://www.ai.org/legislative/ic/code/title8/ar1/index.html	
KY	http://www.lrc.state.ky.us/krs/074-00/chapter.htm http://www.lrc.state.ky.us/kar/title807.htm	
LA	http://www.legis.state.la.us/lss/lss.asp?doc=98560	
MI	http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Department&Dpt=EQ&Level_1=Water+Division	
MS	http://198.187.128.12/mississippi/lpext.dll?f=templates&fn=fs-main.htm&2.0	
MO	http://www.moga.state.mo.us/STATUTES/C393.HTM	
NV	http://www.leg.state.nv.us/NRS/NRS-704.html#NRS704Sec6676 http://www.leg.state.nv.us/NRS/NRS-	

State	State Statutes	State Regulations
	<p>704.html#NRS704Sec6265</p> <p>http://www.leg.state.nv.us/NRS/NRS-704.html#NRS704Sec6674</p> <p>http://www.leg.state.nv.us/NAC/NAC-445A.html#NAC445ASec5921</p>	
NH	<p>http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XXXIV-374.htm</p> <p>http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-L-485.htm</p> <p>http://www.des.state.nh.us/rules/env-ws372.pdf</p>	
NJ	<p>http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=120388&Depth=2&depth=2&expandheadings=on&headingswithhits=on&hitsperheading=on&infobase=statutes.nfo&record={17676}&softpage=Doc_Frame_PG42</p>	
NY		<p>http://www.health.state.ny.us/nysdoh/water/part5/subpart5.htm</p> <p>Unofficial version of Subpart 5-1. Currently in the process of being updated to reflect recent regulatory changes (i.e., arsenic and rad rules).</p>
OR	<p>http://www.leg.state.or.us/ors/448.html</p> <p>http://www.leg.state.or.us/ors/198.html</p> <p>http://www.leg.state.or.us/ors/264.html</p> <p>http://www.leg.state.or.us/ors/448.html</p>	
PA	<p>http://www.pacode.com/secure/data/052/chapter69/chap69toc.html</p>	<p>http://www.dep.state.pa.us/dep/deputate/watermgt/WSM/WSM_TAO/Finan_Tech_Asst.htm</p>

State	State Statutes	State Regulations
	http://www.puc.pa.us	
RI	http://www.rilin.state.ri.us/Statutes/TITLE46/46-30/46-30-2.HTM	
SC	http://www.scstatehouse.net/code/t58c005.htm	
TX	http://info.sos.state.tx.us/pls/pub/readtac\$ext.ViewTAC?tac_vie_w=5&ti=30&pt=1&ch=291&sch=J&rl=Y http://www.legis.state.tx.us/	
VA	http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+32.1-174	http://www.state.va.us/scc/division/pua/filech4ch5.htm
WA	http://www.leg.wa.gov/RCW/index.cfm?fuseaction=chapterdigest&chapter=70.116 http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section&section=70.119A.060 http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section&section=80.28.275 http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section&section=80.28.040 http://www.leg.wa.gov/wac/index.cfm?fuseaction=title&title=246	
WY		http://soswy.state.wy.us/RULES/1201.pdf

Appendix B: Listing of Common Authority, Statute, and/or Regulation Elements

Information included in the table represents information provided by each state. For additional information, please contact your state agency.

	Common Authority, Statute, and/or Regulation Elements																										
	AK	AR	AZ	CA	CT	ID	IN	KS	KY	LA	MI	MS	MO	NV	NH	NM	NJ	NY	OR	PA	RI	SC	TX	VA	WA	WV	WY
State Requires Acquired System to Give Consent for Mergers or Acquisitions									X		X								X	X	X						
State Requires Acquiring System to Give Consent to Accept Consolidation or Restructuring	X ⁱ								X		X			X ⁱⁱ				X	X	X							
Acquiring System Allowed to Impose a Surcharge, Additional Fee, Compensation, Etc.					X				X							X			X	X							
PSC or PUC Provides Expedited Rate Making Procedures for Consolidating Systems					X				X	X									X								
Acquiring System Assumes Liabilities or Obligations of Acquired System									X		X							X	X						X		
State Can Attach Assets, Appoint a Receiver, Order a Takeover or Merger					X				X	X	X	X	X	X	X	X	X ⁱⁱⁱ	X		X	X ^{iv}	X	X				
Consolidating Systems Eligible for Additional Grants or Loans, or Receive Preferred Status for Financial Assistance Programs	X	X ^v			X		X									X	X	X	X		X	X	X	X	X		
State Can Order Improvements, Changes, or Additions to Consolidating Systems		X														X	X	X				X		X			
New Systems Must Prove Need for Service, Existing Systems Must Prove Need for Extensions					X	X	X		X		X			X				X			X		X	X ^{vi}			
New Systems Must Submit Regionalization or Consolidation Studies or Assessments				X		X									X			X			X		X				

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- i. When required by public convenience and necessity, the Alaska PUC can order a public system to allow another public system to use its facilities.
 - ii. The New Hampshire DES can order an existing system to allow a deficient system to interconnect, if after complaint and investigation, DES determines that a significant health or safety risk exists and that the extension of water service from an existing PWS is the most feasible and cost-effective alternative to alleviate the risk.
 - iii. The Oregon courts can appoint a special master to operate a water system under certain circumstances.
 - iv. The Texas TCEQ can ask the State Attorney General to appoint a temporary manager, and can place the system under TCEQ supervision.
 - v. The Arizona DEQ is authorized to allow systems to share monitoring and analytical costs.
 - vi. New water systems must either be owned or operated by a designated satellite system or show that a satellite management system is not available. The new system must also show that it has sufficient management and financial resources to provide safe water.