WEST VIRGINIA CODE CHAPTER 22 ARTICLE 26

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§22-26-1. Short title; legislative findings.

(a) Short title. -- This article may be known and cited as the Water Resources Protection and Management Act.

(b) Legislative findings. --

(1) The West Virginia Legislature finds that it is the public policy of the State of West Virginia to protect and conserve the water resources for the state and to provide for the public welfare. The state's water resources are vital natural resources of the state that are essential to maintain, preserve and promote quality of life and economic vitality of the state.

(2) The West Virginia Legislature further finds that it is the public policy of the state that the water resources of the state be available for the benefit of the citizens of West Virginia, consistent with and preserving all other existing rights and remedies recognized in common law or by statute, while also preserving the resources within its sovereign powers for the common good.

(3) The West Virginia Legislature further finds that the water use survey conducted by the Department of Environmental Protection is a valuable tool for water resources assessment, protection and management.

(4) The West Virginia Legislature further finds that the water resources of this state have not been fully measured or assessed and that a program to accurately measure and assess the state's water resources is necessary to protect, conserve and better utilize the water resources of this state.

(5) The West Virginia Legislature further finds that the survey information collected and analyzed by the Department of Environmental Protection has identified the need for a statewide water resources management plan.

(6) The West Virginia Legislature further finds that the development of a state water resources management plan is in the best interest of the state and its citizens and will promote the protection of this valuable natural resource; promote its use for the public good; and enhance its use and development for tourism, industry and other economic development for the benefit of the state and its citizens.

(7) The West Virginia Legislature further finds that incomplete data collection from an inadequate groundwater monitoring system continues to hamper efforts to study, develop and protect the state's water resources and will be a major obstacle in the development of a water resources management plan.

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§22-26-2. Definitions.

For purposes of this article:

(1) "Baseline average" means the average amount of water withdrawn by a large-quantity user over a representative historical time period as defined by the secretary.

(2) "Beneficial use" means uses that include, but are not limited to, public or private water supplies, agriculture, tourism, commercial, industrial, coal, oil and gas and other mineral extraction, preservation of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation and preservation of cultural values.

(3) "Commercial well" means a well that serves small businesses and facilities in which water is the prime ingredient of the service rendered, including water wells drilled to support horizontal well operations.

(4) "Community water system" means a public water system that pipes water for human consumption to at least fifteen service connections used by year-round residents or one that regularly serves at least twenty-five residents.

(5) "Consumptive withdrawal" means any withdrawal of water which returns less water to the water body than is withdrawn.

(6) "Department" means the West Virginia Department of Environmental Protection.

(7) "Farm use" means irrigation of any land used for general farming, forage, aquaculture, pasture, orchards, nurseries, the provision of water supply for farm animals, poultry farming or any other activity conducted in the course of a farming operation.

(8) "Industrial well" means a well used exclusively for nonpotable purposes, including industrial processing, fire protection, washing, packing or manufacturing of a product excluding food and beverages, or other nonpotable uses.

(9) "Interbasin transfer" means the permanent removal of water from the watershed from which it is withdrawn.

(10) "Large-quantity user" means any person who withdraws over three hundred thousand gallons of water in any thirty-day period from the state's waters and any person who bottles water for resale regardless of quantity withdrawn. "Large-quantity user" excludes farm use, including watering livestock or poultry on a farm, though farms may voluntarily report water withdrawals to assist with the accuracy of the survey.

(11) "Maximum potential" means the maximum designed capacity of a facility to withdraw water under its physical and operational design.

(12) "Noncommunity nontransient water system" means a public water system that serves at

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least twenty-five of the same persons over six months per year.

(13) "Nonconsumptive withdrawal" means any withdrawal of water which is not a consumptive withdrawal as defined in this section.

(14) "Person", "persons" or "people" means an individual, public and private business or industry, public or private water service and governmental entity.

(15) "Secretary" means the Secretary of the Department of Environmental Protection or his or her designee.

(16) "Transient water system" means a public water system that serves at least twenty-five transient people at least sixty days a year.

(17) "Test well" means a well that is used to obtain information on groundwater quantity, quality, aquifer characteristics and availability of production water supply for manufacturing, commercial and industrial facilities.

(18) "Water resources", "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands: Provided, That farm ponds, industrial settling basins and ponds and waste treatment facilities are excluded from the waters of the state.

(19) "Watershed" means a hydrologic unit utilized by the United States Department of Interior's Geological Survey, adopted in 1974, as a framework for detailed water and related land-resources planning.

(20) "Withdrawal" means the removal or capture of water from water resources of the state regardless of whether it is consumptive or nonconsumptive: Provided, That water encountered during coal, oil, gas, water well drilling and initial testing of water wells, or other mineral extraction and diverted, but not used for any purpose and not a factor in low-flow conditions for any surface water or groundwater, is not deemed a withdrawal.

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§22-26-3. Waters claimed by state; water resources protection survey; registration requirements; agency cooperation; information gathering.

(a) The waters of the State of West Virginia are claimed as valuable public natural resources held by the state for the use and benefit of its citizens. The state shall manage and protect its waters effectively for present and future use and enjoyment and for the protection of the environment. Therefore, it is necessary for the state to determine the nature and extent of its water resources, the quantity of water being withdrawn or otherwise used and the nature of the withdrawals or other uses: Provided, That no provisions of this article may be construed to amend or limit any other rights and remedies created by statute or common law in existence on the date of the enactment of this article.

(b) The secretary shall conduct an ongoing water resources survey of consumptive and nonconsumptive surface water and groundwater withdrawals by large-quantity users in this state. The secretary shall determine the form and format of the information submitted, including the use of electronic submissions. The secretary shall establish and maintain a statewide registration program to monitor large-quantity users of water resources.

(c) Large-quantity users, except those who purchase water from a public or private water utility or other service that is reporting its total withdrawal, shall register with the department and provide all requested survey information regarding withdrawals of the water resources. Multiple withdrawals from state water resources that are made or controlled by a single person and used at one facility or location shall be considered a single withdrawal of water. Water withdrawals for self-supplied farm use and private households will be estimated. Water utilities regulated by the Public Service Commission pursuant to article two, chapter twenty-four of this code are exempted from providing information on interbasin transfers to the extent those transfers are necessary to provide water utility services within the state.

(d) Except as provided in subsection (f) of this section, large-quantity users who withdraw water from a West Virginia water resource shall comply with the survey and registration requirements of this article. Registration shall be maintained annually by every large-quantity user on forms and in a manner prescribed by the secretary.

(e) The secretary shall maintain a listing of all large- quantity users and each user's baseline average water withdrawal.

(f) The secretary shall make a good faith effort to obtain survey and registration information from persons who are withdrawing water from in-state water resources, but who are located outside the state borders.

(g) All state agencies and local governmental entities that have a regulatory, research, planning or other function relating to water resources, including, but not limited to, the State Geological and Economic Survey, the Division of Natural Resources, the Public Service Commission, the Bureau for Public Health, the Commissioner of the Department of

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Agriculture, the Division of Homeland Security and Emergency Management, Marshall University, West Virginia University and regional, county and municipal planning authorities may enter into interagency agreements with the secretary and shall cooperate by: (i) Providing information relating to the water resources of the state; (ii) providing any necessary assistance to the secretary in effectuating the purposes of this article; and (iii) assisting in the development of a state water resources management plan. The secretary shall determine the form and format of the information submitted by these agencies.

(h) Persons required to participate in the survey and registration shall provide any reasonably available information on stream flow conditions that impact withdrawal rates.

(i) Persons required to participate in the survey and registration shall provide the most accurate information available on water withdrawal during seasonal conditions and future potential maximum withdrawals or other information that the secretary determines is necessary for the completion of the survey or registration: Provided, That a coal-fired electric generating facility shall also report the nominal design capacity of the facility, which is the quantity of water withdrawn by the facility's intake pumps necessary to operate the facility during a calendar day.

(j) The secretary shall, to the extent reliable water withdrawal data is reasonably available from sources other than persons required to provide data and participate in the survey and registration, utilize that data to fulfill the requirements of this section. If the data is not reasonably available to the secretary, persons required to participate in the survey and registration are required to provide the data. Altering locations of intakes and discharge points that result in an impact to the withdrawal of the water resources shall also be reported.

(k) The secretary shall report annually to the Joint Legislative Oversight Commission on State Water Resources on the survey results. The secretary shall also make a progress report annually on the implementation of the State Water Resources Management Plan and any significant changes that may have occurred since the State Water Resources Management Plan was submitted in 2013.

(l) In addition to any requirements for completion of the survey established by the secretary, the survey must accurately reflect both actual and maximum potential water withdrawal. Actual withdrawal shall be established through metering, measuring or alternative accepted scientific methods to obtain a reasonable estimate or indirect calculation of actual use.

(m) The secretary shall make recommendations to the Joint Legislative Oversight Commission on Water Resources created in section five of this article relating to the implementation of a water quantity management strategy for the state or regions of the state where the quantity of water resources are found to be currently stressed or likely to be stressed due to emerging beneficial or other uses, ecological conditions or other factors requiring the development of a strategy for management of these water resources.

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(n) The secretary may propose rules pursuant to article three, chapter twenty-nine-a of this code as necessary to implement the survey registration or plan requirements of this article.

(o) The secretary is authorized to enter into cooperative agreements with local, state and federal agencies and private policy or research groups to obtain federal matching funds, conduct research and analyze survey and registration data and other agreements as may be necessary to carry out his or her duties under this article.

(p) The department, the Division of Natural Resources, the Division of Highways and the Conservation Agency (cooperating state agencies) shall continue providing matching funds for the United States Geological Survey's (USGS) stream-gauging network to the maximum extent practicable. Should a cooperating state agency become unable to maintain its contribution level, it should notify the USGS and the commission of its inability to continue funding for the subsequent federal fiscal year by July 1 in order to allow for the possible identification of alternative funding resources.

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§22-26-4. Confidentiality.

(a) Information required to be submitted by a person as part of the water withdrawal survey and registration that may be a trade secret, contain protected information relating to homeland security or be subject to another exemption provided by the state freedom of information act may be deemed confidential. Each such document shall be identified by that person as confidential information. The person claiming confidentiality shall provide written justification to the secretary at the time the information is submitted stating the reasons for confidentiality and why the information should not be released or made public. The secretary has the discretion to approve or deny requests for confidentiality as prescribed by this section.

(b) In addition to records or documents that may be considered confidential under article one, chapter twenty-nine-b of this code, confidential information means records, reports or information, or a particular portion thereof, that if made public would:

(1) Divulge production or sales figures or methods, processes or production unique to the submitting person;

(2) Otherwise tend to adversely affect the competitive position of a person by revealing trade secrets, including intellectual property rights; or

(3) Present a threat to the safety and security of any water supply, including information concerning water supply vulnerability assessments.

(c) Information designated as confidential and the written justification shall be maintained in a file separate from the general records related to the person.

(d) Information designated as confidential may be released when the information is contained in a report in which the identity of the person has been removed and the confidential information is aggregated by hydrologic unit or region.

(e) Information designated as confidential may be released to governmental entities, their employees and agents when compiling and analyzing survey and registration information and as may be necessary to develop the legislative report required by this section or to develop water resources plans. Any governmental entity or person receiving information designated confidential shall protect the information as confidential.

(f) Upon receipt of a request for information that has been designated confidential and prior to making a determination to grant or deny the request, the secretary shall notify the person claiming confidentiality of the request and may allow the person an opportunity to respond to the request in writing within five days.

(g) All requests to inspect or copy documents shall state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within ten business days of the receipt of a request, the secretary shall: (1) Advise the person making the request in

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writing of the time and place where the person may inspect and copy the documents which, if the request addresses information claimed as confidential, may not be sooner than twenty days following the date of the determination to disclose, unless an earlier disclosure date is agreed to by the person claiming confidentiality; or (2) deny the request, stating in writing the reasons for denial. If the request addresses information claimed as confidential, then notice of the action taken pursuant to this subsection shall also be provided to the person asserting the claim of confidentiality.

(h) Any person adversely affected by a determination regarding confidential information under this article may appeal the determination to the appropriate circuit court pursuant to the provisions of article five, chapter twenty-nine-a of this code. The filing of a timely notice of appeal shall stay any determination to disclose confidential information pending a final decision on appeal. The scope of review is limited to the question of whether the portion of the records, reports, data or other information sought to be deemed confidential, inspected or copied is entitled to be treated as confidential under this section. The secretary shall afford evidentiary protection in appeals as necessary to protect the confidentiality of the information at issue, including the use of in camera proceedings and the sealing of records when appropriate.

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§22-26-5. Joint Legislative Oversight Commission on State Water Resources.

[Repealed.]

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§22-26-6. Mandatory survey and registration compliance.

(a) The water resources survey and subsequent registry will provide critical information for protection of the state's water resources and, thus, mandatory compliance with the survey and registry is necessary.

(b) All large-quantity users who withdraw water from a West Virginia water resource shall complete the survey and register use with the department. Any person who fails to complete the survey or register, provides false or misleading information on the survey or registration, or fails to provide other information as required by this article may be subject to a civil administrative penalty not to exceed $5,000 to be collected by the secretary consistent with the secretary's authority pursuant to this chapter. Every thirty days after the initial imposition of the civil administrative penalty, another penalty may be assessed if the information is not provided. The secretary shall provide written notice of failure to comply with this section thirty days prior to assessing the first administrative penalty.

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§22-26-7. Secretary authorized to log wells; collect data.

(a) In order to obtain important information about the state's surface and groundwater, the secretary is authorized to collect scientific data on surface and groundwater and to enter into agreements with local and state agencies, the federal government and private entities to obtain this information.

(b) Any person who installs a community water system, noncommunity nontransient water system, transient water system, commercial well, industrial or test well shall notify the secretary of his or her intent to drill a water well no less than ten days prior to commencement of drilling. The ten-day notice is the responsibility of the owner, but may be given by the drilling contractor.

(c) The secretary has the authority to gather data, including driller and geologist logs, run electric and other remote-sensing logs and devices and perform physical characteristics tests on nonresidential and multifamily water wells.

(d) The drilling contractor shall submit to the secretary a copy of the well completion forms submitted to the Bureau for Public Health for a community water system, noncommunity nontransient water system, transient water system, commercial well, industrial or test well. The drilling contractor shall also provide the well GPS location and depth to groundwater on the well report submitted to the secretary.

(e) Any person who fails to notify the secretary prior to drilling a well or impedes collection of information by the secretary under this section is in violation of the Water Resources Protection and Management Act and is subject to the civil administrative penalty authorized by section six of this article.

(f) Any well contracted for construction by the secretary for groundwater or geological testing must be constructed at a minimum to well design standards as promulgated by the Bureau for Public Health. Any wells contracted for construction by the secretary for groundwater or geological testing that would at a later date be converted to a public use water well must be constructed to comport to state public water design standards.

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§22-26-8. State Water Resources Management Plan; powers and duty of secretary.

(a) The secretary shall oversee the development of a State Water Resources Management Plan to be completed no later than November 30, 2013. The plan shall be reviewed and revised as needed after its initial adoption. The plan shall be developed with the cooperation and involvement of local and state agencies with regulatory, research or other functions relating to water resources including, but not limited to, those agencies and institutions of higher education set forth in section three of this article and a representative of large-quantity users. The State Water Resources Management Plan shall be developed utilizing the information obtained pursuant to said section and any other relevant information available to the secretary.

(b) The secretary shall develop definitions for use in the State Water Resources Management Plan for terms that are defined differently by various state and federal governmental entities as well as other terms necessary for implementation of this article.

(c) The secretary shall continue to develop and obtain the following:

(1) An inventory of the surface water resources of each region of this state, including an identification of the boundaries of significant watersheds and an estimate of the safe yield of sources for consumptive and nonconsumptive uses during periods of normal conditions and drought.

(2) A listing of each consumptive or nonconsumptive withdrawal by a large-quantity user, including the amount of water used, location of the water resources, the nature of the use, location of each intake and discharge point by longitude and latitude where available and, if the use involves more than one watershed or basin, the watersheds or basins involved and the amount transferred.

(3) A plan for the development of the infrastructure necessary to identify the groundwater resources of each region of this state, including an identification of aquifers and groundwater basins and an assessment of their safe yield, prime recharge areas, recharge capacity, consumptive limits and relationship to stream base flows.

(4) After consulting with the appropriate state and federal agencies, assess and project the existing and future nonconsumptive use needs of the water resources required to serve areas with important or unique natural, scenic, environmental or recreational values of national, regional, local or statewide significance, including national and state parks; designated wild, scenic and recreational rivers; national and state wildlife refuges; and the habitats of federal and state endangered or threatened species.

(5) Assessment and projection of existing and future consumptive use demands.

(6) Identification of potential problems with water availability or conflicts among water uses and users including, but not limited to, the following:

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(A) A discussion of any area of concern regarding historical or current conditions that indicate a low-flow condition or where a drought or flood has occurred or is likely to occur that threatens the beneficial use of the surface water or groundwater in the area; and

(B) Current or potential in-stream or off-stream uses that contribute to or are likely to exacerbate natural low-flow conditions to the detriment of the water resources.

(7) Establish criteria for designation of critical water planning areas comprising any significant hydrologic unit where existing or future demands exceed or threaten to exceed the safe yield of available water resources.

(8) An assessment of the current and future capabilities of public water supply agencies and private water supply companies to provide an adequate quantity and quality of water to their service areas.

(9) An assessment of floodplain and stormwater management problems.

(10) Efforts to improve data collection, reporting and water monitoring where prior reports have found deficiencies.

(11) A process for identifying projects and practices that are being, or have been, implemented by water users that reduce the amount of consumptive use, improve efficiency in water use, provide for reuse and recycling of water, increase the supply or storage of water or preserve or increase groundwater recharge and a recommended process for providing appropriate positive recognition of those projects or practices in actions, programs, policies, projects or management activities.

(12) An assessment of both structural and nonstructural alternatives to address identified water availability problems, adverse impacts on water uses or conflicts between water users, including potential actions to develop additional or alternative supplies, conservation measures and management techniques.

(13) A review and evaluation of statutes, rules, policies and institutional arrangements for the development, conservation, distribution and emergency management of water resources.

(14) A review and evaluation of water resources management alternatives and recommended programs, policies, institutional arrangements, projects and other provisions to meet the water resources needs of each region and of this state.

(15) Proposed methods of implementing various recommended actions, programs, policies, projects or management activities.

(d) The State Water Resources Management Plan shall consider:

(1) The interconnections and relationships between groundwater and surface water as components of a single hydrologic resource.

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(2) Regional or watershed water resources needs, objectives and priorities.

(3) Federal, state and interstate water resource policies, plans, objectives and priorities, including those identified in statutes, rules, regulations, compacts, interstate agreements or comprehensive plans adopted by federal and state agencies and compact basin commissions.

(4) The needs and priorities reflected in comprehensive plans and zoning ordinances adopted by a county or municipal government.

(5) The water quantity and quality necessary to support reasonable and beneficial uses.

(6) A balancing and encouragement of multiple uses of water resources, recognizing that all water resources of this state are capable of serving multiple uses and human needs, including multiple uses of water resources for reasonable and beneficial uses.

(7) The distinctions between short-term and long-term conditions, impacts, needs and solutions to ensure appropriate and cost-effective responses to water resources issues.

(8) Application of the principle of equal and uniform treatment of all water users that are similarly situated without regard to established political boundaries.

(e) Each November, the secretary shall report to the Joint Legislative Oversight Commission on State Water Resources on the implementation of the State Water Resources Management Plan.

(f) The State Water Resources Management Plan is adopted. Persons identified as large-quantity users prior to the effective date of this subsection shall report actual monthly water withdrawals, or monthly water withdrawals by a method approved by the secretary, for the previous calendar year by March 31 of each succeeding year. Persons identified as large-quantity users on or after the effective date of this subsection shall submit their initial annual report no later than March 31, 2016, and subsequent annual reports by March 31 of each year thereafter.

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§22-26-9. Regional water resources management plans; critical planning areas.

(a) As part of the state Water Resources Management Plan, the secretary may designate areas of the state as regional or critical water planning areas for the development of regional or critical area water resources management plans.

(b) The secretary shall establish a timetable for completion of regional and critical area plans which may be developed.

(c) The secretary shall identify all federal and state agencies, county commissions, municipal governments and watershed associations that should be involved in the planning process and any compacts or interstate agreements that may be applicable to the development of a regional or critical area water resource management plan.

(d) The secretary shall establish the minimum requirements for any issues to be addressed by regional and critical area plans within twelve months of the amendment and reenactment of this article during the two thousand eight regular session of the Legislature. The plan requirements and issues to be addressed by regional and critical area plans shall be consistent with the state plan requirements of this article.

(e) The secretary shall establish timetables for the completion of tasks or phases in the development of regional and critical area plans. County commissions and municipal governments may recommend changes in the order in which the tasks and phases must be completed. The secretary shall have final authority to determine the schedule for development of a plan.

(f) Any county or municipal government may enter into an agreement with the secretary to designate a local planning area and develop a local plan which may include all or part of a region. The secretary shall assist in development of any such plan to the extent practicable with existing staff and funding.

(g) Plans developed by a county or municipal government shall comply with the secretary's requirements and shall be filed as part of the state Water Resources Management Plan.

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