

1 §22-26-8 of the Code of West Virginia, 1931, as amended, be amended
2 and reenacted, all to read as follows:

3 **ARTICLE 26. WATER RESOURCES PROTECTION ACT.**

4 **§22-26-1. Short title; legislative findings.**

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

7 (b) *Legislative findings.* --

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

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

21 (3) The West Virginia Legislature further finds that the water
22 use survey conducted by the department of ~~Environmental Protection~~
23 is a valuable tool for water resources assessment, protection and

1 management.

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

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

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

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

23 **§22-26-2. Definitions.**

1 For purposes of this article, the following words have the
2 meanings assigned unless the context indicates otherwise:

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

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

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

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

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

22 (f) "Department" means the West Virginia Department of
23 Environmental Protection.

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

5 ~~(g)~~ (h) "Industrial well" means a well used in industrial
6 processing, fire protection, washing, packing or manufacturing of
7 a product excluding food and beverages or similar nonpotable uses.

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

10 ~~(I)~~ (j) "Large-quantity user" means any person who withdraws
11 over ~~seven~~ three hundred ~~fifty~~ thousand gallons of water in ~~a~~ any
12 ~~calendar month~~ thirty-day period from the state's waters and any
13 person who bottles water for resale regardless of quantity
14 withdrawn.

15 ~~(j)~~ (k) "Maximum potential" means the maximum designed
16 capacity of a facility to withdraw water under its physical and
17 operational design.

18 ~~(k)~~ (l) "Noncommunity nontransient water system" means a
19 public water system that serves at least twenty-five of the same
20 persons over six months per year. (l) "Nonconsumptive withdrawal"
21 means any withdrawal of water which is not a consumptive withdrawal
22 as defined in this section.

23 (m) "Person", "persons" or "people" means an individual,

1 public and private business or industry, public or private water
2 service and governmental entity.

3 (n) "Secretary" means the Secretary of the West Virginia
4 Department of Environmental Protection or his or her designee.

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

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

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

22 (r) "Watershed" means a hydrologic unit ~~utilized~~ used by the
23 United States Department of Interior's geological survey, adopted

1 in 1974, as a framework for detailed water and related
2 land-resources planning.

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

10 **§22-26-3. Waters claimed by state; water resources protection**
11 **survey; registration requirements; agency**
12 **cooperation; information gathering.**

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

1 article.

2 (b) The secretary shall conduct an ongoing water resources
3 survey of consumptive and nonconsumptive surface water and
4 groundwater withdrawals by large-quantity users in this state. The
5 secretary shall determine the form and format of the information
6 submitted, including the use of electronic submissions. The
7 secretary shall establish and maintain a statewide registration
8 program to monitor large-quantity users of water resources of this
9 state beginning in 2006.

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

1 (d) Except as provided in subsection (f) of this section,
2 large-quantity users who withdraw water from a West Virginia water
3 resource shall comply with the survey and registration requirements
4 of this article. Registration shall be maintained annually by
5 every large-quantity user ~~by certifying,~~ on forms and in a manner
6 prescribed by the secretary. ~~that the amount withdrawn in the~~
7 ~~previous calendar year varies by no more than ten percent from the~~
8 ~~users' baseline average or by certifying the change in usage.~~

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

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

16 (g) All state agencies and local governmental entities that
17 have a regulatory, research, planning or other function relating to
18 water resources, including, but not limited to, the State
19 Geological and Economic Survey, the Division of Natural Resources,
20 the Public Service Commission, the Bureau for Public Health, the
21 Commissioner of the Department of Agriculture, the Division of
22 Homeland Security and Emergency Management, Marshall University,
23 West Virginia University and regional, county and municipal

1 planning authorities may enter into interagency agreements with the
2 secretary and shall cooperate by: (i) Providing information
3 relating to the water resources of the state; (ii) providing any
4 necessary assistance to the secretary in effectuating the purposes
5 of this article; and (iii) assisting in the development of a state
6 water resources management plan. The secretary shall determine the
7 form and format of the information submitted by these agencies.

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

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

21 (j) The secretary shall, to the extent reliable water
22 withdrawal data is reasonably available from sources other than
23 persons required to provide data and participate in the survey and

1 registration, ~~utilize~~ use that data to fulfill the requirements of
2 this section. If the data is not reasonably available to the
3 secretary, persons required to participate in the survey and
4 registration are required to provide the data. Altering locations
5 of intakes and discharge points that result in an impact to the
6 withdrawal of the water resources ~~by an amount of ten percent or~~
7 ~~more from the consecutive baseline average~~ shall also be reported.

8 (k) The secretary shall report annually to the Joint
9 Legislative Oversight Commission on State Water Resources on the
10 survey results. The secretary shall also make a progress report
11 ~~every three years~~ annually on the ~~development~~ implementation of the
12 state water resources management plan and any significant changes
13 that may have occurred since the ~~survey report~~ State Water
14 Resources Management Plan was submitted in ~~2006~~ 2014.

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

21 (m) The secretary shall make recommendations to the Joint
22 Legislative Oversight Commission created in section five of this
23 article relating to the implementation of a water quantity

1 management strategy for the state or regions of the state where the
2 quantity of water resources are found to be currently stressed or
3 likely to be stressed due to emerging beneficial or other uses,
4 ecological conditions or other factors requiring the development of
5 a strategy for management of these water resources.

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

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

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

1 of alternative funding resources.

2 **§22-26-6. Mandatory survey and registration compliance.**

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

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

21 **§22-26-7. Secretary authorized to log wells; collect data.**

22 (a) In order to obtain important information about the
23 state's surface and groundwater, the secretary is authorized to

1 collect scientific data on surface and groundwater and to enter
2 into agreements with local and state agencies, the federal
3 government and private entities to obtain this information.

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

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

16 ~~(3)~~ (d) The drilling contractor shall submit to the secretary
17 a copy of the well completion forms submitted to the Division of
18 Health for a community water system, noncommunity nontransient
19 water system, transient water system, commercial well, industrial
20 or test well. The drilling contractor shall also provide the well
21 GPS location and depth to groundwater on the well report submitted
22 to the secretary.

23 ~~(4)~~ (e) Any person who fails to notify the secretary prior to

1 drilling a well or impedes collection of information by the
2 secretary under this section is in violation of the Water Resources
3 Protection and Management Act and is subject to the civil
4 administrative penalty authorized by section six of this article.

5 ~~(5)~~ (f) Any well contracted for construction by the secretary
6 for groundwater or geological testing must be constructed at a
7 minimum to well design standards as promulgated by the Division of
8 Health. Any wells contracted for construction by the secretary for
9 groundwater or geological testing that would at a later date be
10 converted to a public use water well must be constructed to comport
11 to state public water design standards.

12 **§22-26-8. State Water Resources Management Plan; powers and duty**
13 **of secretary.**

14 (a) The secretary ~~of the Department of Environmental~~
15 ~~Protection~~ shall oversee the development of a State Water Resources
16 Management Plan to be completed no later than November 30, ~~2013~~
17 2014. The plan shall be reviewed and revised as needed after its
18 initial adoption. The plan shall be developed with the cooperation
19 and involvement of local and state agencies with regulatory,
20 research or other functions relating to water resources including,
21 but not limited to, those agencies and institutions of higher
22 education set forth in section three of this article and a
23 representative of large-quantity users. The State Water Resources

1 Management Plan shall be developed ~~utilizing~~ using the information
2 obtained pursuant to said section and any other relevant
3 information available to the secretary.

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

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

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

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

22 (3) A plan for the development of the infrastructure necessary
23 to identify the groundwater resources of each region of this state,

1 including an identification of aquifers and groundwater basins and
2 an assessment of their safe yield, prime recharge areas, recharge
3 capacity, consumptive limits and relationship to stream base flows.

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

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

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

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

22 (B) Current or potential in-stream or off-stream uses that
23 contribute to or are likely to exacerbate natural low-flow

1 conditions to the detriment of the water resources.

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

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

10 (9) An assessment of flood plain and stormwater management
11 problems.

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

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

22 (12) An assessment of both structural and nonstructural
23 alternatives to address identified water availability problems,

1 adverse impacts on water uses or conflicts between water users,
2 including potential actions to develop additional or alternative
3 supplies, conservation measures and management techniques.

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

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

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

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

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

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

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

23 (4) The needs and priorities reflected in comprehensive plans

1 and zoning ordinances adopted by a county or municipal government.

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

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

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

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

15 (e) In November of each year, the secretary shall report to
16 the Joint Legislative Oversight Commission on State Water Resources
17 on the implementation of the State Water Resources Management Plan.
18 ~~The report on the water resources plan shall include benchmarks for~~
19 ~~achieving the plan's goals and time frames for meeting them.~~

20 (f) ~~Upon adoption of the state Water Resources Management Plan~~
21 ~~by the Legislature, the report requirements of this article shall~~
22 ~~be superceded by the plan and subsequent reports shall be on the~~
23 ~~survey results and the water resources plan. If the plan is not~~

1 ~~adopted a detailed report discussing the provisions of this section~~
2 ~~as well as progress reports on the development of the plan shall be~~
3 ~~submitted every three years.~~ The State Water Resources Management
4 Plan is hereby adopted. Persons identified as large-quantity users
5 prior to the effective date of this subsection shall report actual
6 monthly water withdrawals for the previous calendar year by March
7 31 of each succeeding year. Persons identified as large-quantity
8 users on or after the effective date of this subsection shall
9 submit their initial annual report no later than March 31, 2017,
10 and subsequent annual reports by March 31 of each year thereafter.

NOTE: This bill was recommended for introduction and passage by the Joint Legislative Oversight Commission on State Water Resources. The purpose of this bill is to amend the Water Resources Protection and Management Act to incorporate recommendations from the State Water Resources Management Plan (Plan). Those recommendations include: Changing the definition of a large-quantity user to a person who uses at least 300,000 gallons of water in any thirty-day period; Requiring large-quantity users to report actual water withdrawals or usage for a calendar year on an annual basis; Requiring any agency that contributes to funding the stream gage network to notify the Commission and the USGS if the agency cannot maintain its level of funding; Requiring drilling contractors or well owners to report the depth to groundwater of drilled wells; adopting the Plan; and Requiring the Department of Environmental Protection to report annually to the Commission on the implementation of the Plan and survey results.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.