

**SENATE CONCURRENT RESOLUTION NO. 73**

(By Senators Hall, Minard, McCabe and Browning)

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Urging the United States Environmental Protection Agency to interpret the West Virginia Water Pollution Act in a manner that will faithfully balance the protection of the environment with the need to maintain and expand opportunities for employment, agriculture and industry as set forth in the Legislature's statement of public policy as contained in the West Virginia Water Pollution Control Act.

Whereas, In enacting the Federal Water Pollution Control Act Congress declared that "it is the policy of Congress to recognize, preserve and protect the primary responsibilities and rights of states to prevent, reduce and eliminate pollution, to plan the development and use of land and water resources"; and

Whereas, As an exercise of its sovereign and primary right to plan the development and use of its lands and water resources the West Virginia Legislature previously enacted Chapter 22, Article 11 of the 1931 Code of West Virginia as amended, the West Virginia Water Pollution Control Act, and in that enactment declared it to be "the public policy of the State of West Virginia to maintain reasonable standards of purity and quality of the water of the

1 state consistent with: (1) Public health and enjoyment thereof; (2)  
2 the propagation and protection of animal, bird, fish, aquatic and  
3 plant life; and (3) the expansion of employment opportunities,  
4 maintenance and expansion of agriculture and the provision of a  
5 permanent foundation for healthy industrial development"; and

6       Whereas, The State of West Virginia has developed and  
7 implemented environmental protection performance and permitting  
8 standards to adequately protect the waters of the state consistent  
9 with this statement of public policy; and

10       Whereas, Such standards have been promulgated by the West  
11 Virginia Department of Environmental Protection and the Legislature  
12 and submitted to and approved by the United States Environmental  
13 Protection Agency pursuant to the federal Clean Water Act; and

14       Whereas, These environmental protections and permitting  
15 measures include narrative water quality standards codified at 47  
16 CSR 2-3; and

17       Whereas, West Virginia's narrative standards must be  
18 implemented and interpreted in a manner that is protective of  
19 aquatic communities consistent with the Legislature's statement of  
20 public policy and applicable laws; and

21       Whereas, The State of West Virginia has not adopted  
22 subcategories of special use to protect a certain species of mayfly  
23 but protects the aquatic community consistent with the  
24 Legislature's statement of public policy; and

1       Whereas, West Virginia's economic stability relies on the  
2 accurate implementation of applicable laws as enacted by the  
3 Legislature; and

4       Whereas, The current method in which the United States  
5 Environmental Protection Agency is interpreting the West Virginia  
6 Water Pollution Control Act is hindering economic development  
7 within the state which directly affects the employment  
8 opportunities available to all West Virginians; and

9       Whereas, The West Virginia Legislature would not enact  
10 legislation that would have a detrimental effect on the industrial  
11 progression of the state and cause or contribute to environmental  
12 degradation; therefore, be it

13       *Resolved by the Legislature of West Virginia:*

14       That the United States Environmental Protection Agency is urged  
15 to interpret the West Virginia Water Pollution Act in a manner that  
16 will faithfully balance the protection of the environment with the  
17 need to maintain and expand opportunities for employment,  
18 agriculture and industry as set forth in the Legislature's  
19 statement of public policy as contained in the West Virginia Water  
20 Pollution Control Act; and, be it

21       *Further Resolved,* That any interpretation and implementation of  
22 West Virginia's narrative water quality standards is the  
23 responsibility of the West Virginia Department of Environmental  
24 Protection; and, be it

1     *Further Resolved*, That the requirements of the narrative  
2 criteria are met when a stream: (a) Supports a balanced aquatic  
3 community that is diverse in species composition; (b) contains  
4 appropriate trophic levels of fish (in streams with sufficient  
5 flows to support fish populations); and (c) the aquatic community  
6 is not composed only of pollution-tolerant species, or the aquatic  
7 community is composed of benthic invertebrate assemblages  
8 sufficient to perform the biological functions necessary to support  
9 fish communities within the assessed reach (or, if the assessed  
10 reach has insufficient flows to support a fish community, in those  
11 downstream reaches where fish are present); and, be it

12     *Further Resolved*, That interpretation of West Virginia's  
13 narrative water quality standards must faithfully balance the  
14 protection of the environment with the need to maintain and expand  
15 opportunities for employment, agriculture and industry as set forth  
16 in the Legislature's statement of public policy as contained in the  
17 West Virginia Water Pollution Control Act; and, be it

18     *Further Resolved*, That the West Virginia Legislature encourages  
19 the United States Environment Protection Agency to change their  
20 current interpretation of the West Virginia Water Pollution Control  
21 Act to include the intent of the 72nd and subsequent Legislatures  
22 and the policy issued by the WVDEP in August 2010; and, be it

23     *Further Resolved*, That the Clerk of the Senate is hereby  
24 directed to forward a copy of this resolution to the West Virginia

1 Department of Environmental Protection, the United States  
2 Environmental Protection Agency, the Huntington District of the  
3 United States Army Corps of Engineers and other appropriate state  
4 and federal agencies; and, be it

5 *Further Resolved*, That the EPA is encouraged to accept the  
6 narrative water quality standards interpretive guidance issued in  
7 August, 2010, by the West Virginia Department of Environmental  
8 Protection which was developed by the agency consistent with the  
9 will and intent of the Legislature.