

## HB 175 Proponent Testimony

### Agriculture and Conservation Committee

May 4, 2021

Chairman Koehler, Vice Chairman Creech, Ranking Member Brent, and members of the Committee:

Thank you for the opportunity to provide testimony in support of HB 175. My name is Kristin Watt. I am a partner with the Vorys law firm located here in Columbus, Ohio. I have practiced environmental law for over 31 years. I am here on behalf of a coalition of industry groups, including the Ohio Oil & Gas Association and the Ohio Home Builders Association, among others, who have been engaged in a decades-long debate with regulators regarding what water features are/are not “Waters of the United States” and “Waters of the State” – which dictates whether impacts to certain features are/are not regulated. HB 175 would provide much needed clarity and resolution of the issue by helping to align these two definitions with the revision of Ohio Revised Code 6111 to expressly *exclude* “ephemeral features” from the definition of “Waters of the State.” “Ephemeral features” are excluded from the federal definition of “Waters of the United States.” This legislative amendment will eliminate unnecessary and costly administrative burdens on industries critical to Ohio’s economy, including the production of mineral resources, aggregates, and commercial and residential development.

Under existing Ohio law, "Waters of the state" is broadly defined as

all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

As it is currently defined, “Waters of the State” includes ephemeral features, which is inconsistent with the federal Clean Water Act. In 2020, the U.S. EPA and U.S Army Corps of Engineers revised the definition of “waters of the United States” (WOTUS) to exclude ephemeral streams. Ephemeral streams flow only in direct response to rainfall. They are geomorphically unstable features that provide little to no water storage during a storm event and, thus, have little to no biological function. Instead, ephemeral streams are pathways that reduce resistance to flow and increase the velocity of runoff from the watershed, thereby serving as a mechanism transporting silts and clays further downstream in the watershed.

HB 175 would align Ohio’s law with current federal law and effectively de-regulate ephemeral streams. This will reduce administrative burdens and costs currently associated with having to mitigate for impacts to these streams, which impedes economic development projects across the state.

Finally, it should be noted that Indiana Senate Bill 389, which deregulated ephemeral streams *and* certain isolated wetlands, was signed into law on April 29, 2021. The protection of isolated wetlands is firmly entrenched in Ohio law, and HB 175 will not change that. HB 175 is not “anti-environment” nor will it reduce the protection of other water features already provided for in federal regulations. The continued regulation of ephemeral features, however, puts Ohio at a competitive disadvantage from many other states across the country as it relates to the cost of development and what property owners can and cannot do with their property.

HB 175 will remedy Ohio’s current economic disadvantage, align state law with the federal WOTUS rule, and provide industry with much needed regulatory certainty.

Thank you for your time and consideration. I am happy to answer any questions, and I urge your support of HB 175.