



**Opponent Testimony of National Wildlife Federation
HB 175 Deregulation of Ephemeral Stream features
Presented to the House Agriculture and Conservation Committee**

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Chairman Koehler, Vice Chair Creech, Ranking Member Brent, and members of the committee, thank you for the opportunity to provide testimony on HB 175. My name is Gail Hesse and I am the Great Lakes Water Program Director for the National Wildlife Federation (NWF), America's largest conservation organization. Prior to joining NWF, I spent a career with the State of Ohio working towards clean water. I served for more than 25 years with Ohio EPA's water programs, working in both regulatory and incentive-based programs, including the section 401 water quality certification program early in my career. I also served as executive director of the Ohio Lake Erie Commission where I served as chair of the Ohio Lake Erie Phosphorus Task Force and as a member of the binational work group that developed the nutrient reduction targets for Lake Erie. Since coming to the National Wildlife Federation, I have been active in the programs and policies to address the critical water quality issues facing the Great Lakes. I am an active member of the broad coalition of agriculture and environmental stakeholders working to support Ohio's H2Ohio program.

The National Wildlife Federation is strongly opposed to HB 175. Surface waters are connected systems, and ephemeral streams are part of the pathway to larger and larger streams and rivers. Each part of that pathway has a part to play in healthy ecological function. To remove part of this system from Ohio's regulatory programs removes the scientific review for potential impacts and subsequent consequences to ecological functioning.

Ecologist and President of the Ohio Wetlands Association Mark Dilley compares ephemeral streams to the capillaries in our bodies' circulatory system: they are small and numerous and necessary. Dr. Mazeika Sullivan at Ohio State University has made the analogy of ephemeral streams to the adrenalin and insulin in our bodies, we need them, just not all of the time. And just as any doctor does not ignore any of these critical functions to our overall health, nor should we ignore the functions of ephemeral features in the health of Ohio's surface water integrity.

During the proponent testimony there was much discussion of the perceived broad reach of regulation affecting ephemeral streams and concerns were expressed about homeowners disconnecting downspouts, agricultural producers unable to manage their fields and best management practices as replacements for ephemeral streams. In reality, ephemeral streams are only subject to state regulations that govern the discharge of dredged or fill material (something a homeowner does not do if disconnecting a downspout). Further, Ohio has a general permit

with this regulation that establishes certain thresholds for allowable activities. The Ohio general permit states “Ephemeral streams do not include agricultural and roadside ditches, grass swales, erosional features, or other artificial channels constructed wholly in uplands that do not relocate an existing stream.”

Projects that involve the discharge of dredged or fill material often require best management practices as part of the permitted activity. These practices are designed to address the temporary disturbances during the project such as erosion or water runoff from the site. These practices are designed to be temporary as well, and not as permanent replacements for natural features, nor are they “better” than natural features as was discussed during proponent testimony. Not all regulated impacts to ephemeral streams require mitigation or payment of a mitigation credit. These requirements only affect projects impacting 300 feet or more in length and permittees have the flexibility of purchasing mitigation credits or conducting their own on-site mitigation, a flexibility not raised in proponent testimony.

HB 175 is being proposed to align with the recent federal Navigable Waters Protection Rule, a rule that removes significant protection for the nation’s waters. The federal rule is not based on scientific merit nor are there any methodologies developed to interpret and implement this rule. To attempt to align HB 175 with the federal rule is short-sighted and premature as the federal rule is now being reconsidered. Ohio should avoid hasty promulgation of regulation that provides lesser protection for its waters, a shared resource for all Ohioans.

We are also greatly concerned with the proposed change in terminology from ephemeral stream to ephemeral feature. This term is ambiguous and has no scientific definition. The current definition states that an ephemeral stream must include a channel bottom and contain an ordinary high water mark providing specificity as to what is and is not regulated by the filling of dredged or fill material. Given the longstanding deliberation over the federal navigable waters rule, it is not in Ohio’s interest to introduce regulation that creates additional confusion about what exactly is an ephemeral feature and how existing regulations will or will not be impacted. This terminology has significant implications for vernal pools and other isolated wetlands. We need clarity and predictability with our surface water regulations, not confusion.

The State of Ohio is making an important investment in clean water with the H2Ohio program. Through the ecological functions of processing nutrients, sediment and other pollutants as well as dissipating the energy of water flow, we know that ephemeral surface waters provide benefits and protection of downstream water quality and aquatic use designations in Ohio’s water quality standards. HB 175 has the potential to undermine the benefits being realized under the H2Ohio program.

Chairman Koehler and Members of the Agriculture and Conservation Committee, thank you for the opportunity to provide comment on HB 175.

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