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May 17, 2021

Representative Juanita O. Brent, District 12
Ranking Member, House Agricultural and Conservation Committee
Ohio House of Representatives
77 South High Street, 13th Floor
Columbus, OH 43215

via email

Re: Written Testimony House Bill 175 – Deregulation of Ephemeral Features

Chagrin River Watershed Partners strongly opposes House Bill 175 because it would eliminate protections for streams that support clean water for people across Ohio.

According to the Ohio Environmental Protection Agency, more than 36,000 miles of streams throughout Ohio are classified as Class 1 Primary Headwater Streams (ephemeral). This represents 31.6% of all primary headwater habitat streams in the State. Located in the sensitive headwaters of watersheds, ephemeral streams, are those that contain flowing water only after major rain events or for very short times during the year. While they do not flow continuously, these streams are important to aquatic ecosystems and watersheds as a whole because they trap pollutants, dissipate energy and maintain stream energy dynamics which helps to reduce flooding, and improve aquatic conditions in larger streams to support healthy fish populations. The American Sportfishing Association estimated that 2,610,700 anglers spent \$2.1 billion while fishing in Ohio and sportfishing supported 16,780 jobs in 2018. Our water quality fundamentally depends on these small streams.

Healthy watersheds filter and store water, filter air, store and cycle nutrients, build soils, and provide many other intrinsic social and cultural values. Much research has shown that the health of small headwater streams impacts the larger streams they feed into as well as receiving waters like Lake Erie, which provides drinking water for over 11 million people and supports a coastal tourism economy that generates over \$15 billion annually. According to Ohio EPA, the majority of impacts from nonpoint source pollution occurs in the upper parts of the watersheds of larger streams where ephemeral streams are located.

There is clear scientific evidence that ephemeral streams play an important role for human and environmental health, and detrimental impacts to them will result in harmful impacts to other bodies of water and eventually to the water we drink. Ohio has already lost around 90% of its historic wetlands and more would be threatened under this proposed legislation.

The State of Ohio used its legal authority to continue regulatory protections for ephemeral streams to ensure drinking water quality was protected for all Ohioans even after key portions of the Clean Water Act were rolled back in 2020. HB 175 will remove protections for ephemeral streams and open them up to pollution and degradation. Ohio as a state has the authority to cover the two types of waterways that the federal rule removed protections on by defining what is a “Water of the State” and therefore what has regulator protection in Ohio restricting pollution and degradation. “Waters of the State” under current Ohio Revised Code 6111.01 includes:

1. “all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs...” (Ohio EPA takes the position that “all streams” includes ephemeral streams that only receive water when it rains);
2. irrigation systems and drainage systems; and
3. underground waters (i.e. groundwater).

Based on this definition of “waters of the state” more waterways, including groundwater, are protected under state law than the Clean Water Act as defined in the Navigable Waters Rule. Unfortunately, HB 175 would undo this protection.

The State Scenic Chagrin River drains 267 square miles of land to Lake Erie in northeast Ohio. The watershed is home to high quality aquatic habitat and forests, including coldwater streams that are home to the native Ohio brook trout; however, the watershed is also impacted by development pressure and encroachment on headwater streams. Chagrin River Watershed Partners (CRWP) is a non-profit technical organization formed in 1996 by communities, counties, and park districts in response to concerns about flooding, erosion, and water quality problems in the Chagrin watershed. Today, CRWP’s skilled team of experts works with 36 member communities, counties and park districts as well as partners across Ohio’s Central Lake Erie basin to protect and restore streams, wetlands, and forests that provide clean water for homes, businesses, and wildlife.

Ohio’s streams, rivers and Lake Erie are already threatened by development, pollution and climate change. House Bill 175 will exacerbate these threats and undermine decades of investment by taxpayers to clean and protect our water and irreparably damage our watersheds, including proposed investments under the H2Ohio program. By allowing ephemeral streams to be dredged, filled, polluted, or otherwise damaged without a permit, House Bill 175 will degrade water quality, contribute to increased flooding and erosion damages, and jeopardize safe drinking water for millions of Ohioans. The State of Ohio should strengthen protection of our watersheds and drinking water rather than allowing degradation of these key environmental and economic resources.

Sincerely,



Heather Elmer
Executive Director

cc.

J. Kyle Koehler, District 79, Chair, House Agricultural and Conservation Committee