



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

**Gail Hesse, National Wildlife Federation  
September 28, 2021**

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. 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.

The National Wildlife Federation continues to be 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.

The amendments that will be presented today do not change the impact of the bill. The proposed amendment only allows Ohio EPA to enforce sections 3734 (Solid and Hazardous Wastes) and 3714 (Construction and Demolition Debris) of the Revised Code, but explicitly eliminates the director's enforcement authority under section 6111 (Water Pollution Control). The authority under section 6111 provides the review to determine the actions and activities necessary for the healthy ecological functioning of Ohio's water resources and must be maintained.

In 2020, Ohio EPA issued a general permit for ephemeral streams and level one isolated permits. Prior to issuing the general permit, Ohio EPA pursued a deliberative approach with stakeholder outreach and the opportunity for public comment to allow for these issues to be fully vetted. HB 175 is duplicating the debate of what has already undergone public review and administrative process. The general permit clearly defines thresholds for what activities are subject to review and what is exempted. HB 175 only serves to confuse what has been previously deliberated and resolved.

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. Ohio addressed alignment with

the federal rule with the issuance of the 2020 general permit. The federal rule is now being reconsidered and Ohio needs to avoid a ping pong approach to legislation for the protection of water resources that are critical for all Ohioans.

We remain concerned with the terminology of 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.

Gail Hesse  
Director, Great Lakes Water Programs  
National Wildlife Federation

A handwritten signature in blue ink that reads "Gail A. Hesse". The signature is written in a cursive style with a large initial "G" and "H".