



Senate Bill 89 (2025) **“An Act Relating to Environmental Protection and Declaring an Emergency”**

Senate Bill 89 (Senator S. Madon) (Strong Oppose)

Removes protections for many streams, headwaters and all groundwater. Groundwater, which is the source of drinking water for 31% of Kentucky’s population, and is used by Kentucky’s farmers for irrigation and farmstead uses, is not protected under the federal Clean Water Act, and would no longer be protected against pollution in Kentucky.

According to University of Kentucky, Kentucky Geological Survey (2020), more than 1.5 million Kentuckians are served by public water-supply systems that rely on groundwater, and 416,000 Kentuckians use water wells or springs.

Summary of what Senate Bill 89 does:

- Limits the definition of "water" or "waters of the Commonwealth" to "waters of the U.S." (WOTUS) as opposed to its current definition which includes all surface and groundwater.
- Requires that for any permit identified by the cabinet as requiring long-term treatment, the cabinet shall calculate an additional bond amount based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by a factor of 25, plus any capital cost of the treatment system.

Why is this important?

- Kentucky has its own water quality protections, regulations, and programs that include waters beyond the federal definition.
- Kentucky will now severely limit what waters it can regulate.
- By limiting protections of Kentucky waters, water treatment costs will likely rise, making drinking water and utility costs even more unaffordable.
- Superfund cleanups would no longer have to consider groundwater protection. Whether a remedy was protective of public health it would no longer have to consider groundwater pathways of exposure, since groundwater would no longer be a “water of the Commonwealth.”

Background:

- [The U.S. Environmental Protection Agency](#) (EPA) and the U.S. Army Corps of Engineers (USACE) announced a final definition of “Waters of the United States” in



Kentucky Conservation Committee

Established 1975

December 2022. The rule took effect in March 2023. However, litigation is ongoing, and the agencies are interpreting WOTUS differently in different states.

- In 24 states, the District of Columbia, and the U.S. Territories, the agencies are using the January 2023 Rule. In the other 26 states, the agencies are using the pre-2015 regulatory regime.
- Congress allows federal regulatory agencies to determine the definition of “waters of the U.S.” When new administrations are elected, the definition flip flops depending on the agenda of the new administration. The lack of consistency leaves the regulators, regulated, and other parties uncertain about how to comply. By tying the definition of “waters of the Commonwealth” to the federal regulation, the meaning of that term will now also be subject to the same inconsistency with each new administration.
- The Legislature should not interfere with the ongoing regulatory review of long term mitigation bonding requirements. And if it does, it must ensure that the bond amount will be adequate to complete reclamation in the event of forfeiture. Otherwise, the state and taxpayers will be on the hook to pay for a permittee’s failure to clean up and restore its site.

What can you do to oppose the bill?

(the bill has passed the Senate and is now in the House)

- Call the Kentucky Legislative Message Line at (800) 372-7181
- Send a letter or email to your legislators
<https://legislature.ky.gov/Legislators/house-of-representatives>
- Spread the word to others about the bill