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SECRETARY

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Members of the Kentucky House of Representatives
Capital Annex
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Sent Electronically

Dear Representatives:

We are reaching out to provide comments on Senate Bill 89 and the House Committee Substitute, which passed the House Committee on Natural Resources and Energy this morning. The Energy and Environment Cabinet finds this legislation and its committee substitute very concerning. The bill threatens the water quality of many Kentucky rivers, streams, and tributaries and, as a result, would significantly compromise Kentucky's groundwater, impacting the water quality of more than 31,000 private use wells and at least 156 public water systems. Attached are two maps that illustrate the magnitude of the situation regarding the impact groundwater has on these wells and water systems that use groundwater as their source water.

If adopted, the bill amends the existing definition of "water" and "waters of the Commonwealth" to include only navigable waters as the term is defined by federal law, specifically 33 U.S.C. §1362, and a few water and geologic features that do not sufficiently address protection of groundwater. *By relying primarily on the federal definition of the term, this bill would make Kentucky the only state in the United States to cede its authority to define its waters to the federal government and jeopardize state regulatory primacy.* This is not where Kentucky needs to be the exception. The House Committee Substitute does little to change this important fact.

The bill would require additional treatment for drinking and wastewater because fewer source waters would be protected, which would significantly impact water quality downstream. The increased costs of additional water testing would be passed down to Kentuckians through utility rate increases – an extra cost Kentuckians do not need to bear in the face of rising costs at the grocery store and the gas pump.

The House Committee Substitute does not address groundwater aquifers and would provide no protection for the state's residents who have domestic use wells, including Kentucky's farmers, and those who rely on water systems whose source water comes from groundwater. These 156 public water systems serve 558,624 connections, with an estimated population impact of over 1,500,000 Kentuckians, and additional impacts to nursing homes, schools, hospitals, parks, mobile home parks

and hotels. The impact also includes three bottled water companies that bottle and distribute groundwater across the Commonwealth.

Additionally, the House Committee Substitute includes geological features and geographic areas in its definition of Waters of the Commonwealth, which are not “waters” and, therefore, do not address groundwater concerns. Specifically, Wellhead Protection Areas (WPA) are geographic areas where certain activities are prohibited because of their proximity to a water well or wellfield supplying water to a public water system. Inclusion of WPAs in the definition of Waters of the Commonwealth does not add protection for the wells themselves because WPAs exist to protect public water supplies, not the individual water wells. Similarly, sinkholes with open throats are geologic features and are not “water.” Inclusion of these features in the definition of Waters of the Commonwealth does not address groundwater.

Notable in the House Committee Substitute are waterways and water sources that it does not include and, therefore, leaves unprotected. House Committee Substitute only includes springs used as a domestic water supply and does not capture all springs. The only type of groundwater covered under the committee substitute is water that both emerges from a spring *and* provides a source for a domestic water supply. This qualification is too narrow and leaves groundwater impacting millions of Kentuckians unprotected.

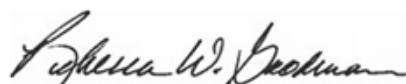
Additionally, the House Committee Substitute does not include in its classification of protected waters lakes and impounding reservoirs without a continuous surface connection. The exclusion of these waters from the definition of Waters of the Commonwealth would leave lakes/reservoirs used for drinking water supply and recreation unaddressed. Kentucky has many of these surface water features that would not meet the classification of Waters of the United States and, as such, these features would not be protected under the House Committee Substitute.

Water is a valuable resource to Kentuckians. Degrading the Commonwealth’s waters to the point that water quality is decreased, while costs increase, will negatively affect economic development opportunities for Kentucky.

With respect to concerns that have been voiced regarding permitting delays, Senate Bill 89 and its House Committee Substitute remain overly broad and apply a machete to an issue that needs a scalpel, at a cost to Kentuckians. The Cabinet’s goal is to enforce the law in order to protect Kentuckians and their natural resources. This most important of outcomes is essential so that individuals and industry can be protected. Delays in issuing permits may occur as the applicants resolve administrative and technical deficiencies.

For these reasons, the Cabinet has grave concerns with SB 89 as amended by the House Committee Substitute. We appreciate your consideration of these concerns and the impact this legislation would have on the water quality of the Commonwealth and, in turn, its citizens.

Sincerely,



Rebecca Goodman, Secretary
Energy and Environment Cabinet