



## **SB 89: NARROWING PROTECTIONS FOR KENTUCKY'S WATERS**

### **What does SB 89 do?**

Senate Bill 89 redefines "waters of the Commonwealth" as it is used in KRS Chapter 224, to limit protections against pollution and damage to only those waters that are defined as "navigable waters" under the federal Clean Water Act. That Act defines "navigable waters" as "waters of the United States, including the territorial seas" and provides authority for the U.S. Environmental Protection Agency and the U.S. Department of the Army to define "waters of the United States" in regulations.

Because the reach of federal law is limited to pollution affecting interstate waters, the protections against pollution in the Clean Water Act have **never** reached **all** Kentucky waters of state concern.

Kentucky law now defines "water" and "waters of the Commonwealth" broadly to cover both surface water and groundwater, including "any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction." KRS 224.1-010(32). By narrowing the definition of "waters of the Commonwealth" to remove all waters that are not "navigable" under the federal Clean Water Act, SB89 will end protections for all groundwater, as well as many of the upper reaches of stream and river systems in Kentucky.

### **What are the implications for Kentucky waters if SB 89 passes?**

#### **All protections of groundwater from pollution would be eliminated.**

Groundwater is not protected under the federal Clean Water Act and would no longer be protected against pollution in Kentucky. Water supplied from wells for drinking water, for businesses, and for farms, would lose protection. More than 1.5 million Kentuckians are served by public water-supply systems that rely on groundwater, and 416,000 Kentuckians get their drinking water from wells or springs.

**Dumping or discharging pollution into all headwater streams would no longer be limited or prohibited, compromising downstream water quality.**

Kentucky's rivers and streams all begin with headwaters – the upper ephemeral reaches of stream systems that flow only in response to rainfall, but which are critical for slowing floodwaters, filtering pollutants, and supporting aquatic ecosystems. These headwater “ephemeral streams” are largely excluded from federal law protections, and this bill would remove all protections of these waters under state law. Discharging or dumping hazardous substances, pollutants, or contaminants into headwater streams would no longer be prohibited. Removing pollution protections for these essential parts of our river systems will lower water quality downstream.

**More water pollution would be allowed across the Commonwealth.**

Kentucky's general prohibition against water pollution in KRS 224.70-110 would no longer apply to many ephemeral headwater stream reaches or any groundwater, with far-reaching implications. The Cabinet would no longer be able to require permits, to impose limits, or to require sampling or reporting of pollution in order to protect downstream water quality. Direct discharges or dumping of pollutants into upper reaches of streams that are not regulated under federal law would not be subject to any state permit, any controls, or any limits. Other Kentucky laws prohibiting water pollution as to these waters would also be weakened. For example, timber harvest operations would no longer have to consider avoiding pollution to headwater streams under KRS 149.344(2).

**All protections for off-stream constructed lakes, water storage reservoirs, and for farm, irrigation, stock watering ponds** would be removed. Lakes, ponds, and water storage reservoirs, that are constructed upland rather than by impounding regulated streams, would lose all protections against pollution.

**Regulation of public drinking water systems** could be at risk because the authority of the Cabinet over water distribution and purification systems using groundwater would be eliminated.

**Pollution** of groundwater and pollution of streams by dumping into ephemeral streams would no longer be punishable by civil penalties.

**Water quality in downstream reaches would be compromised.** The upper reaches of stream systems are an essential part of the Kentucky's river systems, and removing protections against pollution will lower water quality downstream.

**Treatment costs for city and county water systems could increase.** Public water systems rely on the state Cabinet to control discharges of pollution into the streams and rivers from which they withdraw water for treatment and sale to customers.

Lower water quality due to loss of pollution controls over headwater stream reaches could increase water treatment costs to water users.

**Costs of pollution controls for permitted industries could rise.** If loss of control over upstream pollution causes downstream water quality to decline, regulatory controls on downstream impaired waters may result in more stringent limits and higher costs for discharges from downstream permittees.

**Discharging or dumping hazardous substances, pollutants, or contaminants into headwater streams would no longer be prohibited,** and the Cabinet would lack authority to enter property during or to prevent an environmental emergency affected headwater streams; or to require cleanup of releases of hazardous substances to groundwater or ephemeral streams. KRS 224.1-400.

**Waste sites like landfills would no longer have to protect against pollution of groundwater or headwater streams.** The environmental performance standards for landfills, land application of sludges, and other waste sites would no longer be required to protect groundwater and headwater streams from pollution.

**Superfund cleanups would no longer have to consider groundwater protection.** Whether a remedy was protective of the public health would no longer have to consider groundwater pathways of exposure.

**Downstream flooding may become worse.** If the Cabinet is prevented from controlling dumping of wastes into and destruction of all headwater stream reaches, sediment loading and increased runoff rates may worsen flooding.

**Kentucky's protected waters will be defined by a federal regulatory definition that is still in flux.** We don't need Washington to tell us that Kentucky's waters are precious, and that from headwater to mouth, **all** Kentucky's waters should be protected from indiscriminate pollution.

**We all live downstream, and Kentuckians deserve clean water for drinking, irrigation, recreation, and fishing, and for industries and businesses.**