



Post Office Box 1070
Frankfort, Kentucky 40602
502-875-2428
hello@kyrc.org
www.kyrc.org

KRC Attorney Audrey Ernstberger's testimony before the House Natural Resources Committee on March 12, 2025 in opposition of SB 89

Chairman and Committee Members,

My name is Audrey Ernstberger, I'm an attorney and lobbyist for Kentucky Resources Council, Inc., a non-profit environmental law-firm offering services across the Commonwealth to those that are downwind and downstream of environmental pollution.

Thank you for giving me the opportunity to testify in opposition to SB 89 and its committee amendment. Let me start by saying that all Kentucky's waters deserve the continued protections they have had for decades under our state laws, which this bill strips away. This amendment does nothing to alleviate the devastating consequences that Senate Bill 89 will have on the water resources that Kentuckians rely on for drinking water, recreation, fishing, watering livestock, and crop irrigation. It leaves most groundwater and 89,000 domestic use and agricultural wells unprotected from pollution – impacting rural Kentuckians most directly.

This bill: with narrow exceptions, limits protections against pollution to only those waters that are defined as "navigable" under the federal Clean Water Act. This definition fails to cover tens of thousands of miles of waters across the Commonwealth that are critical for the health of Kentuckians. The waters impacted by this bill include karst aquifers and other vital groundwater resources since they are not regulated under the Clean Water Act.

It also removes protections for Kentucky's ephemeral streams—those that flow in response to rainwater and snowmelt— which mitigate floodwaters and are crucial to the health of our river systems. In Kentucky, about 65% of our streams and rivers are ephemeral or intermittent, and over 3 million people receive drinking water from public water systems that rely at least in part on streams that will lose protections under this bill.

Allowing unregulated pollution into these streams will lower water quality downstream -- increasing costs for our drinking water systems and downstream dischargers that will need additional pollution controls.

SB 89 also excludes off-stream ponds, reservoirs, and headwaters. To say that none of these water sources require the same level of protection as our rivers and lakes is not just irresponsible—it's dangerous.

SB 89's new definition of "waters of the Commonwealth" also completely ignores the reality of Kentucky's geography. Sinkholes, which are not a water resource, are included in the amended definition, while the crucial karst aquifers that supply drinking water to so many rural Kentuckians are left unprotected. The bill does nothing to safeguard these karst underground water systems that are particularly vulnerable to contamination. Karst aquifers are a fragile but vital water source in Kentucky, and their exclusion from this bill's protections shows a misunderstanding and lack of appreciation for our state's unique water systems.

The amendment's addition of wellhead protection areas may help some cities that rely on groundwater for public drinking water but does absolutely nothing for the tens of thousands of homes, farms, and businesses in rural Kentucky that rely on groundwater from private wells. It fails to protect wells in fracture-flow dominated groundwater aquifers in eastern Kentucky, alluvial wells across the state, and countless others that are vital to the daily lives of Kentuckians. SB 89 exposes rural communities to pollution risks that could devastate local economies and health.

Senate Bill 89 will also substantially weaken the regulation of waste disposal and will remove protections for groundwater in hazardous substances spills and clean-up efforts. If our "environment" under our state hazardous spill response law no longer includes groundwater or headwater streams, since they are written out of "waters of the commonwealth," there would be no accountability when these waters are contaminated. No reporting. No action. No clean-up.

SB 89 is a free pass for pollution and a betrayal to Kentucky's most precious resource—its water. The bill's failure to address these concerns is not an oversight, it's a deliberate choice to cater to the interests of a few at the expense of the many. We cannot afford to gut our water protections- Kentuckians literally cannot afford increased prices for water treatment costs that the lessening of pollution controls for headwaters and groundwater would impose on downstream water users. This bill is an absolute affront to every person who depends on clean, safe water to live, work, and thrive in this state.

I strongly urge you to reject SB 89. Kentucky deserves better.

Thank you.