
SUBSTITUTE SENATE BILL 5882

State of Washington

67th Legislature

2022 Regular Session

By Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Muzzall, Mullet, Honeyford, Sefzik, Short, and Van De Wege)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to clarifying the existence of riparian stock
2 watering rights; amending RCW 90.03.010; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that riparian
5 rights derive from the ownership of land that abuts surface water.
6 These rights were initially granted as part of the federal land
7 grants pursuant to the donation land claim act and the homestead act.
8 Because livestock were essential for the cultivation of the land,
9 riparian rights for stock watering were included in those land grants
10 and therefore date to the inception of title by the government
11 patentee. The territorial legislature recognized riparian rights when
12 adopting English common law in 1862. Provision for the condemnation
13 of riparian rights in the 1890 act makes clear that riparian rights
14 continued to exist. Common law continued to acknowledge the existence
15 of riparian rights even as the state moved towards an appropriative
16 system. The Washington state supreme court recognized a "California"
17 or dual system of riparian and appropriative rights in 1897.

18 (2) In 1917, the water code was enacted and is now codified in
19 chapter 90.03 RCW. RCW 90.03.010 states that the 1917 water code
20 could not be construed to "lessen, enlarge, or modify the existing

1 rights of any riparian owner." Riparian rights are also included in
2 the statutes that dictate the process for adjudication.

3 (3) Purportedly, the only purpose of limiting riparian rights is
4 to further the state policy of encouraging beneficial use. Any taking
5 of riparian rights can only be done through a legal process with full
6 compensation. In fact, riparian rights may only be limited through
7 eminent domain and condemnation actions. The legislature finds that
8 there are legal structures in place if riparian rights are to be
9 limited for any purpose.

10 (4) Stock watering has been already found to be a beneficial use
11 of water as recognized by the exception to the requirement of a
12 certificated water right to groundwater use. Currently, many areas of
13 the state are designated by the state as open range. This designation
14 requires a riparian stock watering right and shows that the state
15 intends for livestock to be able to access surface water. Surface
16 water stock watering rights are to be considered in an adjudication
17 and have been taken into account recently as part of adjudicative
18 actions in the state. Surface stock watering rights are to be
19 considered as part of the instream flow rules as long as there is no
20 unconscionable waste within the carrying capacity of the land.
21 Historically, agents of the state and federal government have
22 provided aid in the exercise of these rights to serve the public
23 purpose of maintaining the water quality of these riparian streams.
24 Therefore, the legislature finds that surface riparian stock watering
25 rights exist without the need for certification under chapter 90.03
26 RCW.

27 (5) The legislature also finds that the 1994 policy adopted by
28 the department of ecology and the support provided for off-channel
29 watering infers the existence of a riparian water right put to a
30 beneficial use of stock watering. The legislature finds that
31 maintaining water quality is important to the state and that off-
32 channel watering of livestock is a means of maintaining water
33 quality. A simple diversion of surface water for the beneficial use
34 of watering livestock and the simultaneous state interest of
35 maintaining water quality therefore does not trigger a requirement of
36 an additional certificated water right. Finally, the legislature
37 finds that requiring a certificated water right for the purpose of
38 watering livestock in riparian areas would trigger a legal quagmire
39 for the state. Therefore, the legislature recognizes a de facto

1 riparian stock watering right that may be exercised through an off-
2 channel diversion.

3 (6) The legislature acknowledges that instream flows have many
4 demands on them including the protection of treaty hunting and
5 fishing rights as well as the maintenance of water quality. Because
6 of the need for the coexistence of treaty rights and historic
7 riparian rights as well as the need to protect water quality for the
8 collaborative good, the legislature finds that some notice of
9 livestock watering through a diversion is important.

10 **Sec. 2.** RCW 90.03.010 and 1917 c 117 s 1 are each amended to
11 read as follows:

12 (1) The power of the state to regulate and control the waters
13 within the state shall be exercised as hereinafter in this chapter
14 provided. Subject to existing rights all waters within the state
15 belong to the public, and any right thereto, or to the use thereof,
16 shall be hereafter acquired only by appropriation for a beneficial
17 use and in the manner provided and not otherwise; and, as between
18 appropriations, the first in time shall be the first in right.
19 Nothing contained in this chapter shall be construed to lessen,
20 enlarge, or modify the existing rights of any riparian owner,
21 including riparian stock watering rights, or any existing right
22 acquired by appropriation, or otherwise. They shall, however, be
23 subject to condemnation as provided in RCW 90.03.040, and the amount
24 and priority thereof may be determined by the procedure set out in
25 RCW 90.03.110 through 90.03.240.

26 (2)(a) A riparian landowner who implements a de minimis surface
27 water diversion to water livestock in a manner that enhances and
28 protects water quality and provides environmental protection and
29 value to the stream must provide notice of such use to the department
30 within two years of the effective date of this section or within two
31 years of commencement of such a diversion.

32 (b) For the purposes of this section, "notice" means providing
33 the name of the landowner and identification of the water source
34 electronically or by United States mail to the department. The
35 department shall also provide an electronic portal to receive such a
36 notice.

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