

SENATE BILL REPORT

SB 5882

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, February 3, 2022

Title: An act relating to clarifying the existence of riparian stock watering rights.

Brief Description: Clarifying the existence of riparian stock watering rights.

Sponsors: Senators Muzzall, Mullet, Honeyford, Sefzik, Short and Van De Wege.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/27/22, 2/03/22
[DPS, DNP].

Brief Summary of First Substitute Bill

- Establishes that nothing contained in the Water Code shall be construed to lessen, enlarge, or modify the existing rights of any riparian stock watering rights.
- Requires a riparian landowner who implements a de minimus surface water diversion to water livestock in a manner that enhances and protects water quality and provides environmental protection and value to the stream to provide notice of such use to the Department of Ecology within two years of the effective date of the bill or within two years of commencement of such diversion.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5882 be substituted therefor, and the substitute bill do pass.

Signed by Senators Van De Wege, Chair; Warnick, Ranking Member; Honeyford and Rolfes.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass.

Signed by Senators Salomon, Vice Chair; Stanford.

Staff: Karen Epps (786-7424)

Background: In 1917, the Legislature passed the first comprehensive water management legislation. Passage of the Water Code established the prior appropriation doctrine in Washington, often known as "first in time, first in right," and created a priority system based on the date of use or intent to use water. With certain exceptions, new rights to use surface or ground water or to establish reservoir and storage projects must be established according to the permit system. Exemptions include any withdrawal of public groundwater for stock watering purposes, for watering a lawn, or for a noncommercial garden less than one-half an acre. Single or group domestic uses or industrial purposes not exceeding 5000 gallons a day are also exempt.

A person seeking a new water right files an application with the Department of Ecology (Ecology), which must consider a four-part test when deciding whether to issue the requested right:

- whether water is available;
- whether a beneficial use of water would be made;
- whether granting the right would impair existing rights; and
- whether the proposed use would detrimentally affect the public interest.

If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Prior to passage of the 1917 Water Code, there were some riparian water rights in Washington. A riparian right arises by virtue of ownership of the land bordering the stream, lake, or other water body. The Water Code established that nothing contained in the Water Code shall be construed to lessen, enlarge, or modify the existing rights of any riparian owner or any existing right acquired by appropriation, or otherwise.

Summary of Bill (First Substitute): The Water Code is amended to establish that nothing contained in the Water Code shall be construed to lessen, enlarge, or modify the existing rights of any riparian stock watering rights. A riparian landowner who implements a de minimus surface water diversion to water livestock in a manner that enhances and protects water quality and provides environmental protection and value to the stream must provide notice of such use to Ecology within two years of the effective date of the bill or within two years of commencement of such diversion. The riparian landowner must include their name and identification of the water source in the notice and the notice must be submitted to Ecology electronically, by mail, or through an electronic portal provided by Ecology.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, NATURAL

RESOURCES & PARKS COMMITTEE (First Substitute):

- Requires a riparian landowner who implements a de minimus surface water diversion to water livestock in a manner that enhances and protects water quality and provides environmental protection and value to the stream to provide notice of such use to Ecology within two years of the effective date of the bill or within two years of commencement of such diversion.
- Establishes that notice includes providing the name of the landowner and identification of the water source electronically, by mail, or through an electronic portal provided by Ecology.
- Amends the intent section to state that the Legislature finds that some notice of livestock watering through a diversion is important.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill clarifies existing law to show that livestock producers have the right to water for their stock. Ecology's current policy allows livestock owners who have riparian water to pump water out of the stream to water their livestock. Farmers were encouraged to pull water out of the stream into a water trough without wasting water to water livestock and help protect water quality. This bill safeguards livestock's legal access to surface stockwater. The Water Code provides that livestock can drink from streams, lakes, and other public bodies of water. This bill provides certainty for ranchers and clarifies that no permit is necessary for watering stock. Stockwatering is historically recognized as a senior water right. Not allowing stockwatering would increase the carbon footprint because ranchers would have to truck water to stock. This bill clarifies the existence of riparian stockwater rights, riparian rights that derive from the ownership of the land that abuts surface water and that may be exercised through an off-channel diversion for stockwatering. This bill addresses the misunderstanding about off-channel stockwatering and Ecology's policy that needs to be clarified. Livestock owners could drill an exempt well but this will not work in every location and could be cost prohibitive. The bill addresses the legal risks to producers and the state if existing laws are not clarified with regard to off-stream watering.

CON: It is encouraging that the Legislature is interested in finding solutions to the issue around surface stockwatering rights, but this bill, as written, is in conflict with other statutes and will create further uncertainty and legal conflicts. Ecology is partnering with the Conservation Commission to hold meetings with livestock producers and others to identify

needs and next steps. The bill does not accurately describe the relationship between riparian rights and the prior appropriation doctrine and it could result in confusion and litigation.

OTHER: The bill highlights a need for a path forward on the issue of surface stockwatering across the state. A collaborate, transparent process to achieve this is already underway in partnership between the Conservation Commission and Ecology, focusing on a series of listening session to find a workable path forward. There is a need to provide clarity and certainty around stockwatering, but this bill fails to provide sufficient clarity and may be interpreted in ways that could negatively impact the state's fish and wildlife resources.

Persons Testifying: PRO: Senator Ron Muzzall, Prime Sponsor; Mark Herke, Yakima County Farm Bureau; Wes McCart, Stevens County-Commissioner; Jack Field, Washington Cattle Feeders Association; Toni Meacham, Washington Cattlemen's Association; KAREN VAN DE GRAAF-ERICKSON, Midvale Cattle Co LLC; Dean Hellie, Stevens County Conservation District; Kelly Knapp; Tom Davis, Washington Farm Bureau.

CON: Sharlett Mena, Washington State Department of Ecology; Dave Christensen, Washington State Department of Ecology; Bruce Wishart, CELP/Sierra Club.

OTHER: Jon Culp, Washington State Conservation Commission; Megan Kernan, WDFW.

Persons Signed In To Testify But Not Testifying: No one.