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**SENATE BILL 5882**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Muzzall, Mullet, Honeyford, Sefzik, Short, and Van De Wege

Read first time 01/17/22. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

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

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

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