

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0818.01 Jennifer Berman x3286

HOUSE BILL 17-1190

HOUSE SPONSORSHIP

Becker K.,

SENATE SPONSORSHIP

(None),

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE LIMITED APPLICABILITY OF THE COLORADO
102 SUPREME COURT'S DECISION IN *ST. JUDE'S CO. V. ROARING FORK*
103 *CLUB, LLC*, 351 P.3d 442 (COLO. 2015).

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

In the case of *St. Jude's Co. v. Roaring Fork Club, LLC*, 351 P.3d 442 (Colo. 2015) (*St. Jude's Co.*), the Colorado supreme court held that direct diversions of water from a river to a private ditch for aesthetic, recreational, and piscatorial purposes on private property, without impoundment, are not beneficial uses of water under Colorado water law.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill provides that the decision in the *St. Jude's Co.* case interpreting section 37-92-103 (4) does not apply to previously decreed absolute and conditional water rights or claims pending as of July 15, 2015. The interpretation of section 37-92-103 (4) in *St. Jude's Co.* applies only to direct flow appropriations, without storage, made after July 15, 2015, for water diverted from a surface stream to a private ditch on private property for aesthetic, recreational, and piscatorial purposes.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-305, **add** (20)
3 as follows:

4 **37-92-305. Standards with respect to rulings of the referee and**
5 **decisions of the water judge - definitions. (20) Limited applicability**
6 **of *St. Jude's Co.* case - legislative declaration. (a)** THE PROVISIONS IN
7 THE COLORADO SUPREME COURT'S DECISION IN *ST. JUDE'S CO. V. ROARING*
8 *FORK CLUB, LLC*, 351 P.3d 442 (COLO. 2015), INTERPRETING SECTION
9 37-92-103 (4), DO NOT APPLY TO ABSOLUTE AND CONDITIONAL WATER
10 RIGHTS FOR WHICH A DECREE WAS ENTERED, OR FOR WHICH A WATER
11 COURT CLAIM WAS PENDING, AS OF JULY 15, 2015. SUCH RIGHTS AND
12 CLAIMS ARE VALID AND SHALL BE GIVEN FULL FORCE AND EFFECT. THE
13 RIGHTS AND CLAIMS MAY BE MAINTAINED THROUGH FINDINGS OF
14 REASONABLE DILIGENCE AND MADE ABSOLUTE, AND AUGMENTATION
15 PLANS RELATED TO SUCH RIGHTS AND CLAIMS MAY BE APPROVED, IN
16 ACCORDANCE WITH COLORADO LAW. THE POINTS OF DIVERSION OF SUCH
17 RIGHTS MAY BE CHANGED PURSUANT TO SUBSECTION (3.5) OR (3.6) OF
18 THIS SECTION, OR IF DIVERSIONS AT THE PROPOSED NEW POINT OF
19 DIVERSION WILL NOT CAUSE INJURY TO A VESTED WATER RIGHT OR A
20 DECREED CONDITIONAL WATER RIGHT.

21 (b) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND
22 DECLARES THAT THE INTERPRETATION OF SECTION 37-92-103 (4) IN THE

1 *ST. JUDE'S CO.* DECISION APPLIES ONLY TO DIRECT-FLOW APPROPRIATIONS,
2 WITHOUT STORAGE, MADE AFTER JULY 15, 2015, FOR WATER DIVERTED
3 FROM A SURFACE STREAM INTO A PRIVATE DITCH ON PRIVATE PROPERTY
4 FOR AESTHETIC, RECREATIONAL, AND PISCATORIAL PURPOSES.

5 (c) NOTHING IN THIS SUBSECTION (20) IS INTENDED TO AFFECT THE
6 EXISTING STATUTORY AUTHORITY REGARDING THE APPROPRIATION OF
7 INSTREAM FLOW WATER RIGHTS AND RECREATIONAL IN-CHANNEL
8 DIVERSION WATER RIGHTS PURSUANT TO SECTIONS 37-92-102 AND
9 37-92-103.

10 **SECTION 2. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.