

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-1139.01 Thomas Morris x4218

HOUSE BILL 16-1382

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HOUSE SPONSORSHIP

Becker K.,

SENATE SPONSORSHIP

(None),

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House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE CONFIRMATION OF CERTAIN USES OF WATER AS  
102 BEING BENEFICIAL.

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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://www.leg.state.co.us/billsummaries>.)*

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 diversions of water for aesthetic, recreational, and piscatorial purposes, without impoundment, are not beneficial uses of water under Colorado water law. The bill supersedes the court's holding in *St. Jude's Co.* by:

! Amending the definition of beneficial use to include the

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.

diversion or release from storage of water for any purpose for which an appropriation is lawfully made, including piscatorial, recreational, and aesthetic purposes; and  
! Confirming that decrees entered before, on, or after the effective date of the bill for such beneficial uses shall be given full effect and enforced according to their specific terms.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby:

4 (a) Finds that:

5 (I) In the case of *St. Jude's Co. v. Roaring Fork Club, LLC*, 351  
6 P.3d 442 (Colo. 2015), the Colorado Supreme Court held that diversions  
7 of water for aesthetic, recreational, and piscatorial purposes, without  
8 impoundment, are categorically not beneficial uses of water under  
9 Colorado water law; and

10 (II) The court specifically stated that it was for the general  
11 assembly to approve such uses;

12 (b) Determines that:

13 (I) The court's decision has created great uncertainty as to how the  
14 holding affects many existing water rights decreed for these purposes and  
15 how the state and division engineers should administer decreed water  
16 rights going forward in light of the court's decision;

17 (II) These decreed water rights are valuable property upon which  
18 their owners rely and that have been the basis for planning decisions and  
19 expectations; and

20 (III) The state's water courts have adjudicated hundreds of such  
21 rights over the course of many years, and are well equipped to handle the  
22 case-by-case adjudication of proposed water diversions under the specific

1 facts of each case pursuant to a long-standing understanding of beneficial  
2 use and normative statutory and case law principles applied to all water  
3 rights; and

4 (c) Declares that:

5 (I) The court's decision is contrary to an evolving recognition, in  
6 this state and many western states, of the environmental, fishing habitat,  
7 recreational, and economic benefits of these types of water uses; and

8 (II) This act is necessary to protect water right owners' property  
9 rights and reasonable investment-backed expectations.

10 **SECTION 2.** In Colorado Revised Statutes, 37-92-103, **amend**  
11 (4) (a) as follows:

12 **37-92-103. Definitions.** As used in this article, unless the context  
13 otherwise requires:

14 (4) "Beneficial use" means the use of that amount of water that is  
15 reasonable and appropriate under reasonably efficient practices to  
16 accomplish without waste the purpose for which the appropriation is  
17 lawfully made. Without limiting the generality of the previous sentence,  
18 "beneficial use" includes:

19 (a) The DIVERSION, impoundment, OR RELEASE FROM STORAGE of  
20 water ~~for firefighting or storage~~ for any purpose for which an  
21 appropriation is lawfully made, including FIREFIGHTING, recreational,  
22 fishery, PISCATORIAL, AESTHETIC, or wildlife purposes, AND JUDGMENTS  
23 AND DECREES ENTERED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF  
24 THIS PARAGRAPH (a), AS AMENDED, FOR SUCH PURPOSES SHALL BE GIVEN  
25 FULL EFFECT AND ENFORCED ACCORDING TO THE TERMS OF SUCH DECREES;

26 **SECTION 3. Applicability.** This act applies to applications  
27 pending before the water judges or referees or filed on or after the

1 effective date of this act.

2           **SECTION 4. Safety clause.** The general assembly hereby finds,  
3 determines, and declares that this act is necessary for the immediate  
4 preservation of the public peace, health, and safety.