

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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. RIGHTS WHICH WOULD
12 BE SUBJECT TO THE COLORADO SUPREME COURT'S INTERPRETATION OF
13 SECTION 37-92-103 (4) IN THE *ST. JUDE'S CO.* CASE BUT FOR THIS
14 SUBSECTION (20)(a) ARE VALID AND SHALL BE GIVEN FULL FORCE AND
15 EFFECT, AND ANY SUCH PENDING CLAIMS MAY BE ADJUDICATED IN
16 ACCORDANCE WITH OTHERWISE APPLICABLE COLORADO LAW. SUCH
17 RIGHTS AND CLAIMS MAY BE MAINTAINED THROUGH FINDINGS OF
18 REASONABLE DILIGENCE AND MADE ABSOLUTE, AND AUGMENTATION
19 PLANS RELATED TO SUCH RIGHTS AND CLAIMS MAY BE APPROVED, IN
20 ACCORDANCE WITH COLORADO LAW. CHANGES OF SUCH RIGHTS MUST BE
21 LIMITED TO CHANGES IN POINTS OF DIVERSION MADE IN ACCORDANCE
22 WITH THE PROVISIONS OF THIS SECTION.

1 (b) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND
2 DECLARES THAT THE INTERPRETATION OF SECTION 37-92-103 (4) IN THE
3 *ST. JUDE'S CO.* DECISION APPLIES ONLY TO CLAIMS FOR DIRECT-FLOW
4 APPROPRIATIONS, WITHOUT STORAGE, FILED AFTER JULY 15, 2015, FOR
5 WATER DIVERTED FROM A SURFACE STREAM OR TRIBUTARY
6 GROUNDWATER BY A PRIVATE ENTITY FOR PRIVATE AESTHETIC,
7 RECREATIONAL, AND PISCATORIAL PURPOSES.

8 (c) NOTHING IN THIS SUBSECTION (20) IS INTENDED, NOR SHALL BE
9 INTERPRETED, AS CREATING ANY NEW TYPE OF WATER RIGHTS OR
10 BENEFICIAL USES FOR PUBLIC OR PRIVATE ENTITIES UNDER COLORADO
11 LAW.

12 (d) NOTHING IN THIS SUBSECTION (20) IS INTENDED TO AFFECT THE
13 EXISTING STATUTORY AUTHORITY REGARDING THE APPROPRIATION OF
14 INSTREAM FLOW WATER RIGHTS AND RECREATIONAL IN-CHANNEL
15 DIVERSION WATER RIGHTS PURSUANT TO SECTIONS 37-92-102 AND
16 37-92-103, OR THE APPROPRIATION OF WATER RIGHTS FOR PARKS AND
17 WILDLIFE PURPOSES PURSUANT TO SECTIONS 33-1-101, 33-1-105,
18 33-10-101, AND 33-10-107.

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