

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 17-0818.01 Jennifer Berman x3286

HOUSE BILL 17-1190

HOUSE SPONSORSHIP

Becker K.,

SENATE SPONSORSHIP

Sonnenberg,

House Committees
Agriculture, Livestock, & Natural Resources

Senate Committees
Agriculture, Natural Resources, & Energy

SENATE
3rd Reading Unamended
April 26, 2017

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).***

SENATE
Amended 2nd Reading
April 25, 2017

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>.)

HOUSE
3rd Reading Unamended
April 5, 2017

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.

HOUSE
Amended 2nd Reading
April 4, 2017

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.** 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 AS OF JULY 15, 2015. RIGHTS
11 WHICH WOULD BE SUBJECT TO THE COLORADO SUPREME COURT'S
12 INTERPRETATION OF SECTION 37-92-103 (4) IN THE *ST. JUDE'S CO.* CASE
13 BUT FOR THIS SUBSECTION (20) ARE VALID AND SHALL BE GIVEN FULL
14 FORCE AND EFFECT. SUCH RIGHTS MAY BE MAINTAINED THROUGH
15 FINDINGS OF REASONABLE DILIGENCE AND MADE ABSOLUTE, AND
16 AUGMENTATION PLANS RELATED TO SUCH RIGHTS MAY BE APPROVED, IN
17 ACCORDANCE WITH COLORADO LAW. CHANGES OF SUCH RIGHTS MUST BE
18 LIMITED TO CHANGES IN POINTS OF DIVERSION MADE IN ACCORDANCE
19 WITH THE PROVISIONS OF THIS SECTION.

20 **SECTION 2. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August

1 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2018 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.