

**Consent Agenda Item 1.f**

March 11-12, 2020 Board Meeting

Case No. 19CW3092 (Water Division 4); Dalwhinnie Group LLC

**Summary of Water Court Application**

Application for approval of ground water rights and supplemental plan for augmentation.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2020 to protect CWCB's instream flow water rights.

**CWCB Instream Flow Water Rights**

The CWCB holds water rights, including the following instream flow water right(s) in Water Division 4 in the Uncompahgre River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
98CW0222 (Div. 4)	Uncompahgre River	Highway 62 bridge	confl Ridgway Res	20 (10/15 - 4/30) 65 (5/1 - 10/14)	07/13/1998

**Potential for Injury**

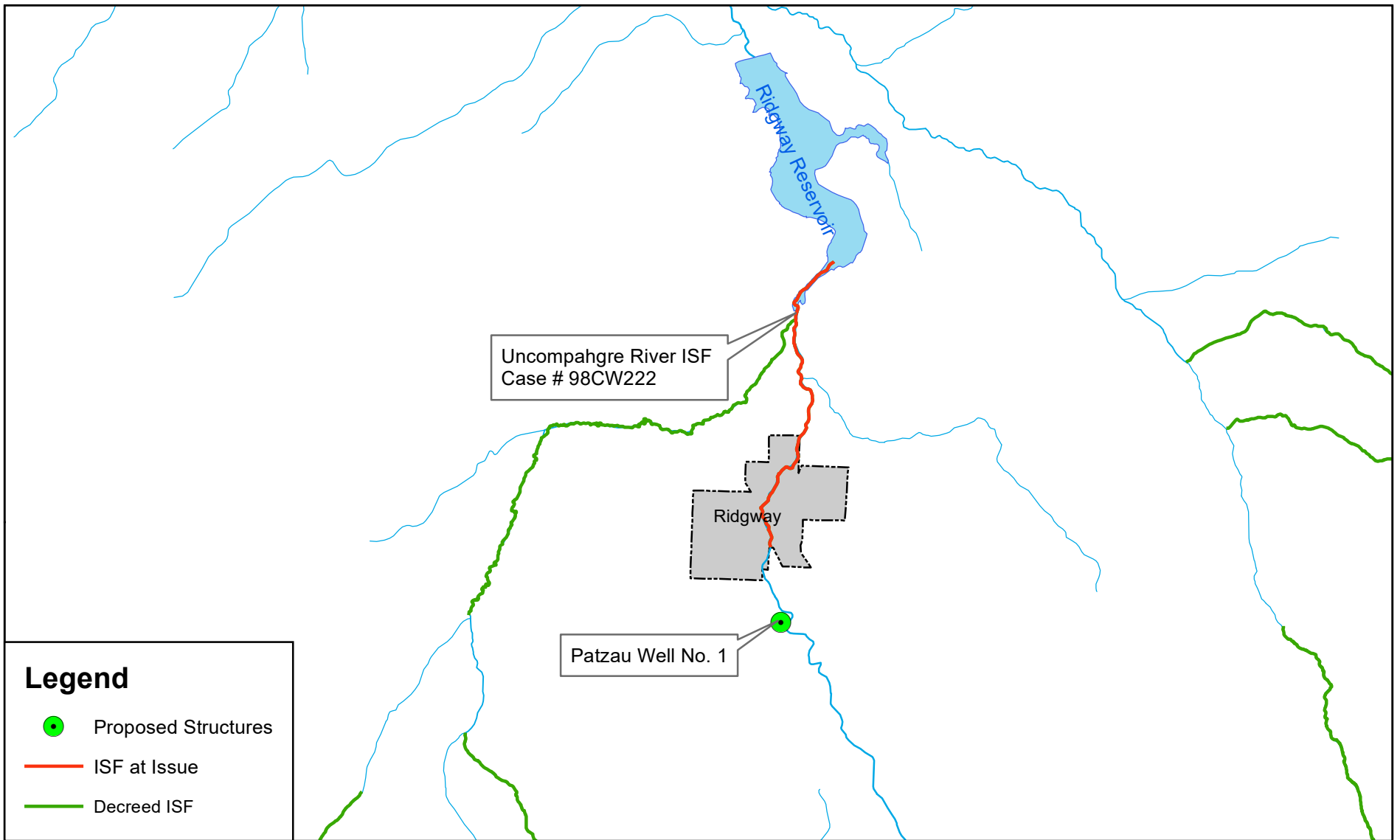
- The proposed plan for augmentation uses a downstream supply to replace upstream depletions. This operation appears to contain an augmentation by exchange component that extends through a reach of stream containing an instream flow water right. The exchange reach must be clearly identified relative to the instream flow water right, and depletions must be replaced in the proper time, place and amount, to prevent injury to the CWCB's instream flow water right.

**Other Objectors**

Statements of Opposition were also filed by: Orvis Hot Springs Inc. and Orvis Springs Ranch LLC; and The Ranch at Kettle Creek, LLC.

**Attorney Representing CWCB**

Philip E. Lopez, Senior Assistant Attorney General, is assigned to this case and can be contacted at philip.lopez@coag.gov, or 720-508-6312.

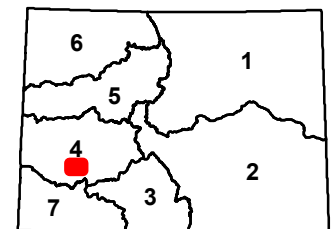


**COLORADO**  
**Colorado Water  
Conservation Board**

Department of Natural Resources

March 11-12, 2020 CWCB Board Meeting  
Consent Agenda Item 1.f. Statement of Opposition  
Case No. 19CW3092 (Division 4)  
Dalwhinnie Group LLC

0 1 2 4 Miles



**IN THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 4  
STATE OF COLORADO**

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER  
DIVISION NO. 4

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of December 2019. The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows: There has been filed in this proceeding a claim or claims which may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest as provided in the Water Right Determination and Administration Act of 1969, or be forever barred.

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**CASE NO. 2019CW3092.** Dalwhinnie Group LLC, 6154 County Road 23, Ridgway CO 81432, by Aaron R. Clay, P.O. Box 38, Delta CO 81416, 970-874-9777. APPLICATION FOR UNDERGROUND WATER RIGHTS AND FOR APPROVAL OF A PLAN FOR AUGMENTATION 2. Name of Structure: **Patzau Well No. 1 Use Enlargement;** 3. Location of well: in the SE1/4NW1/4 of Section 21, Township 45 North, Range 8 West, N.M.P.M. at a point 2900 feet north of the south section line and 2900 feet east of the west section line of irregular Section 21. 4. Amounts claimed and uses: 15 g.p.m., annual diversion of 5.65 acre-feet. This well takes groundwater tributary to the Uncompahgre River. It is transmitted it to a greenhouse for commercial use for irrigation in an indoor greenhouse, and reuse of water for supplemental irrigation. All uses are located on Dalwhinnie Ranch. Water gathered from the greenhouse due to treatment, condensation, and runoff is stored and used for supplemental irrigation. 5. Name and location of water rights used for augmentation: **McDonald Cuddigan Ditch**, decreed for 0.625 c.f.s. as Priority 6 in the first general adjudication, case No. CA939. Applicant owns 37.5% of this priority or 0.23 c.f.s. of priority 6. It is located on the west bank of the Uncompahgre River 30 rods west of the SE corner of Section 21, Township 45 North, Range 8 West, N.M.P.M. UTM coordinates X: 259712, Y: 4223763, NAD 83 Zone 13; also described as 157 feet from the north section line and 517 feet from the east section line of Section 28. 5. Date of Appropriation: May 10, 1876; 6. Decreed Use: Per decree in CA939, total acreage is 25 acres of which Applicant owns and irrigates 10 acres. 7. Statement of the Plan for Augmentation: The original Patzau Well No. 1 water right operates under an augmentation plan decreed in Case No. 98CW29. Applicant has recently constructed an indoor greenhouse and has added commercial indoor greenhouse uses to Patzau Well No. 1 through a SWSP (Plan Id 5998) and has applied for and received a well permit (82456-F), which allows use of the well for the indoor greenhouse use in addition to the uses decreed in 98CW29. Applicant requests a supplemental augmentation plan to augment the additional water depletions from the commercial uses added to Patzau Well No. 1 by the Patzau Well No. 1 Use Enlargement: Water demands from the Use Enlargement of Patzau Well No. 1 is provided in Table 1 and equals 5.65 AF per year. Calculated return flows from the proposed use total 2.02 AF, which will be stored and reused for irrigation. Total irrigation return flows are based on a 15 percent return flow factor and total 0.30 AF per year. Total water depletions projected for the Dalwhinnie Facility equal 5.34 AF per year, of which 3.57 AF could be out of priority based on actual and projected water administration located downstream. Applicant has received a water contract from TriCounty Water Conservancy District for 4.0 AF to be released from Ridgway Reservoir

to cover all additional potential out-of-priority uses for Patzau Well No. 1 for its requested Use Enlargement for uses associated with the indoor green house facility and associated reuse of water for irrigation. The Applicant has filed for the Dalwhinnie Ranch Augmentation Pond for 3.84 Acre-Feet in a separate water court application. Applicant requests using water stored in the Dalwhinnie Ranch Augmentation Pond as a supplemental source of augmentation water supply for the Patzau Well No. 1 Use Enlargement as needed. By drying up these lands and making water from the augmentation pond available to be released to the River, Applicant will have compensated for all of its consumptive use in the greenhouse. **OURAY COUNTY.**

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YOU ARE FURTHER NOTIFIED THAT you have until the last day of February, 2020 to file with the Water Clerk a Verified Statement of Opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$192.00; Forms may be obtained from the Water Clerk's Office or on our website at [www.courts.state.co.us](http://www.courts.state.co.us)). DARLEEN CAPPANNOKEEP, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401