

STATE OF OREGON  
COUNTY OF MALHEUR  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

GREEN ALPHA II LLC  
ONE EMBARCADERO CENTER SUITE 3860  
SAN FRANCISCO CA 94111

confirms the right to use the waters of ELEVEN WELLS within the COW CREEK BASIN for IRRIGATION of 71.4 ACRES, being 36.4 ACRES from WELL 6 AND WELL 7 AND 35.0 ACRES WELLS 1-5 AND WELLS 8-12.

This right was confirmed under Permit U-391. The date of priority is MAY 10, 1951. The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.90 CUBIC FOOT PER SECOND (CFS), further limited to 0.34 CFS each from WELL 6 AND WELL 7 and being 0.13 CFS from WELL 1, and 0.09 CFS from WELL 2, or its equivalent in case of rotation, measured at the wells.

The wells are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	40 E	WM	2	SW SE	WELL 1 (ORIGINAL) - 225 FEET NORTH AND 1560 FEET WEST FROM SE CORNER, SECTION 2
15 S	40 E	WM	2	SW SW	WELL 2 (ORIGINAL) - 880 FEET NORTH AND 55 FEET EAST FROM SW CORNER, SECTION 2
15 S	41 E	WM	8	NW SW	WELL 6 (ORIGINAL) - 1200 FEET SOUTH AND 760 FEET EAST FROM W1/4 CORNER, SECTION 8
15 S	41 E	WM	7	NE SE	WELL 7 (ORIGINAL) - 995 FEET SOUTH AND 200 FEET WEST FROM E1/4 CORNER, SECTION 7
15 S	40 E	WM	10	NW NE	WELL 3 (ADDITIONAL) - 1250 FEET SOUTH AND 1980 FEET WEST FROM NE CORNER, SECTION 10
15 S	40 E	WM	11	SE SW	WELL 4 (ADDITIONAL) - 730 FEET NORTH AND 1400 FEET EAST FROM SW CORNER, SECTION 11
15 S	40 E	WM	14	NE SW	WELL 5 (ADDITIONAL) - 325 FEET SOUTH AND 1575 FEET EAST FROM W1/4 CORNER, SECTION 14
15 S	40 E	WM	14	SW SE	WELL 8 (ADDITIONAL) - 1420 FEET SOUTH AND 2370 FEET WEST FROM E1/4 CORNER, SECTION 14
15 S	40 E	WM	2	NW SW	WELL 10 (ADDITIONAL) - 3060 FEET SOUTH AND 4380 FEET WEST FROM NE CORNER, SECTION 2
15 S	40 E	WM	2	NE SE	WELL 11 (ADDITIONAL) - 2730 FEET SOUTH AND 70 FEET WEST FROM NE CORNER, SECTION 2
15 S	40 E	WM	1	NE NW	WELL 12 (ADDITIONAL) - 1220 FEET SOUTH AND 2360 FEET EAST FROM NW CORNER, SECTION 1

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482. Pursuant to ORS 183.482, ORS 536.075 and OAR 137-003-0675, you may petition for judicial review and petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use is as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	POA
15 S	40 E	WM	14	SW NE	600	5.7	WELLS 1-5 AND WELLS 8-12 ONLY
15 S	40 E	WM	14	SE NW	600	1.5	WELLS 1-5 AND WELLS 8-12 ONLY
15 S	40 E	WM	14	NE SW	600	19.3	WELLS 1-5 AND WELLS 8-12 ONLY
15 S	40 E	WM	14	NW SE	600	8.5	WELLS 1-5 AND WELLS 8-12 ONLY
15 S	41 E	WM	7	NE NE	300	22.6	WELL 6 AND WELL 7 ONLY
15 S	41 E	WM	7	NW NE	300	7.5	WELL 6 AND WELL 7 ONLY
15 S	41 E	WM	7	SW NE	300	4.2	WELL 6 AND WELL 7 ONLY
15 S	41 E	WM	7	SE NE	300	2.1	WELL 6 AND WELL 7 ONLY

Water use measurement conditions:

- A. The water user shall maintain the totalizing flow meters or other suitable measuring devices as approved by the Director in good working order at each point of appropriation.
- B. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

The combined quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.

Water shall be acquired from the same aquifer as the original point of appropriation.

The right to the use the water for the purposes aforesaid is restricted to the lands or place of use herein described.

This right is issued subject to the terms of a settlement agreement related to the approval of Transfer Application T-12072. A copy of that settlement agreement is attached for reference.

This certificate is issued to confirm changes in ADDITIONAL POINTS OF APPROPRIATION and PLACE OF USE approved by an order of the Water Resources Director entered SEPTEMBER 11, 2019, at Special Order Volume 113, Page 1134, approving Transfer Application T-12072, and supersedes Certificate 89177, State Record of Water Right Certificates.

Issued OCT 01 2021

Dwight French  
 Water Right Services Division Administrator, for  
 Thomas M. Byler, Director  
 Oregon Water Resources Department

**BEFORE THE OREGON WATER RESOURCES DEPARTMENT**

In the Matter of Transfer Application T-12072	)	
in the name of Mike Wagner,	)	
<i>Applicant</i>	)	
	)	
Davis Land and Livestock Co.,	)	SETTLEMENT
<i>Protestant</i>	)	AGREEMENT
	)	
_____	)	

The Oregon Water Resources Department (“Department”), Mike Wagner (“Applicant”), and Davis Land and Livestock Co. (“Protestant”), referred to collectively as the “Parties” and each individually a “Party,” do hereby stipulate and agree in this Settlement Agreement as follows:

**Stipulations**

- I. On May 29, 2015, Mike Wagner filed an application for additional points of appropriation and to change the place of use under Certificates 81208, 81209, 81210, 81211, 81212, 81213, 89176, 89177, 89178, 89179, 89180, 89181, 89182, 89183, 89184, 89198, 89199, 89526, and 89527. The Department assigned the application number T-12072.
- II. On December 7, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12072 to Applicant. The draft Preliminary Determination cover letter set forth a deadline of January 8, 2016, for the Applicant to respond. The deadline was later extended.
- III. By April 25, 2016, Applicant’s agent submitted amended application pages, amending the application for Certificate 81210 such that it is a portion of the right, not the entirety of the right.
- IV. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
- V. On May 16, 2016, the Department issued a Preliminary Determination indicating that the Department intended to approve Transfer Application T-12072. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department’s weekly notice on May 4, 2016, and in the Argus Observer newspaper on May 26, 2016, and June 1, 2016, pursuant to ORS 540.520 and OAR 690-380-4020.
- VI. On June 30, 2016, the Department received a protest to the Preliminary Determination from Davis Land and Livestock Co., through its attorneys Schwabe, Williamson and Wyatt.
- VII. Following settlement discussions between the Department, Applicant, and Protestant, all parties agree that all issues raised in Protestant’s protest to the Preliminary Determination on Transfer Application T-12072 are resolved solely on the following terms.

## Terms of Agreement

1. In signing this Settlement Agreement, Protestant withdraws its protest and any associated request for contested case hearing regarding the Preliminary Determination for Transfer Application T-12072 with prejudice.
2. Regarding Transfer Application T-12072, Protestant and Applicant hereby expressly waive all right and opportunity to file a protest or request for contested case hearing, request for reconsideration, exceptions, or to seek judicial review of the Final Order, in addition to waiving any right and opportunity to challenge this Settlement Agreement, which includes the attached draft Final Order Incorporating Settlement Agreement.
3. After Applicant and Protestant sign this Settlement Agreement, they will:
  - a. immediately email a signed copy to the attention of Patricia McCarty at [patricia.e.mccarty@oregon.gov](mailto:patricia.e.mccarty@oregon.gov); and
  - b. promptly mail the complete signed original Settlement Agreement (including all attachments) to Oregon Water Resources Department, ATTN: Patricia McCarty, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.
4. Upon receipt of the signed original Settlement Agreement, the Department will:
  - a. promptly execute the Settlement Agreement; and
  - b. promptly mail copies of the fully executed Settlement Agreement to Applicant and Protestant.
5. Within 60 days after the Department receives the original Settlement Agreement signed by Applicant and Protestant, the Department will issue a Final Order Incorporating Settlement Agreement that is consistent with the draft Final Order attached to this Settlement Agreement. The Final Order will incorporate this Settlement Agreement by reference and as an attachment.
6. The Applicant agrees to limit its pumping from Wells 6 and 7 to serve only the places of use located in Taxlot 300; to limit its pumping from Wells 1, 2, 3, 4, 5, 8, 9, 10, 11, and 12 to serve only the places of use located in Taxlots 100, 401, 500, and 600 and consistent with the amended transfer application maps; to limit all wells to their current authorized duty which is limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year; to maintain totalizing flowmeters on all wells; and to allow the watermaster to read said flowmeters annually during the week of August 1 and at the end of the irrigation season. The Parties acknowledge and agree that these actions will eliminate any alleged injury to Protestant's exempt domestic and livestock uses resulting from Transfer Application T-12072.
7. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executes this Settlement Agreement on its behalf has the full right and authority to enter into

this Settlement Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.

8. Each Party to this Settlement Agreement certifies that they have had a reasonable opportunity to review and request changes to the Settlement Agreement, and that they have signed this Settlement Agreement of their own free will and accord. Each Party to this Settlement Agreement also certifies that they have read the entire Settlement Agreement and draft Final Order Incorporating Settlement Agreement, and understand and fully agree with the contents thereof.
9. This Settlement Agreement may be signed in counterparts, each of which will be deemed an original, and all of which together shall constitute one and the same Settlement Agreement.

**Signature page follows on page 4.**

SIGNATURE PAGE FOR SETTLEMENT AGREEMENT  
ON TRANSFER APPLICATION T-12072



Dwight French, Administrator,  
Water Right Services Division  
*for*  
Thomas M. Byler, Director  
Oregon Water Resources Department

Aug 19, 2019  
Date

\_\_\_\_\_  
Mike Wagner, Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Davis Land and Livestock Co., Protestant  
By (print name) \_\_\_\_\_


\_\_\_\_\_  
Date

**SIGNATURE PAGE FOR SETTLEMENT AGREEMENT  
ON TRANSFER APPLICATION T-12072**



Dwight French, Administrator,  
Water Right Services Division  
for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Aug 19, 2019  
Date



Mike Wagner, Applicant

8-20-19

Date

\_\_\_\_\_  
Davis Land and Livestock Co., Protestant  
By (print name) \_\_\_\_\_

\_\_\_\_\_  
Date

SIGNATURE PAGE FOR SETTLEMENT AGREEMENT  
ON TRANSFER APPLICATION T-12072



Dwight French, Administrator,  
Water Right Services Division  
for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Aug 19, 2019  
Date

\_\_\_\_\_  
Mike Wagner, Applicant

\_\_\_\_\_  
Date



\_\_\_\_\_  
Davis Land and Livestock Co., Protestant  
By (print name) Guss E. Young

9-6-19  
Date