

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-14438, Coos County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF APPROPRIATION,
)	A CHANGE IN PLACES OF USE AND A
)	CHANGE IN CHARACTER OF USE

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

BANDON BIOTA LLC/BANDON DUNES GOLF RESORT
57744 ROUND LAKE DR
BANDON, OR 97411

Findings of Fact

1. On April 22, 2024, BANDON BIOTA LLC/BANDON DUNES GOLF RESORT filed an application for a change in place of use and change in character of use under Certificate 86648, and an additional point of appropriation, change the place of use, and to change the character of use under Certificate 86449. The Department assigned the application number T-14438.
2. Notice of the application for transfer was published on April 23, 2024, pursuant to OAR 690-380-4000. Seven timely comments were filed in response to the notice and are summarized as follows:
 - a. The application for T-14438 does not have land use approval from Coos County Planning Department at time of submission;
 - b. T-14438 would result in enlargement of the rights through an increase in acreage under the rights, and because irrigation of turf grass is more consumptive than irrigation and temperature control for cranberry operations;
 - c. Certificates 86448 and 86649 are not eligible for transfer because the water user did not follow the water use reporting conditions on either certificate;

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

- d. The source of water under Certificate 86449 is appropriated from an unauthorized reservoir;
 - e. Certificates 86448 and 86449 may be subject to forfeiture from non-use that occurred from 2014-2019;
- 3. Not all issues raised by the commenters are relevant to the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. Many of the issues noted in Finding of Fact #2, though important to the residents and water resources in the area, do not directly relate to the transfer review criteria. Rather, the statutory basis for approving a water right transfer application is relatively narrow and confined to the Department finding or determining:
 - a) The water right proposed for transfer is a water use subject to transfer;
 - b) The portion of the water right proposed for transfer is not cancelled nor subject to forfeiture for non-use pursuant to ORS 540.610;
 - c) The water user is ready, willing and able to use the full amount of water allowed under the right;
 - d) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
 - e) The proposed transfer would not result in injury to other water rights.
- 4. In response to the issues raised by the timely comments received relevant to the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000, the Department has determined:
 - a) The land use form submitted with the application was approved based upon a land use application submitted to the Coos County Planning Department (CCPD) that was subsequently withdrawn.
 - b) Conditions placed on the changes requested in T-14438 will prevent enlargement of the water rights.
 - c) There is no information on record showing the use of water under Certificate 86649 comes from an unauthorized reservoir, but instead from a groundwater sump.
 - d) The water user has provided Evidence of Use that indicates water was beneficially used within the previous five years prior to receiving Transfer Application T-14438, and the water rights are not cancelled.
- 5. On, May 9, 2024, the Department completed review of the land use form for T-14438, and concluded that the land use form submitted with the application was approved based upon a land use application submitted to the Coos County Planning Department (CCPD) that was subsequently withdrawn.

6. On May 10, 2024, the Department contacted CCPD and received confirmation that the land use application used to determine transfer criteria was withdrawn on February 1, 2023.
7. On November 8, 2024, CCPD notified the Department that a new Hearings Body Conditional Use application (HBCU) was submitted and approved this year, identified as HBCU-24-001.
8. On January 3, 2025, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14438 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 2, 2025, for the applicant to respond. 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.
9. The portion of the first right to be transferred is as follows:

Certificate: 86448 in the name of RONALD D. PUHL and MARY ANNE PUHL, TRUSTEES OF THE RONALD AND MARY ANNE PUHL TRUST UAD 12-1-95 (perfected under Permit S-46674)

Use: SUPPLEMENTAL IRRIGATION OF 17.4 ACRES AND SUPPLEMENTAL TEMPERATURE CONTROL

Priority Date: APRIL 5, 1982

Rate: 6.0 CUBIC FEET PER SECOND; being 0.435 cfs for supplemental irrigation and 6.0 cfs for supplemental temperature control.

Limit/Duty: If for irrigation, this appropriation shall be limited to 1/40 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, for cranberries. If for the irrigation of any other crop, this appropriation shall be limited to 1/80 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

Source: UNNAMED STREAM, a tributary of LAUREL LAKE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	15 W	WM	25	SW NW	P-3 - 480 FEET NORTH AND 1510 FEET WEST FROM THE C1/4 CORNER OF SECTION 25

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION AND SUPPLEMENTAL TEMPERATURE CONTROL					
Twp	Rng	Mer	Sec	Q-Q	Acres

29 S	15 W	WM	25	SE NW	17.4
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10. Transfer Application T-14438 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
29 S	15 W	WM	25	SW NW	6.9
29 S	15 W	WM	25	NW SW	10.5
TOTAL					17.4

SUPPLEMENTAL IRRIGATION (FROM SUPPLEMENTAL TEMPERATURE CONTROL)					
Twp	Rng	Mer	Sec	Q-Q	Acres
29 S	15 W	WM	25	NW NW	3.0
29 S	15 W	WM	25	SW NW	6.0
TOTAL					9.0

11. Transfer Application T-14438 proposes to change the character of use under Certificate 86448 from Supplemental Temperature Control to Supplemental Irrigation.
12. Certificate 86448 does not describe a period of use, and the irrigation season is not described by decree. Pursuant to OAR 690-250-0070, the irrigation season shall be exercised between March 1 and October 31.
13. Under the change in character of use from supplemental temperature control, the use of water for the proposed supplemental irrigation use is limited to 0.11 cfs ($9.0 \div 80$ (limited to $1/80$ of one cubic foot per second)) = 0.1125), and shall be further limited to a total volume diverted of 22.5 Acre-Feet (9.0×2.5 AF (not to exceed 2.5 acre-feet per acre) during the season of use, being between March 1 and October 31.
14. The portion of the second right to be transferred is as follows:

Certificate: 86449 in the name of RONALD D. PUHL AND MARY ANNE PUHL, TRUSTEES OF THE RONALD AND MARY ANNE PUHL TRUST UAD 12-1-95 (perfected under Permit G-9684)

Use: IRRIGATION OF 17.4 ACRES AND TEMPERATURE CONTROL

Priority Date: APRIL 5, 1982

Rate: 6.0 CUBIC FEET PER SECOND (cfs); being 0.435 cfs from each sump for irrigation, and 3.0 cfs from each sump for temperature control.

Limit/Duty: If for irrigation, this appropriation shall be limited to $1/40$ 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, for cranberries. If for the irrigation of any other crop, this appropriation shall be limited to $1/80$ 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SUMPS 1 AND 2

Authorized Points of Appropriation:

Sump	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 (Pump P-2)	29 S	15 W	WM	25	SE NW	450 FEET NORTH AND 1190 FEET WEST FROM THE C1/4 CORNER OF SECTION 25
2 (Pump P-1)	29 S	15 W	WM	25	SE NW	475 FEET NORTH AND 855 FEET WEST FROM THE C1/4 CORNER OF SECTION 25

Authorized Place of Use:

IRRIGATION AND TEMPERATURE CONTROL					
Twp	Rng	Mer	Sec	Q-Q	Acres
29 S	15 W	WM	25	SE NW	17.4

15. Transfer Application T-14438 proposes an additional point of appropriation with the following approximate distances from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized POA
29 S	15 W	WM	25	SE NW	P-4 - 450 FEET NORTH AND 1140 FEET WEST FROM THE CENTER OF SECTION 25	PUMP 2 – 50 FEET EAST PUMP 1 – 300 FEET WEST

16. Transfer Application T-14438 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
29 S	15 W	WM	25	SW NW	6.9
29 S	15 W	WM	25	NW SW	10.5
TOTAL					17.4

IRRIGATION (FROM TEMPERATURE CONTROL)					
Twp	Rng	Mer	Sec	Q-Q	Acres
29 S	15 W	WM	25	NW NW	3.0
29 S	15 W	WM	25	SW NW	6.0
TOTAL					9.0

17. Transfer Application T-14438 proposes to change the character of use for Certificate 86449 from Temperature Control to Irrigation.
18. Certificate 86449 does not describe a period of use, and the irrigation season has not been set by decree or basin plan within the South Coast Basin. Pursuant to OAR 690-250-0070(1) an irrigation season is to be exercised between March 1 and October 31.
19. Under the change in character of use from temperature control, the use of water for the proposed irrigation use is limited to 0.11 cfs ($9.0 \div 80$ (limited to $1/80$ of one cubic foot per second)) = 0.1125), and shall be further limited to a total volume diverted of 22.5 Acre-Feet ($9.0 \times 2.5 \text{ AF}$ (not to exceed 2.5 acre-feet per acre) during the season of use, being between March 1 and October 31.

Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2), OAR 690-380-2110(2), 690-380-2200, and 690-380-2300]

20. Water has been used within the last five years prior to the submittal of Transfer Application T-14438 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
21. A water delivery system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-14438.
22. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
23. The proposed point of appropriation develops groundwater from the same aquifer as the authorized points of appropriation, as required by OAR 690-380-2110(2).
24. The proposed changes, as conditioned, would not result in enlargement of the rights.
25. The proposed change, as conditioned, would not result in injury to other existing water rights.
26. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation, changes in place of use, and changes in character of use proposed in Transfer Application T-14438 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-14438 is approved, the final order will include the following:

1. *The additional point of appropriation, changes in place of use, and changes in character of use proposed in Transfer Application T-14438 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 86448, 86449, and any related decree.*
3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new point of appropriation or the new place of use.*
4. *Water right Certificates 86448 and 86449 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*

5. *The quantity of water diverted at the new additional point of appropriation (P-4), together with that diverted at the original points of appropriation (Sump 1 (Pump P-2) and Sump 2 (Pump P-1)), shall not exceed the quantity of water lawfully available at the original points of appropriation (Sump 1 (Pump P-2) and Sump 2 (Pump P-1)).*
6. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
7. *The former place of use of the transferred rights shall no longer receive water under the rights.*
8. *Under Certificate 86448, the use of water for supplemental irrigation shall be limited to 0.11 cfs, and shall be further limited to a total volume diverted of 22.5 Acre-Feet, during the season of use, being between March 1 and October 31.*
9. *Under Certificate 86449, the use of water for irrigation shall be limited to 0.11 cfs, and shall be further limited to a total volume diverted of 22.5 Acre-Feet, during the season of use, being between March 1 and October 31.*
10. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of appropriation (new and existing).*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *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.*
11. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*

12. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **MAR 21 2025**


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Dante Luongo. If you have questions about the information in this document, you may reach me at 971-304-5006 or Dante.J.Luongo@water.oregon.gov.

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and

- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.



Oregon

Tina Kotek, Governor

Water Resources Department

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Salem, OR 97301
Phone 503 986-0900
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www.oregon.gov/owrd

March 21, 2025

VIA CERTIFIED MAIL AND E-MAIL

BANDON BIOTA LLC
BANDON DUNES GOLF RESORT
57744 ROUND LAKE DR
BANDON, OR 97411

SUBJECT: Water Right Transfer Application T-14438

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14438. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Coos Bay World newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please don't hesitate to contact me at 971 304-5006 or Dante.J.Luongo@water.oregon.gov, if I may be of assistance.

Sincerely,

Dante Luongo
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-14438
Susan M. Douthit, District 15 Watermaster (*via e-mail*)
Bob Long, CWRE, CwM-H2, LLC (*via e-mail*)
Schroeder Law Offices, PC, Agent for the applicant (*via e-mail*)
Sean Malone, Oregon Coastal Alliance, Commentor (*via e-mail*)

Stephanie Hayes, Water Watch, Commentor *(via e-mail)*

Cameron La Follette, Oregon Coast Alliance, Commentor *(via e-mail)*

Charlie and Sharon Waterman, Waterman Ranch, Commentors *(via e-mail)*

Marie Richie, Silly Dog Farms, Commentor *(via e-mail)*