

**Oregon Department of Fish and Wildlife
Water Right and Diversion Transfer Comment Form**

Reference Transfer #: 9329

A. Please check box if you believe there is a potential for injury to an instream water right.

The Oregon Department of Fish and Wildlife (ODFW) believes this proposed transfer may injure an instream water right(s) on

Cow Creek, tributary to South Umpqua. Because,

removal of additions of CFS from Rail Creek may impact Cow Creek water during early spring and summer months.
(Please attach any available supporting information.)

Note: This will prompt WRD to further evaluate and make a determination whether the transfer will injure an instream water right. (WRD is the agency that makes the determination of injury to a water right, while ODFW's role is to raise concerns and to evaluate proposed mitigation and net benefit to the resource if WRD requests concurrence with injury to an instream water right.)

B. Please check one of the following five boxes related to requiring a fish screen and/or by-pass device pursuant to ORS 540.525 or 540.532:

The new Point of Diversion (POD) requires a fish screening and/or by-pass device and is currently equipped with an appropriate fish screening and/or by-pass device.

Note: This option will yield the following:

Finding of Fact: The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.

Condition: The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.

The new Point of Diversion (POD) requires a fish screening and/or by-pass device and would be eligible for cost share assistance under ODFW's cost share program. (If this box is selected, provide contact information on the "Fish Screening and Passage Information" sheet.)

Note: This option will yield the following:

Finding of Fact: The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion is eligible for screening cost share funds. However, funds may not be currently available. ODFW has indicated a grace period is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of cost share funding availability.

Condition: Within two years after the date of this order, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from

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725 Summer St. NE, Suite A, Salem, OR 97301-1271

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ODFW that the required screen and/or by-pass device meets ODFW's criteria. The water user may withdraw water at the new point of diversion without screening or by-pass devices until two years after the date of this order. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

- The new Point of Diversion (POD) requires a fish screening and/or by-pass device prior to diverting water and is **NOT** eligible for cost share assistance under ODFW's cost share program. (If this box is selected, provide contact information on the "Fish Screening and Passage Information" sheet.)

Note: This option will yield the following:

Finding of Fact: The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device.

Condition: Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screen and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

- The new Point of Diversion (POD) does not currently require a fish screen and/or by-pass device, however, the permittee may be required in the future to install, maintain, and operate fish screening and/or by-pass devices.

Note: This option will yield the following:

Finding of Fact: The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device may be required in the future at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device.

Condition: Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

- A fish screen and/or by-pass device should not be required as a condition of the transfer approval.

Note: This option will yield the following:

Finding of Fact: The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device is not necessary to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted.

Condition: None.

Signature

Printed Name

Title

() _____
Phone

T-9329

T-9329 proposes to add two diversions to collect overflow water from diversion 5. The two new diversions would be located in 30S 6W 21. It is unclear as to how many cfs the new POD's would remove from Rail Creek.

Potential impacts of these POD's transfer can include:

- Injury to other land owner water rights
- This transfer could potential impact resident cutthroat.

There is no ODFW water right on this creek. The removal of water at two new diversions may impact ODFW water rights in Cow Creek which Rail Creek flows into. For this transfer to move forward (from ODFW) the landowner may be required to mitigate at a net benefit for the impacted fisheries resource in this area.

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**Oregon Department of Fish and Wildlife
Fish Screening and Passage Information**

Transfer # 9329

The applicant should be aware that fish screening and passage may be required for certain changes in point of diversion if the boxes below are checked.

- Fish screening and/or fish by-pass devices are required as a condition of this transfer. The fish screen and/or by-pass device must meet ODFW's design, construction, operational and maintenance standards. Fish screening will prevent fish from entering the diversion, while a by-pass device safely transports fish back to the body of water from which the fish were diverted.

Pursuant to ORS 498.306, cost share funds may be available to assist in the installation of fish screening and by-pass devices at diversions.

The applicant should contact the ODFW staff below to obtain additional information on the design, construction, operational, and maintenance standards for the required fish screening and/or by-pass device and to obtain information about ODFW's cost sharing program for screening and by-pass devices. **Prior to installation, the water user must obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria.**

ODFW staff name: _____
Address: _____
City/State/Zip: _____
Phone: (____) _____

- This transfer may trigger requirements for fish passage under ORS 509.585 because a new point of diversion will be constructed, an existing point of diversion's capacity will be increased, or an existing point of diversion will be abandoned. The applicant should contact the ODFW staff below for a determination of whether native migratory fish are or were present at the applicable location, which will determine whether fish passage must be addressed.

ODFW staff name: _____
Address: _____
City/State/Zip: _____
Phone: (____) _____

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