

**Swiftwater ARRA Culvert Replacements Decision Documentation**  
**Environmental Assessment**  
**(EA # OR-103-08-09)**  
**Swiftwater Field Office, Roseburg District**

**Decision:**

It is my decision to authorize replacement of five existing stream-crossing culverts on four streams within the boundaries of the Swiftwater Field Office, consistent with restoration projects proposed and analyzed in the Roseburg District Aquatic Restoration Environmental Assessment (EA) #OR-103-08-09. These are stimulus projects funded by the Bureau of Land Management (BLM) under the American Recovery and Reinvestment Act (ARRA), and implemented by BLM partners. The Partnership for the Umpqua Rivers will be responsible for culvert design, contract preparation, contract award, and construction for four of the culverts. These culverts are located in Williams Creek, Mill Creek, and Little Wolf Creek, respectively. The Elk Creek Watershed Council will be responsible for culvert design, contract preparation, contract award, and construction for one culvert on Billy Creek. Project details are listed in the table below. Design and work will be done consistent with the project design features (PDFs) outlined in the EA (pgs. 19-21).

<b>Culvert Name</b>	<b>Culvert Location</b>	<b>Public or Private Land</b>	<b>Existing Structure</b>	<b>Replacement Structure</b>
Little Wolf Ck. #1	T. 25 S., R. 8 W., Section 2, SE¼ of SE¼	Private	60" corrugated round metal pipe	157" x 101" corrugated metal pipe arch
Little Wolf Ck #2	T. 25 S., R. 8 W., Section 3, SW¼ of SE¼	Public (Late-Successional Reserve)	36" corrugated round metal pipe	128" x 83" corrugated metal pipe arch
Mill Ck	T. 26 S., R. 7 W., Lot 43, NE¼ of SW¼	Private	36" corrugated round metal pipe	87" x 63" corrugated metal pipe arch
Williams Ck. Trib.	T. 24 S., R. 6 W., Lot 40, NW¼ of NW¼	Private	Low Water Crossing	Concrete modular bridge
Billy Ck.	T. 23 S., R. 6 W., Section 12, SW¼ of SW¼	Private	36" corrugated round metal pipe	Concrete modular bridge

The projects entail removing the existing structures, and replacing them with new crossing structures designed to accommodate the 100 year flow event, and allow for aquatic organism passage. The projects are proposed to take place during the in-water work period (July 1 – September 15). No bypass roads will be needed for any of the projects. The completed project footprints will be very similar to the existing structures; however project activities (fish exclusion fencing, grade control weirs, etc.) may extend approximately 50 feet upstream and downstream of the proposed structures.

**Survey and Manage Compliance**

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey, et al.*, No. 08-1067 (W.D. Wash.) ( Coughenour, J.), granting Plaintiffs' motion for partial summary judgment and finding a variety of NEPA violations in the BLM and USFS 2007 Record of Decision eliminating the Survey and Manage mitigation measure. Previously, in

2006, the District Court (Judge Pechman) had invalidated the agencies' 2004 RODs eliminating Survey and Manage due to NEPA violations. Following the District Court's 2006 ruling, parties to the litigation had entered into a stipulation exempting certain categories of activities from the Survey and Manage standard (hereinafter "Pechman exemptions").

Four of five ARRA Culvert Replacements project culverts are located on privately owned lands. These culverts are not subject to pre-disturbance surveys and/or management of known sites as directed in the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (2001 ROD), because the 2001 "[d]ecision applies to administrative units of the USDA Forest Service and USDI Bureau of Land Management (BLM) (generally referred to as "the Agencies") within the range of the northern spotted owl.

The fifth Swiftwater ARRA Culvert Replacements Project culvert is consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated into the Roseburg District Resource Management Plan.

Judge Pechman's Order from October 11, 2006 directs: "Defendants shall not authorize, allow, or permit to continue any logging or other ground-disturbing activities on projects to which the 2004 ROD applied unless such activities are in compliance with the 2001 ROD (as the 2001 ROD was amended or modified as of March 21, 2004), except that this order will not apply to:

- A. Thinning projects in stands younger than 80 years old;
- B. Replacing culverts on roads that are in use and part of the road system, and removing culverts if the road is temporary or to be decommissioned;
- C. Riparian and stream improvement projects where the riparian work is riparian planting, obtaining material for placing in-stream, and road or trail decommissioning; and where the stream improvement work is the placement large wood, channel and floodplain reconstruction, or removal of channel diversions; and
- D. The portions of project involving hazardous fuel treatments where prescribed fire is applied. Any portion of a hazardous fuel treatment project involving commercial logging will remain subject to the survey and management requirements except for thinning of stands younger than 80 years old under subparagraph a. of this paragraph."

Following the Court's December 17, 2009 ruling, the Pechman exemptions are still in place. Judge Coughenour deferred issuing a remedy in the December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects. Nevertheless, I have reviewed the Swiftwater ARRA Culvert Replacements Project in consideration of both the December 17, 2009 and October 11, 2006 order. Because the Swiftwater ARRA Culvert Replacements project entails a project replacing a culvert (the only project on Federal Lands) crossing Little Wolf Creek, along the 25-8-1.1 road and is in use and part of the road system, I have made the determination that this culvert replacement meets Exemption B of the Pechman Exemptions (October 11, 2006 Order), and therefore may still proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision since the Pechman exemptions will remain valid in such case.

Project design will be consistent with the project design features described in the EA (pages 14-19). As noted in the EA, these PDFs come from a variety of sources. Culvert design incorporates requirements of

*the Oregon Road/Stream Crossing Restoration Guide* (Oregon Department of Forestry 1999) and the Aquatic Restoration Biological Opinions mentioned above. Installation will incorporate Best Management Practices from the *Roseburg District Record of Decision/Resource Management Plan* (ROD/RMP, Appendix D, pp. 134-136) and project design features that include:

- Pressure washing or steam cleaning of all excavation and earth-moving equipment prior to move-in on the project site, to minimize the risk of introducing soil from outside the project area that may be contaminated with noxious weed seed or plant propagules. Disturbed areas will be seeded and mulched or otherwise revegetated.
- Restriction of in-stream construction activities to the period between July 1 and September 15, during low summer stream flows.
- Diversion of any surface stream flow or pumping of water around the project site during construction activities and in-stream equipment operation minimized to the extent practicable.
- Installation of absorbent booms downstream of the project sites, prior to commencement of work, to contain any inadvertent spillage of petroleum products.
- End haul of any resulting waste material to an authorized disposal site.

Existing culvert removal and placement of the new structures will be completed using an excavator. Endangered Species Act consultation for this project is covered programmatically under the Aquatic Restoration Biological Opinions issued by National Marine Fisheries Service (NMFS<sup>1</sup>) and the U.S. Fish and Wildlife Service (USFWS<sup>2</sup>) in 2008.

### **Rationale for the Decision:**

Replacement of problematic stream crossings was analyzed under Alternative Two, the “Proposed Action”, of the Roseburg District Aquatic Restoration EA (pp. 26-45). Replacement of the existing stream crossing structures meets the stated objectives of reducing sediment in streams and restoring fish passage. Alternative One, the “No Action” alternative, will not meet the identified objectives or need, and the barriers to fish passage described in the EA (pp. 24) will remain. I considered the following potential resource impacts in making my decision.

### **Soils**

Temporary bypass crossings will not be necessary during construction, minimizing the disturbance area for project construction. Project construction will be located almost entirely within the existing road prism, limiting potential impacts to soil productivity. Project design features will further reduce soils impacts by requiring the application of seeding and mulching to revegetate any disturbed or compacted sites (EA pp. 15). As a result, sediment contributions to the adjacent streams from these surfaces will be confined to a first-season flush, and will not be measurable from background levels downstream.

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<sup>1</sup> U. S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service - Northwest Region. 2008. Endangered Species Act - Section 7 Programmatic Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation (Fish Habitat Restoration Activities in Oregon and Washington, CY 2007-2012). NMFS Number 2008/03506.

<sup>2</sup> U. S. Department of Interior, U.S. Fish and Wildlife Service - Portland, Oregon. 2007. Biological Opinion and Letter of Concurrence USDA Forest Service, USDI Bureau of Land Management and the Coquille Indian Tribe for Programmatic Aquatic Habitat Restoration Activities in Oregon and Washington That Affect ESA-listed Fish, Wildlife, and Plant Species and their Critical Habitats. 8330.F0055(07).

### **Aquatics**

The project will not result in undue environmental degradation, and is consistent with Aquatic Conservation Strategy objectives (1995 ROD/RMP, pp. 20-21). It will aid in maintenance and restoration of in-stream flows, spatial and temporal connectivity in the watershed, natural sediment regimes, and aquatic habitat. It is consistent with the management objective “To preclude stream crossings from being a direct source of sediment to streams thus minimizing water quality degradation and provide unobstructed movement for aquatic fauna.” (1995 ROD/RMP, p. 134)

Potential effects to Oregon Coast coho salmon and other fish species, and critical habitat and Essential Fish Habitat for Oregon Coast coho salmon are associated with sediment mobilized during culvert removal and installation of the new crossing structures. With application of the requirements of *the Oregon Road/Stream Crossing Restoration Guide* project design features described above and identified and adopted in the National Marine Fisheries Service Aquatic Restoration Biological Opinion, dated June 27, 2008, effects of the project will be localized and short term; temporarily elevated turbidity levels may cause short-term stress to fish, but will not cause long term stress that may decrease survival rates (EA pp. 33-34). . These limited effects will “not have an adverse effect” on critical habitat or Essential Fish Habitat. Replacement of the crossings will restore access for coho salmon, steelhead trout and cutthroat trout to a combined total of 2 miles of habitat above the crossings.

### **Botany**

The project areas are within the range of Kincaid’s lupine (*Lupinus sulphureus var. kincaidii*), a Federally-threatened species and hairy popcorn flower (*Plagiobothrys hirtus*) a federally endangered plant species. Habitat surveys for these species were conducted January 25-26, 2010. None of these culvert sites had potential habitat present that will support either of these species.

Noxious weed populations of Himalayan blackberry (*Rubus armeniacus*) were present on all sites. Projects on BLM land will be monitored, evaluated, and treatment recommended as needed under the Roseburg District’s Noxious Weed Program.

### **Wildlife**

#### **Northern Spotted Owl**

The Little Wolf Creek culvert projects are not expected to affect northern spotted owls. Though there is suitable spotted owl habitat within proximity of Little Wolf Creek I and II culverts, the known spotted owl sites occur more than 65 yards away from the project area. Therefore, disruption to spotted owls is not expected to occur during the implementation of the Little Wolf Creek I and II culvert replacements between July 1<sup>st</sup> and July 15<sup>th</sup> (end of the critical breeding season for the spotted owl). No suitable habitat will be removed or modified.

The Little Wolf Creek culvert projects are both within Critical Habitat for the northern spotted owl, under either the 2008 rule (Fed. Register; Vol. 73 No. 157; Aug. 13, 2008; pgs. 47326-47374) (Unit OR-8) or the 1992 rule (Fed. Register; Vol. 73 No. 157; Aug. 13, 2008; pgs. 47326-47374) (Unit OR-58). Critical Habitat for the northern spotted owl was re-designated in 2008. The BLM recognizes the 2008 rule is currently under review by the federal government. Regardless, under either designation, primary constituent elements will not be removed and therefore, there will be no effect to Critical Habitat for the northern spotted owl.

No suitable habitat or known spotted owl sites occur within the proposed project areas at the Williams Creek, Mill Creek, and Billy Creek culvert sites. These projects do not occur within designated Critical

Habitat for the northern spotted owl. Therefore, the projects are not expected to affect northern spotted owl or its designated Critical Habitat.

### Marbled Murrelet

The Little Wolf Creek culvert projects will occur within Marbled Murrelet Inland Management Zone 1 (within 0-35 miles of the coast). The Little Wolf Creek I and II culvert replacements are located in unsurveyed suitable habitat, and will occur during the latter portion of the marbled murrelet critical breeding season (July 1<sup>st</sup>–September 15<sup>th</sup>). To minimize disruption to nesting murrelets a seasonal restriction will be implemented from July 1<sup>st</sup> through August 5<sup>th</sup>, and Daily Operating Restrictions (operations may occur between two hours after sunrise and two hours before sunset) will be implemented from August 6<sup>th</sup> through September 15<sup>th</sup>. No suitable habitat will be removed or modified.

The project area is located within designated Critical Habitat Unit OR-04-*e* for the marbled murrelet (Fed. Register; Vol. 61 No. 102; May. 13, 1996; pgs. 26256-26230). However, the project will not remove primary constituent elements and therefore will not affect Critical Habitat for the marbled murrelet.

The Billy Creek, Mill Creek, and Williams Creek culverts will occur within Marbled Murrelet Inland Management Zone 2 (within 36-50 miles of the coast). However, these culvert replacements will not occur within suitable habitat or within designated Critical Habitat for the marbled murrelet. Therefore, the projects are not expected to affect the marbled murrelet or its designated Critical Habitat.

### Cultural

The Little Wolf Creek and Billy Creek culverts are exempt from normal survey under the 1998 Oregon Protocol, Appendices A (Survey Techniques for Densely Vegetated Areas of Western Oregon) and D<sup>3</sup> (Coast Range Inventory Plan). The projects will occur in steep, narrow canyons which are considered low probability terrain based on previous inventories in the drainages (Appendix A). The projects are further exempted under Appendix D because they occur in the Coast Range. In addition, the Little Wolf culvert location in Section 3 was inventoried for the Little Wolf Timber Sale; no historic or cultural resources were found. The projects will not impact any known National Register properties. The BLM has completed its Section 106 responsibilities.

Cultural resource surveys were conducted at the Mill Creek and Williams Creek culvert sites; no historic or cultural resources were found. BLM has completed its Section 106 responsibilities.

### Public Involvement & Response to Comment:

No issues were identified by any local or tribal governments, State agencies, or other Federal agencies.

The EA and Draft Finding of No Significant Impact were made available for public review from August 4, 2009, through September 4, 2009. No comments were received.

### Monitoring:

Monitoring will be done in accordance with the 1995 ROD/RMP, Appendix I (pp. 84, & 195-198), with emphasis on assessing the effects of the restoration activities on the following resources: Water and Soils, and Fish Habitat.

### Administrative Remedies:

Parties adversely affected by this decision may appeal under 43 CFR §4.410. Appeals of the decision

must be filed with the authorized officer (Max Yager) within 30 days of publication of this notice in *The News Review*, Roseburg Oregon, on March 30, 2010.

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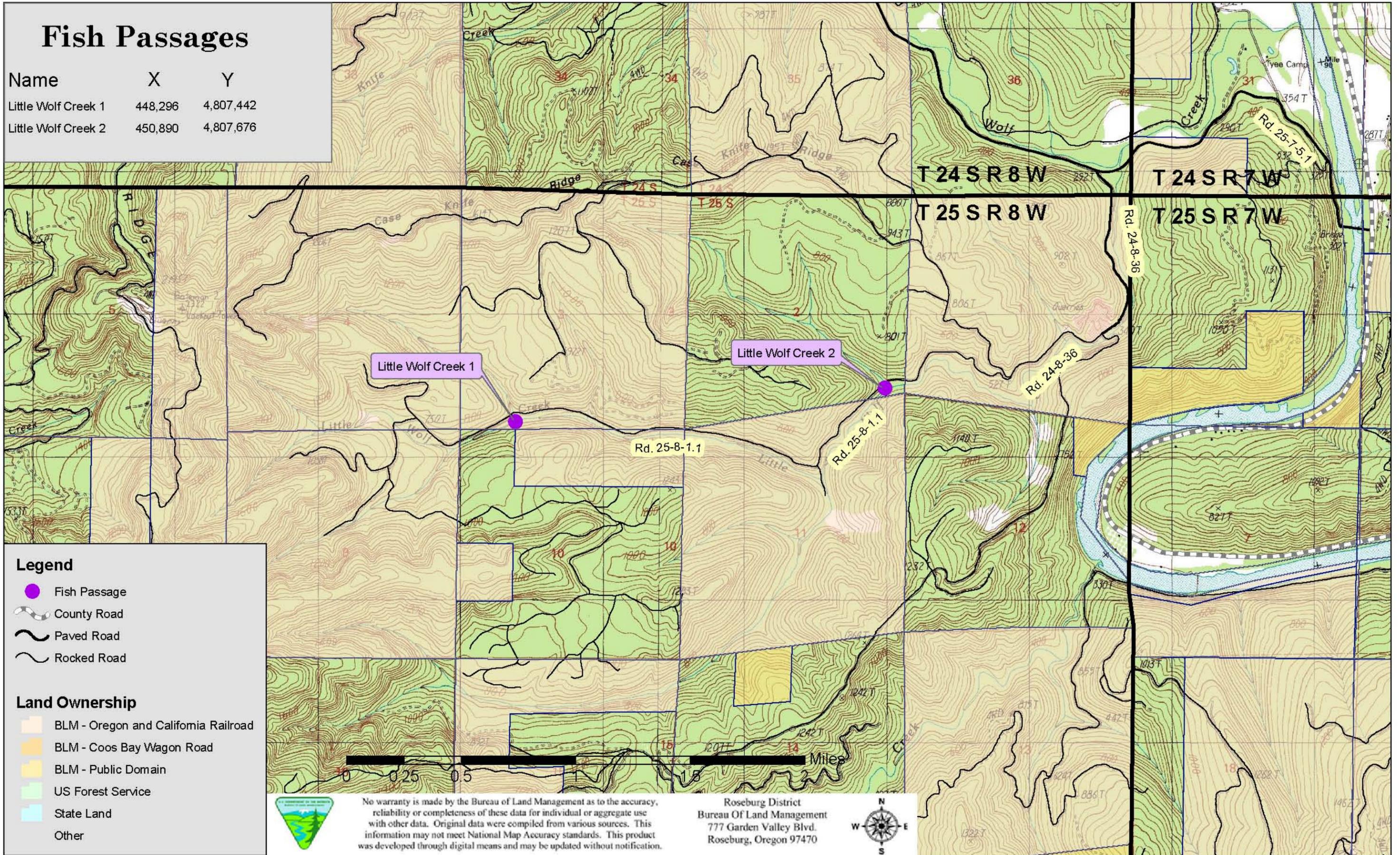
Max Yager  
Swiftwater Field Manager  
Roseburg District Bureau of Land Management

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Date

# Fish Passages

Name	X	Y
Little Wolf Creek 1	448,296	4,807,442
Little Wolf Creek 2	450,890	4,807,676



## Legend

- Fish Passage
- County Road
- Paved Road
- Rocked Road

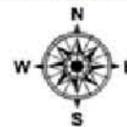
## Land Ownership

- BLM - Oregon and California Railroad
- BLM - Coos Bay Wagon Road
- BLM - Public Domain
- US Forest Service
- State Land
- Other



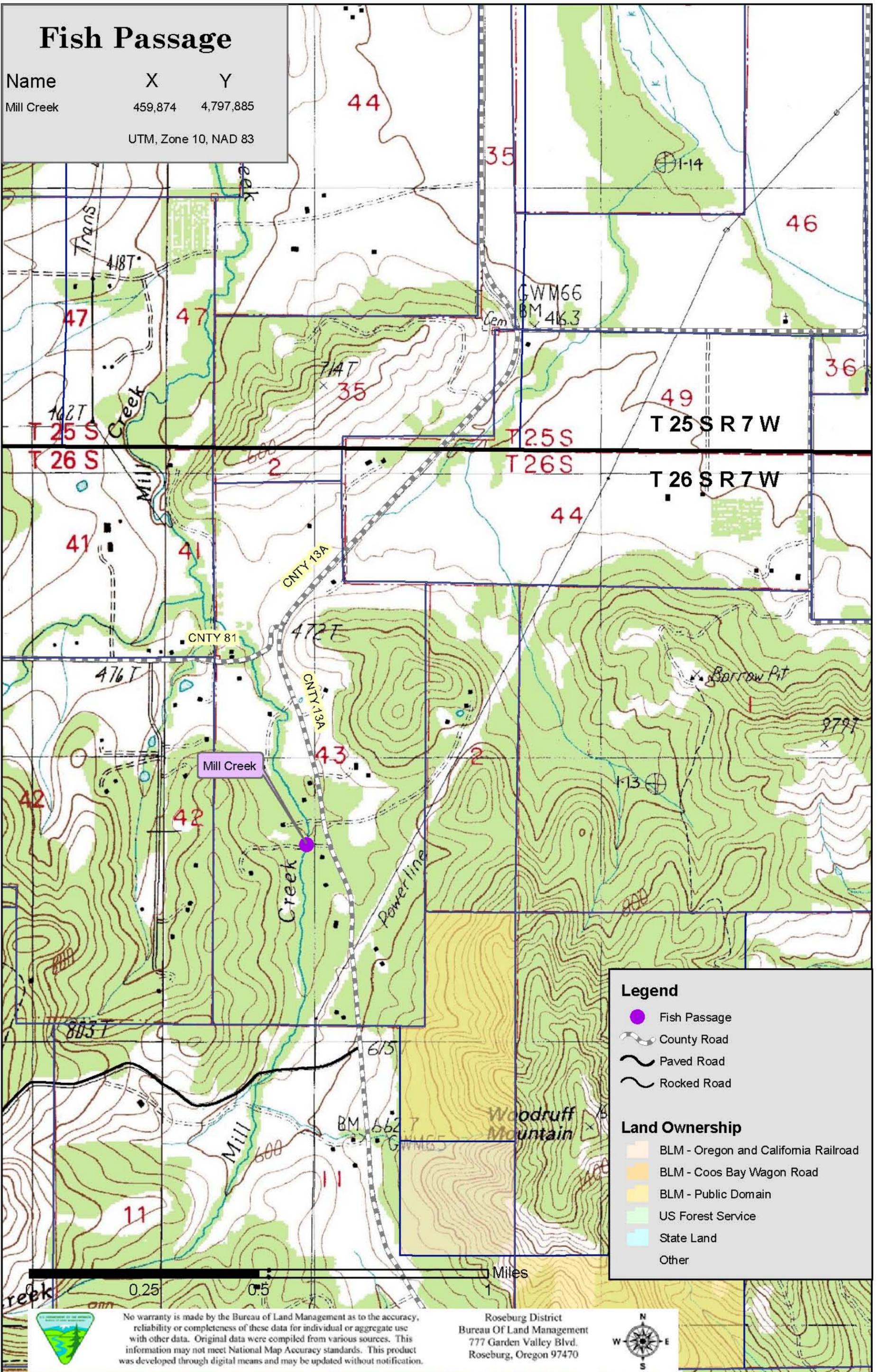
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# Fish Passage

Name	X	Y
Mill Creek	459,874	4,797,885
UTM, Zone 10, NAD 83		



## Legend

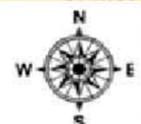
- Fish Passage
- County Road
- Paved Road
- Rocked Road

## Land Ownership

- BLM - Oregon and California Railroad
- BLM - Coos Bay Wagon Road
- BLM - Public Domain
- US Forest Service
- State Land
- Other

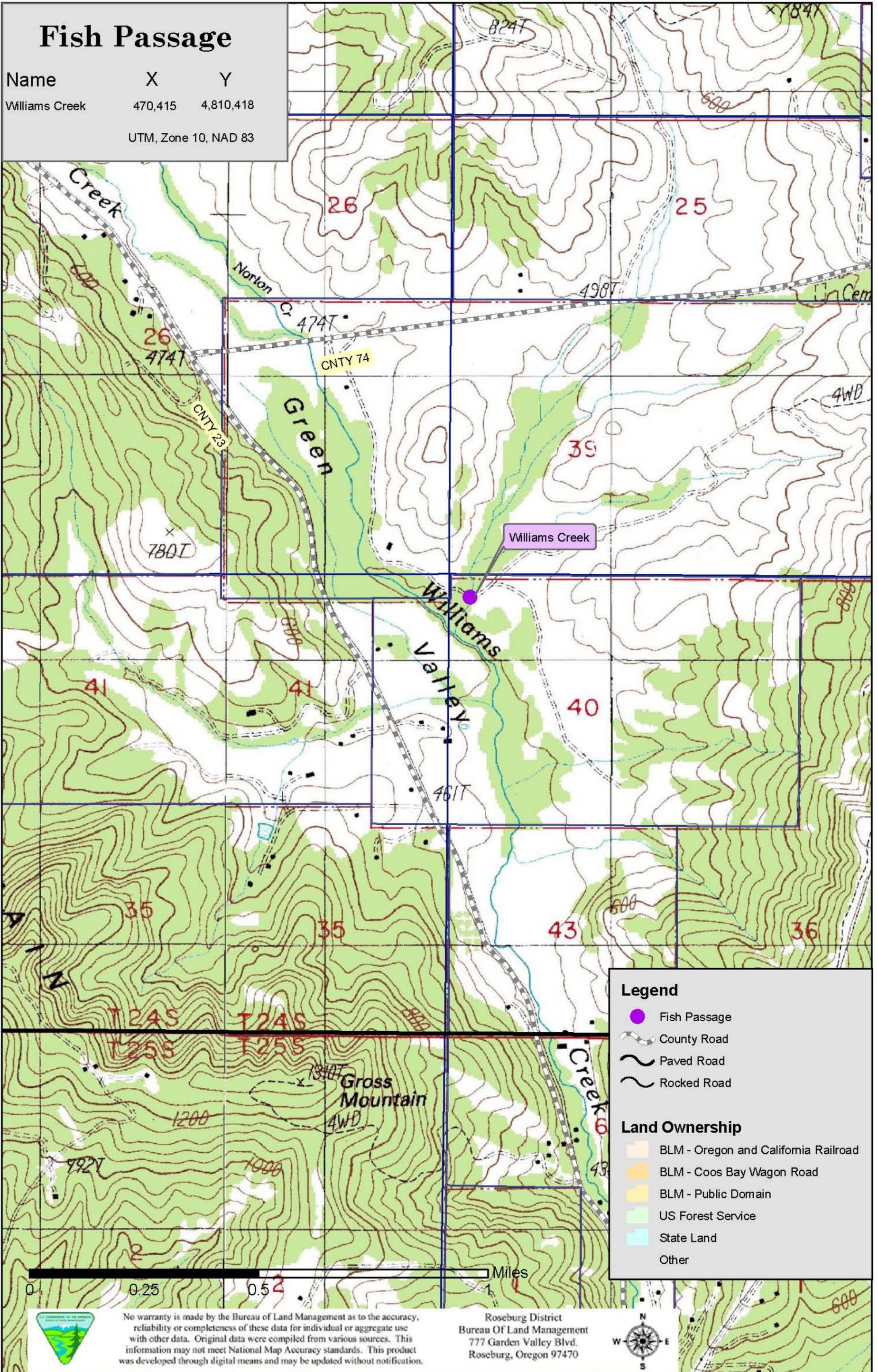
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# Fish Passage

Name	X	Y
Williams Creek	470,415	4,810,418
UTM, Zone 10, NAD 83		



## Legend

- Fish Passage
- County Road
- Paved Road
- Rocked Road

## Land Ownership

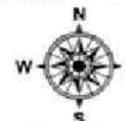
- BLM - Oregon and California Railroad
- BLM - Coos Bay Wagon Road
- BLM - Public Domain
- US Forest Service
- State Land
- Other

0 0.25 0.5 1 Miles



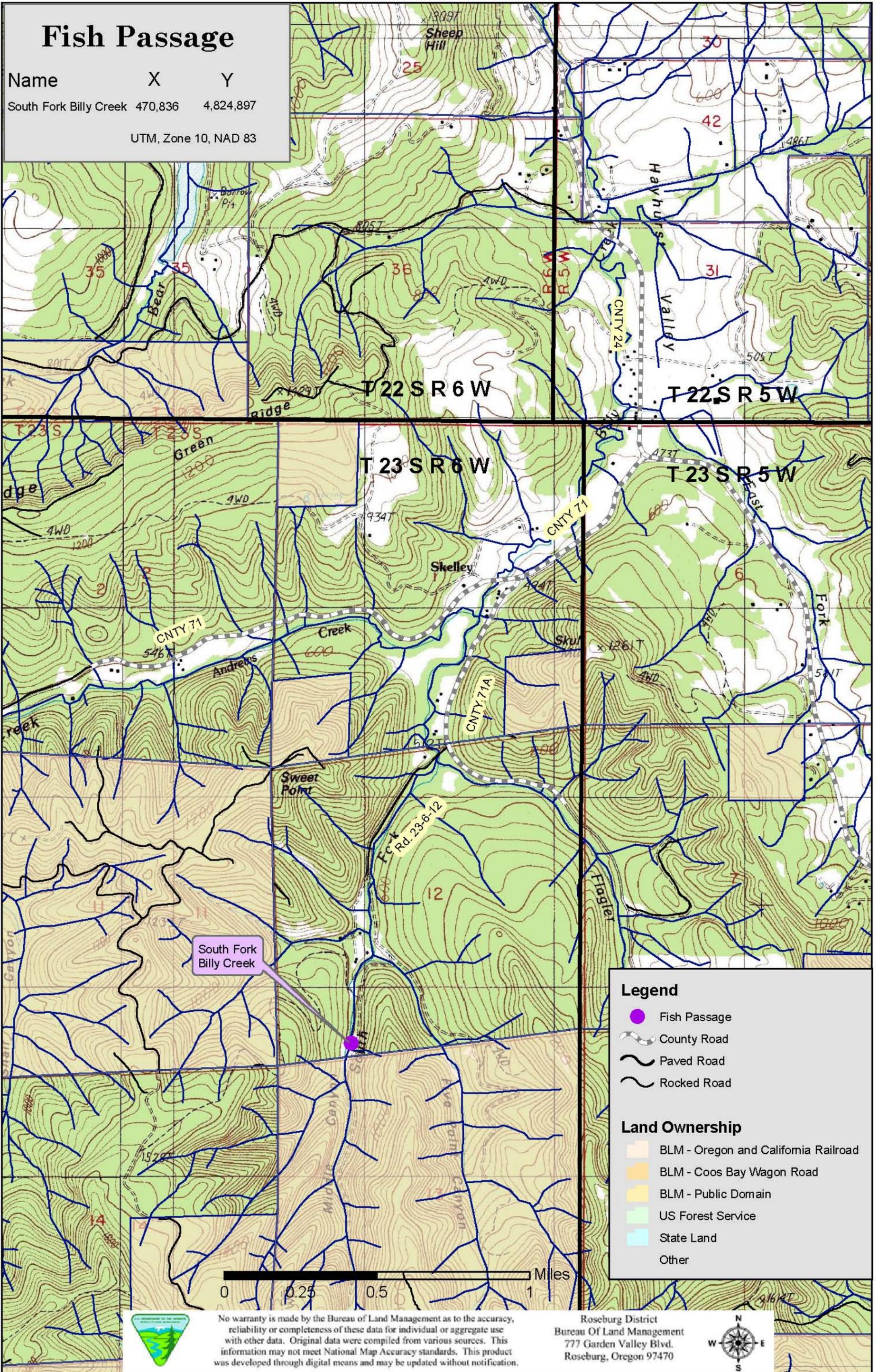
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# Fish Passage

Name                    X                    Y  
 South Fork Billy Creek 470,836    4,824,897  
 UTM, Zone 10, NAD 83



**Legend**

- Fish Passage
- County Road
- Paved Road
- Rocked Road

**Land Ownership**

- BLM - Oregon and California Railroad
- BLM - Coos Bay Wagon Road
- BLM - Public Domain
- US Forest Service
- State Land
- Other

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