



# Oregon

Theodore R. Kulongoski, Governor

**Water Resources Department**

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

**CERTIFIED MAIL  
Return Receipt Requested**

September 12, 2008

KENNETH ROSENBAUM  
1942 MILL CREEK RD  
PROSPECT, OR 97536

Reference: File S-86823

Dear Mr. Rosenbaum:

**THIS IS NOT A PERMIT AND IS  
SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.**

This letter is to inform you of the preliminary analysis of your water use permit application and to describe your options. In determining whether a water use permit application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The application requested 0.12 acre feet (AF) from Hurd Creek Reservoir, constructed under Permit R-8201, and 0.005 cubic foot per second (CFS) from Mill Creek via Nye Ditch, a tributary of Rogue River, for year-round domestic use for one household.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from Hurd Creek Reservoir, a tributary of Hurd Creek and Mill Creek via Nye Ditch, a tributary of Rogue River for domestic use for one household is allowable under the Rogue Basin Program.
4. The use of stored water from Hurd Creek Reservoir is available during the period requested.
5. The proposed use is located above the Rogue Scenic Waterway, as designated under Oregon Revised Statute (ORS) 390.826(9).

6. Surface water is not available in the amount requested during the entire period requested. However, by providing additional information you may be able to pursue a permit for a limited, human consumption use (indoor use only: cooking, drinking, and sanitation), limited to 500 gallons per day per household. Because you have access to the use of 0.12 AF of stored water, which is approximately 107 gallons per day, human consumption will be limited to 400 gallons per day. Please refer to the **Additional Information Opportunity** section below for details.
7. The Department has determined there are deficiencies with the application. Please refer to the **Additional Information Required** section below for specific information.

### **Summary of Initial Determinations**

**The use of 0.12 AF from Hurd Creek Reservoir, tributary to Hurd Creek, for domestic use for one household may be allowed year round.**

**Because not all items above are favorable, the use of 0.005 CFS of water from Mill Creek via Nye Ditch, a tributary of Rogue River, for domestic use for one household is not allowable, and it appears unlikely that you will be issued a permit for live flow. However, by providing additional information you may be able to pursue a limited permit for human consumption use from live flow (indoor use only: cooking, drinking, sanitation), limited to 500 gallons per day per household. At this time, you must decide whether to proceed or to withdraw your application as described below.**

### **Additional Information Required:**

Additional information is required to process your application. Please provide the following:

- Names and addresses of owners of land not owned by you where water will be diverted transported or used. It appears from your map that Tax Lots 2506, 2509, 2510, and 2513 must be crossed to deliver water from the Hurd Reservoir diversion point to the place of use; please provide the name and address of all affected land owners.

**Please submit this information no later than October 16, 2008.** If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If we do not receive the items requested above or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

### **Additional Information Opportunity**

Due to requirements for existing water rights and/or minimum flows in a scenic waterway, water is not available in sufficient quantities to support the proposed use from Mill Creek. However, human consumption of water (indoor use only: cooking, drinking and sanitation) from the proposed source may be considered a high public interest use if there is no reasonable alternative. Because you have access to 0.12 AF of stored water, which is about 107 gallons per day, human consumption will be limited to 400 gallons per day, if approved. If you can provide evidence that this is the case, we will work with the Oregon Department of Fish and Wildlife to attempt to determine conditions which will protect instream values during the months when instream flow requirements are not met. These conditions may include mitigation measures to offset the impact of the requested use.

Please complete and return the attached "Application Supplement for Human Consumption & Livestock Uses" form. **Please submit the information no later than Thursday, October 16, 2008.** If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If we do not receive the items requested above or a request for an administrative hold by this date, the Department will likely proceed with a proposed final order limiting the proposed use to stored water only.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period will be evaluated at the next phase of the process.

### **Withdrawal Refunds:**

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$150 processing charge per application.) To accomplish this you must notify the Department in writing by **Friday, September 26, 2008.** For your convenience you may use the enclosed "STOP PROCESSING" form.

### **To Proceed With Your Application:**

If you choose to proceed with your application, you do not have to notify the Department. Your application will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a proposed final order.

If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
  - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
2. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.
  3. Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a proposed final order. You should be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of your application.

The water source identified in your application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at [http://www.oregon.gov/ODA/NRD/water\\_agplans.shtml](http://www.oregon.gov/ODA/NRD/water_agplans.shtml) to learn more about the plans and how they may affect your proposed water use.

If you have any questions:

Feel free to call me at 503-986-0816 if you have any questions regarding the contents of this letter or your application. Please have your application number available if you call. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0801. When corresponding by mail, please use this address: Kerry Kavanagh, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

A handwritten signature in cursive script that reads "K Kavanagh".

Kerry Kavanagh  
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

S-86823, WAB 15-73379, POU 15-73379  
GW

# APPLICATION FACT SHEET

Application File Number: S-86823

Applicant: KENNETH ROSENBAUM

County: JACKSON

Watermaster: 13

Priority Date: April 2, 2007

Source: HURD CREEK RESERVOIR, A TRIBUTARY OF HURD CREEK AND MILL CREEK VIA NYE DITCH, A TRIBUTARY OF ROGUE RIVER

Use: DOMESTIC USE FOR ONE HOUSEHOLD

Quantity: 0.005 CUBIC FOOT PER SECOND FROM MILL CREEK VIA NYE DITCH AND 0.12 ACRE FOOT FROM HURD CREEK RESERVOIR

Basin Name & Number: Rogue, #15

Stream Index Reference: Volume 1A ROGUE R MISC

Point of Diversion Locations:

RESERVOIR - SWNW, SECTION 11, T33S, R2E, W.M.; 1050 FEET NORTH AND 90 FEET EAST FROM W1/4 CORNER, SECTION 11

MILL CREEK DIVERSION - NWSE, SECTION 28, T32S, R3E, W.M.; 1860 FEET NORTH AND 2690 FEET EAST FROM SW CORNER, SECTION 28

Place of Use:

SW  $\frac{1}{4}$  NW  $\frac{1}{4}$   
SECTION 11  
TOWNSHIP 33 SOUTH, RANGE 2 EAST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, September 26, 2008**

**PUBLIC NOTICE DATE: Tuesday, September 16, 2008**

**30 DAY COMMENT DEADLINE DATE: Thursday, October 16, 2008**

# Mailing List for IR Copies

Application #S-86823

IR Date : September 12, 2008

## Original mailed to applicant:

KENNETH ROSENBAUM  
1942 MILL CREEK RD  
PROSPECT, OR 97536

## Copies sent to:

1. WRD - File # S-86823
2. WRD - Water Availability: Ken Stahr

## IR, Map, and Fact Sheet Copies sent VIA EMAIL:

3. WRD - Watermaster # 13
4. ODFW: Jay Doino
5. DEQ: Heather Tugaw

## IR, Map, and Fact Sheet Copies sent to:

6. WRD - Regional Manager: SW
7. Department of Agriculture
8. State Parks

## Div 33 App Work Sheet - Human Consumption Exception Form to:

9. WRD - Watermaster # 13
10. ODFW: Jay Doino
11. DEQ: Heather Tugaw

## Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

12. James E. Hibbs, CWRE #66, 419 Phoenix Hills Drive, Phoenix, OR 97535

COPYSHT.IR

Caseworker: Kerry Kavanagh

**REMINDER:** Copy all IR's for uses in the Klamath Basin to DEQ and ODFW contacts, regardless of whether they are subject to Division 33. (If they are not subject to Division 33, do not include Division 33 forms.)

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>
---------------------------------------------------------------------------------

