

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

In the Matter of Instream Lease Application    )    DETERMINATION and  
IL-1194, Jackson County                            )    FINAL ORDER ON PROPOSED  
                                                          )    INSTREAM LEASE

**Authority**

ORS 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. OAR Chapter 690, Division 077 implements the statutes and provides the Department’s procedures and criteria for evaluating instream lease applications.

**Lessors**

Clement J. and Melinda G. Kong, Trustees of the Clement and Melinda Kong Family Revocable Living Trust and  
Stuart R. and Louise H. Korshak, Trustees of the Stuart R. and Louise H. Korshak Living Trust  
25<sup>th</sup> and J Streets Building  
2430 J Street  
Sacramento CA 95816

**Findings of Fact**

1. On June 16, 2016, Clement J. Kong filed an application on behalf of himself and Melinda G. Kong, Trustees of the Clement and Melinda Kong Family Revocable Living Trust and Stuart R. and Louise H. Korshak, Trustees of the Stuart R. and Louise H. Korshak Living Trust to renew instream lease IL-1194, involving the entirety of Certificate 87426 for instream use.
2. On February 12, 2012, Certificate 87426 was issued to correct the location of the point of diversion described in Certificate 87286. Certificate 87426 corrected and superseded Certificate 87286. On February 16, 2012, IL-1194 was leased to George H. and Hendrika Neary involving the entirety of Certificate 87286. This lease correctly leases Certificate 87426.
3. The property appurtenant to Certificate 87426 is currently owned by Clement J. and Melinda G. Kong, Trustees of the Clement and Melinda Kong Family Revocable Living Trust and Stuart R. and Louise H. Korshak, Trustees of the Stuart R. and Louise H. Korshak Living Trust.
4. The right to be leased is as follows:

**Certificate:**    87426 in the name of GEORGE H. AND HENDRIKA NEARY,  
                                                          TRUSTEES (perfected under Permit S-23796)

**Use:**                 IRRIGATION of 92.1 acres

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or 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.

**Priority Date:** JULY 28, 1955

**Quantity:** **Rate:** 1.15 CUBIC FEET PER SECOND (CFS)

**Volume:** 414.45 ACRE FEET (AF)

**Limit/Duty:** 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** ROGUE RIVER, a tributary to the PACIFIC OCEAN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 W	WM	18	NW SE	1130 FEET SOUTH AND 2510 FEET WEST FROM THE E1/4 CORNER OF SECTION 18

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 W	WM	17	NENW	2.9
36 S	2 W	WM	17	NWNW	0.3
36 S	2 W	WM	17	SWNW	8.2
36 S	2 W	WM	17	SENW	8.4
36 S	2 W	WM	18	NENE	7.7
36 S	2 W	WM	18	NWNE	2.5
36 S	2 W	WM	18	SWNE	28.9
36 S	2 W	WM	18	SENE	13.7
36 S	2 W	WM	18	NENW	2.3
36 S	2 W	WM	18	SENW	17.1
36 S	2 W	WM	18	NWSE	0.1
Total:					92.1

5. Certificate 87426 does not specify the irrigation season. However, the Rogue River Decree establishes the irrigation season for the area as April 1 – October 31.
6. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
7. The instream use is as follows:  
ROGUE RIVER, a tributary to the PACIFIC OCEAN

**Instream Reach:** From the POD (as described in Finding of Fact No. 4) to the mouth of the Rogue River

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
87426	JULY 28, 1955	1.15	April 2 through September 29

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
9. The protection of flows within the proposed reach is appropriate, considering:
  - a. The instream water use begins at the recorded point of diversion;
  - b. The location of confluences with other streams downstream of the point of diversion.
  - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
10. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
11. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
12. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
13. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
14. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of any future transactions.
15. The Lessors have requested that the lease terminate on October 31, 2021. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2017, being the first day of the irrigation season.
16. The Lessors have requested the option of terminating the lease early with written notice to the Department.

### **Conclusions of Law**

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

**Now, therefore, it is ORDERED:**

1. The Lease as described herein is APPROVED.
2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence on April 1, 2017, and terminate on October 31, 2021. For multiyear leases, the lessors *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (April 2 – September 29, 2021) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 18 day of July, 2016.

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

Mailing Date: JUL 22 2016

*This document was prepared by Tracy  
Fox, if you have any questions, please  
call 503-986-0827.*