

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificate 87286, Jackson County) 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.

Lessor

George H. and Hendrika Neary
C/O Clement J. Kong, ESQ
2430 J Street
Sacramento, CA. 95816
Clement@kkks.com

Findings of Fact

1. December 5, 2011 George H. and Hendrika Neary filed an application to Lease all of Certificate 87286 to instream use. The Department assigned the application number IL-1194.

2. The first right to be leased is as follows:

- Certificate:** 87286 in the name of GEORGE NEARY; HENDRIKA NEARY, TRUSTEES (perfected under Permit S-23796)
- Use:** IRRIGATION of 92.1 acres
- Priority Date:** JULY 28, 1955
- Rate:** 1.150 CUBIC FEET PER SECOND AND 414.450 ACRE FEET
- Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to, 4.5 FOR IRRIGATION acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: ROGUE RIVER in the PACIFIC OCEAN BASIN

Authorized Point of Appropriation:

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

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
36.00 S	2.00 W	WM	17	NENW	2.9
36.00 S	2.00 W	WM	17	NWNW	0.3
36.00 S	2.00 W	WM	17	SWNW	8.2
36.00 S	2.00 W	WM	17	SEnw	8.4
36.00 S	2.00 W	WM	18	NENE	7.7
36.00 S	2.00 W	WM	18	NWNE	2.5
36.00 S	2.00 W	WM	18	SWNE	28.9
36.00 S	2.00 W	WM	18	SENE	13.7
36.00 S	2.00 W	WM	18	NENW	2.3
36.00 S	2.00 W	WM	18	SEnw	17.1
36.00 S	2.00 W	WM	18	NWSE	0.1
Total					92.1

3. 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.

4. The instream use is as follows:

ROGUE RIVER tributary to PACIFIC OCEAN

Instream Reach: From POD (as described in Finding of Fact #2) to the Mouth of the Rogue River

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
87286	JULY 28, 1955	1.15	April 2 through September 29

5. Other conditions to prevent injury and enlargement are:

6. 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.

7. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the 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.

8. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.

9. The lease will commence on April 2, 2012 and terminate on September 29, 2016.
10. The Lessor has 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.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, during the term of the lease.
3. The lease will terminate on September 29, 2016. The Lessor has the option of terminating the lease each year, with notification to the Department by March 2 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 16 day of February 2012.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

FEB 17 2012

Mailing date: _____