

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

**KLAMATH BASIN GENERAL STREAM ADJUDICATION**

In the Matter of the Claim of	)	PARTIAL ORDER OF
JELD-WEN, INC	)	DETERMINATION
	)	
_____	)	Water Right Claim 60

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT**

1. On February 1, 1991, JELD-WEN, INC (Claimant) timely submitted a Statement and Proof of Claim (Claim 60) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 60 was submitted for a total of 2.6 cfs of water from Crooked Creek and the Fort Creek Canal, tributaries of the Wood River, being 1.6 cfs for irrigation of 80 acres and 1.0 cfs for livestock watering of 60 head. The claimed period of use is year-round for livestock watering, and May 1 through October 1 for irrigation. The claimed priority date is October 14, 1864.
3. MATTHEW W. BEDDOE, corporate counsel for JELD-WEN, INC., signed Claim 60 attesting that the information contained in the claim is true.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because “the claim is for a source which has been previously adjudicated.”
5. On May 5, 2000, the Claimant timely filed Contest 2042 to the Preliminary Evaluation of Claim 60.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3458: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady

District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co.<sup>1</sup>, Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard<sup>2</sup>, Don Vincent<sup>3</sup>, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

7. On May 8, 2000, the United States of America timely filed Contest 3800 to the Claim and/or Preliminary Evaluation of Claim 60.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4113 to the Claim and/or Preliminary Evaluation of Claim 60.
9. On May 8, 2000, Ambrose W. McAuliffe, Dwight Mebane, Elmore Nicholson, Richard Nicholson, and William Nicholson timely filed Contest 2754 to the Claim and/or Preliminary Evaluation of Claim 60.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 192.
11. On May 6, 2003, Claim 60 was consolidated with Case 900 “for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . , which have been previously adjudicated, bar the Claimants from participation in this adjudication.” *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.
12. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.
13. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 12, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
14. On June 25, 2004, Dwight Mebane voluntarily withdrew from Contest 2754. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DWIGHT MEBANE (June 25, 2004).
15. On July 16, 2004, the Klamath Tribes withdrew from Contest 4113. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (July 16, 2004).

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3458 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3458 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3458 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

16. On November 3, 2004, Ambrose McAuliffe withdrew from Contest 2754. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY AMBROSE MCAULIFFE (Nov. 1, 2004).
17. On November 3, 2004, Elmore Nicholson withdrew from Contest 2754. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY ELMORE NICHOLSON (Nov. 3, 2004).
18. On November 3, 2004, William Nicholson withdrew from Contest 2754. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY WILLIAM NICHOLSON (Nov. 3, 2004).
19. On June 9, 2005, the Klamath Project Water Users withdrew Contest 3458. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3457 [sic] (June. 9, 2005) and CORRECTED NOTICE OF WITHDRAWAL OF CONTEST NO. 3458 (June 14, 2005).
20. On March 15, 2006, Roger Nicholson<sup>4</sup> voluntarily withdrew from Contest 2754. *See* WITHDRAWAL OF CONTEST OF CONTEST 2458 (Nov. 3, 2004).
21. On March 28, 2006, Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 60.
22. On March 29, 2006, the Adjudicator withdrew Case 192 from the Office of Administrative Hearings.
23. OWRD finds that livestock watering is limited to 60 head as originally claimed.

## **B. DETERMINATION**

1. The Settlement Agreement executed between the Claimants, OWRD, and the United States of America is adopted and incorporated as if set forth fully herein.
2. Livestock watering is limited to 60 head as described in Finding 23, above.
3. A portion of the claimed place of use is subject to natural subirrigation and/or natural overflow from Crooked Creek. The Settlement Agreement states that the privilege to use water as described herein does not constitute a water right. OWRD will not issue a certificate for this portion of Claim 60 subject to natural subirrigation and/or natural overflow. This privilege cannot be insisted upon if it interferes with the appropriation of the waters for beneficial use by others, and no priority date, season of use, rate or duty shall attach to such privilege. This privilege may not be transferred to any other property, and may not be altered by the use of any physical means to modify the manner in which natural subirrigation and/or natural overflow occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural

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<sup>4</sup> Roger Nicholson was substituted for Richard Nicholson in Contest 2754. *See* CHANGE OF OWNERSHIP FORM (Nov. 3, 2004) and STATUTORY WARRANTY DEED, COUNTY OF KLAMATH, VOL M04, PAGE 26209.

subirrigation and/or natural overflow. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS.537.150. This privilege will not modify any rights that the Claimant may have to allow livestock watering pursuant to ORS 537.141(2). The stipulated place of use for acceptance of natural subirrigation and/or natural overflow is located as follows:

<b>IRRIGATION AND LIVESTOCK WATERING BY NATURAL SUBIRRIGATION AND/OR NATURAL OVERFLOW</b>					
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Acres</b>
34 S	7.5 E	WM	12	NW SE	7.8
34 S	7.5 E	WM	12	SW SE	17.5
34 S	7.5 E	WM	13	NE NE	3.9
34 S	7.5 E	WM	13	NW NE	0.3
34 S	7.5 E	WM	13	NW NE	0.8
34 S	7.5 E	WM	13	SE NE	0.5

See Map at CLAIM # 60, PAGE 63

4. Diversion of stock water to the place of use for the portion of Claim 60 as specified in the Water Right Claim Description, below, is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.
5. Based on the file and record herein, IT IS ORDERED that a portion of Claim 60 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 60**  
FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**  
OWRD INVESTIGATION MAP – T 34 S, R 7.5 E; CLAIM # 60, PAGE 63

**CLAIMANT:** JELD-WEN, INC.  
401 HARBOR ISLES BLVD  
KLAMATH FALLS OR 97601

**SOURCE OF WATER:** CROOKED CREEK, tributary to the WOOD RIVER

**PURPOSE OR USE:**  
IRRIGATION OF 14.8 ACRES, AND LIVESTOCK WATERING UP TO 60 HEAD

**RATE OF USE:**  
0.3711 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:  
  
0.37 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND  
  
0.0011 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 720 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

**DUTY:**

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

**PERIOD OF ALLOWED USE:** MAY 1 - OCTOBER 1

**DATE OF PRIORITY:** OCTOBER 14, 1864

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	Crooked Creek	34 S	7.5 E	WM	13	NW SE	1420 FEET NORTH AND 2210 FEET WEST FROM SE CORNER, SECTION 13


**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

IRRIGATION FROM POD 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	12	SW SE	0.2
34 S	7.5 E	WM	13	NE NE	2.6
34 S	7.5 E	WM	13	NW NE	7.5
34 S	7.5 E	WM	13	SW NE	1.5
34 S	7.5 E	WM	13	SE NE	3.0

LIVESTOCK WATERING FROM POD 1				
Twp	Rng	Mer	Sec	Q-Q
34 S	7.5 E	WM	12	SW SE
34 S	7.5 E	WM	13	NE NE
34 S	7.5 E	WM	13	NW NE
34 S	7.5 E	WM	13	SW NE
34 S	7.5 E	WM	13	SE NE
34 S	7.5 E	WM	13	NE SE
34 S	7.5 E	WM	13	NW SE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication