

**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
DAVID P. FAIRCLO, AND)	DETERMINATION
JELD-WEN, INC.)	
_____)	
)	Water Right Claim 77

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 January 17, 1991, RICHARD FAIRCLO timely submitted a Statement and Proof of Claim (Claim 77) 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 77 was submitted for a total of 2.9 acre-feet per year of water from unnamed draws, all tributary to the Sycan River, stored in six stock watering ponds for livestock watering of 200 to 800 head with a “year round” season of use. The claimed priority date is 1864.
3. Item 13 of the Statement and Proof of Claim incorporates “Exhibit C,” an Affidavit that states in pertinent part: “All the lands described in Exhibit “A” [lands appurtenant to Claim 77] are within the former Klamath Indian Reservation and our predecessors in interest of the land described were members of the Klamath Tribe as allottees or were the Klamath Tribe since the Treaty of 1864, and all diversions and improvements of the use of the water were made within a reasonable time after acquisition of the lands from the members of the Tribe for those diversions and improvements that were not already in place by such Indians. All owners have claimed and continue to claim a treaty date priority for the water applied on the described lands.” (Claim # 77, Page 08).
4. RICHARD FAIRCLO signed the Statement and Proof of Claim for Claim 77 attesting that the information contained in the claim is true.

5. On January 9, 1997, RICHARD FAIRCLO assigned one-half interest in the title to the property associated with Claim 77 to DAVID P. FAIRCLO and the other one-half interest to JELD-WEN, INC. *See* ASSIGNMENT OF WATER RIGHTS (CLAIM # 77, PAGE 017). *See also* COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 762. Claimants in Claim 77 are DAVID P. FAIRCLO AND JELD-WEN, INC (Claimants).
6. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 77 (Claim # 77, WIP, Page 00001).
7. 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 approved.
8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 77.
9. Based on the sworn statements in Claim 77, along with the field inspection report, the following findings are made:
 - a. The claimed water use is on former Klamath Indian Reservation Land.
 - b. The claimed water use is on land that was transferred from Indian ownership.
 - c. Beneficial use of water for the claimed purpose was not made prior to transfer from Indian ownership.
 - d. Beneficial use of water for the claimed purpose has been made with reasonable diligence following the transfer from Indian ownership.

B. DETERMINATION

1. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
2. Based on the file and record herein, IT IS ORDERED that Claim 77 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 77

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 35 S, R 12 E

CLAIMANTS: DAVID FAIRCLO
20751 AMBER WAY
BEND, OR 97701

JELD-WEN, INC.
401 HARBOR ISLES BVLD.
KLAMATH FALLS, OR 97601

SOURCES OF WATER: UNNAMED DRAWS, all tributary to the SYCAN RIVER

PURPOSE or USE:

LIVESTOCK WATERING OF UP TO 800 HEAD FROM SIX STOCK WATERING PONDS

PERIOD OF ALLOWED USE: JANUARY 1 – DECEMBER 31

RATE OF USE:

2.9 ACRE-FEET PER YEAR (AF) MEASURED AT THE PLACE OF USE, BEING 0.2 AF EACH IN CHECK DAM # 1 AND # 5, 0.1 AF EACH IN CHECK DAM # 2 AND # 3, 1.3 AF IN CHECK DAM # 4, AND 1.0 AF IN CHECK DAM # 6

DATE OF PRIORITY: OCTOBER 14, 1864

POINTS OF DIVERSION LOCATIONS ARE AS FOLLOWS:

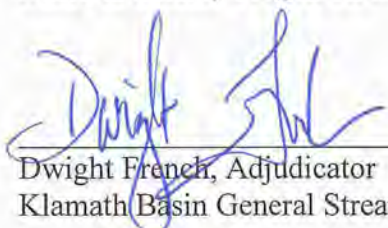
All Tributary to the Sycan River		Point of Diversion Location				
Source	Stock Pond Name	Twp	Rng	Mer	Sec	Q-Q
Unnamed Draw	Check Dam # 1	35 S	12 E	WM	10	NW NW
Unnamed Draw	Check Dam # 2	35 S	12 E	WM	10	SW NW
Unnamed Draw	Check Dam # 3	35 S	12 E	WM	10	SE SE
Unnamed Draw	Check Dam # 4	35 S	12 E	WM	10	NW SE
Unnamed Draw	Check Dam # 5	35 S	12 E	WM	9	NWNE
Unnamed Draw	Check Dam # 6	35 S	12 E	WM	9	SW NW and SE NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
35 S	12 E	WM	9	NW NE
35 S	12 E	WM	9	SW NW
35 S	12 E	WM	9	SE NW
35 S	12 E	WM	10	NW NW
35 S	12 E	WM	10	SW NW
35 S	12 E	WM	10	NW SE
35 S	12 E	WM	10	SE SE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication