

**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 101

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 101) 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 101 was submitted for instream livestock watering of 150 head for a total 1.0 cubic feet per second (cfs) of water from the Sycan River, a tributary of the Sprague River with a “year round” season of use. The claimed priority date is 1864. The evidence in the record supports the number of head and season of use claimed.
3. Item 14 on the Statement and Proof of Claim states, “Livestock have and continue to water directly from the river upon Claimant’s property since such property passed from Indian ownership.”
4. MATTHEW W. BEDDOE, corporate counsel for JELD-WEN, INC., signed the Statement and Proof of Claim for Claim 101 attesting that the information contained in the claim is true.
5. In 1991, a field inspection report, including a map (“Claimants Map”), was prepared by a private engineer or surveyor, describing the present use of water on the property substantially as stated in the Claim 101 (Claim # 101, Pages 067 and 068).
6. On June 25, 1998, the claimant supplemented information to Claim 101 by providing a place of use listing by quarter-quarter (Claim # 101, Page 00247).

- The place of use list includes the SENW, Section 5. The Claimant's Map referenced in Finding 6, above, shows the Sycan River flows through the SWNW, Section 5, not the SENW. OWRD finds that the place of use in Section 5 is the SWNW.
 - The place of use list also includes the SENW, Section 21. The Claimant's Map shows the SENW, Section 21 is not within the boundaries of the Claimant's land, and furthermore, is not included in the Claimant's chains of title for lands appurtenant to Claim 101. OWRD finds that the place of use does not include the SENW, Section 21.
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, but for a larger quantity of water and more head than claimed.¹
 8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 101.
 9. Based on the sworn statements in Claim 101, 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.

¹ The Preliminary Evaluation included two errors: (1) the number of head claimed and approved was stated as 1500 instead of 150, and (2) the amount of beneficially used water was stated as 18,000 gallons per day instead of 1800.

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. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
3. The total rate of water for livestock use is based on 150 head, the number of head claimed by the Claimant.
4. Based on the file and record herein, IT IS ORDERED that Claim 101 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 101

CLAIM MAP REFERENCE: CLAIM # 101, PAGE 68

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

SOURCE OF WATER: The SYCAN RIVER, tributary to the SPRAGUE RIVER

PURPOSE or USE: INSTREAM LIVESTOCK WATERING FOR 150 HEAD

RATE OF USE:

0.003 CUBIC FOOT PER SECOND MEASURED AT THE PLACE OF USE, NOT TO EXCEED 1800 GALLONS PER DAY

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

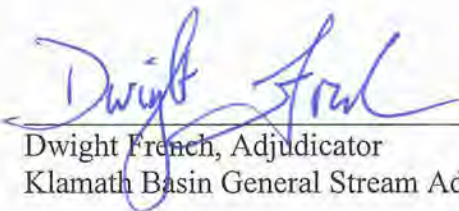
Twp	Rng	Mer	Sec	Q-Q	Instream Livestock Watering
35 S	12 E	WM	5	SW NW	No specific point of diversion - livestock drink directly from the Sycan River
35 S	12 E	WM	5	NE SW	
35 S	12 E	WM	5	NW SW	
35 S	12 E	WM	5	SW SW	
35 S	12 E	WM	5	SE SW	
35 S	12 E	WM	6	NE NE	
35 S	12 E	WM	6	SE NE	
35 S	12 E	WM	8	NW NW	
35 S	12 E	WM	8	SW NW	
35 S	12 E	WM	8	NE SW	
35 S	12 E	WM	8	NW SW	
35 S	12 E	WM	8	NE SE	
35 S	12 E	WM	8	NW SE	
35 S	12 E	WM	9	NW SW	
35 S	12 E	WM	9	SW SW	
35 S	12 E	WM	16	NW NW	
35 S	12 E	WM	16	SW NW	
35 S	12 E	WM	16	NE SW	
35 S	12 E	WM	16	NW SW	
35 S	12 E	WM	16	SE SW	
35 S	12 E	WM	21	NE NW	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
35 S	12 E	WM	5	SW NW
35 S	12 E	WM	5	NE SW
35 S	12 E	WM	5	NW SW
35 S	12 E	WM	5	SW SW
35 S	12 E	WM	5	SE SW
35 S	12 E	WM	6	NE NE
35 S	12 E	WM	6	SE NE
35 S	12 E	WM	8	NW NW
35 S	12 E	WM	8	SW NW
35 S	12 E	WM	8	NE SW
35 S	12 E	WM	8	NW SW
35 S	12 E	WM	8	NE SE
35 S	12 E	WM	8	NW SE
35 S	12 E	WM	9	NW SW
35 S	12 E	WM	9	SW SW
35 S	12 E	WM	16	NW NW
35 S	12 E	WM	16	SW NW
35 S	12 E	WM	16	NE SW
35 S	12 E	WM	16	NW SW
35 S	12 E	WM	16	SE SW
35 S	12 E	WM	21	NE NW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication