

M E M O R A N D U M

TO: File 29070

Date: July 29, 1981

FROM: Larry W. Jebousek *LWJ*

Subject: ~~Re~~ Proof of Beneficial Use Under Terms of Permit 22863

Application 28388 was filed on May 5, 1953 by Willard J. Baysinger for permit to appropriate 0.15 cfs from Humbug Creek to irrigate 12 acres in the southerly portion of the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 23, T38S, R4W, WM. Dave Hendrix, Watermaster, assisted in preparing the application. Permit 22394 was issued on August 21, 1953 approving the application.

Application 29070 was filed on March 18, 1954 by Arion D. Christensen for permit to appropriate 0.313 cfs from Applegate River through the Kubli Ditch to irrigate, among other lands, 8.0 acres supplemental irrigation in the southerly portion of the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 23, T38S, R4W, WM, apparently supplemental to Permit 22394. Dave Hendrix also assisted the applicant in this matter. Permit 22863 was issued approving the application on May 28, 1954.

On December 10, 1954, Baysinger assigned his interest in Permit 22394 to M.J. Winningham and Arion and Norm Christensen. On December 8, 1954, Dave Hendrix made final proof survey on Permit 22863 and found 5.7 acres irrigated in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 23, all east of Humbug Creek. Subsequently, on August 26, 1955, Certificate 20883 was issued describing the 5.7 acres of supplemental irrigation in this 40.

On December 28, 1956, Dave Hendrix then made the final proof survey on Permit 22394 and found only 2.2 acres irrigated, all being west of Humbug Creek. On September 12, 1957, Certificate 23104 was issued to M.J. Winningham confirming the irrigation of 2.2 acres.

The term supplemental irrigation is not defined by statute or administrative rule, but is derived from case law. A water right for supplemental irrigation is generally accepted now as being a second source of appropriation to make up a deficiency in the primary right. However, it appears that proof to the satisfaction of the State Engineer was submitted under the terms of Permit 22863 sufficient to issue Certificate 20883 and this use has purportedly continued without forfeiture to date. Therefore, even though Permit 22863 and Certificate 20883 designate the use as supplemental irrigation, no primary right was established for these lands and this right must be considered as primary irrigation regardless of the terminology.

*na superseded by cert. 46556  
pencil notation entered on certificate 46556*

cc: David C. Hendrix  
lcj