

MEMORANDUM

TO: Transfer No. 74753 & 74776 Files

FROM: Angela Grimm

DATE: November 5, 2009 Amended December 10, 2009

RE: Evaluation of Sufficiency of Information Submitted

The transfers propose to establish permissible place of uses for the water rights proposed for transfer. Transfer No. 74753 proposes a permissible place of use for rights 2-2251 and 2-10017 for irrigation within a 2,720 acre PPU. Transfer No. 74776 proposes a permissible place of use for rights 57-2254, 2-10238, 2-10239, 2-10240, 2-10241, 2-10242, and 2-10243 for irrigation within a 1,256 acre PPU. Transfer No. 74476 also proposes to change ownership of rights 57-2254, 2-10238, 2-10240, and 2-10242.

The place of use for Transfer No. 74753 is approximately; 2 miles west of Swan Falls Dam, 2 miles north of Murphy Flat Rd, and 5 miles east of Murphy within the Snake River Birds of Prey area. The place of use proposed for Transfer No. 74776 is between Highway 95 and Highway 78 approximately 3 miles south of Marsing.

Contact person for the applicant is Lori Graves, SPF Water Engineering.

Summary of Information Submitted

Authority to File: The applicant is the owner on file for the rights proposed for change in Transfer No. 74753. The applicant also owns the entire PPU proposed in transfer no. 74753 per ownership documentation on file. The applicant is the owner on record of rights 2-10239, 2-10241, and 2-10243 proposed for change in Transfer No. 74776. Warranty deeds were submitted documenting current ownership of irrigated lands of rights 57-2254, 2-10238, 2-10240, 2-10242 and property proposed as the PPU in Transfer No. 74776. The property and rights proposed for change in both transfers are subject to a lien, and the rights have a security interest recorded. The applicant provided a lien holder letter acknowledging the lien holder is aware of the transfers and is ok with them. The transfer applications were submitted in the name of Dale and/or Jackie Van Es, with only the signature of Dale. Ownership documentation on file indicates the property of the rights involved is in the name of Dale and Jackie Van Es. An amended signature page and the second amended application for Transfer No. 74753 and Transfer No. 74776 respectively were submitted documenting both parties are privy to the changes proposed. Transfer data entry will update the right records to include the correct legal name connector. The applicant has authority to change their rights.

Water Right Validity: Rights 2-2251 and 2-10017 (Transfer No. 74753) are presumed valid based on the pending SRBA recommendations. The SRBA objection period is over and objections were not filed.

Right 57-2254 (Transfer No. 74776) is presumed valid based on evidence of irrigation from 2006 NAIP imagery within the previous five year period. Rights 2-10238, 2-10240, and 2-10242 (Transfer No. 74776) when combined authorize irrigation of 181 acres within a 193 ac PPU. 2006 Imagery indicates roughly 141 acres of the 181 authorized were irrigated in the previous 5 year period. It appears 40 acres of the NW NE Sec 20 2N 4W, was subdivided and is no longer irrigated per 2006 NAIP imagery. Rights 2-10239, 2-10241, and 2-10243 (Transfer No. 74776) when combined authorize irrigation of 829 acres within an 882 ac PPU. 2006 Imagery indicates roughly 775 acres of the 829 acres authorized were irrigated in the previous 5 year period. It appears acres in the SW Sec 28 2N 4W were converted into a feedlot/dairy operation per 2006 NAIP imagery. In total it appears 94 acres (40 acres under rights 2-10238, 2-10240, and 2-10242 + 54 acres under rights 2-10239, 2-10241, and 2-10243) of Snake River water rights have been forfeit due to non-use. In a cover letter submitted with the amended application (Transfer No. 74776), the applicant's representative states the maximum extent of beneficial use of the Snake River rights is 916 acres of the 1010 acres authorized. The applicant states 928 acres of total irrigation occurred within the current PPUs of the Snake River rights, but 12 acres is irrigated only with ground water authorized under right 57-2254. The applicant's representative further conceded the Snake River rights are subject to partial forfeiture due to non-irrigation of 40 acres in the NW NE Section 20 and construction of a dairy on previously irrigated lands in Sections 28 and 29. However, the applicant's representative stated a total of 82 acres is subject to forfeiture when in fact a total of 94 acres has been forfeit based on the maximum extent of beneficial use of 916 acres of the authorized 1010 acres. Therefore, 40 acres of right 2-10242 and 54 acres of right 2-10243 is subject to forfeiture, based on the applicant's desire partial forfeiture occur of the junior rights rather than the senior rights in the system. Forfeiture can occur from any one of the rights in the system as a result of this transfer based on Department policy allowing changes to individual rights within an un-staked common system. In summary, the applicant will be authorized to irrigate a total of 934 individual acres within the proposed 1,256 ac PPU.

Injury to Other Water Rights: Injury should not occur under this proposal. There will be no change in the amount of acres irrigated, point of diversion, or water used.

Enlargement of Use: The applicant does not propose to enlarge the use. The applicant proposes to establish a permissible place of use for each set of rights to allow for irrigation of 2,495 acres within 2,720 acres for Transfer No. 74753 and 934 acres within 1,256 acres under Transfer No. 74776. The diversion rate, annual diversion volume and number of acres authorized for irrigation will not increase. A portion of right's 57-7754 PU partially overlaps the PPU of rights 2-10238, 2-10240, and 2-10242. 57-2254 is a ground water right with an older priority date than the Snake River water rights 2-10238, 2-10240, 2-10242 meaning in the areas of overlap the Snake River water rights are supplemental to the pre-existing ground water right. Information submitted by

applicants' representative and analysis of existing data indicates there are 159 unique acres currently irrigated inside the places of use of all four of these rights (See Van Es Transfer No. 74776 Irrigation Acres diagram attached: 18 ac GW + 53 ac GW & SW + 88 ac SW1). In order to avoid enlargement, use of rights 57-2254, 2-10238, 2-10240, and 2-10242 irrigation within the proposed PPU will be limited to 159 acres (18 ac ground water irrigation, 88 ac surface water irrigation, and 53 ac ground water with surface water irrigation). Also, the system will be limited to a total of 934 acres irrigation within the 1,256 acre PPU based on the total number of unique acres irrigated.

Local Public Interest: Authorizing the applicant to establish integrated irrigation systems within a larger permissible place of use allows for more efficient land use through rotation of crops and creation of a more efficient water supply system, which serves the local public interest.

Beneficial Use/Conservation of Water Resources: The applications propose beneficial use(s) consistent with conservation of water resources in Idaho.

Review of the applications finds there is no clear inconsistency with criteria of I. C. § 42-222 preventing processing of the application.

Discussion

Data entry for Transfer No. 74753 will affect the adjudication records for rights 2-2251 and 2-10017. The recommendations for these rights are pending in the SRBA. Data entry for Transfer No. 74776 will affect the water right records of rights 57-2254, 2-10238, 2-10239, 2-10240, 2-10241, 2-10242, and 2-10243. Right 57-2254 has been partially decreed in the SRBA and the record has been migrated in the database prior to transfer data entry. The other rights proposed for transfer in Transfer No. 74776 are licensed water rights not subject to adjudication at the time of processing.

There are no overlapping rights for the existing PPU, existing PD, or proposed PPU of Transfer No. 74753. The existing PU of right 57-7754 (Transfer No. 74776) partially overlaps the PPU of rights 2-10238, 2-10240 and 2-10242. This overlap was discussed in the Enlargement of Use section above. To avoid enlargement, the transfer approval has been drafted to limit use of these four rights based on historic use of the rights in that 53 acres within the PPU have been irrigated with both ground water and surface water. The total number of acres of irrigation being transferred (Transfer No. 74776) is 987 acres, irrigation of 53 of these acres requiring use of ground water under 57-7754 and surface water from 2-10238, 2-10240, and 2-10242. Therefore, irrigation within the proposed PPU for Transfer No. 74776 shall be limited to the 934 (987 – 53) unique acres irrigated. The transfer approval has been drafted to include combined rate, volume, and acre limitations on rights 57-2254, 2-10238, 2-10240, and 2-10242 as well as all the rights proposed for transfer (57-2254, 2-10238, 2-10239, 2-10240, 2-10241, 2-10242, and 2-10243) due to the overlap of ground water and surface water irrigation of the 53 acres.

The combined total limits were reduced by 0.70 cfs, 238.5 af, and 53 acres. The 0.70 cfs was calculated based on the rate per acre of the combined surface water rights after the proposed changes $\{[(0.72 + 0.49 + 0.67) \text{ cfs} / (141) \text{ ac}] = 0.013 \text{ cfs/ac}\}$, because the surface water rights are junior in priority to the ground water right they overlap and the rate per acre for the surface water rights is slightly less than the rate per acre for the ground water right. The 238.5 af was calculated based on the volume per acre of 4.5 af for all rights involved. Only combined acre limits for the surface water rights are applicable for these rights, because rate and volume limits would be additive and thus not limiting. There are no other overlapping rights for the existing PU and PPU's, the existing PDs, or the proposed PPU of rights involved in Transfer No. 74776. No other water rights need to be involved in either transfer.

Rights 2-7155, 2-7186, and 2-7461 are the parent rights for the snake right rights proposed for change in Transfer No. 74776 (2-10238, 2-10239, 2-10240, 2-10241, 2-10242, and 2-10243). 2-7155 and 2-7186 were limited to a combined diversion rate of 6.69 cfs (based on system capacity) and a combined volume of 3420.0 af (based on the maximum allowable 4.5 af per ac) for irrigation of 760 acres when licensed. 2-7461 was licensed for volume and rate of flow for irrigation of an additional 250 acres plus an increase in the authorized rate of flow for the 760 acres of irrigation previously licensed. At the time the beneficial use exam was conducted for 2-7461, the irrigation system consisted of 4 pumps with a combined system capacity of 13.38 cfs. 2-7461 was licensed for a rate of 6.69 cfs (13.38 cfs – 6.69 cfs previously licensed) and a volume of 1125.0 af (250 ac @ 4.5 af/ac) for irrigation of 1010 acres. The authorized rate of diversion for the combined system is approximately 0.013 cfs/ac (13.38 cfs/1010 ac). The 6.69 cfs diversion rate authorized for right 2-7461 consists of approximately 3.31 cfs for the additional 250 acres of irrigation and approximately 3.38 cfs of additional flow for irrigation of the 760 acres previously licensed under rights 2-7155 and 2-7186. The authorized volume for the combined system is 4.5 af/ ac (4545.0 af/1010 ac).

Previous split calculations for an ownership change of the parent rights 2-7155, 2-7186 and 2-7461 did not follow the licensing process regarding rate per acre and volume per acre quantities issued. See memos Loucks / Van Es Water Right Splits of 1/13/04 and Ownership Change Review of 2/19/04 on file. Transfer processing allows for the opportunity to re-work the splits and correct quantity errors, because the transfer proposes recombining the system. Correction of quantity errors is necessary in this case due to finding of forfeiture of water rights in the previously split systems (40 acres in 2-10238 et al and 54 acres in 2-10239 et al PPU's). Quantities for each of the rights were recalculated per the attached Calculations page. Differences between the quantities of each right prior to processing of transfer no. 74776 and after (including partial forfeiture of 2-10242 and 2-10243) processing is illustrated in the attached split tree. The combined systems, 2-10238 et al and 2-10239 et al, had a combined condition limiting the volume. The volume limitation is the additive of the individual volumes of each right, thus not limiting. The draft approval of Transfer No. 74776 does not include the unnecessary limiting condition for combined volume or rate, but includes condition 205 for the

surface water rights 2-10238 thru 2-10243, because the quantities of the draft approval are different than prior to transfer processing.

Rights 2-10239, 2-10241, and 2-10243 proposed for change in Transfer No. 74776 currently have a security interest in the name of DL Evans Bank. This securing interest has an expiration year of 2029 per Department records. A lien holder letter from Wells Fargo was submitted with the transfer application, but no letter has been received from DL Evans Bank nor has DL Evans Bank withdrawn the security interest on these rights. Current Department processing standards do not require a lien holder letter for the changes proposed in this transfer. Therefore, a lien holder letter will not be requested from DL Evans Bank. However, this security interest will remain on the record of these rights, and a comment letter and copy of the transfer approval, should it be approved, will be sent to DL Evans Bank per Department policy.

Transfer No. 74776 rights 2-10239, 2-10241, and 2-10243 currently include irrigation of 20 acres in the NW SE Sec 29 T02N R04W. These 20 acres were recognized as a portion of irrigation occurring under parent right 2-7461 at the time the beneficial use exam occurred. After the exam and prior to licensing, a permit amendment application was processed to create a permissible place of use. The amended place of use erroneously excluded the NW SE Sec 29 T02N R04W, but the 20 acres of irrigation was included in the licensing as a portion of the total irrigated acres authorized within the licensed PPU. The transfer application provides an avenue to correct this error in processing by including this land inside the proposed PPU.

Transfer No. 74776 rights 2-10238 thru 2-10243 PDs are currently described as one legal description under the PD portion of the right with a remark/condition stating there are 4 pumps. Per current Department data entry standards, each pump is recognized as a PD and the legal description is listed on each of the rights accordingly on the draft transfer approval.

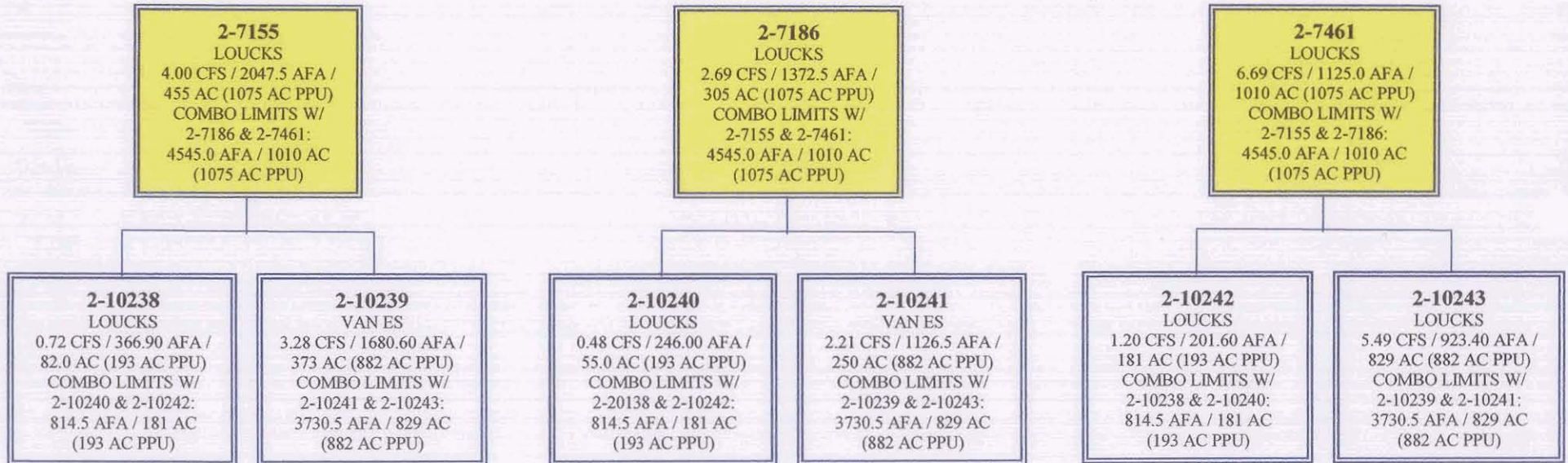
The correct filling fee for Transfer No. 74753, based on transfer of the 29.0 cfs diversion rate limit of the rights proposed for transfer, is \$1,190.00. The correct filling fee for Transfer No. 74776, based on the 14.47 cfs total diversion rate of the rights proposed for transfer, is \$810.00. The applicant paid a total of \$4,315.60 for both applications when filed (W036376 & W036412). A refund request of \$2,000.00 was submitted to Debbie Allen (IDWR) on 4/30/09 to refund the overpaid fees to the applicant.

Summary

Assuming protests are not filed and/or other information does not contradict the above analysis, the applications can be approved as reflected by the draft approvals.

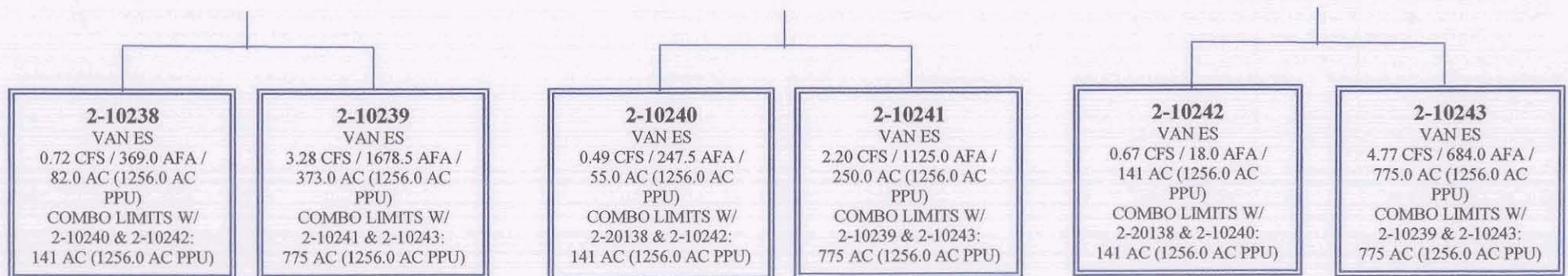
2-7155, 2-7186, & 2-7461 VAN ES SPLIT TREE

Rights Prior to Transfer No. 74776 Processing



Rights Post Transfer No. 74776 Processing

(including correction of previous split quantity errors, forfeiture of 94 acres, and ownership change)



**RIGHTS HAVE BEEN SPLIT
AND ARE NO LONGER ACTIVE**

MEMORANDUM

TO: 2-10238 thru 2-10243 files

FROM: Angela Grimm

DATE: November 5, 2009 Amended December 10, 2009

RE: Calculations of Loucks/Van Es Water Rights Splits

The original Loucks parent rights (after licensing of all 3 rights) are 2-7155, 2-7186, and 2-7461 as follows:

2-7155: 4.00 cfs / 2047.5 afa / 455 ac (1075 ac PPU)
2-7186: 2.69 cfs / 1372.5 afa / 305 ac (1075 ac PPU)
2-7461: 6.69 cfs / 1125.0 afa / 1010 ac (1075 ac PPU)
2-7155 + 2-7186 + 2-7461: 4545.0 afa / 1010 ac

Diversion rate per acre calculation for rights (as licensed):

2-7155: 4.00 cfs / 455 ac = 0.009 cfs/ac (approx.)
2-7186: 2.69 cfs / 305 ac = 0.009 cfs/ac (approx.)
2-7461: 6.69 cfs / 1010 ac = 0.007 cfs/ac (approx.)
Combo: 13.38 cfs / 1010 ac = 0.013 cfs/ac (approx)

Volume per acre calculation for rights (as licensed):

2-7155: 2047.5 afa / 455 ac = 4.5 afa/ac
2-7186: 1372.5 afa / 305 ac = 4.5 afa/ac
2-7461: 1125.0 afa / 250 ac (condition limited 1010 ac, but vol for 250 ac per b.u. exam) = 4.5 afa/ac
Combo: 4545 afa / 1010 ac = 4.5 afa / ac

Corrections to initial processing of parent water right splits:

2-7155 Split:

2-10238 (Loucks) = 82 ac irrigation per previous ownership change analysis memos

=> (4.00 cfs / 455 ac) * 82 ac = 0.72 cfs
=> (2047.5 afa / 455 ac) * 82 ac = 369.0 afa

2-10239 (Van Es) = 373 ac irrigation per previous ownership change analysis memos

=> (4.00 cfs / 455 ac) * 373 ac = 3.28 cfs
=> (2047.5 afa / 455 ac) * 373 ac = 1678.5 afa

2-7186 Split:

2-10240 (Loucks) = 55 ac irrigation per pervious ownership change analysis
 memos

$$\Rightarrow (2.69 \text{ cfs} / 305 \text{ ac}) * 55 \text{ ac} = 0.49 \text{ cfs}$$

$$\Rightarrow (1372.5 \text{ afa} / 305 \text{ ac}) * 55 \text{ ac} = 247.5 \text{ afa}$$

2-10241 (Van Es) = 250 ac irrigation per pervious ownership change analysis
 memos

$$\Rightarrow (2.69 \text{ cfs} / 305 \text{ ac}) * 250 \text{ ac} = 2.20 \text{ cfs}$$

$$\Rightarrow (1372.5 \text{ afa} / 305 \text{ ac}) * 250 \text{ ac} = 1125.0 \text{ afa}$$

2-7461 Split:

2-10242 (Loucks) = 181 ac irrigation per previous ownership change analysis
 memos

$$\Rightarrow (6.69 \text{ cfs} / 1010 \text{ ac}) * 181 \text{ ac} = 1.20 \text{ cfs}$$

$$\Rightarrow (1125.0 \text{ afa} / 250 \text{ ac}) * 181 \text{ ac} = 814.5 \text{ afa}$$

2-10243 (Van Es) = 829 ac irrigation per previous ownership change analysis
 memos

$$\Rightarrow (6.69 \text{ cfs} / 1010 \text{ ac}) * 829 \text{ ac} = 5.49 \text{ cfs}$$

$$\Rightarrow (1125.0 \text{ afa} / 250 \text{ ac}) * 829 \text{ ac} = 3730.5 \text{ afa}$$

Combined System Limitations within PPU's after ownership splits:

2-10238 + 2-10240 + 2-10241 (Loucks):

$$\Rightarrow 814.5 \text{ afa for } 181 \text{ ac within } 193 \text{ ac PPU (no rate combo limit condition)}$$

2-10239 + 2-10241 + 2-10243 (Van Es):

$$\Rightarrow 3730.5 \text{ afa for } 829 \text{ ac within } 882 \text{ ac PPU (no rate combo limit condition)}$$

Partial forfeiture of rights in each combined system of rights (see Transfer No. 74776 review memo for details):

2-10238 et al (Loucks): 40 ac

2-10239 et al (Van Es): 54 ac

Forfeiture from junior right in system of rights using combined system rate and volume per acre quantities as originally licensed:

2-10242 (Loucks)

$$\Rightarrow 1.20 \text{ cfs} - \{[(0.72 + 0.49 + 1.20) \text{ cfs} / 181 \text{ ac}] * 40 \text{ ac}\} = 0.67 \text{ cfs}$$

$$\Rightarrow 198.0 \text{ afa} - [(4.5 \text{ afa/ac}) * 40 \text{ ac}] = 18.0 \text{ afa}$$

2-10243 (Van Es)

$$\Rightarrow 5.49 \text{ cfs} - \{[(3.28 + 2.20 + 5.49) \text{ cfs} / 829 \text{ ac}] * 54 \text{ ac}\} = 4.77 \text{ cfs}$$

$$\Rightarrow 927.0 \text{ afa} - [(4.5 \text{ afa/ac}) * 54 \text{ ac}] = 684.0 \text{ afa}$$

Split trees outlining the splits of the three parent rights are attached. The quantities given for each right per previous analysis are at the top. The quantities as they are proposed to be recorded per Transfer 74776 processing (after correction to previous split errors, forfeiture of 94 acres within the system, and ownership changes) are at the bottom. No

combined rate or volume limitations were entered for the system. Previous volume limitations were unnecessary, because the limit was a combination of all the rights in the system added together, thus not limiting. However, the rights do now have various conditions limiting the acres authorized for irrigation within the PPU established by Transfer 74776 processing.