

IDAHO DEPARTMENT OF WATER RESOURCES  
Proof Report

9/11/2020

Water Application 47-8288

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	SALMON FALLS LAND & LIVESTOCK CO INC MICHAEL J HENSLEE 95A BELL RAPIDS RD HAGERMAN, ID 83332-6039 (208) 837-6053

Status: Denied

Source

Tributary

Beneficial Use

From

To

Diversion Rate

Volume

Source and Point(s) of Diversion

Place Of Use

Conditions of Approval:

Comments:

Dates and Other Information

Application Denied Date: 1/27/1995  
Number of Protests: 0  
Water District Number: TBD  
Application Type: New Appropriation  
Mitigation Plan: False

Combined Use Limits

N/A

SubCase:

N/A

Water Supply Bank:

N/A



State of Idaho  
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000  
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

DEC 01 1994

November 29, 1994

James C. Henslee  
Salmon Falls Land & Livestock, Inc.  
123 Bell Rapids Road  
Hagerman, Idaho 83332

Department of Water Resources  
Southern Region Office

RE: DENIED APPLICATION FOR PERMIT NO. 47-08288 IN THE NAME OF  
SALMON FALLS SHEEP CO. INC.

Dear Mr. Henslee:

I have reviewed your letter dated November 14, 1994, in connection with the Preliminary Order of the department dated November 1, 1994, which Denied the above referenced application.

In order to continue the use of the well for irrigation, you need to "transfer" an existing water right to your well. This is commonly done by identifying an existing irrigation water right and then filing an application for transfer with the department to change the location of the point of diversion (well) and to change the authorized place of use. If the department approves such a transfer, you may continue to divert water from the well in compliance with the approved transfer.

With respect to future stockwater use from the well, there is nothing you need to file with the department provided your use does not exceed the limitations described in Section 42-111, Idaho Code. This section basically provides that you can divert up to 13,000 gallons of water per day from a well for stockwater purposes. Related code sections provide that you can make this diversion and use of water without applying for a permit from the department.

If you can find an existing irrigation right which you wish to transfer to your well, please feel free to contact the department in Twin Falls relative to the validity of the right proposed for transfer and/or the procedure or assistance in completing and filing an application for transfer.

Sincerely,

*L. Glen Saxton*

L. GLEN SAXTON, Chief  
Water Allocation Bureau

c: IDWR - S. Region

47-08288



State of Idaho  
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000  
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

RECEIVED

NOV 04 1994

November 2, 1994

Department of Water Resources  
Southern Region Office

RE: In the matter of Application for Permit No. 47-08288 in the name of Salmon Falls Sheep Co.

Dear Interested Party:

The accompanying order is a "preliminary order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

47-08288

### ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

### CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

### FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

### APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Glen Saxton".

L. GLEN SAXTON  
Chief, Water Allocation Bureau

Enclosure

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 47-08288 IN THE )  
NAME OF SALMON FALLS SHEEP CO.)  
INC. )  
\_\_\_\_\_ )

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (department), the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On January 24, 1992, Salmon Falls Sheep Co. Inc. (applicant) filed Application for Permit No. 47-08288 (application) with the department proposing the diversion of 2.67 cubic feet per second of ground water from a well within the NE1/4NW1/4 Section 36, T8S, R12E, BM for the irrigation of 160 acres. The proposed place of use is within the W1/2SW1/4 Section 25 and E1/2SE1/4 Section 26, T8S, R12E, BM. in Twin Falls County, Idaho.

2. The department advertised the application as required by law. Protests were not filed against the application.

3. Review of the application shows that the proposed point of diversion is within the boundaries of the Blue Gulch Critical Groundwater Area which the department designated on December 9, 1970.

4. The file shows that the well was constructed approximately in 1965 or 1966 by Denton Drilling of Kimberly Idaho and that use of water as proposed in the application has already occurred.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in part as follows:

In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the

local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor...

2. Section 42-229, Idaho Code, which was enacted in 1951 and amended in 1963 provides in pertinent part as follows:

The right to the use of ground water of this state may be acquired only by appropriation. Such appropriation may be perfected by means of the application permit and license procedure provided in this act; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

3. Section 42-233a, Idaho Code, provides in pertinent part as follows:

In the event the application for permit is made in an area which has been designated as a critical ground water area, if the director of the department of water resources from the investigation made by him on said application as herein provided, or from the investigation made by him in determining the area to be critical, or from other information that has come officially to his attention, has reason to believe that there is insufficient water available subject to appropriation at the location of the proposed well described in the application, the director of the department of water resources may forthwith deny said application.

4. Section 42-351, Idaho Code, provides in pertinent part as follows:

The director may file an action seeking injunctive relief or may commence an administrative enforcement action by issuing the person a written notice of violation directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

5. The application will reduce the quantity of water under existing water rights.

6. The water supply available is not sufficient for the purposes intended.

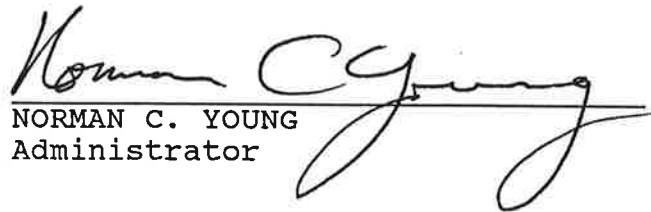
7. The applicant has diverted water as proposed in the application but does not have a water right authorizing diversion and use of the water.

8. The department should deny the application pursuant to Sections 42-203A and 42-233a, Idaho Code, and should issue a notice of violation pursuant to Section 42-351, Idaho Code.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Application for Permit No. 47-08288 in the name of Salmon Falls Sheep Co. Inc. is **DENIED** pursuant to the provisions of Sections 42-203A and 42-233a, Idaho Code, and that the applicant discontinue the diversion of ground water without having obtained a valid right to do so.

Dated this 1<sup>st</sup> day of NOVEMBER, 1994.

  
NORMAN C. YOUNG  
Administrator

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of November, 1994,  
I mailed a true and correct copy, postage prepaid, of the foregoing  
**PRELIMINARY ORDER** to the following:

Salmon Falls Sheep Company  
123 Bell Rapids Rd.  
Hagerman, ID 83332

  
JULIE L. YARBROUGH  
Senior Secretary

PHOTO ID. BB 18 1974 Right

PERMIT \_\_\_\_\_ INIT KKC

- T. R. S. Q/Q

P/D B3 12E 36 NENENW

SCALE

← P/C

← P/C

Form 202  
6/85

Ident. No. 47-08288

RECEIVED

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR PERMIT

JAN 24 1992

To appropriate the public waters of the State of Idaho

Department of Water Resources

Southern Region Office

1. Name of applicant Salmon Falls Sheep Co. Inc. Phone 837-4534

Post office address 95 A Bell Rapids Rd. Hagerman, Idaho

2. Source of water supply Groundwater - well which is a tributary of 8332

3. Location of point of diversion is NE 1/4 of NW 1/4 of NW 1/4, Govt. Lot

Sec. 36 Township 8S Range 12E B.M. Twin Falls County; additional

points of diversion if any: \_\_\_\_\_

4. Water will be used for the following purposes:

Amount 2.67 for irrigation purposes from 3/15 to 11/15 (both dates inclusive)  
(cfs or acre-feet per annum)

Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)

Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)

Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 2.67 and/or (b) \_\_\_\_\_  
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. 150 hp pump  
with 12" casing, 420' deep, static water at  
241' tied into center pivot

b. Height of storage dam N/A feet; active reservoir capacity \_\_\_\_\_ acre-feet; total  
reservoir capacity \_\_\_\_\_ acre-feet; period of year when water will be diverted to storage:  
\_\_\_\_\_ to \_\_\_\_\_ inclusive.

c. ~~Proposed~~ well diameter is 12" inches; ~~proposed~~ depth of well is 420' feet.

d. Is ground water with a temperature of greater than 90°F being sought? No

7. Time required for the completion of the works and application of the water to the proposed beneficial use is  
1 years (minimum 1 year).

47-8288

8. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in KW. \_\_\_\_\_
- Stockwatering; list number and kind of livestock. \_\_\_\_\_
- Municipal; show name of municipality. \_\_\_\_\_
- Domestic; show number of households. \_\_\_\_\_
- Other; describe fully. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: *D* for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
8S	12E	36					40	40	40	40									160

Total number of acres to be irrigated 160

10. Describe any other water rights used for the same purposes as described above. \_\_\_\_\_

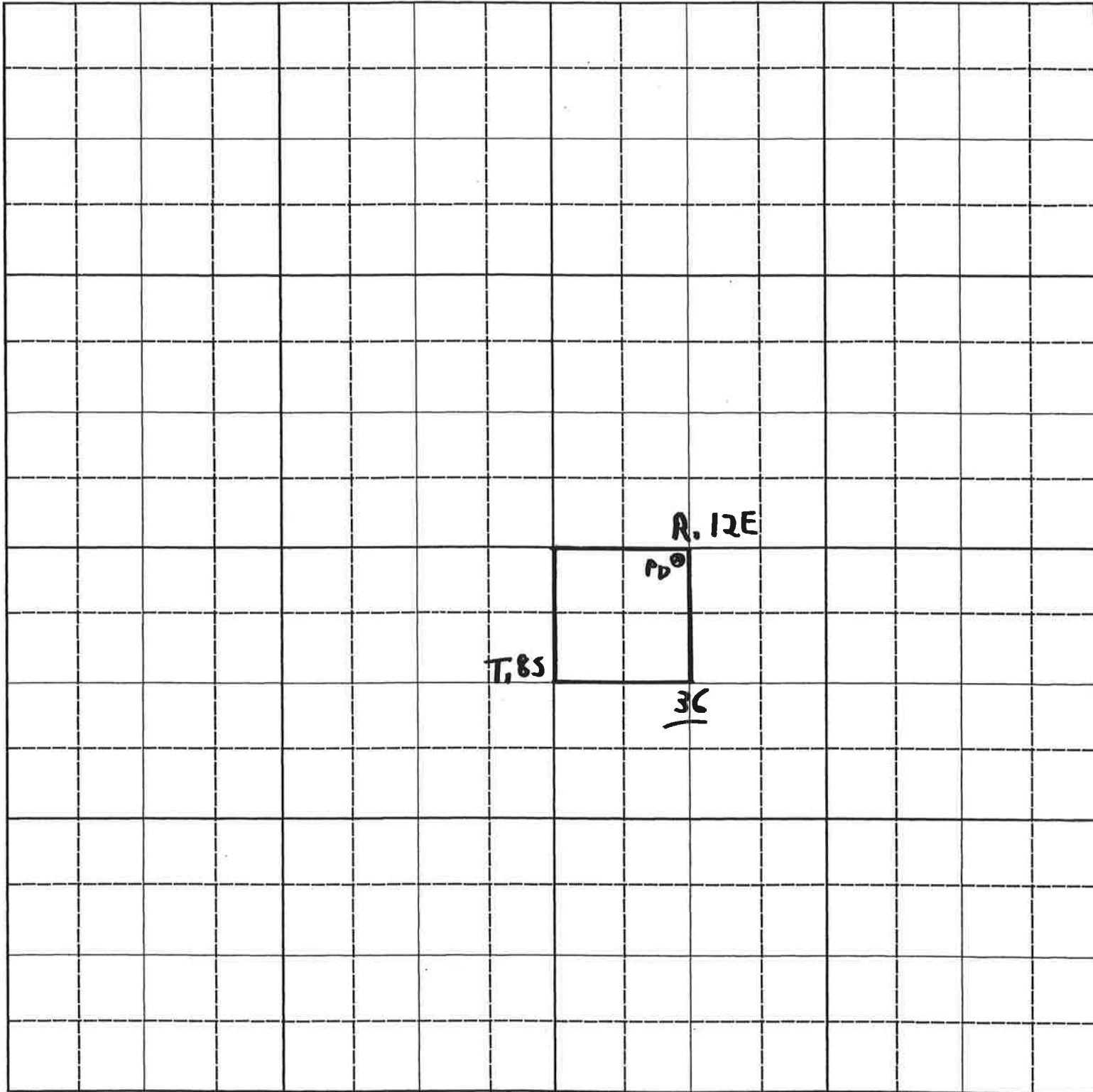
11. a. Who owns the property at the point of diversion? Salmon Falls Sheep Co.

b. Who owns the land to be irrigated or place of use? " "

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. \_\_\_\_\_

12. Remarks: Amount requested is capacity of existing well & pump. New sprinkler system is being installed.  
This system was developed in 1966, and has been used more or less continuously ever since. No later developments will be harmed by approval of this application. This was the second irrigation well drilled in this area.

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

*Salmon Falls Sheep Co*  
By *James F. Henslee* Pres.  
(Applicant)

Received by KKC Date 1-24-92 Time 12:30 Preliminary check by J. F. Stanton  
Fee \$ 85<sup>00</sup> Receipted by KKC # 5014093 Date 1-24-92  
Publication prepared by MB Date 2-20-92 Published in Idaho News  
Publication approved M. Baldwin Date 4-23-92

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### ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. \_\_\_\_\_, and said application is hereby \_\_\_\_\_.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before \_\_\_\_\_, 19 \_\_\_\_.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other: