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Michael C. Creamer, [ISB No. 4030]  
Jeffrey C. Fereday [ISB No. 2719]  
GIVENS PURSLEY LLP  
601 W. Bannock St.  
P.O. Box 2720  
Boise, Idaho 83701-2720  
Telephone: 208-388-1200  
Facsimile: 208-388-1300

*Attorneys for Tessenderlo Kerley, Inc.*

RECEIVED

MAY 14 2015

DEPARTMENT OF  
WATER RESOURCES

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

**IN THE MATTER OF DISTRIBUTION  
OF WATER TO VARIOUS WATER  
RIGHTS HELD BY OR FOR THE  
BENEFIT OF A&B IRRIGATION  
DISTRICT, AMERICAN FALLS  
RESERVOIR DISTRICT #2, BURLEY  
IRRIGATION DISTRICT, MILNER  
IRRIGATION DISTRICT, MINIDOKA  
IRRIGATION DISTRICT, NORTH SIDE  
CANAL COMPANY, AND TWIN FALLS  
CANAL COMPANY**

**DOCKET NO. CM-DC-2010-001**

**NOTICE OF SECURED WATER**

Tessenderlo Kerley, Inc. (“TKI”), through its attorneys Givens Pursley LLP, hereby submits this Notice of Secured Water (“Notice”) in connection with the above-captioned delivery call proceeding and the Department’s *Final Order Regarding April 2015 Forecasts Supply (Methodology Steps 1-3)* (“Order”). The purpose of this Notice is to confirm that TKI has taken appropriate steps to mitigate potential material injury to the Surface Water Coalition members that may be determined to be attributable to TKI’s ground water diversions in 2015.

TKI holds the following ground water rights for use at its Burley Plant: 45-7465C, with a priority date of April 15, 1981 authorizing diversion of 0.14 cfs for irrigation purposes and

45-7465 D with a priority date of April 15, 1981 authorizing diversion of 0.56 cfs for industrial purposes. TKI also holds ground water right 29-7423 with a priority date of November 20, 1977 authorizing diversion of 0.89 cfs for industrial purposes and 0.02 cfs for domestic purposes at its Michaud Terminal facility. TKI is a member of Southwest Irrigation District (“SWID”) for mitigation purposes.

TKI is aware that the Order determined that Idaho Ground Water Appropriators (“IGWA”), acting on behalf of SWID and its other ground water district members, was required to establish that it had secured 89,000 acre-feet of storage water in 2015 to mitigate for the predicted in-season demand shortfall of certain SWC members. TKI also is aware that indications have been that IGWA would be unable to meet this 89,000 AF requirement, but has entered into a tentative settlement agreement with the SWC that, if performed by IGWA, would forestall any curtailment of ground water district members in 2015.

TKI also understands that to the extent IGWA is able to secure storage water, the risk of curtailment of its ground water district members’ water use would be reduced or potentially eliminated, and that the priority date of ground water rights implicated by a curtailment order would also be affected as determined by use of the ESPA ground water model. As such, it is possible that ground water rights with 1977 or 1981 priority dates such as TKI’s may not be subject to curtailment.

Nevertheless, as a contingency to insure uninterrupted operation of its industrial facilities, on April 21, 2015 TKI applied to the Water District #1 Rental Pool to rent twenty-five acre-feet of water from the common pool supply. A copy of TKI’s rental pool application is attached hereto as Exhibit A. The twenty-five acre-feet of water to be rented is greater than TKI’s estimated historical ground water diversions for its Burley and Michaud facilities, and

greater than the anticipated depletive effects of TKI's ground water diversions to the Near Blackfoot-Minidoka reach of the Snake River. TKI intends that to the extent use of its water rights would be implicated by a curtailment order to address material injury to SWC members in 2015, the twenty-five acre-feet will be available to be assigned and delivered as appropriate to any injured SWC member as determined by the Director.

TKI is prepared, on request by the Department, to provide available historical diversion data and a depletion analysis using the ESPA ground water model to demonstrate that the twenty-five acre-feet of storage water it has secured from the rental pool is sufficient to mitigate for any material injury in 2015 that may be attributable use of TKI's water rights. Given the apparent fluid situation with water supply, injury analysis and the tentative settlement agreement between IGWA and the SWC, TKI has deferred having the ESPA ground water analysis performed unless and until requested or obviously necessary.

DATED this 13<sup>th</sup> day of May, 2015.

GIVENS PURSLEY LLP

By   
Michael C. Creamer  
*Attorneys for Tessengerlo Kerley, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of May, 2015, the foregoing was filed, served, and copied as follows:

**DOCUMENT FILED:**

Director Gary Spackman	<input type="checkbox"/>	U. S. Mail
Idaho Department of Water Resources	<input checked="" type="checkbox"/>	Hand Delivered
PO Box 83720	<input type="checkbox"/>	Overnight Mail
Boise, ID 83720	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	E-mail

**SERVICE COPIES TO:**

Deputy Attorney General	<input checked="" type="checkbox"/>	U. S. Mail
Garrick L. Baxter	<input type="checkbox"/>	Hand Delivered
Idaho Dept. of Water Resources	<input type="checkbox"/>	Overnight Mail
P O Box 83720-0098	<input type="checkbox"/>	Facsimile
Boise, ID 83720	<input checked="" type="checkbox"/>	E-mail
Fax: 208-287-6700		
<a href="mailto:Garrick.baxter@idwr.idaho.gov">Garrick.baxter@idwr.idaho.gov</a>		
<a href="mailto:Kimi.white@idwr.idaho.gov">Kimi.white@idwr.idaho.gov</a>		

W. Kent Fletcher	<input type="checkbox"/>	U. S. Mail
Fletcher Law Office	<input type="checkbox"/>	Hand Delivered
P O Box 248	<input type="checkbox"/>	Overnight Mail
Burley, ID 83318-0248	<input type="checkbox"/>	Facsimile
<a href="mailto:wkf@pmt.org">wkf@pmt.org</a>	<input checked="" type="checkbox"/>	E-mail

John K. Simpson	<input type="checkbox"/>	U. S. Mail
Travis L. Thompson	<input type="checkbox"/>	Hand Delivered
Paul L. Arrington	<input type="checkbox"/>	Overnight Mail
Barker, Rosholt & Simpson	<input type="checkbox"/>	Facsimile
195 River Vista Place, Ste 204	<input checked="" type="checkbox"/>	E-mail
Twin Falls, ID 83301-3029		
<a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>		
<a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a>		
<a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>		

Randall C. Budge  
Racine Olson Ney Budge & Bailey, Chartered  
P O Box 1391  
Pocatello, ID 83204  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[tjb@racinelaw.net](mailto:tjb@racinelaw.net)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Sarah Klahn  
Mitra Pemberton  
White Jankowski LLP  
511 16<sup>th</sup> Street, Suite 500  
Denver, CO 80202  
[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)  
[mitrap@white-jankowski.com](mailto:mitrap@white-jankowski.com)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

A. Dean Tranmer  
City of Pocatello  
P O Box 4169  
Pocatello, ID 83205  
[dtranmer@pocatello.us](mailto:dtranmer@pocatello.us)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Kathleen Carr  
U.S. Dept. of Interior  
960 Broadway Ste 400  
Boise, ID 83706  
[Kathleenmarion.carr@sol.doj.gov](mailto:Kathleenmarion.carr@sol.doj.gov)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

David Gehlert  
Natural Resources Section  
Environment and Natural Res. Div.  
US Dept of Justice  
999 18<sup>th</sup> St., S. Terrace, Ste. 370  
Denver, CO 80202  
[David.gehlert@usdoj.gov](mailto:David.gehlert@usdoj.gov)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Matt Howard  
US Bureau of Reclamation  
1150 N. Curtis Road  
Boise, ID 83706  
[mhoward@usbr.gov](mailto:mhoward@usbr.gov)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

William Parsons  
Parsons, Smith & Stone LLP  
P O Box 910  
Burley, ID 83318  
[wparsons@pmt.org](mailto:wparsons@pmt.org)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Lyle Swank  
IDWR Eastern Region  
900 N. Skyline Dr., Ste. A  
Idaho Falls, ID 83402  
[Lyle.swank@idwr.idaho](mailto:Lyle.swank@idwr.idaho)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Allen Merritt  
Cindy Yenter  
IDWR Southern Region  
650 Addison Ave West, Ste 500  
Twin Falls, ID 83301  
[Allen.merritt@idwr.idaho.gov](mailto:Allen.merritt@idwr.idaho.gov)  
[Cindy.yenter@idwr.idaho.gov](mailto:Cindy.yenter@idwr.idaho.gov)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Robert E. Williams  
Williams, Merservy & Lothspeich LLP  
P O Box 168  
Jerome, ID 83338  
[rewilliams@cableone.net](mailto:rewilliams@cableone.net)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Candice McHugh  
Chris Bromley  
McHugh Bromley PLLC  
380 S 4<sup>th</sup> Street, Ste 103  
Boise, ID 83702  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)  
[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail



Michael C. Creamer

## **EXHIBIT A**

RECEIVED

APR 21 2015

WATER DISTRICT #1 RENTAL POOL  
APPLICATION TO RENT WATER FROM THE COMMON POOL SUPPLY

Department of Water Resources  
Eastern Region

Tessenderlo Kerley, Inc. (applicant) hereby requests to rent 25 (acre-feet) of storage from the Water District #1 Rental Pool with the enclosed rental fees of \$425.00 for the irrigation season 20<sup>15</sup>. The acceptance and approval of this rental request by the Water District #1 Watermaster is subject to the adopted Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765.

Description of Point of Diversion:

Name of River or Stream from which rental is diverted: Snake River above Milner  
Canal or Pump Name: \_\_\_\_\_ OR  
Diversion location         $\frac{1}{4}$          $\frac{1}{4}$ , Sec.        Twp.        Rge.       

Description of Place of Use:

Total Acres Irrigated:       N/A        
Within Canal Company Name: \_\_\_\_\_ OR  
Other Description: Service areas of injured surface water coalition member as determined by IDWR

Applicant Signature and Address:

Print Name: Steve W. Sailors, Regional Plant Operations Manager  
Signature:   
Address: Tessenderlo Kerley, Inc  
480 South, 260 West; Burley, ID 83318

=====  
(official use only)

Date Application Accepted by Watermaster: \_\_\_\_\_  
Application Approved by Watermaster:        YES        No  
Watermaster Signature: \_\_\_\_\_