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District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho	
JAN 22 2015	
By _____	Clerk
_____	Deputy Clerk

*Attorneys for Tessenderlo Kerley, Inc. and Millenkamp Properties, LLC*

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

**RANGEN INC., an Idaho corporation,**

**Petitioner,**

**vs.**

**IDAHO DEPARTMENT OF WATER  
RESOURCES, and GARY SPACKMAN, in  
his official capacity as Director of the Idaho  
Department of Water Resources,**

**Respondent.**

**Case No. CV-2014-4970**

**DECLARATION OF STEVEN  
WAYNE SAILORS**

**I, Steven Wayne Sailors, declare and state as follows:**

1. I am over the age of 18 and I have personal knowledge of the facts set forth in this Declaration.
2. I am employed as a Regional Plant Operations Manager with Tessenderlo Kerley, Inc., and I have worked at Tessenderlo Kerley, Inc. since 1982.
3. In my position, I oversee several Tessenderlo Kerley, Inc. sites, including two sites in Idaho, one in Texas, two in Washington, and one in Nevada.

4. I am currently stationed at Tessenderlo Kerley, Inc.'s plant located at 480 South 260 West, Burley, Idaho 83118 (the "Burley Site"). I frequently visit Tessenderlo Kerley Inc.'s terminal facilities located at 1667 Sod Farm Road, Pocatello, Idaho 83204 (the "Michaud Site"). I am in charge of operations at the Burley Site and at the Michaud Site.

5. As a Regional Plant Operations Manager, I oversee the operations of the Burley Site and the Michaud Site, including overseeing the handling of raw materials and storage of materials. I also ensure that both sites operate in a manner consistent with applicable laws and oversee employees and handle human resources issues. I am also in charge of emergency response operations.

6. At the Burley Site, Tessenderlo Kerley, Inc. produces liquid soil fumigant, called Metam Sodium (labeled as Sectagon42). It is primarily used to help control disease and fungus in the ground prior to planting a seed, such as for potatoes. The site also stores another soil fumigant called Metam Potassium (labeled as SectagonK54). Both products are registered pesticides under the Federal Insecticide, Fungicide and Rodenticide Act.

7. Because there are materials classified as hazardous materials at the Burley Site, we have twelve permanent employees stationed there around the clock.

8. The Burley Site is presently not producing product, but we continue to store product and it must be staffed at all times because of the hazardous materials storage. The Burley Site will be producing product beginning in March. Once the Burley Site begins producing product in March, the site will have an increased need for water.

9. Although the Burley Site is in non-production mode at this point, employees constantly need to have access to water for a number of purposes. Water obviously is used for cleaning and domestic uses. Employees must also have continuous, immediate access to water for safety showers if they come into contact with hazardous materials. We cannot maintain personnel on site without them having water for these safety and emergency response purposes.

10. We track water usage at the Burley Site. In 2014, the Burley Site used 4,536,777 gallons of water, which is 13.9 acre-feet.

11. At the Michaud Site, Tessenderlo Kerley, Inc. runs a product terminal, bringing in product throughout the year and shipping product nationwide.

12. The Michaud Site has tanks that store Metam Potassium and Metam Sodium.

13. There are four full time employees stationed at the Michaud Site.

14. At the Michaud Site, water is used for the same purposes as at the Burley Site, except that the Michaud Site doesn't produce soil fumigants, and so water is not used for production purposes.

15. We track water usage at the Michaud Site. In 2014, the Michaud Site used 288,974 gallons of water, which is 0.89 acre-feet.

16. Tessenderlo Kerley, Inc. holds water right no. 45-7465D which has a priority date of April 15, 1981 and authorizes diversion of ground water for industrial purposes at the Burley Site, and water right no. 29-7423 which has a priority date of November 20, 1977 and authorizes diversion of ground water for industrial and domestic purposes at the Michaud Site. Both of these water rights are implicated by the Idaho

Department of Water Resources' notice of curtailment in the Rangen delivery call. These water rights are the sole source of water for the Burley Site and the Michaud Site.

17. If Tessengerlo Kerley, Inc. is ordered to shut down its water pumps and to cease using water from its wells at the Burley Site and at the Michaud Site, there will be a significant impact at both locations. There are currently no back-up water supplies for either facility. Operations at both sites would need to cease immediately.

18. The biggest safety concern for both locations is fire protection, though the risk of fires is more significant at the Burley Site. For safety purposes, our fire protection system must remain pressurized and operational. This would not be possible if our ground water pumps were shut down due to the proposed curtailment. Bringing this system back on-line involves significantly more than flipping a switch at our well.

19. Aside from concerns about immediate fire containment, loss of water would have other serious impacts. Employees at both sites would be prevented from moving any product because of the risk of exposure to hazardous materials without the ability to take safety showers after such exposure. Additionally, both sites would have to arrange to bring in water for washing hands and flushing toilets, at a minimum, which we have not prepared for.

20. Aside from concerns about the health and safety of employees at the Burley Site and at the Michaud Site, loss of water will impact operations of Tessengerlo Kerley, Inc. at other locations. Because the Michaud Site is a product terminal site, shipping to the Michaud Site will be interrupted, and Tessengerlo Kerley, Inc.'s suppliers will be forced to store and hold on to product that would otherwise be shipped to the Michaud Site. In addition, the Burley Site will be unable to accept raw materials, which

may delay production and deliveries of product that begins in March. The Burley Site and the Michaud Site are part of a nationwide product distribution system, and without water to operate the sites, there may be serious company-wide disruption to Tessengerlo Kerley, Inc.'s production and distribution operations.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 22<sup>nd</sup> day of January, 2015.

*Steven Wayne Sailors*  
STEVEN WAYNE SAILORS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of January, 2015, the foregoing was filed, served, and copied as follows:

**DOCUMENT FILED:**

Clerk of the Court  
SRBA Deputy Clerk  
PO Box 2707

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

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