



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

June 2, 2015

Michael C. Creamer  
Jeffrey C. Fereday  
Givens Pursley LLP  
P.O. Box 2720  
Boise, Idaho 83701-2720

Re: SWC Delivery Call  
Docket No. CM-DC-2010-001

Dear Messrs. Creamer and Fereday:

I am returning to you the *Notice of Secured Water* ("Notice") submitted on behalf of Tessengerlo Kerley, Inc. ("TKI") in the Surface Water Coalition ("SWC") delivery call. I cannot approve the Notice because TKI does not have an approved mitigation plan for the SWC delivery call. The Notice describes the actions TKI proposes to take to mitigate for injury to the SWC. TKI is in effect proposing a mitigation plan. I can only approve mitigation activities that are conducted pursuant to approved mitigation plans. *In Matter of Distribution of Water to Various Water Rights Held By or For Ben. of A & B Irrigation Dist.*, 155 Idaho 640, 654, 315 P.3d 828, 842 (2013); *Order on Petition for Judicial Review*, Gooding County Case No. 2008-551 (July 24, 2009). To recognize and approve the actions proposed in the Notice would be contrary to established case law. If you want the mitigation activities proposed in the Notice to be approved for mitigation in the SWC delivery call, you must resubmit the Notice as a Conjunctive Management Rule 43 mitigation plan to be processed in accordance with the conjunctive management rules.

Sincerely,

A handwritten signature in black ink that reads "Gary Spackman". The signature is written in a cursive, flowing style.

Gary Spackman  
Director

Encl.  
Cc: Parties

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of June, 2015, the letters to Candice McHugh, Chris Bromley, and Robert Williams for the Coalition of Cities and Michael Creamer and Jeffrey Fereday for Tessengerlo Kerley, Inc., dated June 2, 2015, was served by the method indicated below, and addressed to the following:

<p>John K. Simpson          Travis L. Thompson          Paul L. Arrington          BARKER ROSHOLT &amp; SIMPSON, LLP          195 River Vista Place, Ste. 204          Twin Falls, ID 83301-3029</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>W. Kent Fletcher          FLETCHER LAW OFFICE          P.O. Box 248          Burley, ID 83318</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>Randall C. Budge          Thomas J. Budge          RACINE OLSON          P.O. Box 1391          Pocatello, ID 83204-1391</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>Kathleen M. Carr          U.S. Dept. Interior          960 Broadway, Ste 400          Boise, ID 83706</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>David W. Gehlert          Natural Resources Section          Environment and Natural Resources Division          U.S. Department of Justice          999 18<sup>th</sup> Street          South Terrace, Suite 370          Denver, CO 80202</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>Matt Howard          U.S. Bureau of Reclamation          1150 N Curtis Road          Boise, ID 83706-1234</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>

<p>Sarah A. Klahn  Mitra Pemberton  WHITE JANKOWSKI  511 16<sup>th</sup> St., Ste. 500  Denver, CO 80202</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>A. Dean Tranmer  City of Pocatello  P.O. Box 4169  Pocatello, ID 83205</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>
<p>William A. Parsons  Parsons, Smith &amp; Stone, LLP  P.O. Box 910  Burley, ID 83318</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Email</p>

*Deborah J. Gibson*

Deborah Gibson  
Administrative Assistant for the Director