

JUL 20 2020

WATER RESOURCES
WESTERN REGION

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

IN THE MATTER OF APPLICATION)	MICRON TECHNOLOGY INC.'s
FOR PERMIT NO. 63-34614,)	RESPONSE TO SUEZ's MOTION
IN THE NAME OF MICRON)	FOR PARTIAL SUMMARY
TECHNOLOGY INC.)	JUDGMENT CONCERNING
_____)	CONDITION 908

Applicant Micron Technology, Inc. (Micron), by and through its counsel of record, Stoel Rives LLP, provides this response to SUEZ's Motion for Partial Summary Judgment Concerning Condition 908.

Micron's only position on Suez's Motion for Summary Judgement Motion is that any water right issued by IDWR in the subject matter should clearly specify when unappropriated water can be diverted from the Boise River. Condition 908 provides such direction and Micron has familiarity with how that condition is administered by the water master in Basin 63.

Accordingly, Micron has reached a tentative agreement with the Boise Board and the Ditch Company protestants to include a modified version of Condition 908 that acknowledges the refill settlement and associated water rights. A copy of which is attached as Exhibit A.

Micron believes the tentative settlement conditions with the protestants provide the necessary direction on when unappropriated water can be diverted by Micron from the Boise River.

Micron takes no position on whether Standard Condition 908 is contrary to Idaho law. Similarly, as Micron has no experience with Suez's proffered conditions to address the refill

settlement, Micron takes no position on whether such conditions would provide the necessary direction to Micron and the water master on when unappropriated water can be diverted from the Boise River.

DATED this 16th day of July 2020.



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EXHIBIT A

**STIPULATION AND JOINT MOTION
TO APPROVE APPLICATION AND ISSUE PERMIT**

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BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-34614 IN THE
NAME OF MICRON TECHNOLOGY, INC.

STIPULATION AND JOINT MOTION
TO APPROVE APPLICATION AND
ISSUE PERMIT

Applicant Micron Technology, Inc. ("Micron") and Protestants, Boise Project Board of Control ("Boise Board"); and Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company, Canyon County Water Company, Eureka Water Company, Farmers' Co-operative Ditch Company, Middleton Mill Ditch Company, Middleton Irrigation Association, Inc., Nampa & Meridian Irrigation District, New Dry Creek Ditch Company, Pioneer Ditch Company, Pioneer Irrigation District, Settlers Irrigation District, South Boise Water Company, and Thurman Mill Ditch Company (hereinafter "Ditch Companies"), (collectively, the "Parties"), pursuant to IDAPA 37.01.01.204, .260, .557, and .612, hereby stipulate and move the Idaho Department of Water Resources ("Department") to approve the September 13, 2018 application in the above-captioned matter ("Application") and to issue a permit according to the terms and conditions set forth in this *Stipulation and Joint Motion to Approve Application and Issue Permit* ("Stipulation").

The Parties hereby stipulate and agree that the following conditions ("*Conditions*") shall be included in any permit and subsequent license issued under the *Application*:

STIPULATION AND JOINT MOTION TO APPROVE APPLICATION AND ISSUE PERMIT – 63-34614 Page 1 of 7

Condition No. 1. The direct diversion industrial use portion of this right is subordinate to the capture and retention of water in on-stream Boise River reservoir space that was existing on September 13, 2018, during and following flood control operations until the day of allocation, including the capture and retention of water in such space pursuant to water right numbers 63-33734A and 63-33734B. The recharge use portion of this right is subordinate to the capture and retention of water in on-stream Boise River reservoir space that was existing on September 13, 2018, during and following flood control operations until the day of allocation, including the capture and retention of water in such space pursuant to water right numbers 63-33734A and 63-33734B.

Condition No. 2. This right is subject to water right holder's full utilization of available rights 63-120F, 63-198Q, 63-199B, and 63-200B.

Condition No. 3. The right holder shall exercise the direct diversion industrial use portion of this right only when authorized by the District 63 Watermaster when the Boise River is on flood release below Lucky Peak dam/outlet or when water right no. 63-33734A is in priority. The right holder shall exercise the recharge use portion of this right only when authorized by the District 63 Watermaster when the Boise River is on flood release below Lucky Peak dam/outlet. Flood releases shall be determined based upon the Memorandum of Agreement between the Department of Army and the Department of Interior for Flood Control Operations of Boise River Reservoirs, dated November 20, 1953, contracts with Reclamation contract holders in the Boise River Reservoirs, the Water Control Manual for Boise River Reservoirs, dated April 1985, and any modifications adopted pursuant to the procedures required in these documents and federal laws. The right holder shall not seek, directly or indirectly, any change to the flood control operations of the 1985 Water Control Manual for Boise River reservoirs. This water right may not be used to divert water released from storage to augment lower Snake River flows during the migration of Snake River salmon as authorized under Idaho law, or for any purpose of use authorized under the water rights for Lucky Peak Reservoir.

The Parties further stipulate and agree that diversion and use of water in connection with any permit and subsequent license issued under the Application shall be subject to the terms and conditions of this Stipulation, which shall be binding upon the Parties hereto, and their heirs, successors, and assigns.

The Parties move the Department, pursuant to IDAPA 37.01.01.612, for an order ("Order") approving the Conditions and confirming that the Conditions shall be included by the Department

in any permit and subsequent license issued under the Application. The Parties acknowledge that Condition No. 3 does not create a standard condition that would be binding on any future applications filed with the Department.

The protests to the Application filed by the Boise Board and the Ditch Companies shall be deemed withdrawn upon the issuance of a final Order stating that the Conditions are approved and shall be included by the Department in any permit and subsequent license issued under the Application. Provided, however, the Protestants reserve the right to participate further should the Department elect not to include the conditions set forth above or if another protestant or party challenges or disputes the inclusion of the conditions stated in this Stipulation. Such withdrawal of protests shall be with prejudice.

The Parties respectfully request the entry of an Order approving the stipulated terms and conditions set forth herein, including without limitation the Conditions. Each Party shall bear its own costs, expenses, and attorney fees in connection with the above-captioned matter.

MICRON TECHNOLOGY, INC.

_____, 2020

By:
Its:

BOISE PROJECT BOARD OF CONTROL

_____, 2020

By:
Its:

BALLENTYNE DITCH COMPANY
BOISE VALLEY IRRIGATION DITCH COMPANY
CANYON COUNTY WATER COMPANY
EUREKA WATER COMPANY
FARMERS' CO-OPERATIVE DITCH COMPANY
MIDDLETON MILL DITCH COMPANY
MIDDLETON IRRIGATION ASSOCIATION, INC.
NAMPA & MERIDIAN IRRIGATION DISTRICT
NEW DRY CREEK DITCH COMPANY
PIONEER DITCH COMPANY
PIONEER IRRIGATION DISTRICT
SETTLERS IRRIGATION DISTRICT
SOUTH BOISE WATER COMPANY
THURMAN MILL DITCH COMPANY

_____, 2020

By: _____
Its: _____

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2020, a true and correct copy of the foregoing was filed and/or served upon the following individual(s) by the means indicated:

DOCUMENT FILED:

Idaho Department of Water Resources
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DOCUMENT SERVED:

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STOEL RIVES LLP

By: _____
Kevin J. Beaton, ISB #3080
Attorneys for Micron Technology, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of July 2020, I served a true and correct copy of the within and foregoing **MICRON TECHNOLOGY INC.'s RESPONSE TO SUEZ's MOTION FOR PARTIAL SUMMARY JUDGMENT CONCERNING CONDITION 908** upon the following named parties by *USPS First-Class Mail and Email*, addressed as follows:

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July 16, 2020

**VIA EMAIL
HARD COPY TO FOLLOW**

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Re: In the Matter of Application for Permit No. 63-34614, in the Name of Micron Technology Inc.

Dear Chris and Mike:

Enclosed please find Micron Technology Inc.'s Response to SUEZ's Motion for Partial Summary Judgment Concerning Condition 908. Copies have been sent via email and US Mail to all parties as listed in the Certificate of Service.

Sincerely,

A handwritten signature in blue ink that reads "Kevin Beaton". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Kevin J. Beaton

Enclosures

cc: Nick Miller, Idaho Dept. of Water Resources
Laurence J. Lucas, Advocates for the West
Bryan Hurlbutt, Advocates for the West
Hon. Charles F. McDevitt, Chas McDevitt Law
Michael Orr, AG, Idaho Dept. of Fish & Game
Terry Scanlan, SPF Water Engineering
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