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WATER RESOURCES  
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Attorneys for Protestant Idaho Foundation for Parks and Lands

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

IN THE MATTER OF APPLICATION	)	<b>DECLARATION OF</b>
FOR PERMIT NO. 63-34614,	)	<b>LAURENCE J. LUCAS</b>
IN THE NAME OF MICRON	)	
TECHNOLOGY INC.	)	
_____	)	

I, LAURENCE (“LAIRD”) J. LUCAS, declare:

1. I am an attorney in good standing with the Idaho State Bar and am co-counsel of record for Protestant Idaho Foundation for Parks and Lands (IFPL) in this matter. The following facts are personally known to me, and if called as a witness I would and could truthfully testify thereto. I make this declaration under Idaho Code Section 9-1406.
2. I prepared IFPL’s “Motion to Continue Hearing and Extend Prehearing Deadlines” which IFPL filed in this matter on June 19, 2020. The facts stated in that Motion to Continue Hearing regarding the procedural history of this matter were based

on my review of the hearing orders, correspondence, email, and other documents related to this proceeding, and are true and correct to the best of my knowledge.

3. In paragraph 27 of the Motion to Continue Hearing, I noted that Micron could not claim substantial prejudice from the requested 6-month continuance of the hearing based on information provided by Micron regarding Micron's planned use of water under the water right application at issue here. That paragraph 27 specifically stated that such information about the lack of prejudice was "[b]ased on Micron's supplemental responses to IFPL's First Discovery Requests—which are subject to the Confidentiality Agreement and Protective Order, and will not be detailed here."

4. Paragraph 27 of the Motion to Continue Hearing did not provide any specific information that Micron had disclosed in its supplemental responses to IFPL's First Discovery Requests.

5. At no time have I or any other attorney or representative of IFPL (to my knowledge) disclosed to any third party any discovery response(s) or document(s) provided by Micron under the Confidentiality Stipulation and Protective Order in this matter.

6. I believed at the time of filing the Motion to Continue Hearing that the Confidentiality Stipulation and Protective Order applied to and bound all parties and their counsel in this matter, because the IDWR Hearing Officer approved the Protective Order on May 11, 2020, and circulated it to all counsel of record. I continue to believe that all parties are bound by that Protective Order.

7. In asserting in the Motion to Continue Hearing that Micron could claim no prejudice from the requested continuance of the hearing, and later briefly discussing the

same points on the status conference conducted on June 24, 2020, I did not disclose any of the actual information designated as confidential, and I believe I complied with the provisions of the Confidentiality Stipulation and Protective Order. Certainly, neither I nor IFPL had any intention of breaching that order.

8. According to my attorney timesheets and email logs, I engaged in phone and email communications with Micron's outside counsel, Kevin Beaton, repeatedly in the period before IFPL filed its Motion to Continue Hearing. These included emails dated May 7, 2020; May 21, 2020; June 4, 2020; June 10, 2020; and June 18, 2020; and I had a telephone call with Mr. Beaton on June 5, 2020.

9. In our call on June 5<sup>th</sup>, I raised the issue with Mr. Beaton of continuing the July 20<sup>th</sup> hearing, noting impacts of the Covid-19 virus pandemic and delays in discovery.

10. On Thursday, June 18, 2020, I sent Mr. Beaton an email advising that IFPL would seek an extension of the hearing and prehearing deadlines, and asked if Micron would agree. I received no response, and with the prehearing discovery cutoff and other deadlines imminent, I filed the Motion to Continue Hearing on Friday, June 19, 2020, and circulated it via email to IDWR and all counsel at 2:00 p.m. that day—including to Kevin Beaton, Micron's counsel, and Ann Dickey, Micron's representative on the hearing service list.

11. At 2:43 p.m. that same day, Mr. Beaton sent a reply to my 2:00 p.m. email circulating the Motion to Continue Hearing, which stated simply: "Laird: I wasn't blowing off your e-mail from yesterday, but have not yet run to ground your request with the Micron team. Have a nice weekend." Mr. Beaton raised no issue or concern in that email about IFPL's Motion to Continue Hearing or the allegedly improper disclosure of

confidential information in it. A true and correct copy of this email exchange is attached hereto as Exhibit 1.

12. Shortly after receiving IFPL's Motion to Continue Hearing, the Hearing Officer sent an email to all counsel later on the afternoon of June 19, 2020, advising that he intended to shorten time for responses to IFPL's motion and requested dates for a status conference in the next week. Mr. Beaton responded on behalf of Micron that same day, stating his availability for a status conference in the next week. Mr. Beaton made no mention of the alleged confidentiality breach by IFPL's Motion to Continue Hearing in this email.

13. On Monday, June 22, 2020, Mr. Beaton's assistant sent an email to me attaching Micron's Responses to IFPL's Second Discovery Requests. That email again raised no issue or concern about IFPL's Motion to Continue Hearing or the allegedly improper disclosure of confidentiality information in it.

14. Neither Mr. Beaton nor any other attorney or representative of Micron called, emailed, wrote, or otherwise informed me or other IFPL counsel that Micron viewed the Motion to Continue Hearing as having improperly disclosed confidential material, prior to the telephonic status conference call on June 23, 2020.

15. When the Hearing Officer conducted a telephonic status conference call to address the Motion to Continue Hearing on Wednesday, June 23, 2020, I thus had no idea that Micron believed the motion improperly disclosed confidential material. I briefly mentioned the same point about lack of prejudice to Micron on the status conference call as was contained in the Motion to Continue Hearing, and believed that was appropriate since the Confidentiality Stipulation and Protective Order was binding on all parties and

their counsel and since I did not reveal any specific information that Micron designated as confidential.

16. Even though Micron's above-named counsel and representative were both on that telephonic status conference call, neither of them objected to IFPL's supposed confidentiality breach during the call. Neither did they do so after the call.

17. In the two days after the status conference call, Micron did not write, call, email, or otherwise notify IFPL's counsel of the alleged breach. Micron thus filed its Motion for Sanctions late on Friday afternoon, June 26, 2020, without ever giving notice to IFPL or attempting an informal resolution.

18. Immediately upon receiving Micron's motion for sanctions, I sent Mr. Beaton an email at 4:19 p.m. on Friday, June 26, 2020, advising that IFPL would submit a Corrected Motion to Continue Hearing on Monday morning, June 29, 2020, in conformance with the confidentiality markings and submission process set forth in the Confidentiality Stipulation and Protective Order, and request that IDWR shred the original motion so that no publicly available copy will exist in IDWR's files.

19. IFPL is in fact submitting herewith that Corrected Motion to Continue Hearing, following the confidentiality procedures of the Confidentiality Stipulation and Protective Order; and I have no reason to doubt that IDWR will adhere to the request that the original motion be shredded.

20. I am also advising other protestants' counsel of this filing and requesting that they destroy any copies of the original motion.

21. Micron's claim that IFPL's Motion to Continue Hearing improperly disclosed "Micron's highly confidential business plans and future construction

schedules” is inaccurate, as such information was not disclosed and there is substantial public information available—including information publicly disclosed by Micron in connection with this proceeding, permit application materials with the City of Boise, and in Micron press statements and media materials—going to the same point that IFPL made in its Motion to Continue Hearing regarding lack of prejudice to Micron from the request to continue the hearing.

22. Micron’s motion for sanctions was not brought in good faith, in my opinion, including because it lacks a reasonable foundation in law and fact, and Micron made no effort to communicate or “meet and confer” with IFPL to raise its concerns in the week after the Motion to Continue Hearing was filed to seek an informal resolution.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct. Executed this 29th day of June, 2020, at Boise, Idaho.



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Laurence (“Laird”) J. Lucas



Laird Lucas <llucas@advocateswest.org>

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**RE: Motion to Continue Hearing, Micron Application 63-34614**

1 message

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**Beaton, Kevin J.** <kevin.beaton@stoel.com>  
To: Laird Lucas <llucas@advocateswest.org>

Fri, Jun 19, 2020 at 2:43 PM

Laird:

I wasn't blowing off your e-mail from yesterday, but have not yet run to ground your request with the Micron team. Have a nice weekend.

**From:** Laird Lucas <llucas@advocateswest.org>

**Sent:** Friday, June 19, 2020 2:01 PM

**To:** Miller, Nick <Nick.Miller@idwr.idaho.gov>; Beaton, Kevin J. <kevin.beaton@stoel.com>; Ann Dickey (adickey) <adickey@micron.com>; Terry Scanlan <TScanlan@spfwater.com>; Orr, Michael <michael.orr@ag.idaho.gov>; chmboise1 <chrismeyer@givenspursley.com>; michaellawrence@givenspursley.com; dan@sawtoothlaw.com; Bryce Farris (bryce@sawtoothlaw.com) <bryce@sawtoothlaw.com>; Andy Waldera <andy@sawtoothlaw.com>; Albert Barker <apb@idahowaters.com>

**Cc:** Chas McDevitt <chas@mcdevitt.org>; Bryan Hurlbutt <bhurlbutt@advocateswest.org>

**Subject:** Motion to Continue Hearing, Micron Application 63-34614

Mr. Miller and counsel -- Attached please find Protestant IFPL's Motion to Continue Hearing and Extend Pre-Hearing Deadlines, and Request for Status Conference. I am submitting the original hard copy by mail today to Mr. Miller.

To summarize, due to Corona-19 virus and delays in discovery, IFPL seeks a 6-month continuance of the July 20 hearing. We request a status conference to be set to address this motion and scheduling issues. -- Laird Lucas

--  
Laird J. Lucas

Executive Director

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LUCAS Declaration  
Ex 1

