

JUN 29 2020

WATER RESOURCES  
WESTERN REGION

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

IN THE MATTER OF APPLICATION	)	<b>MICRON TECHNOLOGY INC.'s</b>
FOR PERMIT NO. 63-34614,	)	<b>MOTION TO IMPOSE SANCTIONS</b>
IN THE NAME OF MICRON	)	<b>AGAINST IFPL FOR BREACH OF</b>
TECHNOLOGY INC.	)	<b>CONFIDENTIALITY AGREEMENT</b>
	)	<b>AND PROTECTIVE ORDER</b>
	)	

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Micron requests IDWR to impose sanctions against IFPL for Breach of Confidentiality Agreement and Protective Order entered by IDWR on May 12, 2020 for IFPL's disclosure of confidential information. Moreover, since IFPL disclosed confidential information to other protestants and their counsel in this proceeding, Micron requests that IDWR enter a supplemental order directing the other protestants and their counsel not to disclose such information. Micron also requests that IDWR schedule a hearing on this Motion.

**Background.**

Micron and IFPL entered into a Confidentiality Agreement (Agreement) in May 2020 and IDWR entered a Protective Order to enforce the terms of the Agreement. *See* attached Exhibit A. The Agreement stipulated that the signatory parties would not disclose any confidential information any third party and that certain procedures would be followed should any confidential information be filed with IDWR as part of this proceeding, including filing such information under seal. The Agreement and Protective Order stipulated that IDWR may impose sanctions for breach of the Agreement.

Micron provided supplemental responses to IFPL's discovery request containing confidential information that was subject to the Agreement on June 1, 2020. In IFPL's recently filed Motion to Continue and Request to Extend Discovery, IFPL disclosed confidential

**MICRON TECHNOLOGY INC.'s MOTION TO IMPOSE SANCTIONS AGAINST IFPL FOR  
BREACH OF CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER - 1**

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information in violation of the Agreement and Protective Order. The nature of the information disclosed related to Micron's highly confidential business plans and future construction schedules. IFPL was precluded from disclosing this information to any non-signatory party to the Agreement and if IFPL wished to rely on such information in any filing, it should have been filed and managed in accordance with the carefully crafted provisions in the Agreement. As a result of IFPL's actions the information is now potentially contained within a public record and numerous non-signatory third parties, including all of the other protestants and their counsel, are aware of the confidential information.<sup>1</sup>

Micron goes to great length to protect its confidential business information, such as the information disclosed by IFPL. Disclosure of this information can cause Micron irreparable harm.

**Request for Sanctions.**

IFPL breached the Agreement and Protective Order in its recently filed Motion to Continue and related status hearing. The Agreement and Protective Order authorizes to impose sanctions for breach of the Agreement.

Micron believes sanctions are appropriate here. Micron went to great lengths to protect the confidentiality of the information prior to disclosure to IFPL which IFPL promptly publicly disclosed in its recently filed Motion to Continue.

Although what type of sanctions may be warranted are within IDWR's discretion, Micron suggests appropriate sanctions could include requiring IFPL to pay Micron's costs and attorney fees for bringing this motion for, a prohibition from IFPL from requesting any additional

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<sup>1</sup> At this time Micron is unaware if IFPL disclosed the confidential information to any other third parties.

confidential information (should there be any additional discovery in this matter) and/or dismissal of IFPL's protest.

**Supplemental Protective Order.**

Since other protestants and their counsel are now aware of the confidential information IFPL disclosed in its Motion to Continue and any disclosures at the status hearing, Micron requests a Supplemental Protective Order directing the Protestants and their counsel not to disclose the confidential information and to maintain its confidentiality throughout this proceeding.

Micron is not suggesting by this request that the other Protestants or their counsel would disclose such information or otherwise cannot be entrusted with such information. However, to minimize the damage already caused by IFPL's disclosure, it would be appropriate for IDWR to enter a supplemental protective order prohibiting disclosure of the confidential information.

Finally, since the confidential information disclosed by IFPL is contained in a document that is subject to public disclosure, Micron requests that IDWR manage the confidential information in accordance with the terms of the Agreement to ensure it is not further publicly disclosed.

DATED this 26th day of June 2020.



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**EXHIBIT A**

**CONFIDENTIALITY STIPULATION  
AND PROTECTIVE ORDER**

**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	)	<b>CONFIDENTIALITY STIPULATION</b>
TECHNOLOGY INC.	)	<b>AND PROTECTIVE ORDER</b>
	)	
	)	

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**STIPULATION**

WHEREAS, the undersigned parties anticipate that documents and information produced in this matter may contain or constitute confidential information and the parties wish to expedite and facilitate the production of such information;

NOW THEREFORE, it is hereby stipulated and agreed among the undersigned parties, acting through their duly authorized counsel, as follows:

1. The following definitions shall apply to this Stipulated Protective Order:
  - a. As used herein, the term "CONFIDENTIAL INFORMATION" shall mean all information, documents, materials and tangible items designated by any producing party to be "Confidential" including specifically, but not exclusively, written discovery, deposition transcripts and documents, data or other information furnished during the course of this matter which is designated by a party to be confidential. Each party shall designate any material it deems to be "Confidential" in the following manner:
    - i. By stamping all documents with the designation "Confidential."

- ii. By imprinting the designation “Confidential” next to each answer to interrogatory, response to deposition upon written question, or response to request for admission.
- iii. All deposition transcripts shall be confidential and accorded the protections set forth herein upon the designation in writing by a party seeking to keep the transcript, or portions thereof, confidential. The party designating a deposition transcript or portion of a deposition transcript as confidential shall provide written notice to all parties by listing the page and inclusive line numbers of the material to be kept confidential, and shall designate such pages to be “Confidential.” In any deposition transcript in which any portion of the transcript has been designated confidential by any party, court reporter, or the party holding the original transcript, shall imprint the word “Confidential” on the front page of the original of the deposition transcript. A deposition containing confidential information shall not be filed with IDWR unless placed in a sealed envelope bearing the designation hereinafter provided.
- iv. As used herein, the phrase “prosecution and/or defense of this matter” shall mean preparation for hearing in this matter, including specifically, but not exclusively, pre-trial discovery pursuant to the Idaho Rules of Civil Procedure, the hearing in this matter, any alternative dispute resolution in this matter, including but not limited to mediation, and preparation for, participation in, and prosecution

and defense of, any appeal, rehearing, review or other judicial proceeding which relates to the subject matter of this matter.

2. Unless and until agreed by the undersigned parties, or ordered by the Idaho Department of Water Resources (IDWR), all confidential materials that are designated to be "Confidential," and any summaries, compilations or other work product which contains or reflects such confidential materials, shall be kept and treated as confidential and shall be used only for purposes of the prosecution and/or defense of this matter. The parties shall address with IDWR the procedure to be followed with regard to protecting any confidential information used at the hearing, from public disclosure. Confidential materials designated as "Confidential" shall not be disclosed to any person or entity other than: (a) counsel of record for the parties, including partners and employees of such counsel; (b) contractors of such counsel who are involved in the prosecution and/or defense of this matter; (c) qualified persons recording testimony involving documents or information described in paragraph 1.a. (i.e., court reporters) and necessary stenographic or clerical assistants thereof; (d) the parties themselves, including any officers, directors, employees or agents of the parties; (e) experts, consultants and potential witnesses retained in connection with the prosecution and/or defense of this matter; and (f) IDWR. Nothing in this Stipulation shall restrict a party's right to seek relief from this Protective Order or seek further protection or amendment of this Protective Order from IDWR.

3. All persons referenced in paragraph 2 permitted to receive CONFIDENTIAL INFORMATION, except counsel for the parties, shall be given a copy of this Protective Order prior to receiving any CONFIDENTIAL INFORMATION and acknowledge he or she is bound by it by executing the "Agreement of Person to be Bound by Protective Order," Exhibit A.

4. Any party may object to the designation by any other party of any material as "Confidential" by notifying the party that designated the material as "Confidential" in writing and stating the basis for its objection. The parties shall, within fourteen (14) days after service of the objection, meet and confer in an attempt to resolve the dispute. If the designating party refuses to meet within the required fourteen (14) days, or if the parties are unable, after meeting and conferring, to resolve the matters, the dispute may be submitted to IDWR for resolution. If the party objecting to the designation of materials as "Confidential" does not, within fourteen (14) days of the meeting (or failure to attend any meeting) submit the matter to IDWR and seek an appropriate order, the party shall be deemed to have waived any objection to the "Confidential" designation. In either situation, the party designating materials as "Confidential" has the burden to establish the propriety of the challenged designation.

5. All depositions or portions thereof taken in this matter may be designated as set forth above. If so designated, the depositions or portions thereof shall be sealed and all persons shall be prohibited from disclosing the testimony so designated, subject to the exceptions specified under this Protective Order.

6. It is expressly contemplated and agreed that the terms of this Protective Order are applicable to CONFIDENTIAL INFORMATION designated as such by an undersigned party in connection with this matter, and that the parties will treat all such designated CONFIDENTIAL INFORMATION in accordance with the terms of this Protective Order.

7. Any pleadings, motion papers, memoranda, affidavits, declarations, exhibits, transcripts, or other papers filed with IDWR that contain any CONFIDENTIAL INFORMATION shall be marked: "CONTAINS CONFIDENTIAL INFORMATION, SUBJECT TO PROTECTIVE ORDER." Such papers shall be filed with IDWR in a sealed envelope, endorsed



with the caption of this matter, the purpose to which they relate and a statement in the following form:

This envelope contains documents filed in this matter by [name of party] generally described as [title or description of document] and is not to be opened, except for review by IDWR, nor are the contents thereof to be disclosed except by Order of IDWR.

8. This Protective Order shall apply with equal force to any and all copies, notes, summaries, or other compilations and oral recitation of confidential material.

9. CONFIDENTIAL INFORMATION shall remain subject to the terms of this Protective Order unless and until the parties agree to the deletion of the designation or upon order of IDWR.

10. Within sixty (60) days after the final disposition of this matter, all information covered by this Protective Order shall be destroyed in a manner which preserves its confidential nature or shall, at the request of the parties, be returned to the parties. If CONFIDENTIAL INFORMATION is so destroyed, the party destroying the information shall certify in writing to the other party that all information of the other in its possession, care, custody, or control has been destroyed. However, counsel for the undersigned parties may retain one copy of any document for archival purposes.

11. The parties recognize that for purposes of expediency, the parties may produce documents or information without the appropriate designation. In such circumstances, the parties may thereafter designate such documents or other information as provided for herein by providing the other party with a written description of such documents or information within ten (10) business days of production. The parties agree that any document produced to date may be designated as "CONFIDENTIAL" if appropriate.

12. A breach of the provisions of this Protective Order may be subject to sanctions in the discretion of IDWR.

13. Any party or person who discloses CONFIDENTIAL INFORMATION in violation of this Protective Order may be subject to sanctions by IDWR. IDWR's retention of jurisdiction over the matter via entry of this Protective Order shall not prohibit any aggrieved party from bringing a separate action in any appropriate court or tribunal for unauthorized disclosure of CONFIDENTIAL INFORMATION in violation of the Idaho Trade Secrets Act, Idaho Code Sections 48-801, *et seq.* and/or the confidentiality imposed by law on any person or entity.

14. This Protective Order shall not be construed so as to limit either party's rights under any laws of the State of Idaho, including, but not limited to, the Idaho Trade Secrets Act, Idaho Code Sections 48-801, *et seq.*

15. The provisions of this Protective Order shall survive and remain in full force and effect after the entry of a final judgment (including any appellate proceedings) in this matter, whether by settlement or litigation.

16. The parties' consent to this Protective Order does not constitute an admission or agreement that any document or information is subject to discovery, or is admissible as evidence, in this matter. Designation of any information as subject to this Protective Order shall have no meaning or effect whatsoever with respect to the substantive issues, claims or defenses of any part hereto.

17. IDWR retains jurisdiction, both before and after the entry of final agency action in this matter (whether by settlement or litigation), to construe, enforce, and amend the provisions of this Protective Order. The treatment of CONFIDENTIAL INFORMATION to be introduced in the hearing of this matter shall be subject to a later order.

18. Nothing in this Protective Order shall prevent any party in this matter from seeking modification of this Protective Order or from objecting to discovery that it believes to be otherwise improper.

19. Nothing in this Protective Order shall bar or otherwise restrict any attorney herein from rendering advice to his/her client with respect to this matter and, in the course thereof, referring to or relying upon his/her examination of CONFIDENTIAL INFORMATION.

DATED: May 7, 2020



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*[Additional signature pages to follow]*

DATED: 3/7/2020



Laurence ("Laird") J. Lucas, ISB #4733

Bryan Hurlbutt, ISB #8501

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ATTY FOR IFPL

**EXHIBIT A**

AGREEMENT OF PERSON TO BE BOUND BY  
PROTECTIVE ORDER

The undersigned, \_\_\_\_\_, in connection with the *Matter of Application for Permit No. 63-34614 (Micron Technology, Inc.)*, hereby acknowledges that he or she has received and read the Protective Order entered in this matter, a copy of which is attached hereto, and agrees to be bound by all of the provisions thereof.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

**ORDER**

The foregoing Stipulation of the Parties is hereby approved and as executed by the parties shall constitute the Order of the Idaho Department of Water Resources.

IT IS SO ORDERED.

Dated: MAY 11<sup>th</sup>, 2020



Hearing Officer  
IDWR

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of June 2020, I served a true and correct copy of the within and foregoing **MICRON TECHNOLOGY INC.'s MOTION TO IMPOSE SANCTIONS AGAINST IFPL FOR BREACH OF CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER** upon the following named parties by *USPS First-Class Mail and Email*, addressed as follows:

Laurence ("Laird") J. Lucas  
Bryan Hurlbutt  
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Hon. Charles F. McDevitt  
Chas McDevitt Law  
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Kevin J. Beaton

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JUN 29 2020

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June 26, 2020

**VIA EMAIL  
HARD COPY TO FOLLOW**

Laurence J. Lucas  
Bryan Hurlbutt  
Advocates for the West  
1320 W. Franklin Road  
Boise, ID 83701

Hon. Charles F. McDevitt  
Chas McDevitt Law  
PO Box 1543  
Boise, ID 83701

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

Dear Laird, Bryan and Judge McDevitt:

Enclosed please find Micron Technology Inc.'s Motion to Impose Sanctions Against IFPL for Breach of Confidentiality Agreement and Protective Order. 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 J. Beaton".

Kevin J. Beaton

Enclosures

cc: Nick Miller, Idaho Dept. of Water Resources (w/encl.)  
Michael Orr, AG, Idaho Dept. of Fish & Game (w/encl.)  
Terry Scanlan, SPF Water Engineering (w/encl.)  
Michael Lawrence, Givens Pursley LLP (w/encl.)  
Albert Barker, Barker Rosholt & Simpson (w/encl.)  
Bryce Farris, Sawtooth Law Office (w/encl.)