

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

IN THE MATTER OF)	
APPLICATION FOR PERMIT)	HEARING AND PUBLIC TESTIMONY
NO. 63-34614 IN THE NAME)	NOTICE AND SCHEDULING ORDER
OF MICRON TECHNOLOGY INC)	
_____)	

On September 25, 2019, the Idaho Department of Water Resources (Department) held a prehearing conference on this contested matter. Based upon discussion at the prehearing conference, on September 27, 2019, the presiding officer authorized discovery and adopted a schedule in anticipation of a hearing to be held in March 2020. During a January 9, 2020 status conference, the presiding officer verbally vacated the September 27, 2019 schedule based on discussions with the parties that the anticipated hearing should be delayed and held after March 2020. On March 16, 2020, the Department held another status conference to discuss a hearing schedule. During the status conference the parties discussed, among other things, the opportunity for public testimony and a revised hearing schedule.

During the status conference, the parties asked to schedule time for testimony from public witnesses outside of the regularly scheduled hearing. The hearing officer will schedule a two-hour block of time between the hours of 5:30 and 7:30 p.m. on Wednesday July 22, 2020 for public testimony at the same location as the hearing.

The presiding officer provides notice of a hearing and orders as follows.

NOTICE OF HEARING AND PUBLIC TESTIMONY

The department has scheduled the matter for a hearing beginning at 9:00 a.m. on Monday, July 20, 2020 and continuing through Friday July 24, 2020 as necessary, at IDAHO DEPARTMENT OF WATER RESOURCES, STATE OFFICE, 322 E. Front St., 6th Floor, Boise, ID 83720.

The presiding officer at the hearing will be Nick Miller, whose mailing address is 2375 Airport Way, Boise, ID 83705 and whose email address is Nick.Miller@IDWR.Idaho.gov.

If you plan to offer exhibits for the record at the hearing, note that Rule 606 of the Department's Rules of Procedure requires that a copy be provided to the presiding officer.

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/index.html>.

The hearing officer will hold a two-hour period of time for public testimony, as needed to receive all public testimony. The two-hour period is set for **Wednesday July 22, 2020**, beginning at 5:30 p.m. and will be held at the same location as the regular hearing. Any persons planning to testify during this time will be treated as a public witness, with rights and status in this matter as defined by Rule 355 of the Department's Rules of Procedure (IDAPA

30.01.01.355). The hearing and public testimony will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please contact Kensie Thorneycroft (208-334-2190) no later than five (5) days prior to the hearing.

SCHEDULING ORDER

1. General discovery began on September 27, 2019 and shall end on June 22, 2020.
2. Written requests for discovery shall be either interrogatories or requests for documents.
3. Responses to discovery must be served on the requesting party and all other parties within 30 days of the request.
4. Notices of deposition, cover letters stating discovery requests have been served, cover letters stating responses to discovery requests have been served, and objections to discovery must be served on all parties and the Department. Service via email is authorized.
5. Expert Witness Reports shall be due and served no later than May 18, 2020. Rebuttal reports shall be due and served no later than June 1, 2020.
6. Depositions must be completed on or before June 22, 2020.
7. On or before July 6, 2020, each party must disclose to all other parties and the hearing officer, in writing, the identity of all witnesses that will or may testify for the party at the hearing.
8. On or before July 6, 2020, each party seeking to offer exhibits at the hearing must physically serve on all other parties and the hearing officer copies of the exhibits. Service of the proposed exhibits will satisfy Rule 606 of the Rules of Procedure (IDAPA 37.01.01).
9. To avoid duplication of exhibits, pursuant to Rule 602 of the department's Rules of Procedure (IDAPA 37.01.01), the hearing officer will take official notice of the following documents from the application file and department records. For ease of reference, these documents have been assigned the following exhibit numbers:

IDWR1	Application for Permit 63-34614 (September 13, 2018)
IDWR2	Rule 40 Additional Information for Application for Permit 63-34614 (February 20, 2019)
IDWR3	August 12, 2019 letter from Micron RE: Additional Information for Application for Permit 63-34614
IDWR 4	January 31, 2020 Staff Memorandum RE: Origins of Water Right Condition 907 and Implementation of Water Rights with Conditions 907 and 908 in the Boise River Water Right Accounting Program

Dated this 10th day of April 2020



Nick Miller
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April 2020, true and correct copies of the document described below were served by placing a copy of the same with the United States Postal Service, certified mail with return receipt, postage prepaid and properly addressed to the following:

Documents Served:

- Hearing And Public Testimony Notice And Scheduling Order
- Hearing Procedures for Application for Permit

MICRON TECHNOLOGY INC.
ATTN: ANN DICKEY
PO BOX 6
BOISE ID 83707

SPF WATER ENGINEERING
ATTN: TERRY SCANLAN
300 E. MALARD DR, STE 350
BOISE ID 83706

MICHAEL ORR
DEPUTY ATTORNEY GENERAL
NATURAL RESOURCES DIVISION
OFFICE OF THE ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010


SAWTOOTH LAW OFFICE
ATTN: S BRYCE FARRIS
1101 W. RIVER ST, SUITE 110
PO BOX 7985
BOISE ID 83707

GIVENS PURSLEY LLP
ATTN: MICHAEL P. LAWRENCE
601 W BANNOCK ST

PO BOX 2720
BOISE, ID 83701-2720
BARKER ROSHOLT & SIMPSON LLP
ATTN: ALBERT BARKER
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE ID 83701-2139

IDAHO FOUNDATION FOR PARKS
AND LANDS
ATTN: CHARLES MCDEVITT
PO BOX 1543
BOISE ID 83701

ADVOCATES FOR THE WEST
ATTN: LAURENCE ("LAIRD") J. LUCAS
AND BRYAN HURLBUTT
P.O. BOX 1612
BOISE, ID 83701


Kensie Thorneycroft
Administrative Assistant 1

PRE-HEARING CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR PERMIT

ISSUES

Applications to appropriate the water of the state of Idaho are referred to as applications for permit, and are for the development of new water rights. Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit::

1. Will the proposed appropriation reduce the quantity of water under existing water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6, and 7 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5, if applicable, lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for these issues.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues to avoid unnecessary proof, identify documents, schedule discovery, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing, and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. When attending the conference, please bring a calendar with your schedule for the next two–six month period from the date of the pre-hearing conference for the purpose of scheduling a hearing. Parties will be expected to discuss their availability at the prehearing conference for the purpose of scheduling the hearing.

HEARING

A hearing may be conducted according to Sections 42-1701A(1) and (2), Idaho Code and the department's Rules of Procedure. Copies of Idaho Code and the department's rules are available upon request or by accessing the department's website at: www.idwr.idaho.gov. The department records formal hearings, and copies of a hearing recording are available upon request. There may be a charge for reproducing the recording.

The hearing will likely be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended or preliminary order. Parties can petition for reconsideration of a decision or file exceptions. A brief to support exceptions may request oral argument. Parties may seek judicial review of any final order issued by the Director.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please notify the department no later than ten (10) days prior to the hearing.