



State of Idaho

DEPARTMENT OF WATER RESOURCES

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October 1, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

MIKE MCINTYRE & JOHN CHAPMAN
MICRON TECHNOLOGY INC
PO BOX 6
BOISE ID 83707-0006

Re: Permit No. 63-31183 and Draft Amended Ground Water Management Plan

Dear Gentlemen:

This letter addresses Micron's draft amended individual management plan dated May 2007. As part of the ongoing discussion in this regard, you submitted a draft beneficial use field exam report for Permit No. 63-31183.

First, allow me to express the Idaho Department of Water Resources (IDWR) appreciation for all your efforts to conserve and reuse water within the Southeast Boise Ground Water Management Area (GWMA). Your significant contributions in this regard are reflected in the encouraging results from the GWMA annual reporting and data from the monitoring network in recent years: total pumping from the aquifer has greatly decreased, and ground water levels have more or less stabilized.

The draft plan and draft field exam report appear acceptable to IDWR with one major caveat. The annual diversion volume you proposed for licensing of 63-31183 includes the following components:

- total decreed water rights volume (4,507 AF)
- total ground water diverted
- waste water reclaimed and reused.

The sum of the latter two components is identified as total water used. The difference between total decreed water rights and total water used is proposed as the annual volume for licensing the permit. You cited I.C. §§ 42-223 and 42-250 in this context.

IDWR views this situation somewhat differently. The decreed water rights are protected by the statutes as you correctly noted. However, this does not mean reclaimed and reused water can be added to the amount of water diverted from a source to quantify the total volume beneficially used. IDWR would recognize the total amount diverted from a source as a volume limitation in licensing. Reclaimed and reused water would not be added to the total amount diverted from a source when issuing a license.

The development period for Permit 63-31183 runs from February 2002 through February 2012, which includes an approved maximum five-year extension of time to file proof of beneficial use. The best case scenario for the licensing volume is the maximum amount of water injected into

the aquifer during any calendar year in the development period. For example, the maximum injected volume to date is 1,608 AF in 2008 (GWMA annual reporting). The maximum injected volume used to determine the license volume might have to be adjusted somewhat to conform to permit condition of approval #8 (carry over credits etc.). Based on permit condition of approval #10, IDWR can recognize the maximum volume as use under the permit instead of use under the decreed rights.

The volume used for licensing the permit is not an additional increment of ground water beneficially used. Instead, it is water used in lieu of water from the decreed rights. This is consistent with the original intent of the permit as envisioned by IDWR: an approval to divert water that has been injected into the aquifer, including out-of-priority diversions based on favorable mitigation and injury factors (condition of approval #12).

You suggested permit condition of approval #9 regarding analysis of aquifer hydraulic response could be eliminated during licensing. That sounds reasonable. Future concerns in this regard would be noted by the monitoring network established for the GWMA.

Based on the above discussion, the first two pages of the draft amended individual management plan provide a good summary of your efforts to date. The last page of the draft plan should be revised regarding volume issues. Likewise, the draft field exam report should be reconsidered for the same reasons.

In summary, IDWR views the situation as follows.

1. Diversion of ground water can be credited to the permit instead of to the decreed rights.
2. Volume for 63-31183 is the maximum annual amount of water injected into the aquifer minus reductions, if any, associated with condition of approval #8.
3. Calendar years during the permit development period will be used to determine the volume when licensing the permit.
4. When combined, the licensed and decreed volume will be limited to 4,507 AF.
5. As stated in your draft amended plan, Micron's decreed rights will be protected against forfeiture to the extent that nonuse of water under those rights is based on compliance with the GWMA plan previously approved by the IDWR director.

If you have any questions, please contact me at 208-287-4948.

Sincerely,


Jeff Peppersack, Chief
Water Allocation Bureau