

MEMORANDUM

DATE: April 9, 2015

TO: Water Right File 63-12420

FROM: Shelley W. Keen *SWK*

RE: Use of Approval Condition 908

In 2013 IDWR instructed our staff to issue permits for new Basin 63 appropriations of surface water and ground water upstream from Star with condition 908, which states:

The right holder shall exercise 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.

Because of its age, Permit 63-12420 was not issued with condition 908 or similar language.¹ A condition like 908 seems to have first appeared in IDWR records during the processing of Application 63-31409 in 2003. During the licensing review process for this right, IDWR has evaluated whether it would be appropriate to include condition 908 on the right. Our review process looked to determine whether condition 908 is consistent with the expectations of the permit holder throughout the record.

- The 1997 cover letter for the application states, “The application contemplates appropriation of flood control releases from the Boise River reservoir system.”
- The legal notice for the applications states, “Right will be used when water is available (high runoff etc.)”

¹ Permit 63-12420 has conditions prohibiting diversion if Boise River flows are below 240 cfs from June 16 to February 29 and if they are below 1,100 cfs from March 1 to May 31. However, these conditions have a different purpose than to prevent injury to existing water right holders; they are intended to meet environmental objectives pursued by IDFG and Idaho Rivers United.

- On December 16, 1997, consultant Terry Scanlan wrote letters to Ada County Development Services and the Boise City Public Works Department to explain the development proposed in applications 63-12420 and 63-12399. In the letters, Scanlan states, "We propose to appropriate water that is currently released for flood control purposes."
- Terry Scanlan submitted a beneficial use field report in 2009. In his report, he stated, "Water delivered under this water right permit is available only during flood control releases on the Boise River."

Based on these items in the file, it seemed clear that the limitations in condition 908 apply because Micron Technology Inc. expected to be able to divert water only during flood control operations. The conclusion is further bolstered by the fact that the right is partly for ground water recharge, and the Director has substantial authority under Idaho Code § 42-234 to reduce or modify recharge rights.

MEMORANDUM

DATE: November 14, 2014
TO: File 63-12420
FROM: Ashley Newbry
Engineer Associate
RE: Proposed Licensure of WR 63-12420 (Beneficial Use Volume) for Micron Technology

On August 20, 2014 Shelley Keen tasked me with licensure of WR Permit 63-12420, held by Micron Technology. I have reviewed the file for facts pertinent to development of WR License 63-12420.

Suite of Micron Technology Inc.'s Water Rights and Permits

Basin	Sequence	Process	Basis	Priority Date	Diversion Rate	Source List	Water Use List	Volume
63	8992	Water Right	Decreed	7/25/1977	2.090	GROUND WATER	INDUSTRIAL, IRRIGATION	1,267.9
63	9029	Water Right	Decreed	9/9/1977	4.000	GROUND WATER	INDUSTRIAL	806.3
63	9357	Water Right	Decreed	3/12/1980	0.600	GROUND WATER	FIRE PROTECTION, INDUSTRIAL	362.0
63	10208	Water Right	Decreed	11/22/1983	0.610	GROUND WATER	DOMESTIC, INDUSTRIAL	441.6
63	10221	Water Right	License	2/6/1984		WASTE WATER	IRRIGATION FROM STORAGE, IRRIGATION STORAGE	4.0
63	11293	Water Right	Decreed	4/19/1990	2.250	GROUND WATER	INDUSTRIAL	1,628.9
63	12420	Water Permit		6/6/1997	15.000	BOISE RIVER	GROUND WATER RECHARGE, INDUSTRIAL	
63	31183	Water Permit		1/24/2001	10.000	GROUND WATER	INDUSTRIAL, IRRIGATION	

Micron provided the following comments in their 2004 *Request for Extension of Time*: "Market conditions in the semiconductor memory industry have been poor since the 2001 recession. As a result, funding has not been available to complete all project components. Furthermore, since this water right is essentially a floodwater right, a high water year is needed in order to maximize diversion rate and volume. The water right was in priority for only a few days in 2000 and 2003, and was not available for diversion in 2001 and 2002."

Though Permit 63-12420 does not include conditions which require adherence to diversion only at flood release times, it appears that Micron has acknowledged that this was an important condition during the permit advertising and protest processes. In his correspondence exchange with IDWR personnel, Terry Scanlan claims that "any flows over approximately 1,500 cfs at Glenwood can be considered flood control releases that are available for diversion under this right."

Initial Analysis

Per the U.S. Bureau of Reclamation, the Boise River is considered to be at flood stage at 7,000 cfs at the Glenwood Bridge. Based on U.S. Bureau of Reclamation Hydromet data, I found that during Micron's development period (April 1, 1999 to March 31, 2009) the Boise River reached flood stage at the Glenwood Bridge only one time, May 8-11, 2008.

Perhaps flood stage (7,000 cfs) occurred at the point of diversion. This happened twice during the permit development period. In 2006, the Boise River reached flood stage for 37 days at the point of diversion; in 2008, the Boise River reached flood stage for 5 days.

Estimation of Micron's beneficial use volumes:

- A. RECHARGE: Water permit 63-31183, a ground water POD, includes reporting requirements for well discharge. This report also provided groundwater recharge volumes. In 2008, Micron recharged 1,608 AF

of water, the greatest annual volume during the development period. In reviewing the information in this memo, one might guess that the entire 1,608 AF probably did not come entirely from this Boise River right. This volume likely includes some of Micron's storage water from reservoirs upstream of the point of diversion. Until further records can be obtained from Micron Technology or Water District 63, I recommend the following: $(3.34 \text{ cfs}) \times (37 \text{ days}) \times (1.9835 \text{ AF/day}) = 245 \text{ AF}$

- B. INDUSTRIAL: Until Industrial use records become available, I recommend the following calculation method. Assume that Micron pumped for industrial use for 37 days in 2006. Recommended: $(5.0 \text{ cfs}) \times (37 \text{ days}) \times (1.9835 \text{ AF/day}) = 367 \text{ AF}$

Micron's Analysis

On October 30, 2014, Micron Technology representatives Jim Nielsen and Brad Wolf provided volume data from Micron's archives. Based on the dates counted for Flood Control on the Boise River, I suspect that Micron was in search of flows 1,400 cfs or greater at the Glenwood Bridge. A summary is shown below. Based on the maximum volumes presented, I would recommend 237 AF for the Ground Water Recharge volume limit and 291 AF for the Industrial use volume limit.

Years with no Flood Control		Amount of 63-12420 used for:				
Year	River in Flood Control (Dates)	Floodwater Total gallons	Recharge (gal)	Recharge (AF)	Industrial (gal)	Industrial (AF)
1999	No diversions noted					
2000	5/31 to 6/11	7,242,522	0	0	7,242,522	22
2001						
2002						
2003	6/10 to 6/12	4,832,146	1,969,160	6	2,862,986	9
2004						
2005						
2006	1/25 to 6/28	172,052,520	77,180,023	237	94,872,497	291
2007						
2008	(5/13 to 5/27) and (6/4 to 6/15)	40,740,319	8,916,307	27	31,824,012	98
2009	5/13 to 6/23	68,884,698	47,404,057	145	21,480,641	66
2010	6/8 to 7/1	23,151,928	5,217,358	16	17,934,570	55
2011	4/1 to 7/14	160,427,954	64,928,076	199	95,499,878	293
2012	2/14 to 6/26	183,983,665	69,197,287	212	114,786,378	352
2013						
2014	3/31 to 4/25	22,680,439	6,492,237	20	16,188,202	50

Following the above submittal from Micron Technology, Shelley Keen further requested review of Micron's data by Liz Cresto, technical hydrologist. She manages IDWR's water rights accounting model. Her initial thoughts reflected that she felt Micron was mistakenly attributing some storage water releases to permit 63-12420, but she agreed to complete further analysis.

11/7/2014 Pre-Licensing Meeting

Shelley Keen, Liz Cresto, and I coordinated a pre-licensing meeting on November 7, 2014. Liz explained some of her methodology for determining when this WR 63-12420 was in priority during the development period (4/1/1999—3/31/2009). The results of her analysis are shown below. Based on the water rights accounting

model, she determined that in 2006 Micron diverted the most water under this permit. From March 8 to June 28, Micron's permit **63-12420** was in priority.

Following the meeting, I requested daily diversion data from Jim for these dates. During our correspondence exchange, Jim confirmed that his date selection for the data above was based on Boise River Flows at the Glenwood Bridge.

Year	MICRON Analysis		IDWR Analysis	
	River in Flood Control (Dates)	No. Days	IDWR Dates in Priority	No. Days
1999		0	0	0
2000	5/31 to 6/11	12	4/22 to 6/17	57
2001	No Flood Control	0	0	0
2002	No Flood Control	0	0	0
2003	6/10 to 6/12	3	6/1 to 6/12	12
2004	No Flood Control	0	(4/13 to 4/16) and (5/4 to 5/9) and (5/28 to 6/8)	22
2005	No Flood Control	0	5/28 to 6/8	12
2006	1/25 to 6/28	155	3/9 to 6/29	113
2007	No Flood Control	0	(4/8 to 4/11) and (4/29 to 5/3)	9
2008	(5/13 to 5/27) and (6/4 to 6/15)	25	(5/18 to 6/11) and 6/16, 6/19, 6/22, 6/23, 6/29, 6/30	31
2009	5/13 to 6/23	42	5/27 to 6/28	33
2010	6/8 to 7/1	24	6/5 to 7/1	27
2011	4/1 to 7/14	105	3/28 to 7/16	111
2012	2/14 to 6/26	133	3/17 to 6/26	102
2013		0	0	0
2014	3/31 to 4/25	26	(5/3 to 5/6) and 5/10, and (5/18 to 6/14)	33
	MAX in Development Period	155	MAX in Development Period	113

Final Analysis

On November 10, 2014, Micron Technology representative Jim Nielsen provided daily diversion volume data from Micron's archives. The data is shown below. From March 8 to June 28, Micron diverted 52,552,023 gallons for ground water recharge, or **162 AF**. During the same date span, Micron diverted 77,925,332 gallons for industrial use, or **240 AF**.

Micron Technology		
Boise River Diversions Under Permit 63-12420		
3/8/2006 thru 6/29/2006		
Daily Volumes		
Date	Recharge Volume (gallons)	Industrial Volume (gallons)
3/8/2006	653,251	525,051
3/9/2006	635,158	517,272
3/10/2006	702,110	445,928
3/11/2006	700,732	423,563
3/12/2006	700,570	412,770
3/13/2006	683,358	438,200
3/14/2006	655,846	460,695
3/15/2006	493,968	616,736
3/16/2006	379,324	735,171
3/17/2006	344,087	756,616
3/18/2006	489,550	595,708
3/19/2006	651,299	445,250
3/20/2006	590,670	503,536
3/21/2006	631,674	463,605
3/22/2006	661,527	439,283
3/23/2006	597,372	497,470
3/24/2006	509,531	588,202
3/25/2006	509,598	577,211
3/26/2006	596,338	490,872
3/27/2006	613,110	475,336
3/28/2006	561,089	525,505
3/29/2006	494,087	575,126
3/30/2006	311,665	414,634
3/31/2006	437,044	420,212
4/1/2006	778,832	500,916
4/2/2006	819,986	446,378
4/3/2006	771,227	482,084
4/4/2006	703,034	551,974
4/5/2006	711,127	527,571
4/6/2006	784,669	437,332
4/7/2006	770,733	440,953
4/8/2006	734,656	463,617
4/9/2006	750,512	457,749
4/10/2006	689,924	476,262
4/11/2006	652,658	501,181
4/12/2006	532,171	487,357
4/13/2006	603,132	514,623
4/14/2006	575,240	532,159
4/15/2006	459,007	584,669
4/16/2006	528,569	497,851
4/17/2006	528,581	436,361
4/18/2006	423,835	493,896
4/19/2006	347,469	530,024
4/20/2006	359,928	501,260
4/21/2006	293,767	565,584
4/22/2006	308,934	550,847
4/23/2006	339,670	531,851
4/24/2006	345,630	517,182
4/25/2006	346,159	530,156
4/26/2006	200,253	544,190
4/27/2006	139,376	468,396
4/28/2006	316,320	514,575
4/29/2006	691,527	577,160
4/30/2006	694,528	530,834
5/1/2006	680,771	484,908
5/2/2006	577,890	645,302
5/3/2006	530,189	690,385

5/4/2006	480,287	740,891
5/5/2006	460,550	767,438
5/6/2006	404,775	785,303
5/7/2006	367,004	737,289
5/8/2006	417,244	616,906
5/9/2006	390,260	685,830
5/10/2006	371,611	682,357
5/11/2006	375,345	786,607
5/12/2006	252,889	1,018,664
5/13/2006	349,493	866,010
5/14/2006	295,136	839,037
5/15/2006	243,941	668,768
5/16/2006	198,450	951,994
5/17/2006	192,395	1,152,664
5/18/2006	221,336	1,222,869
5/19/2006	238,558	1,067,407
5/20/2006	316,372	378,140
5/21/2006	967,052	322,283
5/22/2006	926,562	230,949
5/23/2006	397,685	776,078
5/24/2006	227,239	781,766
5/25/2006	116,603	657,484
5/26/2006	324,089	810,236
5/27/2006	723,952	802,129
5/28/2006	816,195	496,811
5/29/2006	730,117	505,616
5/30/2006	683,172	606,163
5/31/2006	609,727	754,501
6/1/2006	519,918	1,011,259
6/2/2006	440,630	1,117,051
6/3/2006	283,643	811,961
6/4/2006	358,685	813,441
6/5/2006	307,282	874,083
6/6/2006	266,212	1,004,431
6/7/2006	178,133	1,149,142
6/8/2006	173,132	1,074,836
6/9/2006	188,448	1,043,091
6/10/2006	273,818	939,571
6/11/2006	346,354	757,832
6/12/2006	296,253	775,151
6/13/2006	217,227	974,973
6/14/2006	248,123	952,478
6/15/2006	323,780	694,269
6/16/2006	274,969	715,849
6/17/2006	293,765	849,226
6/18/2006	288,180	889,712
6/19/2006	314,428	825,223
6/20/2006	273,104	904,812
6/21/2006	193,597	1,032,260
6/22/2006	268,040	1,035,832
6/23/2006	324,522	994,524
6/24/2006	544,808	1,110,629
6/25/2006	508,462	1,058,233
6/26/2006	471,477	1,160,336
6/27/2006	477,881	1,103,797
6/28/2006	436,266	1,273,861
6/29/2006	422,841	1,330,796
Total Gallons	52,552,023	77,925,332
Total AF	161.28	239.14

Newbry, Ashley

63-12420

From: Jim Nielsen (jcnelsen) [jcnelsen@micron.com]
Sent: Wednesday, November 12, 2014 1:18 PM
To: Newbry, Ashley
Subject: RE: Micron Water Right Info

No problem....

6/29/2006

Recharge 422,841 gallons

Industrial 1,330,796 gallons

From: Newbry, Ashley [mailto:Ashley.Newbry@idwr.idaho.gov]
Sent: Wednesday, November 12, 2014 9:17 AM
To: Jim Nielsen (jcnelsen)
Subject: RE: Micron Water Right Info

Jim,

I'm sorry to pester you again; I found an extra day that was missing from the previous date range in 2006. We would also like to provide Micron with credit for 6/29/2006. Could I also have the same information for 6/29/2006?

It seems like I'm going to owe you a turkey after all this number crunching.

Thanks again for your help,

Ashley Newbry, EIT

Water Rights Section
Idaho Dept. of Water Resources
State Office
322 E. Front Street
PO Box 83720
Boise, ID 83720-0098
(208) 287-4800 X 4846



From: Jim Nielsen (jcnelsen) [mailto:jcnelsen@micron.com]
Sent: Monday, November 10, 2014 2:49 PM
To: Newbry, Ashley
Subject: RE: Micron Water Right Info

Please find daily totals attached.....Jim

From: Newbry, Ashley [<mailto:Ashley.Newbry@idwr.idaho.gov>]
Sent: Friday, November 07, 2014 3:03 PM
To: Jim Nielsen (jcnelsen)
Cc: Cresto, Liz
Subject: RE: Micron Water Right Info

63-12420

Hello Jim,

Thanks so much; this is quite helpful. I misunderstood how the data was obtained.

We used a water rights accounting model to determine which days this right was in priority and which days storage water was being released. We also found that the best year on the books between 1999 - 2009 was 2006. May we please have Micron's daily flow volumes for 3/8-6/28 of 2006, for each of Recharge and Industrial use?

Thank you so much,

Ashley Newbry, EIT

Water Rights Section
Idaho Dept. of Water Resources
State Office
322 E. Front Street
PO Box 83720
Boise, ID 83720-0098
(208) 287-4800 X 4846



From: Jim Nielsen (jcnelsen) [<mailto:jcnelsen@micron.com>]
Sent: Friday, November 07, 2014 12:58 PM
To: Newbry, Ashley
Cc: Cresto, Liz
Subject: RE: Micron Water Right Info

See Below

From: Newbry, Ashley [<mailto:Ashley.Newbry@idwr.idaho.gov>]
Sent: Friday, November 07, 2014 11:41 AM
To: Jim Nielsen (jcnelsen)
Cc: Cresto, Liz
Subject: RE: Micron Water Right Info

Hello Jim,

I appreciate your help on this. We have used your table to compare to our own values.

A few questions have arisen:

1. What was the methodology that you used to determine which dates were attributable to 63-12420?
Correspondence with D63 Watermaster and Glenwood bridge flows.
2. Did you use daily diversion data to obtain your "Floodwater in Gallons" for each of the date ranges? Or did you use a type of averaged values from the weekly reports?
We have daily data.

Thank you again,

Ashley Newbry, EIT

Water Rights Section

Idaho Dept. of Water Resources

State Office

322 E. Front Street

PO Box 83720

Boise, ID 83720-0098

(208) 287-4800 X 4846



From: Jim Nielsen (jcn Nielsen) [<mailto:jcn Nielsen@micron.com>]
Sent: Thursday, October 30, 2014 1:49 PM
To: Newbry, Ashley; Brad Wolf (blwolf)
Cc: waterdistrict63@questoffice.net; Cresto, Liz; Ricky Murray (rlmurray)
Subject: RE: Micron Water Right Info

Ashley,
Please find attached, Microns river diversions under 63-12420.
We should have your other request by the end of the day.
Let me know if you have any questions.
Thanks,
Jim

From: Newbry, Ashley [<mailto:Ashley.Newbry@idwr.idaho.gov>]
Sent: Wednesday, October 29, 2014 3:52 PM
To: Brad Wolf (blwolf)
Cc: waterdistrict63@questoffice.net; Cresto, Liz; Jim Nielsen (jcn Nielsen); Larry Woodington (lawoodington)
Subject: FW: Micron Water Right Info

Hello Brad,

I am working on licensing a Micron water right 63-12420 on somewhat of a tight deadline (this Friday). Jim Nielsen is working on a task for me associated with compiling and classifying the amounts in your weekly reports (like the one attached, which gets sent to Rex Barrie, Watermaster) as recharge use versus industrial use.

Rex typically sends the report onto our Hydrology section each week. I don't think these have been archived on our end. May I request copies of the reports themselves (like the one attached)? I need from **1997 to 2013**.

Thank you in advance,

Ashley Newbry, EiT

Water Rights Section
Idaho Dept. of Water Resources
State Office
322 E. Front Street
PO Box 83720
Boise, ID 83720-0098
(208) 287-4800 X 4846



From: Jim Nielsen (jcnelsen) [<mailto:jcnelsen@micron.com>]
Sent: Tuesday, October 28, 2014 3:53 PM
To: Newbry, Ashley; Larry Woodington (lawoodington)
Cc: Keen, Shelley; Ricky Murray (rlmurray)
Subject: RE: Micron Water Right Info

Hi Ashley,

To verify...you need.

- 1) Boise river water diverted only under Permit 63-12420 (Flood control right). We can extract amounts diverted under 63-12420 from our archived monthly reports to WD-63 Watermaster.
- 2) The amount differentiated between industrial and recharge use.

Thanks, Jim

Jim Nielsen
MS 602
Micron Technology, Inc.
P.O. Box 6
Boise, ID 83707-0006
Phone 208.368.3366
Fax 208.368.1297

From: Newbry, Ashley [<mailto:Ashley.Newbry@idwr.idaho.gov>]
Sent: Tuesday, October 28, 2014 10:55 AM
To: Larry Woodington (lawoodington)
Cc: Jim Nielsen (jcnelsen); Keen, Shelley
Subject: RE: Micron Water Right Info

Thank you for your help Larry; I look forward to hearing more from Jim.

Ashley Newbry, EiT

Water Rights Section
Idaho Dept. of Water Resources

State Office
322 E. Front Street
PO Box 83720
Boise, ID 83720-0098
(208) 287-4800 X 4846



From: Larry Woodington (lawoodington) [<mailto:lawoodington@micron.com>]
Sent: Tuesday, October 28, 2014 9:34 AM
To: Newbry, Ashley
Subject: RE: Micron Water Right Info

Hi Ashley,

As for question #2, I just gather the numbers 4 days a week. Turn them into Jim Nielsen and either him or another of his employees does the report and sends it on to Rex.

As for question #2, I will forward this on to Jim Nielsen to see if he can help you with the industrial use volumes.

Thanks
Larry

From: Newbry, Ashley [<mailto:Ashley.Newbry@idwr.idaho.gov>]
Sent: Tuesday, October 28, 2014 8:41 AM
To: Larry Woodington (lawoodington)
Subject: Micron Water Right Info

Good Morning Larry,

I should have put this in my last email, but forgot. For Micron, I'm working on turning permit 63-12420 into a water right license. It is for industrial and groundwater recharge uses of Micron's water from the Boise River pump station. IDWR received some groundwater recharge data from Jim Nielsen for a different water right – WR 63-31183. I believe this will help me quantify the volume of water that Micron has recharged, but I am having a difficult time quantifying the volume used for industrial purposes each day from 1999 to 2013.

So, I have a couple of questions:

1. Do you know of a way to obtain industrial use volumes?
2. Are you the Micron employee who submits weekly flow data to Rex Barrie, Water District 63?

Thank you again for your help,

Ashley Newbry, EiT

Water Rights Section
Idaho Dept. of Water Resources
State Office
322 E. Front Street

Micron Technology

Boise River Diversions Recharge and Industrial Use Under 63-12420

3/8/2006 thru 6/28/2006

Date	Daily Volumes	
	Recharge Volume (gallons)	Industrial Volume (gallons)
3/8/2006	653,251	525,051
3/9/2006	635,158	517,272
3/10/2006	702,110	445,928
3/11/2006	700,732	423,563
3/12/2006	700,570	412,770
3/13/2006	683,358	438,200
3/14/2006	655,846	460,695
3/15/2006	493,968	616,736
3/16/2006	379,324	735,171
3/17/2006	344,087	756,616
3/18/2006	489,550	595,708
3/19/2006	651,299	445,250
3/20/2006	590,670	503,536
3/21/2006	631,674	463,605
3/22/2006	661,527	439,283
3/23/2006	597,372	497,470
3/24/2006	509,531	588,202
3/25/2006	509,598	577,211
3/26/2006	596,338	490,872
3/27/2006	613,110	475,336
3/28/2006	561,089	525,505
3/29/2006	494,087	575,126
3/30/2006	311,665	414,634
3/31/2006	437,044	420,212
4/1/2006	778,832	500,916
4/2/2006	819,986	446,378
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4/4/2006	703,034	551,974
4/5/2006	711,127	527,571
4/6/2006	784,669	437,332
4/7/2006	770,733	440,953
4/8/2006	734,656	463,617
4/9/2006	750,512	457,749
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4/11/2006	652,658	501,181
4/12/2006	532,171	487,357
4/13/2006	603,132	514,623
4/14/2006	575,240	532,159
4/15/2006	459,007	584,669
4/16/2006	528,569	497,851
4/17/2006	528,581	436,361
4/18/2006	423,835	493,896
4/19/2006	347,469	530,024
4/20/2006	359,928	501,260
4/21/2006	293,767	565,584
4/22/2006	308,934	550,847
4/23/2006	339,670	531,851
4/24/2006	345,630	517,182
4/25/2006	346,159	530,156
4/26/2006	200,253	544,190
4/27/2006	139,376	468,396
4/28/2006	316,320	514,575
4/29/2006	691,527	677,160
4/30/2006	694,528	530,834

5/1/2006	680,771	484,908
5/2/2006	577,890	645,302
5/3/2006	530,189	690,385
5/4/2006	480,287	740,891
5/5/2006	460,550	767,438
5/6/2006	404,775	785,303
5/7/2006	367,004	737,289
5/8/2006	417,244	616,906
5/9/2006	390,260	685,830
5/10/2006	371,611	682,357
5/11/2006	375,345	786,607
5/12/2006	252,889	1,018,664
5/13/2006	349,493	866,010
5/14/2006	295,136	839,037
5/15/2006	243,941	668,768
5/16/2006	198,450	951,994
5/17/2006	192,395	1,152,664
5/18/2006	221,336	1,222,869
5/19/2006	238,558	1,067,407
5/20/2006	316,372	378,140
5/21/2006	967,052	322,283
5/22/2006	926,562	230,949
5/23/2006	397,685	776,078
5/24/2006	227,239	781,766
5/25/2006	116,603	657,484
5/26/2006	324,089	810,236
5/27/2006	723,952	802,129
5/28/2006	816,195	496,811
5/29/2006	730,117	505,616
5/30/2006	683,172	606,163
5/31/2006	609,727	754,501
6/1/2006	519,918	1,011,259
6/2/2006	440,630	1,117,051
6/3/2006	283,643	811,961
6/4/2006	358,685	813,441
6/5/2006	307,282	874,083
6/6/2006	266,212	1,004,431
6/7/2006	178,133	1,149,142
6/8/2006	173,132	1,074,836
6/9/2006	188,448	1,043,091
6/10/2006	273,818	939,571
6/11/2006	346,354	757,832
6/12/2006	296,253	775,151
6/13/2006	217,227	974,973
6/14/2006	248,123	952,478
6/15/2006	323,780	694,269
6/16/2006	274,969	715,849
6/17/2006	293,765	849,226
6/18/2006	288,180	889,712
6/19/2006	314,428	825,223
6/20/2006	273,104	904,812
6/21/2006	193,597	1,032,260
6/22/2006	268,040	1,035,832
6/23/2006	324,522	994,524
6/24/2006	544,808	1,110,629
6/25/2006	508,462	1,058,233
6/26/2006	471,477	1,160,336
6/27/2006	477,881	1,103,797
6/28/2006	436,266	1,273,861

63-12420

Micron Technology River Diversions under Permit To Appropriate Water # 63-12420

Micron first begins diverting river water 5/25/2000

Years with no Flood Control		Floodwater Total gallons	Amount of 63-12420 used for	
Year	River in Flood Control (Dates)		Recharge (gal)	Industrial (gal)
1999				
2000	5/31 to 6/11	7,242,522	0	7,242,522
2001				
2002				
2003	6/10 to 6/12	4,832,146	1,969,160	2,862,986
2004				
2005				
2006	1/25 to 6/28	172,052,520	77,180,023	94,872,497
2007				
2008	(5/13 to 5/27) and (6/4 to 6/15)	40,740,319	8,916,307	31,824,012
2009	5/13 to 6/23	68,884,698	47,404,057	21,480,641
2010	6/8 to 7/1	23,151,928	5,217,358	17,934,570
2011	4/1 to 7/14	160,427,954	64,928,076	95,499,878
2012	2/14 to 6/26	183,983,665	69,197,287	114,786,378
2013				
2014	3/31 to 4/25	22,680,439	6,492,237	16,188,202

Keen, Shelley

From: Keen, Shelley
Sent: Friday, August 01, 2014 1:17 PM
To: Weaver, Mathew
Subject: RE: Boise Refill Analysis

Mat,

I looked through the files for Permits 63-12399 (Simplot) and 63-12420 (Micron) to see if anything in the record prior to issuance of the permits clearly and overtly indicates that water would be diverted only during flood control operations. I found the following list of statements:

- The cover letter for the Simplot application states, "The application proposes to divert river water when seasonally high flows are available to make beneficial use of the water that would otherwise be lost."
- The cover letter for the Micron applications states, "The application contemplates appropriation of flood control releases from the Boise River system."
- The legal notice for both applications states, "Right will be used when water is available (high runoff etc.)"
- Both applicants subsequently stipulated that they would not divert when flows are below 240 cfs from June 16 to February 29 and when flows are below 1100 cfs from March 1 to May 31. The parties did not reach agreement on the period from June 1 to June 15, and it was not addressed in the approval conditions of either permit.
- For the Simplot permit, proof of beneficial use was received in March of 2014, but the field examination has not been done yet. For the Micron permit, however, Terry Scanlan submitted a beneficial use field report in 2009. In his report, he states, "Water delivered under this water right permit is available only during flood control releases on the Boise River." In subsequent correspondence, Terry states that "any flows over approximately 1,500 cfs at Glenwood can be considered flood control releases that are available for diversion under this water right." **[Is this statement consistent with the Water Control Manual for Boise River Reservoirs?]**

I didn't see anything in either file addressing whether water could be called to make flows in the Boise River come up to the 240 cfs or 1100 cfs flow rate. However, at the time the permits were issued, I don't think the "second fill" question had come up. Everyone probably assumed that the storage rights were senior and that these new rights could make calls only against future juniors. If the Refill2 right is subordinated to rights with priority dates prior to May 1, 2014, it will be subordinate to these two rights, which have 1997 priority dates, unless it can be made absolutely clear that these two rights can be exercised only during flood control operations. This seems to be the reason for Al's question about adding conditions to the licenses to make it clear that diversions can occur only during flood control mode.

IDWR has instructed our staff to issue **permits** for new appropriations of surface water and ground water upstream from Star with the following conditions:

- 907 -- If measured or calculated Boise River flows at the point of diversion are less than 240 cfs during the period beginning June 16 and ending February 29, water shall not be diverted pursuant to this right. If measured or calculated Boise River flows at the point of diversion are less than 1,100 cfs during the period beginning March 1 and ending May 31, water shall not be diverted pursuant to this water right. Measured or calculated Boise River flows at the point of diversion shall be based on gauged Lucky Peak Dam discharge minus the gauged diversion of the New York Canal. If the benchmark stream maintenance flows of 240 cfs (from June 16 to February 29) and 1,100 cfs (from March 1 to May 31) subsequently change, then the diversion of Boise River flows under this right will be limited to provide for the new benchmark flows.
- 908 -- The right holder shall exercise 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.

We've not instructed staff to add any of these conditions to licenses if the conditions were not already on the permits because IDWR's authority to impose new restrictions at licensing is questionable. (I double checked with Craig and John, and we all agree on this point.) Because it's much clearer in the record for the Micron right that it's for flood flows only, I think IDWR could make a fairly strong argument for adding condition 908 to the license. However, the record for the Simplot right is less clear, and adding condition 908 might be viewed by the right holder as imposing a new restriction. This probably goes for all the other post 94 filings as well.

Let me know if you need me to dig deeper on any of this.

Shelley

From: Weaver, Mathew
Sent: Wednesday, July 30, 2014 9:53 AM
To: Keen, Shelley
Subject: FW: Boise Refill Analysis

Shelley,

Can you take a look at Al's question(s) and the two Micron WRs and let me know what you think?

Thanks,

Mathew Weaver, PE
Deputy Director
Idaho Department of Water Resources
www.idwr.idaho.gov
(208) 287-4800

From: Albert Barker [<mailto:apb@idahowaters.com>]
Sent: Wednesday, July 30, 2014 9:07 AM
To: Cresto, Liz
Cc: Weaver, Mathew
Subject: RE: Boise Refill Analysis

Liz-

Thanks for the explanation. I did not scroll up far enough on the first sheet to get all the rights and did not realize how the grey boxes worked on the second sheet.

I do have a question about the Micron rights -63-12399 and 63-12420. They both contain the following language.

If measured or calculated Boise River flows at the point of diversion are less than 240.00 cfs during the period beginning June 16 and ending February 29, water shall not be diverted pursuant

to this water right. If measured or calculated Boise River flows at the point of diversion are less than 1,100.00 cfs during the period beginning March 1 and ending May 31, water shall not be diverted pursuant to this water right. Measured or calculated Boise River flows at the point of diversion shall be based on gauged Lucky Peak Dam Discharge minus the gauged diversion to the New York Canal.

This is not the same language in the later United Water right stating that water can be diverted only when water is being released for flood control, but it seems to suggest that water can be taken only in certain flow conditions and that water cannot be called to make the flow come up to that flow rate. Is that correct and is there something that makes that clear in the back files?

Also these two rights are still permits and a license condition can be added at the time of licensing to provide that water cannot be called from storage to fill these rights. If I understood our discussions from last year on administration that language will be added to all new permits and licenses anyway as a matter of course. Is that right?

It would also seem to me that all the outstanding permits on this list would have that flood release condition added, too, thereby reducing further the impact of the post 1994 rights.