



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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April 8, 2009

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

TERRY M SCANLAN
SPF WATER ENGINEERING LLC
300 E MALLARD DR SUITE 350
BOISE ID 83706

RE: Permit No.: 63-12420

Dear Mr. Scanlan:

On April 1, 2009, the Idaho Department of Water Resources (IDWR) received the Statement of Completion and the Beneficial Use Field Report of the exam you conducted to verify water use for Permit 63-12420 (the permit). The permit is held by Micron Technology Inc., and authorizes a diversion of 15 cfs of surface water from the Boise River at Lot 6 NW¼NE¼, Section 4, Township 2 North, Range 3 East, for industrial and groundwater recharge purposes.

I have been assigned to review your report and determine if it fulfills IDWR requirements for field report acceptability. Although, I found your report was complete and timely, I need clarification of your volume recommendation. In your narrative you state that the river water is only available during flood control releases and that the total river water diversion volume in 2008 was 2080 AF. However, I found that the volume you recommended was much higher and based on a calculation using a 365-day multiplier.

You may remember that in order to resolve protests to this appropriation, special conditions were attached to the permit. Those conditions are:

- 8 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.
- 9 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.
- 10 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.

Based on a quick review of Boise River data, I found that it is unusual for the flow conditions quoted above to be met every day of each year. Although the pumping station is clearly capable of delivering the volume you recommend, the permit does not authorize appropriation of Boise River water when the above conditions are not met. The Department must limit the license to the amount of water actually diverted and beneficially used. A simple multiplication equation does not appear to represent the volume diverted and used.

Because your report was substantially in compliance with IDWR rules for an acceptable exam, it is not being rejected. However, I do need additional information from you. Beneficial Use Examination Rule IDAPA 37.03.02c states,

If the director determines that a field report is acceptable but that additional information is needed to clarify the field report, he will notify the certified water right examiner in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the priority date of the permit will be advanced one (1) day for each day the information submittal is late. Failure to submit the required information within one (1) year of the date of the department's request is cause for the director to take action to cancel the permit.

I will hold processing of this water right for 30 days to provide you with time to submit additional information which validates or refines your volume recommendation based on actual diversion and use. Feel free to contact me with questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Michele Edl". The signature is fluid and cursive, with the first name "Michele" written in a larger, more prominent script than the last name "Edl".

Michele Edl
Associate Engineer
Water Rights Section
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CC: Michelle Atkinson
Micron Technology, Inc.