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Department of Water Resources
Adjudication Bureau

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

Subcase Nos. 63-00127B, 63-00128B,
63-00129B, 63-00130B, 63-00131B and
63-00178B

**JOINT MOTION FOR APPROVAL OF
SEASON OF USE**

COME NOW, Tree Top Ranches, L.P. ("Tree Top"), the Claimant in the above-captioned subcases; the Boise Project Board of Control ("Boise Project")¹; and the United States Bureau of Reclamation ("BOR")², by and through their respective counsel of record, and hereby file this Joint Motion for Approval of Season of Use for water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B and 63-00178B. By this motion, the parties are seeking approval of a season of use remark under the Purpose and Period of Use element for each respective water right. This Joint Motion is made and based upon the following grounds:

1. On or about December 19, 2006, a Director's Report and Recommendation was filed with this Court for each of water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B and 63-00178B.

¹ Acting on its own behalf and on behalf of and for the following individual entities: New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District, Boise-Kuna Irrigation District, and Big Bend Irrigation District.

² United States of America acting through the Department of Interior, Bureau of Reclamation.

2. On or about June 19, 2007, Tree Top filed with this Court a Standard Form 1 - Objection to the Director's Report and Recommendation for each of water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B and 63-00178B, objecting to the following elements of the respective Director's Reports: Purpose(s) of Use, Period of Year, and Place of Use ("Tree Top's Objection").

3. On or about June 19, 2007, Greg Obendorf ("Obendorf") filed with this Court a Standard Form 1 - Objection to the Director's Report and Recommendation for each of water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B and 63-00178B, objecting to the recommended quantity under each water right.

4. On or about August 20, 2007, Boise Project filed with this Court a Standard Form 2 - Response to Tree Top's Objection to each of water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B and 63-00178B, responding to Tree Top's objection to the Purpose(s) of Use and Period of Year elements of the respective Director's Reports.

5. On or about August 20, 2007, BOR filed with this Court a Standard Form 2 - Response to Tree Top's Objection to each of water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B and 63-00178B, responding to Tree Top's objection to the Purpose(s) of Use and Period of Year elements of the respective Director's Reports.

6. On or about August 20, 2007, Obendorf filed with this Court a Standard Form 2 - Response to Tree Top's Objection to each of water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B and 63-00178B, responding to Tree Top's objection to the Purpose(s) of Use, Period of Year, and Place of Use elements of the respective Director's Reports, elements not contested in or by Obendorf's June 19, 2007 Objection.

7. With the exception of Obendorf, the parties have actively engaged in negotiations for the settlement of Tree Top's Objection as to the Purpose(s) of Use and Period of Year elements of the respective Director's Reports.

8. Tree Top, Boise Project, and BOR have agreed upon the following substitute remark to be included under the Purpose(s) of Use and Period of Year elements of the respective Director's Reports for water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B and 63-00178B:

Diversion of irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE1/4 of the SE1/4 of the SE1/4, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall not interfere with storage of water under water rights for Lake Lowell, Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs.

(The "Substitute Remark.") The movants desire that the foregoing Substitute Remark replace the current Purpose(s) of Use and Period of Year remark contained within the enumerated Director's Reports.

9. During the Status Conference held before this Court on November 7, 2008, Obendorf voiced objections to the settlement of Tree Top's Objection as to the Purpose(s) of Use and Period of Year elements of the respective Director's Reports, as outlined above in Paragraph 8. However, Obendorf has failed to provide any reasons, meaningful or otherwise, why he opposes such settlement.

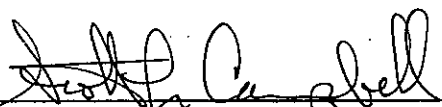
10. Therefore, in the interest of judicial economy, Tree Top, Boise Project, and BOR respectfully request that this Court grant this Joint Motion, thereby approving the inclusion of the Substitute Remark under the Purpose(s) of Use and Period of Year elements for

each of water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B and
63-00178B

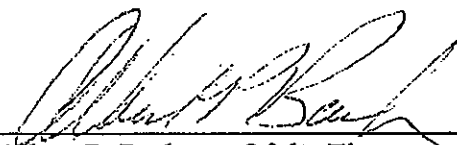
This Joint Motion is brought pursuant to SRBA Administrative Order One and the
Idaho Rules of Civil Procedure and is supported by the record before the Court.

DATED this 15th day of December, 2008.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm
Attorneys for Tree Top Ranches, L.P.

BARKER, ROSHOLT & SIMPSON, LLP

By 
Albert P. Barker – Of the Firm
Attorneys for Boise Project Board of
Control, acting on its own behalf and on
behalf of and for the New York Irrigation
District, Nampa & Meridian Irrigation
District, Wilder Irrigation District, Boise-
Kuna Irrigation District and Big Bend
Irrigation District

UNITED STATES OF AMERICA ACTING
THROUGH THE DEPARTMENT OF
INTERIOR, BUREAU OF RECLAMATION

By _____
David W. Gehlert
Natural Resources Section
Environment and Natural Resource Division
U.S. Department of Justice

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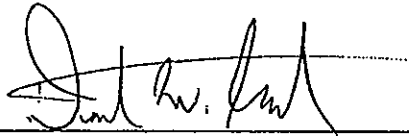
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By  _____
David W. Gehlert
Natural Resources Section
Environment and Natural Resource Division
U.S. Department of Justice

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of December, 2008, I caused a true and correct copy of the foregoing **JOINT MOTION FOR APPROVAL OF SEASON OF USE** to be served by the method indicated below, and addressed to the following:

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