

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

In the Matter of:)
Cactus Hill Ranch Company,) **REPLY SUPPORTING MOTION TO**
Respondent.) **DISMISS**
) Docket No. **CWA-08-2012-0033**

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Cactus Hill Ranch Company (hereinafter "Respondent"), through its attorneys, Davis Graham & Stubbs LLP, hereby submits this Reply Supporting its Motion to Dismiss pursuant to 40 C.F.R. §§ 22.16; 22.2; and F.R.C.P. Rule 12(b)(6) as follows:

Reply Supporting Motion to Dismiss

Notwithstanding the United States Environmental Protection Agency's clarification in its response to Respondent's Motion to Dismiss, Respondent requests an order dismissing any claims with prejudice based on events alleged to have occurred before September 13, 2007 or, in the alternative, an order confirming that no evidence of alleged violations predating September 13, 2007 will be considered. 28 U.S.C. § 2462; *United States v. Banks*, 115 F.3d 916, 918 (11th Cir. 1997), *cert. denied*, 522 U.S. 1075, 118 S. Ct. 852, 139 L. Ed. 2d 752 (1998); *Britton Construction Co. et al.*, 8 E.A.D. 261, 274-75 (EAB 1999).

WHEREFORE, for the reasons stated above, Respondent respectfully requests an order dismissing any claims with prejudice based on events alleged to have occurred before September 13, 2007 or, in the alternative, an order confirming that evidence of the same will not be considered.

RESPECTFULLY SUBMITTED this 15th day of November, 2012.

DAVIS GRAHAM & STUBBS LLP



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*Attorneys for Cactus Hill Ranch
Company*

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of November, 2012, an original and one true and correct copy of the foregoing **REPLY SUPPORTING MOTION TO DISMISS** were served on the following by hand delivery:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

I further hereby certify that on the 15th day of November, 2012, one true and correct copy of the foregoing **REPLY SUPPORTING MOTION TO DISMISS** was served on the following by hand delivery:

Margaret J. Livingston
Senior Enforcement Attorney
U.S. Environmental Protection Agency (8ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202


Tamara Stires

CERTIFICATE OF SERVICE

I hereby certify that on 19th day of November, 2012, an original and one true and correct copy of the foregoing **REPLY SUPPORTING MOTION TO DISMISS** were served on the following by facsimile and Federal Express Overnight Service:

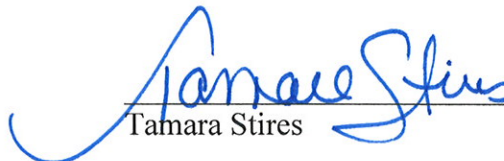
Ms. Sybil Anderson
U.S. Environmental Protection Agency Office of the Hearing Clerk
Franklin Court Building
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005

I further hereby certify that on the 19th day of November, 2012, one true and correct copy of the foregoing **REPLY SUPPORTING MOTION TO DISMISS** was served on the following by facsimile and Federal Express Overnight Service:

The Honorable Susan Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency Office of Administrative Law Judges
Franklin Court Building
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005

I further hereby certify that on the 19th day of November, 2012, one true and correct copy of the foregoing **REPLY SUPPORTING MOTION TO DISMISS** was served on the following by hand delivery:

Margaret J. Livingston
Senior Enforcement Attorney
U.S. Environmental Protection Agency (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202


Tamara Stires