## DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

City and County Building 1437 Bannock Street Denver, CO 80202

Plaintiff/Appellant: POWERTECH (USA) INC.,

a South Dakota Corporation;

v.

**Defendant/Appellee:** STATE OF COLORADO MINED LAND RECLAMATION BOARD;

and

**Defendant-Intervenors:** 

COLORADOANS AGAINST RESOURCE DESTRUCTION; TALLAHASSEE AREA COMMUNITY, INC.; and SHEEP MOUNTAIN

ALLIANCE.

**Attorneys for Plaintiff/Appellant:** 

John D. Fognani, Atty. Reg #8280 Michael T. Hegarty, Atty. Reg #32073 Kendall R. McLaughlin, Atty. Reg. #39574 Paul G. Buchmann, Atty. Reg. #41006

FOGNANI & FAUGHT, PLLC 1801 Broadway, Suite 800

Denver, CO 80202

Telephone: 303-382-6200 Facsimile: 303-382-6210

Email: <u>jfognani@fognanilaw.com</u>

mhegarty@fognanilaw.com kmclaughlin@fognanilaw.com pbuchmann@fognanilaw.com **▲ COURT USE ONLY ▲** 

Case Number: 2010 CV 8615

Div.: Ctrm: 215

## PLAINTIFF/APPELLANT'S MOTION FOR ENTRY OF JUDGMENT

Plaintiff/Appellant, Powertech (USA) Inc. ("Plaintiff"), by and through its undersigned counsel, respectfully moves this Court to effect entry of judgment pursuant to C.R.C.P. Rule 58(a) with respect to the Order of Denver District Court Judge Christina M. Habas (attached hereto as **Exhibit A** and referred to herein as the "Order") delivered to Plaintiff via LexisNexis File & Serve on July 13, 2012. In support hereof, Plaintiff states as follows:

1. Plaintiff has conferred with counsel for Defendant/Appellee, the Mined Land Reclamation Board, who indicated that Defendant/Appellee would not join this motion.

Plaintiff/Appellant also attempted to contact Jeffrey Parsons, attorney for Defendant/Intervenors to confer about this motion but did not receive a response. Plaintiff assumes Defendant/Intervenors oppose this motion.

- 2. C.R.C.P. Rule 58(a) provides, in part, that "upon a decision by the court, the court shall promptly prepare, date, *and sign* a written judgment and the clerk shall enter it on the register of actions as provided in C.R.C.P. 79(a).... The effective date of entry of judgment shall be the actual date of *the signing* of the written judgment" (emphasis added).
- 3. Judge Habas never signed the Order. Consequently, entry of judgment in this matter has never been completed or finalized. "[A] judgment is not final until there is a written order, dated *and signed* by the trial court." *In the Matter of the Estate of Clarence Royal*, 813 P.2d 790, 791 (Colo. App. 1991) (citations omitted) (emphasis added).
- 4. Lacking an entry of judgment in this matter means, among other things, that Plaintiff cannot move for post-trial relief under C.R.C.P. Rule 59 or appeal the Order under C.A.R. Rule 4(a). Both rules become operative and available to Plaintiff only upon a valid entry of judgment. See *Joslin Dry Goods Co. v. Villa Italia*, *Ltd.*, 539 P.2d 137, 138 (Colo. App. 1975), finding that, because "the record does not contain a proper entry of judgment..., we may not render an opinion on the merits."

WHEREFORE, Plaintiff respectfully asks this Court to sign the Order and thereby effect its entry as of the date of signing.

DATED this 1<sup>st</sup> day of October 2012.

FOGNANI & FAUGHT, PLLC

s/ Paul G. Buchmann

John D. Fognani, Esq. Michael T. Hegarty, Esq. Kendall R. McLaughlin, Esq. Paul G. Buchmann, Esq. 1801 Broadway, Suite 800

Denver, Colorado 80202 Telephone: 303-382-6200 Facsimile: 303-382-6210

ATTORNEYS FOR PLAINTIFF/APPELLANT POWERTECH (USA) INC.

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of October 2012, a true and correct copy of the foregoing **Plaintiff/Appellant's Motion for Entry of Judgment** was filed with the Court and served via LexisNexis File & Serve<sup>TM</sup> upon the following:

Jeff M. Fugate, Esq., Assistant Attorney General Steven Nagy, Esq., Assistant Attorney General Office of the Colorado Attorney General 1525 Sherman Street, 7<sup>th</sup> Floor Denver, Colorado 80203

Jeffrey C. Parsons, Esq. Roger Flynn, Esq. Western Mining Action Project P.O. Box 349 Lyons, Colorado 80540

Travis E. Stills, Esq. Energy Minerals Law Center 1911 Main Ave., Suite 238 Durango, Colorado 81301

s/Kimberl	y L. Wise

In accordance with C.R.C.P. 121 §1-26(7), a printed or printable copy of this document with original or scanned signatures is maintained by the filing party and will be made available for inspection by the other parties or the Court upon request.