

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>POWERTECH (USA) INC., A SOUTH DAKOTA CORPORATION,</p> <p>Plaintiff,</p> <p>v.</p> <p>STATE OF COLORADO MINED LAND RECLAMATION BOARD AND MIKE KING, EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES,</p> <p>Defendants.</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>ATTORNEY FOR DEFENDANTS</p> <p>JOHN W. SUTHERS, Attorney General JEFF M. FUGATE Assistant Attorney General Reg. # 37679 CHERYL A. LINDEN First Assistant Attorney General Reg. #14185 STEVE NAGY Assistant Attorney General Reg. # 38955</p> <p>1525 Sherman Street, 7<sup>th</sup> Floor Denver, CO 80203 Telephone: (303) 866-5127 FAX: (303) 866-3558 E-Mail: <a href="mailto:Jeff.fugate@state.co.us">Jeff.fugate@state.co.us</a>; <a href="mailto:Cheryl.linden@state.co.us">Cheryl.linden@state.co.us</a>; <a href="mailto:Steve.nagy@state.co.us">Steve.nagy@state.co.us</a></p>	<p>Case No. 2010 CV 8615</p> <p>Ctrlm.:</p>
<p><b>ANSWER OF THE COLORADO MINED LAND RECLAMATION BOARD</b></p>	

The Colorado Mined Land Reclamation Board (“Board”), by and through the Colorado Attorney General’s Office, files this Answer to the Plaintiff’s Complaint as follows:

**Board's Motion to Dismiss Plaintiff's Claims against Mike King, Executive Director of the Department of Natural Resources and for Dismissal of Mr. King as a Defendant**

On December 8, 2010 the Board filed a Motion pursuant to C.R.C.P. 12(b)(1) to dismiss Plaintiff's claims against Mr. King and to dismiss Mr. King as a defendant. Answering Plaintiff's Complaint is not intended, and should not be construed, to waive or supersede the Board's Motion to Dismiss.

**INTRODUCTION**

1. Admitted.
2. The sentence in this paragraph asserts Plaintiff's description of its Complaint and requires no response; the Complaint speaks for itself.
3. The sentence in this paragraph asserts Plaintiff's description of its Complaint and requires no response; the Complaint speaks for itself.

**JURISDICTION**

4. The Board admits this Court has jurisdiction under C.R.S § 24-4-106 and that venue is proper. The Board does not believe Plaintiff's reference to the Colorado Constitution is relevant in this case and therefore denies the same.
5. Admitted.
6. To the extent relevant, the Board admits that the Plaintiff has exhausted its administrative remedies.

**THE PARTIES**

7. As to the first sentence, the Board admits that Plaintiff operates the Centennial Project but has insufficient knowledge and information to admit or deny that Plaintiff owns such project and therefore denies the same. As to the second sentence, upon information and belief, the Board admits that Plaintiff's planned Centennial Project will be an In Situ Leach ("ISL") uranium mining operation. As to the rest of the allegations in the second sentence, the Board has insufficient information to admit or deny, and therefore denies the same. The Board admits Plaintiff's ISL prospecting and mining activities will be governed by the new Regulations. Plaintiff's allegation that its activities will be "affected by" the new Regulations is vague and therefore the Board denies the same.
8. The Board admits that Mike King is the Executive Director of the Colorado Department of Natural Resources ("DNR") and was a member of the Board during the

rulemaking. The remainder of this paragraph contains Plaintiff's alleged description of the duties of the executive director and requires no response; the executive director's duties speak for themselves.

9. The Board admits that it is an agency within DNR. The Board admits that the Colorado General Assembly created the Board and the Division of Reclamation, Mining and Safety ("DRMS") in the Mined Land Reclamation Act ("Act") and states the Act and authority created therein speak for themselves. As to the last sentence, the Board states that it is charged with issuing and enforcing mining and reclamation permits for all mining operations in Colorado, including coal.

### **FACTUAL ALLEGATIONS**

10. The Board admits that the Colorado General Assembly enacted the Act in 1976 and that the Act created both the Board and the DRMS. As to the rest of the allegations in this paragraph, the Board states the Act and authority created therein speak for themselves.

11. Admitted.

12. Admitted.

13. This paragraph asserts Plaintiff's description of the contents and requirements of House Bill 08-1161; the Board states that HB 08-1161 speaks for itself and is the best evidence of what it provides.

14. This paragraph asserts Plaintiff's description of the contents and requirements of HB 08-1161; the Board states that HB 08-1161 speaks for itself and is the best evidence of what it provides.

15. This paragraph asserts Plaintiff's description of the contents and requirements of Senate Bill 08-228; the Board states that SB 08-228 speaks for itself and is the best evidence of what it provides.

16. This paragraph asserts Plaintiff's description of the contents and requirements of SB 08-228; the Board states that SB 08-228 speaks for itself and is the best evidence of what it provides.

17. The Board denies it commenced formal rulemaking on April 15, 2010. The Board states it commenced formal rulemaking by its Notice published in January, 2010, entitled "Notice of Public Rulemaking Hearing before the Mined Land Reclamation Board", to consider, among other things, new rules and amendments to implement HB 08-1161 and SB 08-228. The Board admits that it commenced the rulemaking hearing on April 15, 2010.

18. Admitted.

19. The Board admits that a letter dated March 15, 2010 was sent to the Board by Representatives Fisher, Kefalas and Curry and Senator Schwartz. This letter was treated as public comment to the proposed rules and regulations and posted on the DRMS website along with the other public comments received on March 15, 2010. The Board denies Plaintiff's characterization of the letter; the Board states that the letter speaks for itself and is the best evidence of what it provides.

20. This paragraph quotes out-of-context excerpts from the March 15, 2010 letter. The Board denies Plaintiff's characterization or interpretation of the letter and states that the letter speaks for itself and is the best evidence of what it provides.

21. The Board admits that a second letter was submitted to the Board by Representatives Fischer, Kefalas and McFadyen on July 5, 2010. However, the Board denies Plaintiff's characterization or interpretation of the letter. In regard to the second sentence, the Board does not recall making the July 5, 2010 letter part of the regulatory analysis. The regulatory analysis is a stand-alone 72 page document that was published on April 9, 2010, three months before the Board received the July 5, 2010 letter. The July 5, 2010 letter is currently located on the DRMS website under the general public comment section, not under the regulatory analysis section. The Board is uncertain of the meaning of Plaintiff's allegation that the July 5, 2010 letter was accorded "official stature as a directive of Colorado state government" and therefore denies the same. However, the Board specifically denies the letter was a "directive" of any sort.

22. The Board admits that both letters were included in the rulemaking record as part of general public comment. The Board admits it ultimately chose to adopt rules that allow public comment and appeals to the Board regarding prospecting notices. The Board states that numerous commenters and parties involved in the rulemaking also requested that public comment and appeals be allowed regarding prospecting notices. Therefore, the Board denies any allegation that only the Legislators raised these issues and that the Board adopted the subject regulations based solely on the Legislator's letters.

23. The Board admits that on July 19, 2010 Mike King, acting in his capacity as Hearing Officer, issued an order directing DRMS to submit additional language for the Board's consideration regarding five issues related to administrative process and reclamation standards. The Board denies that these five issues were not covered by the "Notice of Public Rulemaking Hearing before the Mined Land Reclamation Board". The Board admits that the five specific issues were not in the rules the Division originally proposed but states that the five issues were raised by multiple parties during the initial public comment period of the rulemaking and discussed throughout the rulemaking process.

24. The Board admits that DRMS drafted and provided the Board with alternate and additional language pursuant to the Hearing Officer's Order. The Board denies that this alternate and additional language was not part of the proposed rulemaking.

25. The Board admits that it adopted the new rules and amendments on August 12, 2010 and that the new rules and amendments became effective September 30, 2010. The Board admits that it adopted some of the alternate and proposed language provided by DRMS in response to the Hearing Officer's Order; however, the Board states that prior to adoption it revised some of the DRMS proposed language based on input from stakeholders.

### **FIRST CLAIM FOR RELIEF**

26. The Board incorporates the responses to paragraphs 1 through 25 as if fully set forth herein.

27. This paragraph attempts to describe the content of C.R.S. §24-4-103. The Board states that C.R.S. §24-4-103 speaks for itself and is the best evidence of what it provides.

28. Denied.

29. Denied.

30. Denied.

### **SECOND CLAIM FOR RELIEF**

31. The Board incorporates the responses to paragraphs 1 through 30 as if fully set forth herein.

32. This paragraph attempts to describe the content of Article III of the Colorado Constitution. The Board states that Article III of the Colorado Constitution speaks for itself and is the best evidence of what it provides.

33. This paragraph asserts allegations about actions and intent of members of the Colorado General Assembly, not the Board; the Board cannot speak or respond to actions or intent of another person. Accordingly, the Board states that it has insufficient information or knowledge to admit or deny the allegations of this paragraph, and therefore denies the same.

34. The Board has insufficient information or knowledge to admit or deny this paragraph and therefore denies the same. Additionally, the Board cannot speak or respond to actions taken by members of the State Legislature.

35. Paragraph 35 consists of legal conclusions and arguments to which no response is required.

36. Paragraph 36 consists of legal conclusions and arguments to which no response is required.

### **THIRD CLAIM FOR RELIEF**

37. The Board incorporates the responses to paragraphs 1 through 36 as if fully set forth herein.

38. This paragraph attempts to describe the content of C.R.S. §24-4-106(7). The Board states that C.R.S. §24-4-106(7) speaks for itself and is the best evidence of what it provides.

39. This paragraph identifies the specific new rules and amendments Plaintiff is challenging and therefore requires no response.

40. The first two sentences refer to certain rules. The Board states that Rule 1.4.3(1)(a) and Rule 1.3(4)(a)(i) speak for themselves and are the best evidence of what they provide. The third sentence contains legal conclusions and arguments to which no response is required. The Board denies the remaining allegations in this paragraph.

41. The first sentence refers to Rule 1.4.3(1)(c). The Board states that Rule 1.4.3(1)(c) speaks for itself and is the best evidence of what it provides. The Board denies the remaining allegations in this paragraph.

42. This paragraph refers to Rules 1.4.4(2)(A) and 6.4.22(1). The Board states that Rule 1.4.4(2)(A) and Rule 6.4.22(1) speak for themselves and are the best evidence of what they provide. The first part of the last sentence contains legal argument and conclusions to which no response is required. The Board denies the remaining allegations in this paragraph.

43. The first sentence refers to Rule 6.4.22(1)(c). The Board states that Rule 6.4.22(1)(c) speaks for itself and is the best evidence of what it provides. The Board denies the remaining allegations in this paragraph.

44. The first sentence refers to Rule 1.4.10(1). The Board states that Rule 1.4.10(1) speaks for itself and is the best evidence of what it provides. The second sentence contains legal conclusions and argument to which no response is required. The Board denies the remaining allegations in this paragraph.

45. The first sentence refers to Rule 1.4.10(1)(c) and (d). The Board states that Rule 1.4.10(1)(c) and (d) speaks for itself and is the best evidence of what it provides. The second sentence contains legal conclusions and argument to which no response is required. The Board denies the remaining allegations in this paragraph.

46. The first sentence refers to Rule 1.4.10(2)(b). The Board states that Rule 1.4.10(2)(b) speaks for itself and is the best evidence of what it provides. The second and third sentences contain legal conclusions and argument to which no response is required. The Board denies the remaining allegations in this paragraph.

47. The first and second sentences refer to Rule 3.1.7(8). The Board states that Rule 3.1.7(8) speaks for itself and is the best evidence of what it provides. The third and fourth sentences contain legal conclusions and argument to which no response is required.

48. The first sentence refers to Rule 5.1.3(b). The Board states that Rule 5.1.3(b) speaks for itself and is the best evidence of what it provides. The Board denies the remaining allegations in this paragraph.

49. The first and second sentences refer to Rule 5.1.3(d). The Board states that Rule 5.1.3(d) speaks for itself and is the best evidence of what it provides. The Board denies the remaining allegations in this paragraph.

50. The first sentence refers to Rule 1.3(a)(iv)(A). The Board states that Rule 1.3(a)(iv)(A) speaks for itself and is the best evidence of what it provides. The Board denies the remaining allegations in this paragraph.

51. The first sentence refers to Rule 1.12.2(2). The Board states that this Rule speaks for itself and is the best evidence of what it provides. The second and third sentences contain legal conclusions and argument to which no response is required. The Board denies the fourth sentence.

52. The first sentence refers to Rule 3.1.6(5). The Board states that this Rule speaks for itself and is the best evidence of what it provides. The first sentence also contains Plaintiff's purported description of why the Board adopted this rule. The Board states that the record in this matter speaks for itself. The Board denies the remaining allegations in this paragraph.

53. The first sentence refers to Rule 1.3(4)(iii)(A). This Rule speaks for itself and is the best evidence of what it provides. The Board denies the remaining allegations in this paragraph.

54. Denied.

#### **FOURTH CLAIM FOR RELIEF**

55. The Board incorporates the responses to paragraphs 1 through 54 as if fully set forth herein.

56. Denied.

57. This paragraph contains legal conclusions and argument to which no response is required.

## AFFIRMATIVE DEFENSES

- A. Failure to state a claim upon which relief may be granted.
- B. Lack of subject matter jurisdiction.
- C. Failure to join indispensable party.

Any allegation not specifically admitted or denied is hereby denied.

The Board requests that this Court deny all of Plaintiff's requested relief.

Dated this 25th day of January, 2011.

Respectfully submitted,

JOHN W. SUTHERS  
Attorney General

*E-filed in accordance with C.R.C.P. 121, § 1-26; duly signed original  
on file with the Office of Attorney General for the State of Colorado*

/s/Jeff M. Fugate

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JEFF M. FUGATE #37679  
CHERYL A. LINDEN #14185  
STEVEN NAGY #38955

Assistant Attorney General  
Resource Conservation  
Natural Resources and Environment Section  
Attorneys for Mined Land Reclamation Board

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within ANSWER OF THE COLORADO MINED LAND RECLAMATION BOARD upon all parties herein by LexisNexis File and Serve or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 25th day of January, 2011 addressed as follows:

John D. Fognani  
Michael T. Hegarty  
Fritz W. Ganz  
Kendall R. McLaughlin  
Fognani & Faught  
1700 Lincoln Street, Suite 2222  
Denver, Colorado 80203  
Attorney for Powertech (USA) Inc.

*E-filed in accordance with C.R.C.P. 121, § 1-26; duly signed original on file with the Office of Attorney General for the State of Colorado*

/s/ Christine Batman

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Christine Batman  
Legal Assistant