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<tr><td>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO
1435 Bannock Street
Denver, CO 80202</td><td rowspan="2">□ COURT USE ONLY □</td></tr>
<tr><td>Plaintiff(s): POWERTECH (USA) INC.;
v.
Defendant(s): COLORADO MINED LAND RECLAMATION BOARD;
and
Defendant-Intervenor(s): COLORADOANS AGAINST RESOURCE DESTRUCTION; TALLAHASSEE AREA COMMUNITY; SHEEP MOUNTAIN ALLIANCE.</td></tr>
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Ctrm.: 215</td></tr>
<tr><td colspan="2">RESPONSE OF INTERVENORS IN OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT</td></tr>
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Defendant-Intervenors Coloradoans Against Resource Destruction, Tallahassee Area Community, and Sheep Mountain Alliance hereby file this Response in Opposition to the "Motion for Entry of Judgment" ("Motion") filed by Plaintiff Powertech (USA) Inc. in this

case October 1, 2012.

Powertech (USA) Inc. ("Powertech") asserts in its Motion that the Order and Judgment entered on July 13, 2012 in this case was somehow ineffective, necessitating this Court's entry of a new judgment so as to begin the time period for appeal. In support, Powertech claims that "Judge Habas never signed the Order. Consequently, entry of judgment in this matter has never been completed or finalized" under C.R.C.P. 58(a). Motion at 2. As an initial matter, Powertech is simply wrong as a matter of fact. As evidenced by the signed Order dated July 13, 2012 (attached as Exhibit 1), Judge Habas did indeed sign the Order.[1] Further, as demonstrated by the LexisNexis File and Serve transaction report (attached as Exhibit 2), and the docket sheet for the case (attached as Exhibit 3), following signature by Judge Habas, the clerk duly entered the proper notation in the judgment docket evidencing the Order, as required pursuant to C.R.C.P. 58(a). As a result, no factual basis exists for Powertech's argument.

Further, because Judge Habas did sign the Order in question, Powertech's legal authority is inapplicable. Powertech relies on *Joslin Dry Goods Co. v. Villa Italia, Ltd.*, 539 P.2d 137 (Colo. App. 1975). However, in *Joslin*, the court found an entry of judgment in the docket without effect only because "[t]he entry of judgment contains the signature of only the clerk of the court; it bears no indication that the document was ever approved or considered by the trial court." 539 P.2d at 138. As a result, the court in *Joslin* held that "[s]ince there is nothing in the record to indicate that the 'Entry of Judgment' was prepared or approved by

[1] Counsel for Defendant-Intervenors acquired this copy of the signed Order from counsel for Defendant Mined Land Reclamation Board. Undersigned counsel understands that this Order was provided to the Office of the Attorney General upon request to the Court's general help desk. It is not clear whether counsel for Powertech ever made any such inquiry prior to filing its Motion.

the court, that document cannot serve as the written form of the judgment required under C.R.C.P. 58(a)(2)." In contrast, Exhibit 1 attached hereto demonstrates conclusively that in the present case Judge Habas properly signed the Order on July 13, 2012, in compliance with C.R.C.P. 58(a).[2] Further, Exhibits 2 and 3 attached hereto conclusively establish that entry of this signed final judgment was subsequently duly made in the docket by the clerk and notice of entry of judgment was served on the parties. Thus, *Joslin* is inapplicable.

The language of C.R.C.P. 58(a) and C.A.R. 4(a), governing timing of appeals, also fatally undermines Powertech's argument. C.R.C.P. 58(a) unambiguously provides that "[t]he effective date of entry of judgment shall be the actual date of the signing of the written judgment." Similarly, the Colorado Appellate Rules provide:

> A judgment or order is entered within the meaning of this section (a) when it is entered pursuant to C.R.C.P. 58. If notice of the entry of judgment, decree, or order is transmitted to the parties by mail or E-Service, the time for the filing of the notice of appeal shall commence from the date of the mailing or E-Service of the notice.

C.A.R. 4(a). Here, the actual date of signature by Judge Habas was July 13, 2012. Further, Powertech's attorneys did receive the appropriate "notice" of the entry of judgment, which is all that is required under C.A.R. 4(a) for the appeal period to run. *See* Exhibit 2 (transaction report showing service to Powertech attorneys).

The Colorado Supreme Court addressed a similar issue in *Moore & Co. v. Williams*, 672 P.2d 999 (1983), where the Court found that even a minute order can be effective as a final judgment, so long as it is approved by the court, duly entered by the clerk in the register of actions, and notice of the judgment is made on the parties. 672 P.2d at 1002-1003.

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[2] Defendant-Intervenors note that Judge Habas retired from the bench on the same day the Order in this case was signed, July 13, 2012. Thus, there would be no feasible way Judge Habas could have signed the Order subsequent to that date.

Further, with respect to the failure of the clerk to initially serve a signed copy of the order, the Colorado Supreme Court has conclusively held that "technical noncompliance with the procedural rule governing entry of judgment" (C.R.C.P. 58(a)) is not dispositive as to the finality of an order under C.A.R. 4(a). *Furlong v. Gardner* 956 P.2d 545, 555 (Colo. 1998). Here, because the Order comprising final judgment was signed by Judge Habas, duly entered in the docket by the clerk, and Powertech was in fact provided notice of the entry of a final judgment, the Motion should be denied.

For the reasons given above, the Court should reject Powertech's Motion as without basis in fact or law.

Respectfully submitted,

Date: October 22, 2012_____

*/s/ Jeffrey C. Parsons*_______
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Attorneys for Defendant-Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of October, 2012, a true and correct copy of the foregoing Response was served by via the e-filing system.

*/s/ Jeffrey C. Parsons*_______
Jeffrey C. Parsons