

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

IN THE MATTER OF the Consolidated)	REGULATORY DIVISION
Petition by Mountain Water Company for)	
Declaratory Rulings and Application for)	
Approval of Sale and Transfer of Stock in)	DOCKET NO. D2011.1.8
Park Water Company)	
)	

CLARK FORK COALITION PETITION TO INTERVENE

Pursuant to the Notice of Application and Intervention Deadline, dated February 1, 2011, the Clark Fork Coalition hereby petitions the Public Service Commission of the State of Montana for leave to intervene as a general intervener in the above-captioned proceeding.

I. PETITIONER.

The Clark Fork Coalition (“CFC”) is a Montana non-profit corporation, founded in 1985. CFC’s 2,700 members are dedicated to protecting and restoring the 22,000 square mile Clark Fork River watershed. Hundreds CFC’s members live in the water service area of and are ratepayers to Mountain Water Company, the applicant in this docket (“Mountain Water”).

CFC has a long history of working closely with the City of Missoula (the “City”), Missoula County (the “County”), and a variety of public and private stakeholders to improve water quality and, more recently, stream flows in the Mountain Water service area. For example, CFC designed and conducted a peer-reviewed groundwater modeling study to better understand how the removal of Milltown Dam would affect the Missoula aquifer; CFC played a key role catalyzing the 10-year Clark Fork River Voluntary Nutrient Reduction Program; CFC is an

active participant in developing policies and regulations that protect clean drinking water for area residents; CFC is working with local residents on flow restoration projects and watershed planning in the Rattlesnake Creek watershed; and CFC advocates for water conservation measures with Mountain Water, the City and the County.

Mountain Water is the sole public utility providing drinking water to the City and a large portion of CFC's membership. In addition, Mountain Water controls a significant percentage of surface water rights on Rattlesnake Creek and the majority of water rights to eight lakes in the Rattlesnake wilderness. As such, CFC will be directly affected by the Commission's decisions on Mountain Water's request for declaratory rulings and its application for Commission approval of the stock sale of its parent company, Park Water Company ("Park") to Carlyle Infrastructure Partners Western Water, L.P. ("Carlyle").

II. INTERESTS AND POSITION.

Based on CFC's mission to act on behalf of our members to protect the Clark Fork watershed, including the sustainability and accessibility of our drinking water supplies and the integrity of our water quality and quantity, CFC's interests are unique and cannot be represented adequately by other parties to this proceeding.

In its January 24, 2011 *Consolidated Petition for Declaratory Ruling and Application for Approval of Sale and Transfer of Stock*, Mountain Water requested declaratory rulings from the Commission (1) that there is no basis for the Commission to review the sale and transfer of Park stock to Carlyle; and (2) even if the Commission does have jurisdiction, that the Commission defer to the jurisdiction of the California Public Utilities Commission. In the event that the Commission decides to exert its jurisdiction, Mountain Water asks the Commission approve the

sale under a three month expedited schedule, rather than the nine months typically afforded to these types of proceedings.

At this early juncture, CFC is interested in ensuring that the transfer of ownership in Mountain Water is fully vetted by the Commission to ensure that the public interest is fully protected. CFC does not want to rely on the state of California to determine the fate of the future ownership and control of the City's drinking water supplies.

The Commission clearly has authority over mergers, sales and transfers of public utilities. See, e.g., *In the Matter of the Joint Application of NorthWestern Corporation and Babcock & Brown Infrastructure et al for Approval of the Sale and Transfer of NorthWestern Corporation Pursuant to a Merger Agreement*, PSC Docket D2006.6.82, FOF 23, Final Order (July 31, 2007).

In addition, the expedited three-month schedule requested by Mountain Water is clearly not warranted under the circumstances. The Commission has observed:

The PSC does not intend to make expedited treatment of utility proposals habitual. Most actions taken by the PSC require considerable time, primarily to ensure all necessary information has been obtained, all persons interested in the action have had an opportunity to be heard, and a complete review and thorough consideration has been accomplished.

In the Matter of Montana-Dakota Utility Division Utilities Co. Application for Approval of Natural Gas Conservation Programs, Docket No. D2005.10.156, Order No. 6697, 2-3 (November 2, 2005).

Examples of circumstances where the Commission has adopted an expedited schedule are (1) approval of a natural gas conservation program before winter heating season to mitigate the effects of extraordinary energy bills (*Id.*); and (2) approval of a wind purchase agreement prior to the expiration of a federal tax credit (*In the Matter of the Application of NorthWestern Energy for Advanced Approval of Certain Proposed*

Electricity Power Supply Purchase Agreements, Docket No. D2005.2.14; Order No. 6633b, 2-3 (March 30, 2005)). Mountain Water requests an expedited schedule “so as to not delay the sale of Park stock to Carlyle.” *Consolidated Petition* at ¶ 24. This does not seem to rise to the level of an exigent circumstance warranting an expedited review by the Commission.

CFC’s position is that the Commission should exercise its authority and review this sale under the traditional nine month timeframe. CFC’s position with regard to Mountain Water’s application for approval of the sale will not be ascertained until after completion of discovery.

III. RELIEF REQUESTED.

Pursuant to Montana Administrative Rules 38.2.2403 and 38.2.2405, CFC requests leave for general intervention in this proceeding. CFC will not seek to delay the proceeding, nor will CFC seek to broaden the issues presented in this docket.

CFC also requests that the Commission exercise its authority over the sale and deny Mountain Water’s request to adopt an expedited time frame.

IV. SERVICE.

CFC requests that it receive copies of all documents filed in this proceeding, including but not limited to pleadings, testimony and exhibits, data requests and responses, correspondence and other documents. Documents may be served on CFC at the following address:

Barbara Hall, Legal Director
Clark Fork Coalition
140 S 4th Street West, Unit 1
PO Box 7593
Missoula, Montana 59801
(406) 542-0539 ext 211
barbara@clarkfork.org

V. CONCLUSION.

For the foregoing reasons, CFC respectfully requests the Commission to grant this petition to intervene in the above-captioned matter.

Respectfully submitted this 11th day of February, 2011.

CLARK FORK COALITION

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 11th day of February, 2011, the foregoing CLARK FORK COALITION PETITION TO INTERVENE was served via U.S. mail on:

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The foregoing was e-filed and the original filed via U.S. mail with:

Public Service Commission
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P. O. Box 202601
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By: _____
Barbara Hall