

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

IN THE MATTER OF the Consolidated)
Petition by **Mountain Water Company**)
for Declaratory Rulings and Application)
for Approval of the Sale and Transfer)
of Stock in Park Water Company)
)

REGULATORY DIVISION

DOCKET NO. D2011.1.8

OBJECTION TO INTERVENTION

On February 11, 2011, the Clark Fork Coalition (“Coalition”) filed a Petition to Intervene (“Petition”) in this proceeding. Mountain Water Company (“Mountain”) objects to the requested intervention for the reasons set forth in this Objection. Mountain integrates with its Objection its brief in support of the Objection.

ARGUMENT

- I. The Coalition has no legal authority to appear in this proceeding on behalf of Mountain’s customers.

The Coalition is a Montana corporation with a very limited corporate purpose:

Purpose: To inform the public regarding the ecology of the Clark Fork Basin; to monitor, protect, improve, and maintain the biological health of the river.

Articles of Incorporation of the Clark Fork Coalition, page 1. A certified copy of the Coalition’s Articles of Incorporation, which contain the quoted statement of limited corporate purpose, are attached to this Objection as Exhibit 1.

While Mountain commends the work that the Coalition does to protect and maintain the ecological health of the Clark Fork River, the Coalition’s corporate mission has nothing to do with the subject of this proceeding. The legitimate interests of the Coalition have no connection of any kind to the desire of a California utility, Park Water Company, to sell its stock to the Carlyle Group. It is not only illogical, but unreasonable, for the Coalition to

argue that a change in Park's stock holders will have an ecological impact on the Clark Fork River.

No Montana corporation has the power to conduct its affairs outside of its corporate purpose. Regardless of whether the Coalition is a profit or a nonprofit corporation, its powers are constrained by the very limited corporate purpose set forth in its corporate charter. Mont. Code Ann. §§ 35-1-114(1) and 35-2-118(1). The Commission's proceedings in this docket are outside of the limited corporate purpose of the Coalition. The Coalition cannot claim standing to represent Mountain's customers as its claim would similarly be outside of its limited corporate purpose.

II. The Coalition has no standing to intervene in this proceeding.

Montana law specifies that it is the Montana Consumer Counsel that is the representative of Mountain's consumers in this proceeding. Mont. Const. Art. XIII, sec. 2; Mont. Code Ann. §§ 69-1-201 et seq. To successfully intervene, the Coalition must establish in accordance with the Commission's administrative rules: (1) a recognizable interest in this proceeding; (2) which is different than the consumer interests represented by the Montana Consumer Counsel, and; (3) which could be affected by the Commission's decision in this docket.

To have standing to intervene, the Coalition's interests must be of a nature that it could be aggrieved by a Commission decision in this docket. *E.g. Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, ¶ 38, 356 Mont. 41, 230 P.3d 808 (holding that landowner was an "aggrieved party" under § 76-3-625 and, therefore, had standing; see also *In re Charles M. Bair Family Trust*, 2008 MT 144, ¶ 86, 343 Mont. 138; 183 P.3d 61 (stating that § 72-33-503, MCA, granted certain individuals with a "special interest" have standing to enforce a charitable trust).

The Commission's administrative rules governing intervention in its proceedings require standing as a condition of intervention: "The petition shall disclose...a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding; his position in regard to the matter in controversy; and a statement of the relief desired." ARM 38.2.2403. Since the Commission proceeding in this docket has nothing to do with the ecological health of the Clark Fork River, it is impossible for the Coalition to make the requisite showing of standing required by the Commission's rules.

A party has a right to intervene in a proceeding only if it claims an interest which is the subject of the action and they are so situated that the disposition of the action may impair or impede their ability to protect that interest. M. R. Civ. P. 24(a); *Loftis v. Loftis*, 2010 MT 49, ¶ 8, 355 Mont. 316, 227 P.3d 1030. A party seeking intervention as of right "must make a prima facie showing of a direct, substantial, legally-protectable interest in the proceedings" because a "mere claim of interest is insufficient to support intervention as a matter of right." *Id.* at ¶ 13. To demonstrate a "significantly protectable interest," the intervenor must establish that the interest is protectable under some law and there is a relationship between the legally protected interest and the claims at issue. *J.M. Huber Corp. v. Gallatin County*, 2002 Mont. Dist. LEXIS 2735, *7 (citing *Northwest Forest Resource Council v. Glickman*, 82 F.2d 825, 837 (9th Cir. 1996)).

The Coalition, recognizing that it must claim an interest in this proceeding which justifies intervention, claims as follows:

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 interest are unique and cannot be represented adequately by other parties to this proceeding.

Coalition Petition to Intervene at p. 2. Water rights (water quantity) are administered by the Montana Department of Natural Resources under Title 85, Mont. Code Ann. Water quality is the jurisdiction of the Montana Department of Environmental Quality under Title 75, Chapter 2, Mont. Code Ann. The Commission has no subject matter jurisdiction over the separate interests identified by the Coalition as the basis for its Petition to Intervene. The Coalition has no standing to intervene in this proceeding, as the Commission lacks jurisdiction to grant it relief relative to its claimed interest.

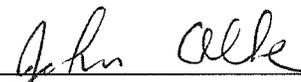
CONCLUSION

The Coalition has no standing to intervene in this proceeding. Given its very limited corporate purpose, it cannot possibly make the requisite showing for intervention under the Commission's administrative rules. Its Petition for Intervention must be denied.

DATED this 23rd day of February, 2011.

HUGHES, KELLNER, SULLIVAN & ALKE

By



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Attorneys for Mountain Water Company

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that a copy of the foregoing **OBJECTION TO INTERVENTION** was served upon the following by mailing a true and correct copy thereof on this 23rd day of February, 2011, addressed as follows:

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MT PUBLIC SERVICE COMMISSION
1701 PROSPECT AVENUE
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HELENA, MT 59620-2601**

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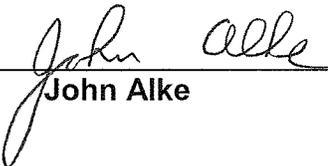
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John Alke

Exhibit 1

SECRETARY OF STATE

SI



CERTIFICATE OF INCORPORATION

I, **JIM WALTERMIRE**, Secretary of State of the State of Montana, do hereby certify that the Articles of Incorporation for the incorporation of **CLARK FORK COALITION LIMITED**, a Montana corporation, duly executed pursuant to the provisions of Section 35-2-203, Montana Code Annotated, have been received in my office and conform to law.

NOW, THEREFORE, I, **JIM WALTERMIRE**, as such Secretary of State, by virtue of the authority vested in me by law, hereby issue this Certificate of Incorporation to **CLARK FORK COALITION LIMITED**, a Montana corporation, and attach hereto a copy of the Articles of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Capital, this January 21, A.D. 1985.

(GREAT SEAL)

A handwritten signature in cursive script that reads "Jim Waltermire".

JIM WALTERMIRE
Secretary of State

FILED

295539

JAN 21 1985

Name: Clark Fork Coalition Limited

Period: Perpetual

Purpose: To inform the public regarding the ecology of the Clark Fork Basin; to monitor, protect, improve, and maintain the biological health of the river.

JIM WALTERWISE
SECRETARY OF STATE

Jim Walterwise
1/20/85

Provisions for the regulation of internal affairs:

1. The coalition shall have as its initial registered agent Carleen Gonder at R. R. Box 1830, Ninemile Creek Road, Huson, MT 59846, and its permanent mailing address as P. O. Box 7593, Missoula, MT 59806.
2. For expediency in conducting business and for purposes of selecting the Board of Directors, the coalition shall be divided into four (4) geographic areas as follows:
 - a. Upper River Segment - Silverbow Creek/Butte area, downstream to and including the town of Drummond.
 - b. Middle River Segment - From a point immediately below the town of Drummond to and including the town of St. Regis.
 - c. Lower River Segment - From a point immediately below the town of St. Regis to the Montana/Idaho border.
 - d. Idaho Segment - From the Montana/Idaho border and below.
3. The affairs of the coalition shall be managed by a thirteen (13) member Board of Directors.
4. There shall be two (2) Directors elected by and representing groups and organizations from each of the four (4) segments and there shall be one (1) Director elected by and representing individual members at large from each of the four (4) segments totaling three (3) Directors from each segment. There shall be one (1) out-of-region Director.
5. The offices of this coalition shall be president, vice president, and secretary/treasurer.
6. All officers shall be elected by the Board of Directors at the Board Meeting following the October general meeting. No officer shall hold a particular office for more than two (2) consecutive years.

7. Officers may be removed and office vacancies filled by a quorum of the directors. Prior to removal, a written notice of intent will be issued to the officer in question and then may be followed by formal action at the next regularly scheduled Board Meeting as outlined.
8. Annual general membership meetings shall be held the second weekend of October to conduct a basin-wide business meeting pursuant to objectives set forth in By Laws, Article I. An agenda will be prepared by the Board and mailed to members fourteen days prior to the annual meeting.
9. The Board of Directors shall have at least seven (7) meetings annually, one to immediately follow the general meeting for the purpose of electing officers, outlining objectives for the succeeding year and setting regular meeting dates for ensuing year.
10. The By Laws may be amended at the annual general membership meeting of the coalition or at any meeting of the Board of Directors by a vote of at least seven (7) directors present at said meeting, provided that at least thirty (30) days written notice is given to all members of intention to alter, amend, repeal, or adopt new By Laws at said meeting and the substance of the proposed alteration, amendment, repealer or new By Law is specified in such notice.

Address:

Initial Board of Directors:

Carleen Gonder, Nine Mile Box 1830, Huson, MT 59846
Judy Hutchins, % P.E.L., Box 963, Sandpoint, ID 83864
Fred Runkel, P. O. Box 249, Clark Fork, ID 83811
John R. Camp, 300 Red Fir Road, Hope, ID 83836
Tim Williamson, Clark Creek Road, Plains, MT 59859
Dennis Workman, R. R. Box 16400, Frenchtown, MT 59834
Sam Burgess, P. O. Box 864, Superior, MT 59872
Bill Janecke, 1811 Tammany, Anaconda, MT 59711

Kathleen Hadley, P. O. Box 835, Deer Lodge, MT 59722

Don Stoecker, Georgetown Lake, Anaconda, MT 59711

Jill Davies, Box 65 Highway, Noxon, MT 59853

Bonnie Reishus, Box 114, Noxon, MT 59853

Ken Knudson, 8 So. Benton, Helena, MT 59601

Incorporators:

Carleen Gonder, Ninemile Box 1830, Huson, MT 59846

Carleen Gonder

Dennis Workman, Box 16400, Frenchtown, MT 59834

Dennis L. Workman

Kathleen Hadley, P. O. Box 835, Deer Lodge, MT 59722

Kathleen Hadley

STATE OF MONTANA

Office of the Secretary of State

I hereby certify this is a true and correct copy, consisting of 4 pages, as taken from the original on file in this office. Originality of this certification can be determined by the color blue.



DATED: 2-16-11

Linda McCulloch

BY: *Lisa Thompson*

Linda McCulloch
Secretary of State

Deputy