

**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**

**REPLY TO PETITIONER'S RESPONSE**

On February 23, 2011, Mountain Water Company ("Mountain") filed an objection to the Petition for Intervention filed by the Clark Fork Coalition ("Petitioner"). The Petitioner filed a Response to the Objections on March 4, 2011. Mountain files this Reply to the Petitioner's Response.

**ARGUMENT**

---

I.. Mountain has not falsely misrepresented the facts to the Commission.

The Petitioner asserts in its Response that Mountain has "false[ly]" "misrepresented" the facts in its Objection. Response at pp 2 & 8. In support of its assertion, it attached to its Response the articles of incorporation of The Clark Fork-Pend Oreille Coalition. Those articles are indeed different than the articles of incorporation of the Clark Fork Coalition, whose intervention is being challenged in this proceeding. According to the on-line records of the Montana Secretary of State, both entities are in good standing with that office.<sup>1</sup>

---

<sup>1</sup>The on-line records of the Montana Secretary of State are accessed through a "Business Entity" search at <http://sos.mt.gov>. Those records indicate that both the Clark Fork Coalition and The Clark Fork-Pend Oreille Coalition are corporations in good standing. They also indicate that Clark Fork-Pend Oreille Coalition (no "The") was an assumed business name used by the Clark Fork Coalition which expired quite some time ago.

It was the Clark Fork Coalition, and not The Clark Fork-Pend Oreille Coalition, which petitioned to intervene in this proceeding. After receiving the Petition, the undersigned counsel for Mountain asked his support staff to contact the Secretary of State, and obtain the Petitioner's Articles of Incorporation. The articles which Mountain attached to its Objections were the articles provided by the Montana Secretary of State in response to a written request for the Articles of Incorporation of the Petitioner, the Clark Fork Coalition. If The Clark Fork-Pend Oreille Coalition has replaced the Clark Fork Coalition, as the Petitioner's Response implies, the question then arises as to why the Petitioner filed for Intervention under the wrong name.<sup>2</sup>

II. The Petitioner lacks standing to intervene in this proceeding.

Regardless of the actual legal identity of the Petitioner, it lacks standing to intervene in this proceeding. As required by the Commission's administrative rules, the Petitioner identified Mountain's water rights, and water quality in the Clark Fork watershed, as its interests in this proceeding:

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.

*Clark Fork Coalition Petition to Intervene* at p. 2. This Commission has no jurisdiction over water rights or water quality. Those subjects are within the exclusive regulatory jurisdiction of other state agencies, specifically the Montana Department of Natural Resources and Conservation and the Montana Department of Environmental Quality.

---

<sup>2</sup>The on-line records of the Montana Secretary of State do not reflect that The Clark Fork- Pend Oreille Coalition has been authorized to conduct its affairs under an assumed business name.

The Commission addresses intervention in its proceedings in its administrative rules. ARM 38.2.2401 *et seq.* As stated in Mountain's objection to the Petitioner's intervention, the Commission's administrative rules require the Petitioner to establish standing to intervene through three required elements:

- (1) a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding;
- (2) his position in regard to the matter in controversy;
- (3) a statement of relief desired.

ARM 38.2.2403 (emphasis supplied). The Commission is not in a position to afford relief of any kind to the interests of the Petitioner alleged in its Petition to Intervene. The Commission lacks jurisdiction over Mountain's water rights. It also lacks jurisdiction over water quality issues in the Clark Fork watershed. Moreover, *Mountain's Consolidated Petition for Declaratory Ruling and Approval of Transfer of Stock* does not implicate the

---

Petitioner's claimed interest in this proceeding. This Commission has no authority to allow Mountain to pollute the Clark Fork watershed, regardless of whether the stock of the Park Water Company is owned by Carlyle Group or the Wheeler family. Whether or not the stock sale occurs, Mountain's water rights used to serve the community of Missoula cannot be transferred without the express approval of the Montana Department of Natural Resources.

The Petitioner spends nearly four pages of its eleven page Response identifying its work to protect the Clark Fork watershed. It then argues:

As the preceding examples make clear, ensuring the protection of Missoula's public water supply falls squarely with CFC's mission to protect the waters of the basin. CFC has a right to intervene in this docket to protect those substantial interests.

*Response* at p. 6. Mountain applauds the Petitioner's efforts to protect the Clark Fork watershed. However, they have nothing to do with the subject of this proceeding. The ownership of the Park Water Company will have no impact, of any kind, on Mountain's water rights, or the quality of the water in the Clark Fork watershed. Both before and after the stock sale, Mountain will own the water rights which are used to serve Missoula. Those rights cannot be transferred, either now or after the sale, without the express approval of the Montana Department of Natural Resources and Conservation.

The Petitioner seems to argue that the Commission's decision *In the Matter of the Complaint of Williamson, PSC Docket D2010.2.14, Order 7084a*, controls the outcome of Mountain's challenge to its Petition to Intervene. *Response* at pp. 8-10. It does not. *Williamson* does not address standing to intervene. The elements for establishing standing to intervene are set forth in the Commission's administrative rule ARM 38.2.2103 discussed above. *Williamson* dealt with standing to file a complaint against Commission established rates when the complaining party was not the party paying the rates being challenged. In that case, the Commission held that the complaining party did not have standing, because it wasn't the party paying the rates it was trying to challenge. Mountain agrees completely with the Commission's decision in the *Williamson* case.

The Petitioner makes the curious argument that its standing to intervene is essentially implied under the Commission's implied powers under Mont. Code Ann. § 69-3-102.<sup>3</sup> Standing to intervene in a Commission proceeding is not implied. Indeed, the

---

<sup>3</sup>The Petitioner does not actually cite to Mont. Code Ann. § 69-3-102, or use the term "implied powers". Instead, it refers uses the term "inherent powers" and cites to Title 69 generally. *Response* at p. 10-11.

Commission's administrative rules require the Petitioner to "clearly" establish the interest it claims justifies intervention. ARM 38.2.2403.

**CONCLUSION**

The Petitioner's Petition to Intervene must be denied for lack of standing.

DATED this 14th day of March, 2011.

**HUGHES, KELLNER, SULLIVAN & ALKE**

By



**John Alke**

40 W. Lawrence, Suite A  
P. O. Box 1166  
Helena, MT 59624-1166

Attorneys for Mountain Water Company

**CERTIFICATE OF SERVICE BY MAIL**

I HEREBY CERTIFY that a copy of the foregoing **OBJECTION TO INTERVENTION OF CFC** was served upon the following by mailing a true and correct copy thereof on this 14th day of March, 2011, addressed as follows:

KATE WHITNEY  
MT PUBLIC SERVICE  
COMMISSION  
1701 PROSPECT AVENUE  
P. O. BOX 202601  
HELENA, MT 59620-2601

MONTANA CONSUMER  
COUNSEL  
P.O. BOX 201703  
HELENA, MT 59620-1703

THORVALD A. NELSON  
HOLLAND & HART LLP  
6380 S. FIDDLER'S GREEN  
CIRCLE  
SUITE 500  
GREENWOOD VILLAGE, CO  
80111

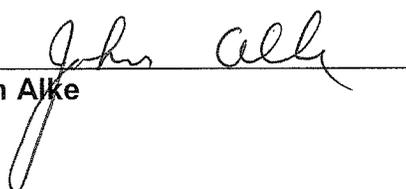
WILLIAM W. MERCER  
HOLLAND & HART LLP  
P. O. BOX 639  
BILLINGS, MT 59103-0639

BRYAN D. LIN  
THE CARLYLE GROUP  
520 MADISON AVENUE, 41ST  
FLOOR  
NEW YORK, NY 10022

JIM LAROCQUE, CFA  
THE CARLYLE GROUP  
520 MADISON AVENUE  
NEW YORK, NY 10022

JIM NUGENT  
MISSOULA CITY ATTORNEY'S  
OFFICE  
435 RYMAN STREET  
MISSOULA, MT 59802

BARBARA HALL, LEGAL  
DIRECTOR  
CLARK FORK COALITION  
140 S 4TH STREET WEST UNIT 1  
MISSOULA, MT 59801

  
\_\_\_\_\_  
John Alke