

**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	)	DOCKET NO. D2011.1.8
Stock in Park Water Company	)	

**REPLY OF CLARK FORK COALITION TO MOUNTAIN WATER  
COMPANY'S REPLY TO PETITIONER'S RESPONSE**

Pursuant to the Notice of Application and Intervention Deadline, dated February 1, 2011, the Clark Fork Coalition (“CFC”) timely filed its Petition to Intervene, dated February 14, 2011, requesting the Public Service Commission for leave to intervene as a general intervener in the above-captioned proceeding. On February 23, 2011, Mountain Water Company (“Mountain Water”) filed an Objection to Intervention requesting the Commission to deny CFC’s request. On March 4, 2011, CFC filed its response to Mountain Water’s Objection. And on March 14, 2011, less than 24 hours before the Commission’s scheduled work session to consider the issue of CFC’s intervention, Mountain Water filed its Reply to Petitioner’s Response. CFC filed its Objection to Mountain Water Company’s March 14, 2011 Filing on March 15, 2011. The Commission deferred consideration of CFC’s Petition to Intervene until March 22, 2011.

Although the Commission has not formally ruled on CFC's March 15th objection, Commission staff indicated by email correspondence, dated March 16, 2011, that CFC should file its response brief within two days, by March 18th.

CFC renews its objection to Mountain Water's additional briefing on this issue. Notwithstanding CFC's objection, CFC responds as follows.

I. **CFC's corporate records clearly indicate that CFC's articles of incorporation do not limit CFC's standing to intervene in this docket.**

Despite Mountain Water's assertions to the contrary, the Clark Fork Coalition is a nonprofit corporation organized under the laws of the State of Montana 26 years ago. As evidenced by CFC's Certificate of Existence, issued by the Montana Secretary of State on March 18, 2011, attached hereto as Exhibit A, CFC is "in good standing under the laws of the State of Montana and authorized to transact business and conduct its affairs in this state." CFC is not only authorized by its corporate charter to engage in any lawful activity, CFC is obligated to further its nonprofit mission by intervening in this proceeding to protect its substantial interests and those of its members.

In its February 23, 2011 Objection to Intervention, Mountain Water asserts that CFC's corporate purpose is too narrowly limited to establish its standing to intervene in this docket. Mountain Water's Objection 1-2. According to Mountain Water, "[g]iven [CFC's] very limited corporate purpose, it cannot possibly make the requisite showing for intervention under the Commission's administrative rules." Mountain Water's Objection 4. In support of this assertion, Mountain Water attached CFC's original incorporation document, filed with the Montana Secretary of State on January 21, 1985.

Mountain Water's Objection Ex. 1. If this document represented CFC's current charter, then Mountain Water could arguably be correct. However, as all corporations are authorized by statute to do, Mont. Code Ann. § 35-2-225, CFC has duly filed articles of amendment to its original incorporation document. Such articles of amendment are readily available through the Secretary of State and are important records that must be reviewed prior to drawing conclusions about CFC's corporate identity.<sup>1</sup>

In its March 4, 2011 Response, CFC provided its Articles of Amendment of Clark Fork Coalition, Limited, filed with the Montana Secretary of State on January 18, 1996. Response of CFC Ex. A. Pursuant to its January 18, 1996 articles of amendment, CFC not only amended its corporate purpose, but as Mountain Water correctly points out, CFC amended its corporate name from Clark Fork Coalition, Limited to Clark Fork – Pend Oreille Coalition. Response of CFC Ex. A, Article I. The Secretary of State confirmed the filing and name change pursuant to a letter dated January 23, 1996 which is attached hereto as Exhibit B.

On January 8, 2001, CFC filed subsequent articles of amendment, attached hereto as Exhibit C, amending its corporate name to the Clark Fork Coalition.<sup>2</sup> Again, the

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<sup>1</sup> CFC made an online request for certified copies of its articles of incorporation and all articles of amendment, from the Montana Secretary of State's office on February 23, 2011. On March 2, 2011, CFC received 19 pages of certified copies of its corporate records, including its original incorporation document and all articles of amendment referenced herein. It appears from Mountain Water's confusion over CFC's corporate identity, that Mountain Water neglected to request copies of articles of amendment and instead must have only requested articles of incorporation. On its web request form for certified records, the Secretary of State includes a link to "Frequently Requested Information" (<https://app.mt.gov/ccop/info.html> (last accessed March 18, 2011)) which distinguishes "Articles---Inc or LLC" from "All Amendments" implying that articles of amendment must be specifically requested regardless of whether the request is made over the phone, in person or online.

<sup>2</sup> On Exhibit C, the third article indicates the "date of this amendment is 1/22/00." However, the date the document was signed by the Chair of the Board was January 4, 2011 and the document was filed on January 8, 2011. The reference to 2000 was a typo which is common during the first month of a new year.

Secretary of State acknowledged the name change with a confirmation, dated January 26, 2001 and attached hereto as Exhibit D.

Mountain Water correctly points out that a “Business Entity Search” through the Montana Secretary of State’s website (<https://app.mt.gov/bes/>) turns up names for both “Clark Fork Coalition” and “The Clark Fork – Pend Oreille Coalition.” Mountain Water’s Reply fn 1. In fact, a third name, “Clark Fork Coalition, Limited,” turns up in the Business Entity Search when the search term is “Clark Fork Coalition.” Without further investigation, perhaps the manner in which the Secretary of State lists corporate names (old and new, active and inactive) pursuant to a Business Entity Search would seem to indicate that there is actually not one, but three different corporations with names similar to the Clark Fork Coalition. However, by taking just one more step and following the link associated with each of the three corporate names: Clark Fork Coalition, Clark Fork Coalition, Limited, and The Clark Fork – Pend Oreille Coalition, confusion is easily resolved, for each path leads to the identical corporate entity with the identical corporate information. As such, a records request filed with the Secretary of State for any of these three corporate names that appropriately references the identification number will yield the same result. A printout of the webpage reached no matter which of the three corporate name links is pursued is attached hereto as Exhibit E.<sup>3</sup>

As set forth above, a basic review of CFC’s corporate records on file with the Montana Secretary of State’s office clearly shows that since its incorporation 26 years

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<sup>3</sup> The name, identification number, type, status, date of incorporation, date of last annual report filing, and registered agent shown on Exhibit E are identical for each of the three corporate names referenced.

ago, the Clark Fork Coalition has always been and continues to be one entity organized under the laws of the state of Montana, Mont. Code Ann. § 35-2-113, *et seq.*, and which is authorized by its corporate charter “to engage in any . . . lawful activity,” including intervening in the current proceedings before the Commission over the first transfer in ownership and control of the community of Missoula’s public water supply system in 32 years.

**II. The Clark Fork Coalition clearly meets the requirements for standing to intervene in this docket under both the Commission’s administrative rules governing general intervention as well as the Commission’s past decisions regarding administrative standing.**

Mountain Water’s argument that CFC lacks standing to intervene in this proceeding is based primarily on two themes. One is that CFC’s corporate purpose does not allow for it to participate in proceedings before the Commission. As set forth above, that argument is without merit. Second, Mountain Water argues in essence that CFC’s corporate interest could only be concerned with water rights and water quality issues that are appropriately before other administrative agencies and CFC therefore has no justifiable reason for participating in this proceeding. As set forth below, CFC clearly meets the standing threshold to intervene in this docket.

**A. CFC has complied with all Commission administrative rules related to intervention.**

CFC has complied with all Commission rules for general intervention in this docket pursuant to Admin. R. Mont. 38.2.2401, 38.2.2403 and 38.2.2405. A petition for intervention must comply with certain rules regarding form, content and filing specific to petitions to intervene, Admin. R. 38.2.2401 – 38.2.2404, as well as those that are

applicable to any documents filed with the Commission, Admin. R. Mont. 38.2.1201 – 38.2.1204. That CFC’s Petition for Intervention meets each of these requirements is uncontroverted.

The Commission’s rules allow for “[a]ny person interested in and directly affected by the subject matter of any hearing or investigation pending before the commission” to file a petition to intervene. Admin. R. Mont. 38.2.2401(1). In evaluating and ruling on CFC’s Petition to Intervene, the Commission’s rules provide three separate bases upon which the Commission may grant CFC’s Petition:

- (1) “the petition discloses a substantial interest in the subject matter of the hearing”;
- (2) “the participation of [CFC] will be in the public interest”; or
- (3) “the granting of the petition would not unduly broaden the issues in the proceeding”.

Admin. R. Mont. 38.2.2405.

As CFC’s Petition and Response to Mountain Water’s objection plainly show, CFC and its members have a substantial interest in who owns and controls the water supply of the greater Missoula area and will be directly affected by the Commission’s decisions on Mountain Water’s Consolidated Petition for Declaratory Ruling and Application for Approval of Sale and Transfer of Stock. And based on its 26 years of efforts to protect this public resource on behalf of the public, CFC’s participation in this docket will without a doubt be in the public interest. No other parties have filed for intervention that could represent CFC’s unique interest. The Commission could therefore grant CFC’s Petition on the first or second bases alone.

Further, CFC's participation will not unduly broaden the issues in the proceeding, which seems to be Mountain Water's primary concern. For one, Mountain Water does not want the Commission to consider any issues, since it has requested that the Commission decline to assert jurisdiction over the transaction. Simply because CFC has made clear in its Petition its position that the Commission should assert jurisdiction, it does not follow that CFC desires to broaden the issues.

In its Reply to Petitioner's Response, Mountain Water reiterates its concerns that CFC intends to introduce issues into this docket that are outside of the Commission's jurisdiction, namely involving water right issues that are properly before the Department of Natural Resources and Conservation, and water quality issues that are within the purview of the Department of Environmental Quality. Mountain Water's Reply 2-3. In fact, CFC is aware that the fundamental basis of the Commission's jurisdiction over the contemplated sale of Mountain Water's parent company is its "duty to ensure adequate service and just and reasonable rates" and that the Commission has the "legal, regulatory authority to approve, disapprove, or condition the proposed transaction" between Park Water Company and The Caryle Group. *In the Matter of the Joint Application of Northwestern Corporation and Babcock & Brown Infrastructure Limited, et al.*, Docket No. D2006.6.82, Order No. 6754e, 2007 Mont. PUC LEXIS 54, ¶¶ 32, 35, 259 P.U.R. 4<sup>th</sup> 493 ¶¶ 32, 35 (July 31, 2007).

Finally, CFC has applied for general intervention in this docket, and Commission rules provide, "[a]ny person . . . who shall desire to appear and participate in any proceeding before the commission, and *who does not desire to broaden the issues of the*

*original proceeding*, may petition in writing for leave to intervene in the proceeding.” Admin. R. Mont. 38.2.2403 (emphasis added). CFC has not applied for special intervention pursuant to Admin. R. Mont. 38.2.2404 because it does not desire to broaden the issues to be considered. As such, pursuant to its administrative rules, the Commission has three separate bases on which to approve CFC’s Petition.

B. CFC meets the requirement for administrative standing for intervention that has been applied by the Commission in other dockets.

The Commission has made clear in past dockets that “administrative standing is not the same as judicial standing.” See, e.g., *In the Matter of the Application of NorthWestern Energy for Approval to Construct and Operate the Mill Creek Generating Station*, Docket No. D2008.8.95, Notice of Commission Action ¶ 13 (October 15, 2008) (hereinafter, *Mill Creek*). In fact, the Commission has stated that “[t]he Commission’s rules implicitly recognize that it may allow intervention by parties that would not meet the standard for judicial standing” and instead the Commission relies on the bases set forth above contained in its own rules regarding whether to grant a petition to intervention. Admin. R. Mont. 38.2.2405(1). *Id.*

In its Reply, Mountain Water takes issue with CFC’s reliance on a Commission order in *In the Matter of the Complaint of Williamson*, Docket No. D2010.2.14, Order No. 7084a (May 20, 2010), where the Commission distinguishes administrative standing from judicial standing, because the issue was not standing for intervention. Mountain Water’s Reply 4. The Commission’s analysis two years earlier in *Mill Creek*, in fact, while consistent with its analysis in *Williamson*, may provide clearer guidance in

determining whether a petitioner has standing to intervene. In *Mill Creek*, the Commission cited with approval the concurring opinion in *Koniag v. Andrus*, 580 F.2d 601, 611-614 (D.C. Cir. 1978) (Bazelon, concurring), in analyzing petitions to intervene in the docket. Notably, the *Koniag* concurrence found that:

most decisions that apply judicial standing concepts stand only for the proposition that if a party would have standing to seek judicial review of administrative action, he should be allowed to appear before the agency, if only to assure the proper development of the record. [citations omitted.] As such these cases do not establish that administrative standing would necessarily be improper if a party would *not* have standing to obtain judicial review.

*Koniag*, 580 F.2d at 613 (*emphasis in original*).

In *Mill Creek*, the Commission ultimately based its decision to grant or deny intervention to the various petitioners based on whether they had demonstrated standing to seek judicial review. *Mill Creek* ¶¶ 15-17. However, it appears that based on the Commission's reliance on *Koniag*, it would not be precluded from granting intervention to a party that would not have standing to obtain judicial review.

Regardless, CFC would have standing to seek judicial review of a Commission decision in this docket. Under the Montana Administrative Procedure Act ("MAPA"), a person "who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review" Mont. Code Ann. § 2-4-702(1)(a) (2009). *Black's Law Dictionary* (West Group 1996) defines "aggrieved party" as a "party whose personal, pecuniary, or property rights have been adversely affected . . . by a court's decree or judgment." In this regard, to be

“aggrieved” is similar if not identical to the concept of “directly affected.” That is, an adverse decision to an entity “directly affected” will result in that entity’s being “aggrieved” by the result.

MAPA is modeled after the federal Administrative Procedure Act (APA). Its judicial review provisions also allow for agency review in cases where a person is “aggrieved” by agency action. 5 U.S.C. § 702. In a case involving the Federal Election Campaign Act, which also used the word “aggrieved” to establish a right of judicial review, the United States Supreme Court, referencing the APA, stated, “[h]istory associates the word ‘aggrieved’ with a congressional intent to cast the standing net broadly....” FEC v. Akins, 524 U.S. 11, 19 (1998).

Indeed, Commission practice has also been to cast its net broadly and allow interested parties the opportunity to intervene. The inclusion of diverse viewpoints in this docket, including the viewpoint of CFC and its members, will ensure the adequate development of the record and that the public interest is protected. CFC respectfully requests the Commission to grants its Petition to Intervene.

Respectfully submitted this 18th day of March, 2011.

**CLARK FORK COALITION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 18th day of March, 2011, the foregoing REPLY OF CLARK FORK COALITION TO MOUNTAIN WATER COMPANY'S REPLY TO PETITIONER'S RESPONSE was served via U.S. mail and electronic mail on:

Arvid Hiller  
Mountain Water Company  
1345 W Broadway  
PO Box 4826  
Missoula, MT 59806-4826  
(U.S. mail only)

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Mary Wright  
Montana Consumer Counsel  
111 North Last Chance Gulch, Suite 1B  
PO Box 201703  
Helena, MT 59620-1703  
rnelson@mt.gov  
mwright@mt.gov

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ramoody@hollandhart.com  
jkraske@mt.gov

Kate Whitney  
Public Service Commission  
1701 Prospect Avenue  
P. O. Box 202601  
Helena, MT 59620-2601  
(e-filed plus original)

By: \_\_\_\_\_



Barbara Hall

# SECRETARY OF STATE

## STATE OF MONTANA

### CERTIFICATE OF EXISTENCE

I, Linda McCulloch, Secretary of State of the State of Montana, do hereby certify that

#### CLARK FORK COALITION

duly filed its Articles of Incorporation in this office on 21 January 1985, and on that date was created a body politic and corporate.

I further certify that all fees reflected in the records of the Secretary of State have been paid by said corporation and that the most recent annual report has been filed with this office.

I further certify that no articles of dissolution have been placed on record in this office by said corporation and my records indicate the corporation is in good standing under the laws of the State of Montana and authorized to transact in business and conduct its affairs in this state.

The Secretary of State cannot certify that tax and penalties owed to this state on record with the Department of Revenue are current. Please contact the Department of Revenue at (406) 444-6900 to obtain information on tax status.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Capital, this 18 March 2011 .

LINDA MCCULLOCH  
Secretary of State

Certified File Number: D060086

EX. A

SECRETARY OF STATE  
STATE OF MONTANA  
Mike Cooney

Business Services Bureau  
Garth Jacobson, Chief Legal C  
Rose Ann Crawford, Operatio

Montana State Capitol  
P. O. Box 202801  
Helena, MT 59620-2801  
(406) 444-3665



January 23, 1996

COPY

Sharon Katsel Harrell  
Milodragovich Dale et al  
Box 4947  
Missoula MT 59806-4947

OLD NAME: CLARK FORK  
COALITION LIMITED  
NEW NAME: THE CLARK FORK-  
PEND OREILLE COALITION  
Date of Filing: January 18, 1996  
Filing Number: D60086 - 338524

Dear Ms. Harrell:

Attached please find a copy of the documents you recently filed with this office. The document number and filing date have been recorded on the copy I've attached. These documents serve as your certificate of filing and should be maintained in your files for future reference.

Pursuant to your request, I have deducted \$35 from your prepaid account to cover the costs of this transaction.

Thank you for giving this office the opportunity to serve you. If you have any questions in this regard, or need additional assistance, please do not hesitate to contact the Business Services Bureau professionals at (406) 444-3665.

Sincerely,

Mike Cooney  
Secretary of State  
Enclosure

You can correspond with our office via facsimile. Our fax number is (406) 444-3976. You can now fax in your search, copy and certificate requests.

EX. B

STATE OF MONTANA

ARTICLES of AMENDMENT for  
NAME CHANGE for  
NONPROFIT CORPORATION



MAIL: MIKE COONEY  
Secretary of State  
P.O. Box 202801  
Helena, MT 59620-2801  
PHONE: (406)444-3665  
FAX: (406)444-3976  
WEB SITE: www.state.mt.us/sos

Prepare, sign and submit an ORIGINAL AND COPY with fee.  
This is the minimum information required.

(This space for use by the Secretary of State only)

375021

STATE OF MONTANA

**FILED**

JAN - 8 2001

SECRETARY OF STATE

Form: ANP-1  
Filing Fee: \$15.00

Priority Filing (add additional \$20.00)

*RR# 15.00*

▶ FIRST: The current name of this Corporation is: CLARK FOLK ~~PEOP~~ OREILLE COALITION

▶ SECOND: The name is hereby amended to be CLARK FOLK COALITION

▶ THIRD: The date of this amendment is 1/22/00  
(mo/day/year)

▶ FOURTH: Choose either (1) or (2):

(1) This amendment was adopted by a sufficient vote of the Board of Directors. A  
vote of the members was not required.

or (2) This amendment was adopted by a vote of the members.

There were \_\_\_\_\_ existing memberships; \_\_\_\_\_ voted  
(specific #) (specific #)  
for the amendment; \_\_\_\_\_ voted against.  
(specific #)

*Elizabeth Sutton*  
Signature of Officer or Chair of the Board  
President  
Title  
1/4/00  
Date

RECEIVED

JAN - 8 2001

MONTANA SECRETARY OF STATE  
s:Forms\stap-1  
Revised: 05/27/99

EX. C

SECRETARY OF STATE

STATE OF MONTANA

BOB BROWN

THE

Business Services Bureau  
Pat Haffey, Deputy



Montana State Capitol  
PO Box 202801  
Helena, MT 59620-2801  
(406)444-3665

<http://www.state.mt.us/sos/>

MATT CLIFFORD  
CLARK FORK COALITION  
PO BOX 7593  
MISSOULA MT 59807

January 26, 2001

Dear Mr. Clifford:

RE: OLD NAME: THE CLARK  
FORK-PEND OREILLE  
COALITION  
NEW NAME: CLARK FORK  
COALITION  
Date of Filing: January 8, 2001  
Filing Number: 375921 - D60086

I've approved the filing of the documents for the above named entity. The document number and filing date have been recorded on the original document. This letter serves as your certificate of filing and should be maintained in your files for future reference.

Thank you for giving this office the opportunity to serve you. If you have any questions in this regard, or need additional assistance, please do not hesitate to contact the Business Services Bureau professionals at (406) 444-3665.

Sincerely,

*Bob Brown*

Bob Brown  
Secretary of State  
Enclosure

EXD.



Data Current as of...

If you are ordering a Certificate of Fact or Certificate of Existence, please make sure the Foreign/Domestic Corporation or Limited Liability Company is in "Good Standing". Enter the name of the business, and check to see whether their annual report was filed in the current year.

We are not able to provide a Certificate of Fact or Certificate of Existence unless the current annual report is filed.

If you would like to purchase a Certificate of Existence for this business entity, select the button below. You will be assessed a \$5.00 fee for this service.

[Get Certificate of Existence](#)

If you would like to purchase information on the principals (i.e., officers, directors, members, managers, partners, etc) associated with this entity, select the button below. You will be assessed \$2.00 for each search you perform.

[Get Principals](#)

If you would like to purchase a Certificate of Fact for this business entity, select the button below. You will be assessed a \$15.00 fee for this service.

[Get Certificate of Fact](#)

**Do another Search**

[Search](#)

**Name:** CLARK FORK COALITION  
**ID #:** D060086  
**Type:** PUBLIC BENEFIT WITH MEMBERS  
**Jurisdiction State:** MT  
**Status:** ACTIVE  
**Status Reason:** GOOD STANDING

### Status Dates

**Expiration Date:**  
**Date of Incorporation:** 01/21/1985  
**Last AR Filed:** 03/02/2011  
**Suspension:**  
**Inactive Date:**  
**Diss/Widthdr/Revoke:**

### Additional Info

**Term:** PERP  
**Shares:**  
**Purpose Code:** PUBLIC AWARENESS

### Agent

**Registered Agent:** KAREN KNUDSEN  
**Address 1:** 140 S. 4TH ST. WEST #1  
**Address 2:** PO BOX 7593  
**City:** MISSOULA  
**State:** MT  
**Zip:** 59801-0000

EX. E