

**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) Docket No. D2011.1.8
Approval of Sale and Transfer of Stock in)
Park Water Company)

ADDITIONAL ISSUE TESTIMONY OF

ROBERT DOVE

ON BEHALF OF

CARLYLE INFRASTRUCTURE PARTNERS, LP

AUGUST 19, 2011

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Robert Dove. My business address is 1001 Pennsylvania Avenue,
3 NW, Washington, DC 20004-2505.

4

5 **Q. ARE YOU THE SAME ROBERT DOVE THAT PREVIOUSLY**
6 **SUBMITTED TESTIMONY ON BEHALF OF CARLYLE IN THIS**
7 **DOCKET?**

8 A. Yes. I am a Managing Director of The Carlyle Group and Co-Head of the
9 Carlyle Infrastructure Partners, LP (“Carlyle”) and I previously submitted direct
10 testimony on Carlyle’s behalf in this docket.

11

12 **Q. WHAT IS THE PURPOSE OF THIS ROUND OF TESTIMONY?**

13 A. The purpose of this testimony is to respond, as appropriate, to the issues raised in
14 the Notice of Additional Issues dated August 11, 2011.

15

16 **Issue (a)(i) If the sale of Park water/Mountain Water to Carlyle was approved,**
17 **how would local control and security of the critical resource of drinking water to**
18 **Missoula [be] impacted.**

19

20 **Q. PLEASE RESPOND.**

21 A. As I indicated in my direct testimony, Carlyle made the decision to acquire Park
22 Water because it and its subsidiaries are well-run companies. Consistent with

1 that fact, it is our intention to allow Mountain Water and its management team to
2 continue essentially as they are today. As a result, Mountain Water customers
3 should see little or no change to the affordable and high-quality service they now
4 receive. Mountain Water is now and would continue to be a wholly-owned
5 subsidiary of Park Water. There is no change in local control. Mountain Water's
6 water rights are now and would continue to be under the jurisdiction of the
7 Montana Department of Natural Resources and Conservation. There is no
8 change in the security of drinking water resources.

9
10 **Issue (a)(ii) Carlyle does not appear to have any experience owning a regulated**
11 **public utility. What information can Carlyle provide to assure the public and the**
12 **Commission that it is fit and qualified to own the Mountain Water Company?**

13
14 **Q. PLEASE RESPOND.**

15 A. First, if the transaction goes forward the management team at Mountain Water
16 will continue essentially as it is today. Second, if the transaction goes forward
17 the management team at Park Water, the company that owns Mountain Water,
18 will also continue essentially as it is today. Under the terms of the transaction,
19 Carlyle will purchase the stock of Park Water from Mr. Sam Wheeler and his
20 family. However, Carlyle, as the new owner, will not be directly involved in the
21 day to day operation and management of Mountain Water. Rather, the people
22 who are involved in the day to day operation and management of both Park

1 Water and Mountain Water will be the same highly qualified and experienced
2 people regardless of who owns the stock of Park Water. Having said that,
3 because I and two of my colleagues will be members of the Park Water Board of
4 Directors after the transaction closes, we will be involved in the strategic
5 decision making process at Park Water. That is essentially the same way Carlyle
6 provides strategic input and guidance to a multitude of different companies that
7 we own. The fact that our investors continue to trust us to manage more than
8 \$153 billion worth of assets should provide our customers and the Commission
9 with ample assurance of Carlyle's fitness and qualifications in this capacity.

10
11 **Issue (a)(iii) Carlyle, as a private equity firm, has the objective to maximize**
12 **investment returns to its partners. How will that objective be met while charging**
13 **just and reasonable rates which the Commission is required to maintain? Please**
14 **specifically explain how those two competing interests will be balanced and how**
15 **Mountain Water ratepayers will be impacted by that balance.**

16
17 **Q. PLEASE RESPOND.**

18 A. Mountain Water and Park Water are, and always have been, for-profit
19 companies. Since the creation of Mountain Water, the company has provided
20 high-quality, reasonably priced services while striving to earn a reasonable
21 return for its owners who provide the capital to fund the company's
22 infrastructure. Since the creation of Mountain Water, the company has done so

1 under rates, terms, and conditions regulated by the Montana Public Service
2 Commission. If the sale of Park Water stock from Mr. Wheeler to Carlyle goes
3 forward, absolutely nothing will change in this regard. Just like every other
4 investor-owned utility in Montana that is subject to the Commission's regulatory
5 authority, Mountain Water will continue, regardless of its upstream owner, to
6 provide a high-quality, reasonably priced service to its customers while striving
7 to earn a reasonable return for the investors who provide the capital to fund the
8 company's infrastructure. And regardless of who owns Park Water Company's
9 stock, Mountain Water will continue to do operate under rates, terms, and
10 conditions fully regulated by the Commission.

11
12 **Issue (a)(iv) Mountain Water ratepayers expressed concern that access to clean**
13 **safe drinking water at affordable rates is critical to the public heath and economic**
14 **welfare of Missoula. How will Carlyle ensure access to clean safe drinking water**
15 **as the owner of Mountain Water and its water rights? Does Carlyle have any**
16 **future plans for the Rattlesnake Lakes water rights and will those water rights stay**
17 **with the Mountain Water system?**

18
19 **Q. PLEASE RESPOND.**

20 A. As I indicated in my direct testimony, water from the Mountain Water system
21 will not be sold to anyone other than users of the Company's system. Nor will
22 Mountain Water Company's water rights be diverted outside of the Missoula area

1 for use elsewhere. They will continue to be used to benefit Mountain Water
2 customers and the Missoula community.

3
4 **Issue (a)(v) Mountain Water ratepayers expressed concern about the perceived**
5 **history of Carlyle, the investments it has been involved in, and the business ethics**
6 **of Carlyle. Please respond to these ratepayer concerns by providing specific**
7 **information about ethics and compliance policies at Carlyle and its companies,**
8 **management training on ethics issues, and compliance with policies that ensure**
9 **ethical activities by corporate representatives. In addition, please list and provide**
10 **the details and results of any and all investigations that were undertaken by local,**
11 **state, and federal regulatory and law enforcement authorities that resulted in fines,**
12 **penalties, or convictions involving the Carlyle Group, its subsidiaries, affiliates,**
13 **investment companies, and/or employees working on behalf of Carlyle owned**
14 **companies.**

15
16 **Q. PLEASE RESPOND.**

17 A. First, Carlyle believes that we must invest wisely and responsibly to create
18 lasting value. That means being a good corporate citizen and promoting
19 practices that encourage social and environmental sustainability and strong
20 corporate governance. In Montana and across six continents, Carlyle is working
21 to create stronger companies and better communities. At Carlyle, creating long-
22 term value for our investors means identifying and managing environmental,

1 social and governmental risks and opportunities. That's why Carlyle has
2 undertaken a number of initiatives to better understand the impact our investment
3 decisions will have on people and on the communities in which we invest. To
4 incorporate this commitment into our investment process, Carlyle developed our
5 own set of investment guidelines in consultation with an environmental, social,
6 and governmental expert, drawing on a variety of existing internationally
7 recognized norms, including the U.N. Principles for Responsible Investment and
8 the U.N. Global Compact. Carlyle's guidelines were integral to shaping the
9 corporate social responsibility guidelines later adopted by the members of the
10 Private Equity Growth Capital Council. First and foremost among our
11 investment guidelines is to consider environmental, public health, safety and
12 social issues associated with target companies when evaluating whether to invest
13 in a particular company or entity, as well as during the period of ownership. A
14 copy of a report entitled, Corporate Citizenship 2010: A Progress Report To Our
15 Investors, Our Partners And Our Communities is attached as Exhibit RD-1 to this
16 testimony.

17 Second, on May 14, 2009, Carlyle became a signatory to the Public
18 Pension Fund Code of Conduct (the "Code"). Pursuant to the Code, Carlyle is
19 providing information regarding the professional backgrounds of certain key
20 Carlyle personnel on its website. In addition, Carlyle is providing details of
21 certain political contributions to candidates for state and local offices as well as
22 certain federal contributions. That information is likewise available on Carlyle's

1 website. Lastly, pursuant to the Code, Carlyle is disclosing certain fees and
2 expenses that have been paid on an aggregate basis with respect to investment
3 funds to which U.S. public pension funds have committed since the effective date
4 of the Code. A copy of Carlyle's 2011 Certificate of Compliance with the Public
5 Pension Fund Code of Conduct filed with the State of New York is attached as
6 Exhibit RD-2 to this testimony.

7 Third, Carlyle's commitment to corporate citizenship has been recognized
8 through its receipt of recent industry awards including the 2010 Robert Toigo
9 Foundation Vision In Action award for supporting diversity and the 2010
10 Corporate Social Responsibility award by the Foreign Policy Association.

11 Finally, as stated in response to data request CFC-006, Carlyle is not
12 aware of any material violations of federal, state or local laws by Carlyle
13 Infrastructure or any of its portfolio companies. One of Carlyle Infrastructure's
14 portfolio companies, Synagro Technologies, engages in the treatment and
15 beneficial reuse of organic residuals, mostly from municipal wastewater
16 treatment facilities, and is occasionally assessed with environmental notices of
17 violations ("NOVs"). These NOVs are typically minor in nature, however the
18 company has made a significant effort to reduce the number of NOVs that it
19 receives.

20
21 **Issue (b)(ii) Please explain whether Carlyle is open to negotiation of providing the**
22 **City of Missoula with a ROFR and under what terms and situations. Would**

1 **Carlyle consider agreeing to a sale of Mountain Water earlier in its investment**
2 **horizon of Park Water, or only at the time of a future sale of Park Water/Mountain**
3 **Water? If Carlyle is open to negotiations, how would Carlyle establish a value for**
4 **Mountain Water if and when a ROFR is agreed to and a future sale of Park**
5 **Water/Mountain Water is commenced?**

6

7 **Q. PLEASE RESPOND.**

8 A. As explained by our attorney in a letter to Mr. Justin Kraske dated August 15,
9 2011, “The Commission has no legal authority to require either Park Water or
10 Carlyle to sell Mountain Water to the City of Missoula – now or in the future.
11 The Commission also has no legal authority to establish a condition on the sale
12 of Park Water to Carlyle that Carlyle must in turn sell Mountain Water to the
13 City in the future. When the government desires to forcibly take ownership of
14 private property, under law the government must condemn the property. The
15 condemnation process is based on well established law that both dictates when
16 the government may do so under the Constitution and sets forth procedures for
17 how to fairly compensate the private property owner. The Commission,
18 obviously, has no legal authority to condemn private property. As such, the
19 Commission should not engage in any effort to unlawfully order a private party
20 to sell its property. Rather, any arrangement between Park Water, Carlyle, and
21 the City of Missoula should be left to Park Water, Carlyle, and the City.”

1 Having said that, as Carlyle indicated in responding to discovery from the
2 City of Missoula, Carlyle is aware of the City's continued interest in acquiring
3 Mountain Water. Further, Carlyle has agreed that it will honor the August 14,
4 1997, letter from Mr. Arvid M. Hiller to then Mayor Kadas that discusses a
5 potential future sale of Mountain Water to the City.
6

7 **Issue (c) In Docket No. D2006.6.82 (the proposed acquisition of NorthWestern**
8 **Energy by Babcock & Brown Infrastructure), the Commission identified three**
9 **possible standards for its review of the transaction: (1) the net benefits to**
10 **consumer's standard; (2) the public interest standard; and (3) the no harm to**
11 **consumer are standard. In that case, the Commission determined that the**
12 **appropriate standard for review of the transaction was the no harm to consumer's**
13 **standard. Joint Application of NorthWestern Corporation and Babcock & Brown**
14 **Infrastructure Limited, Docket No. D2006.6.82, Order No. 6754e ¶36. The**
15 **Commission seeks testimony in this case regarding which standard of review the**
16 **Commission should apply to this proposed acquisition.**
17

18 **Q. PLEASE RESPOND.**

19 A. This issue is strictly a legal issue. As I am not an attorney, Carlyle will provide
20 its response in an appropriate future legal pleading or brief in this docket.
21

1 **Issue (d) Please explain and analyze Carlyle's overall business plan for**
2 **Mountain Water if the acquisition is approved and how that plan will impact**
3 **customers. A response to this question will include, but is not limited to, a**
4 **discussion of infrastructure improvements, meter conversion, leaking mains and**
5 **services, customer service, management decisions, water conservation, and an**
6 **analysis on how that business plan will impact future water rates. Please detail**
7 **what benefits or drawbacks the Mountain Water ratepayers may experience based**
8 **on Carlyle's possible acquisition of Mountain Water.**

9

10 **Q. PLEASE RESPOND.**

11 A. As I discussed in my direct testimony, our commitment to the Mountain Water
12 customers and this Commission is to continue Mountain Water's history of
13 reasonable and affordable rates and top-notch service quality. Our investors,
14 which include public pension funds, organized labor funds, and other
15 institutional investors, have invested in the Carlyle infrastructure fund because
16 they want to invest in something that has a low-risk of failing and a steady and
17 predictable rate of return. Since our investors and management are in this for the
18 long-haul, maintaining reasonable and affordable rates and excellent service
19 quality is a critical part of our business plan.

20 As I also discussed in my direct testimony, one of the reasons we were
21 attracted to Park Water – including Mountain Water Company – was the quality
22 of its management and its performance in providing safe, clean water. However,

1 one area of concern that we identified in our due diligence, and that has been
2 raised in our meetings with Missoula stakeholders, is the rate of leakage in the
3 system's infrastructure. We intend to consult with the Commission, our
4 customers, and other stakeholders to develop strategies to address the leaking
5 infrastructure in the Mountain Water system. We also intend to work with
6 stakeholders to determine how and when to best invest capital into the system's
7 infrastructure to, over time, correct the leakage problem that exists.

8 Finally, as I explained in my direct testimony, Carlyle is proceeding in
9 this effort with a keen awareness that the pace of improvement in Mountain
10 Water's aging infrastructure has to be carefully balanced with the goal of
11 keeping rates reasonable and affordable. To ensure this balancing is done
12 thoughtfully, before implementing any plan, we will conduct analyses on the
13 long-term benefits of new investments compared to the immediate and long term
14 customer rate impacts. As those analyses are completed, our intention is to work
15 closely with the Commission, its staff, our customers, Missoula officials, and
16 environmental stakeholders to determine the best path forward over time.

17 Given these facts, I believe that the proposed sale of Park Water's stock
18 from Mr. Wheeler and his family to Carlyle is in the best interest of both
19 Mountain Water and its customers.

20
21 **Q. DOES THIS CONCLUDE YOUR ADDITIONAL ISSUE TESTIMONY?**

22 **A.** Yes. Thank you.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of August, 2011, the foregoing **ADDITIONAL ISSUE TESTIMONY OF ROBERT DOVE ON BEHALF OF CARLYLE INFRASTRUCTURE PARTNERS, LP** was served via electronic mail and U.S. mail unless otherwise indicated to the following:

Arvid Hiller Mountain Water Company 1345 W. Broadway Street P.O. Box 4826 Missoula, MT 59802-2239 (406) 721-5570 (UPS only)	Barbara Hall, Legal Director Clark Fork Coalition 140 S. 4th Street West, Unit 1 P.O. Box 7593 Missoula, MT 59801 (406) 542-0539 Barbara@clarkfork.org
Kate Whitney (<i>e-filed plus original</i>) Public Service Commission 1701 Prospect Avenue P. O. Box 202601 Helena, MT 59620-2601 kwhitney@mt.gov	William W. Mercer Holland & Hart LLP 401 North 31st Street, Suite 1500 P. O. Box 639 Billings, Montana 59103-0639 (406) 896-4607 wwmerc@hollandhart.com
John Alke Hughes, Kellner, Sullivan & Alke 40 W. Lawrence, Suite A P.O. Box 1166 Helena, MT 59624-1166 jalke@hksalaw.com	Bryan D. Lin The Carlyle Group 520 Madison Avenue, 41st Floor New York, NY 10022 (212) 813-4992 bryan.lin@carlyle.com
Robert Nelson Montana Consumer Counsel 111 North Last Chance Gulch, Suite 1B Box 201703 Helena, MT 59620-1703 robnelson@mt.gov	Jim Larocque, CFA The Carlyle Group 520 Madison Ave New York, NY 10022 (212) 813-4749 jim.larocque@carlyle.com
Thorvald A. Nelson Holland & Hart LLP 6380 South Fiddlers Green Circle Suite 500 Greenwood Village, CO 80111 (303) 290-1601 tnelson@hollandhart.com	Jim Nugent Missoula City Attorney's Office 435 Ryman Street Missoula, MT 59802 JNugent@ci.missoula.mt.us

Dr. John W. Wilson J.W. Wilson & Associates, Inc. 1601 North Kent Street Suite 1104 Arlington, VA 22209 Phone: (702) 243-1049 Fax: (703) 243-3389 E-Mail: john@jwwa.com	
For electronic service only mwright@mt.gov	For electronic service only: lnbuchanan@hollandhart.com

s/ Leah N. Buchanan