

**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 Sale and Transfer of)
Stock in Park Water Company)

REGULATORY DIVISION

DOCKET NO. D2011.1.8

Additional Issue Testimony Of

Karen Knudsen

On Behalf of the

Clark Fork Coalition

September 9, 2011

1 **Q. Please state your name, occupation and address.**

2 A. My name is Karen Knudsen. I am the executive director of the Clark Fork
3 Coalition (the "Coalition"). My business address is 140 S. 4th Street West, Unit 1,
4 Missoula, MT 59802.

5 **Q. Have you filed testimony in this proceeding prior to the testimony you are**
6 **providing herein?**

7 A. No. I have filed responses to certain data requests from the Commission on
8 August 17, 2011 on behalf of the Coalition.

9 **Q. Please describe your educational background and professional experience.**

10 A. I hold a B.A. in Economics from Colorado College and a Master's degree
11 in Public Administration from Syracuse University. I have worked with the
12 Coalition for 18 years in a variety of capacities, including director of its land-use
13 planning and policy program, director of communications, business manager, and
14 education and outreach coordinator. I was hired as executive director in 2007. I
15 am part of the Healthy Headwaters Working Group for Carpe Diem West, an
16 organization that engages diverse stakeholders in developing strategies for
17 addressing climate change impacts on water in the American West. I also serve on
18 the board of the Watershed Restoration Coalition, a landowner-driven nonprofit
19 working to conserve natural resources through stream restoration in the Upper
20 Clark Fork basin. Prior to joining the Coalition in 1993, I worked as a research
21 associate for a forestry/economics research firm in Portland, Oregon, where I
22 conducted economic, policy, and financial research on national forest management
23 issues.

24 **Q. What is the purpose of your testimony?**

25 A. The purpose of my testimony is to provide testimony on behalf of the
26 Coalition on the issues raised by the Commission in the Notice of Additional
27 Issues, dated August 11, 2011 (the "Notice").

1 **Q. Why do you believe that it is necessary for you to file testimony on some of**
2 **the issues raised in the Notice?**

3 A. I believe the issues raised by the Commission in the Notice go precisely to
4 what this proposed transaction is all about: if the Commission approves the sale of
5 Mountain Water Company (“Mountain Water”) to The Carlyle Group (“Carlyle”),
6 essential community resources will be in the hands of what many Coalition
7 constituents perceive as a remote and inaccessible global corporation that exists to
8 generate profits. The issues identified by the Commission are the same concerns
9 that we hear on a daily basis from Coalition members, who are concerned about
10 how, or even whether, community welfare will factor into corporate decisions
11 about their drinking water. Further, our members are concerned that the record
12 contains little information about Carlyle’s motivations for deciding on Park Water
13 Company (“Park Water”) as its entry point into the regulated water utility sector
14 and about its intentions for managing Mountain Water.

15 After several rounds of discovery and testimony, we have few specifics on
16 how Carlyle intends to profit from our drinking water and what impact we will see
17 on our water resources and on our rates. What we do know is that Carlyle predicts
18 to earn a “very large annual return” on its investment in Park Water, according to
19 Dr. John Wilson’s testimony filed with the Commission on July 29, 2011 (page 8,
20 line 20). Even though Mountain Water has always been privately owned, it is a
21 company with which the community has interacted for 30 years, and we know
22 what we get from Mr. Wheeler’s Park Water. We do not know what we will get
23 from Carlyle and would like more assurance that Carlyle will act in the best
24 interest of Missoula’s people and our water.

25 **Q. Commission data request PSC-050 to Carlyle states, “[i]t appears that [the**
26 **Coalition] and the City both have concerns about post-Carlyle ownership, but**
27 **are not otherwise opposed to the sale of Park Water to Carlyle. See PSC-**
28 **041b and PSC-35b.” Is this an accurate statement of the Coalition’s position?**

1 A. No, it is not. In my response to PSC-041(b), I indicated that “the Coalition
2 is more concerned about the post-Carlyle phase” because of “Carlyle’s intentions
3 to hold Mountain Water for a relatively short period of time, along with the
4 Commission’s authority to stipulate responsible stewardship.” Recent testimony
5 filed by Carlyle and Mountain Water have now increased the Coalition’s concerns
6 about the Carlyle ownership phase. For example, Carlyle’s response to PSC-048
7 states that “there is no prescribed holding period for any of the current investments
8 made by Carlyle Infrastructure . . . Our key investment objective is value creation.
9 Value cannot be created in a short span of time, particularly in the regulated utility
10 water space.” As a result, the Coalition is concerned that—despite the short
11 holding period stated in Carlyle’s Investment Committee Memorandum—we
12 really have no certainty about the length of time Carlyle intends to hold Mountain
13 Water.

14 In addition, the Coalition is concerned by recent testimony filed by Carlyle
15 and Mountain Water that questions the Commission’s authority to impose
16 conditions on any approval of the transaction, which would seem to negate our
17 assumption that the Commission can stipulate responsible stewardship. If the
18 Commission is prohibited from imposing conditions, then the Coalition is opposed
19 to a sale of Park Water to Carlyle, unless Carlyle can provide assurances that this
20 transaction is in the public interest. For the Coalition, these assurances are: 1)
21 designate the Rattlesnake Creek watershed as an emergency back-up water supply
22 only; 2) commit to keeping Missoula water in the Missoula-area watershed; and 3)
23 grant the City of Missoula the right of first refusal and first option to purchase
24 Mountain Water and/or any property, rights, or other assets of Mountain Water.

25 **Q. You are now asked provide testimony on several of the issues identified in the**
26 **Notice. Please provide responses as you feel are appropriate.**

1 **Issue (a)(i): If the sale of Park Water/Mountain Water to Carlyle was**
2 **approved, how would local control and security of the critical resource of**
3 **drinking water to Missoula [be] impacted?**

4 A. It is difficult to predict what impact the proposed change in control of
5 Mountain Water will have on local control and security of our drinking water
6 resources. So far, Carlyle has provided few assurances, other than statements that
7 it intends to retain the current management of Mountain Water. In response to
8 data request CFC-041, for example, Mountain Water indicated that two current
9 Mountain Water employees will be offered employment agreements by Carlyle:
10 General Manager and Vice-President of the board of directors of Mountain Water,
11 Arvid Hiller, and Co-CEO, John Kappes.

12 Based on Mountain Water's 2010 annual report filed with the Commission
13 and provided in response to CFC-037, Mountain Water's current board of
14 directors is made up of Mr. Hiller, Mr. Kappes, Park Water Executive Vice
15 President, Leigh Jordan, and the following Park Water executives: Henry H.
16 Wheeler, Jr. and Nyri A. Wheeler-Lewis.

17 As indicated in Park Water's consolidated financial statements provided in
18 response to CFC-038, the current board of directors of Park Water are: Henry H.
19 Wheeler, Jr., Christopher Schilling, Nyri A. Wheeler, Chayre M. Wheeler, Henry
20 H. Wheeler, III, Leigh K. Jordan, Jeanne-Marie Bruno, and John Kappes.
21 According to Schedule 1.5 of the Agreement and Plan of Merger, dated December
22 21, 2010, and provided by Carlyle in response to CFC-001(b), the initial directors
23 of Park Water will be Mr. Wheeler and three Carlyle executives: Robert Dove,
24 Barry Gold, and Bryan Lin. The only Mountain Water manager that currently
25 holds a position on the Park Water board, Mr. Kappes, does not appear on the list
26 of initial directors post-merger. Further, Mr. Jordan, who currently holds board
27 positions at both Mountain Water and Park Water, will not be on the Park Water
28 board post-merger according to Schedule 1.5.

1 While it is unclear who will remain on the board of Mountain Water if the
2 proposed transaction is consummated, it is clear that Carlyle executives will be
3 providing “strategic direction” to both Park Water and Mountain Water as Mr.
4 Robert Dove indicated in his Testimony filed with the Commission on August 19,
5 2011 (“Dove Additional Issue Testimony”) (p. 3, lines 2-5). It is also unclear how
6 Carlyle’s September 6, 2011 Initial Public Offering filing may impact local
7 control. In short, while Carlyle has consistently made statements that local
8 management will not change, the Coalition is concerned that local control of our
9 drinking water may not become a reality under Carlyle’s ownership.

10 Because of Carlyle’s relatively short investment horizon, the Coalition is
11 also concerned about the challenges of retaining local control with every
12 subsequent financial buyer. As the only Park Water-owned utility not regulated in
13 the same jurisdiction as Park Water, Mountain Water is an outlier. The Coalition
14 expects it will become more so as Carlyle and future private owners add non-
15 Montana water utilities to its Park Water portfolio.

16 **Q. Do you believe that the potential lack of local control will impact the security**
17 **of the drinking water resource?**

18 A. It certainly could, but this is impossible to predict. Still, the Coalition is
19 concerned that placing ownership of our water resources in the hands of a multi-
20 national corporation that exists to generate profits means strategic decisions
21 impacting our water security will likely be made in board rooms far removed from
22 Missoula and those affected. Even though Carlyle might manage over \$150
23 billion in assets, as the Commission has observed, it has never managed a water
24 utility.

25 As the Coalition has indicated in data responses thus far, we have no
26 indication that Carlyle will mismanage Mountain Water. Despite the absence of
27 specific information on Carlyle’s management plans, we have been comforted by
28 the fact that the Commission will maintain its jurisdictional authority over

1 Mountain Water and will provide the oversight needed to protect consumers and
2 the resource.

3 However, based on recent filings by both Carlyle and Mountain Water, we
4 are concerned that the Commission will not have oversight over management
5 decisions made at the holding company level, and that these decisions could
6 directly impact Mountain Water ratepayers and our water resources. If the
7 Commission's oversight of parent-level management of Mountain Water is indeed
8 limited, the Coalition is concerned that the security of our drinking water
9 resources could be in jeopardy as Carlyle attempts to achieve its goal of making a
10 large profit in a short amount of time.

11 In my 18 years of experience working to protect and restore the Clark Fork
12 watershed, I have seen the devastation from a legacy of out-of-state interests
13 making a profit at the expense of our water resources. Decisions made by the
14 upstream owner of Mountain Water certainly have the potential to impact our
15 members and the resource, both of which will be on the receiving end of those
16 decisions. Our concerns are certainly heightened when new out-of-state interests
17 with no track record in Montana or in the water utility industry want to be
18 entrusted with managing a resource that has no replacement.

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

23 A. Because there is little in the way of specific information in the record
24 regarding Carlyle's investment strategy for Park Water and Mountain Water,
25 especially regarding how it intends to make infrastructure investments, the
26 Commission may be interested in having Carlyle provide more specific
27 information asked for in the Notice at Issue (d).

1 **Q. Issue (a)(iv). Mountain Water ratepayers expressed concern that access to**
2 **clean safe drinking water at affordable rates is critical to the public health**
3 **and economic welfare of Missoula. How will Carlyle ensure access to clean**
4 **safe drinking water as the owner of Mountain Water and its water rights?**
5 **Does Carlyle have any future plans for the Rattlesnake Lakes water rights**
6 **and will those water rights stay with the Mountain Water system?**

7 A. Because the Coalition is directly involved in water right management
8 through our water leasing program, I and my staff are aware of the ins and outs of
9 water rights in Montana. Carlyle's response to this issue in the Dove Additional
10 Issue Testimony (p. 4, lines 20-22 – p. 5, lines 1-2) is that "water from the
11 Mountain Water system will not be sold to anyone other than users of the
12 Company's system. Nor will Mountain Water Company's water rights be diverted
13 outside of the Missoula area for use elsewhere." This statement does not provide
14 the Coalition any assurance that Mountain Water, under Carlyle ownership, will
15 not allow or recruit additional large scale commercial users, such as bottling
16 companies, to become users of the system. The Coalition has concerns that one
17 possible way to increase Mountain Water's rate base in a short amount of time
18 could be to attract new large scale customers with the potential to use a significant
19 amount of water. We believe the Commission should be aware of this possibility.

20 **Q. Does this conclude your testimony?**

21 A. Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 9th day of September, 2011, the foregoing ADDITIONAL ISSUE TESTIMONY OF KAREN KNUDSEN ON BEHALF OF THE CLARK FORK COALITION 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)

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

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
bryan.lin@carlyle.com

Jim Nugent
Missoula City Attorney's Office
435 Ryman Street
Missoula, MT 59802
Nugent@ci.missoula.mt.us

Jim Larocque, CFA
The Carlyle Group
520 Madison Ave
New York, NY 10022
jim.larocque@carlyle.com

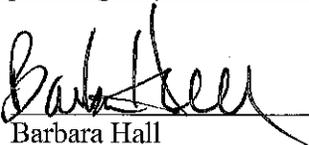
Thorvald A. Nelson
Holland & Hart LLP
6380 South Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111
tnelson@hollandhart.com

William Mercer
Holland & Hart LLP
401 North 31st Street, Suite 1500
P. O. Box 639
Billings, Montana 59103-0639
wwmerc@hollandhart.com

Electronic service only:
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