

**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)	

**Statement of Clark Fork Coalition Regarding
Rebuttal Testimony of John Kappes**

On September 2, 2011, the applicant in this docket, Mountain Water Company (“Mountain Water”), provided rebuttal testimony of Mountain Water’s Co-CEO, Mr. John Kappes. The Coalition is filing this Statement with the Commission to put its position on the record that a large portion of Mr. Kappes’ testimony consists of impermissible legal opinion and/or legal argument that appropriately should be filed with the Commission in the form of a legal brief by Mountain Water’s counsel.

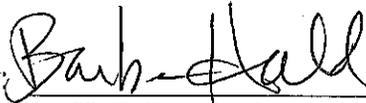
A large portion of Mr. Kappes’ testimony focuses on the legal jurisdiction and authority of the Commission. These matters are purely legal opinion. Mr. Kappes is not an attorney, and even if he was an attorney, providing legal opinion in the form of lay or expert witness testimony is improper. It is clearly the law in Montana, and indeed in most jurisdictions, that a witness may not express an opinion on a conclusion of law. See, e.g., *Heltborg v. Modern Machinery, et al.*, 244 Mont. 24, 29-30, 795 P.2d 954, 957 (1990).

Rather than burdening the Commission’s work load and potentially jeopardizing the quickly approaching hearing date, the Coalition wishes to preserve its objection to Mr. Kappes’ testimony with this Statement rather than by filing a motion to strike. In

the event that Mountain Water moves to admit Mr. Kappes' testimony into the record in this docket, the Coalition will move to strike the offending portions of Mr. Kappes' testimony at that time.

Respectfully submitted this 9th day of September, 2011.

CLARK FORK COALITION

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 9th day of September, 2011, the foregoing STATEMENT OF CLARK FORK COALITION REGARDING REBUTTAL TESTIMONY OF JOHN KAPPES was served via U.S. mail and electronic mail on:

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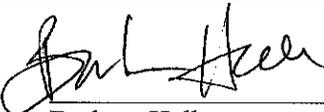
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