

**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)	

**CLARK FORK COALITION'S
POST-HEARING BRIEF**

The Clark Fork Coalition (the “Coalition”) intervened in this proceeding for three reasons. First, we believed that the proposed change in control of Mountain Water Company (“Mountain Water”) to a multinational private equities firm, after over thirty years of ownership by a small family corporation, marks a significant transition in the future management of the company. Second, we sought to ensure that any new owner of Mountain Water is committed to vigilantly protecting our irreplaceable water resources, namely our sole-source aquifer and the Rattlesnake Creek watershed, that are essential to the continued viability of the Missoula community’s well-being. Finally, given the possibility that The Carlyle Group (“Carlyle”) would attempt to quickly maximize investment returns and sell Mountain Water in the not-so-distant future to a similarly-motivated private corporation, we were concerned about an eventual “revolving-door” of out-of-state corporate interests controlling our most precious natural resource.

For the Coalition, and for the greater Missoula community, this proposed sale of our water utility to Carlyle has been a wake-up call. During the last many months, we have fielded calls and visits from community members concerned that the proposed sale means Missoula will become another case study in the world-wide trend toward corporate take-over of municipal water supplies, and that our local aquifer will be just another data point in the globalization of water.

For the past thirty years under Park Water's management, Mountain Water has come to the Commission for one rate increase after another and the people of Missoula have rarely played an active role in those decisions. Despite charging its customers higher rates than most water users in the state pay, Mountain Water is still plagued with significantly aging infrastructure that will only be replaced on the backs of ratepayers. Under any ownership scenario, the Coalition believes that we must pay careful attention to who owns Mountain Water and how it is operated to ensure that the people of Missoula have a voice in how our water is managed. As we have made clear in this proceeding, we believe the collective voice of the Missoula community on matters pertaining to how our drinking water should be managed will be best heard under a public ownership scenario, and we have supported the City of Missoula's (the "City") attempts to position itself as the next owner of Mountain Water.

Given the commitments made by Carlyle in the September 22, 2011 letter agreement with the Coalition, the City and Carlyle (Carlyle Exhibit 3, the "Letter Agreement"), the Coalition believes that Mountain Water is now on a path to public ownership and that our water resources will be secure under a short-term Carlyle-

ownership scenario. Carlyle has acknowledged the City's long-term, legitimate, and continuing interest in acquiring the Mountain Water system for the people of Missoula. (Tr. p. 36, Ins. 10-25 – p. 37, Ins. 1-3.) Carlyle has made commitments regarding Mountain Water's water resources that provide the Coalition with an acceptable level of comfort to support the proposed sale. (Tr. p. 37, Ins. 5-15.) We especially appreciate the commitment made by Carlyle to engage stakeholders in the Missoula community in ratemaking proceedings (tr. p. 46, Ins. 24-25 – p. 47, Ins. 1-2) and to seek consensus from Missoula stakeholders on the best course forward for improving Mountain Water's infrastructure problems (tr. p. 83, Ins. 24-25 – p. 84, Ins. 1-10). We fully expect and look forward to working with Mountain Water throughout Carlyle's ownership to ensure the best possible stewardship of Missoula's water resources and to ensure that public ownership becomes a reality.

A. The Coalition supports the ring-fencing stipulation.

The Coalition is pleased to learn that a stipulation has been reached on ring-fencing conditions among the Montana Consumer Counsel ("MCC"), Mountain Water, Carlyle and the City. We were especially pleased to see a prohibition against Mountain Water disposing of water right assets without authorization from the Commission (Stipulation, proposed condition (h)(a)). Because the Coalition did not take a position on what specific ring-fencing conditions should be included and was not involved in the negotiations that led to the Stipulation, we did not feel it necessary or appropriate to join in the Stipulation.

- B. The Parties have agreed not to brief arguments on the Commission's jurisdictional authority or authority to impose conditions in this proceeding.

The Commission's jurisdiction over this proposed transaction and authority to inquire into certain matters and impose conditions on its approval have been contested by Mountain Water and Carlyle throughout this proceeding. However, because Mountain Water, Carlyle, MCC and the City have agreed to certain conditions in the Stipulation, the Parties have agreed among themselves not to present arguments herein on the Commission's jurisdictional or conditional authority in this matter.

The Coalition does not intend for its agreement to not brief these issues to be construed as accepting the position of any other party in this proceeding regarding these issues. Nor should it be implied that the Coalition accepts any particular legal theory regarding the Commission's jurisdiction and conditioning authority.

- C. A denial of the proposed transaction will result in long-term uncertainty over the future of Mountain Water and will risk losing altogether the possibility of public ownership.

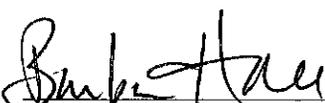
We have received phone calls, emails, and visits from many of our members asking why we are not urging the Commission to deny the sale or require Mountain Water to be sold the City. Our answer has been that a denial of the sale would not move us forward toward local control of our water utility through public ownership. In addition, while we are not taking a position on whether the Commission has authority to do so, we believe a Commission requirement that the utility be sold to the City will be met with intense resistance and an uncertain outcome. We understand that the City has attempted to acquire Mountain Water unsuccessfully from its current owner, and it does

not appear that Mountain Water will ever be for sale to the City under the existing ownership regime. If the Commission denies the proposed transaction, we will be back in front of you in the upcoming years to vet another prospective purchaser that has been selected by Sam Wheeler, which in all likelihood will not be the City. So, rather than seeking to preserve the status quo, the Coalition has agreed to support Carlyle's bid primarily because of the promises made by Carlyle in the Letter Agreement.

While there is uncertainty and risk with either approach, we believe that this proceeding has sparked an important community conversation about who owns and controls our water. This conversation will not end with the Commission's decision in this proceeding. An expectation has now been set that Mountain Water will eventually be in public hands and the public will see to it that this expectation is met.

Respectfully submitted this 31st day of October, 2011.

CLARK FORK COALITION

By: 
Barbara Hall, Legal Director
Clark Fork Coalition
140 S 4th 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 31st day of October, 2011, the forgoing CLARK FORK COALITION'S POST HEARING BRIEF 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
jnugent@ci.missoula.mt.us

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

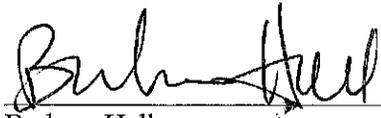
Thorvald A. Nelson
Holland & Hart LLP
6380 South Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111
tnelson@hollandhart.com

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:
Inbuchanan@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