DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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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

FACT SHEET

TO: Commissioners, Dennis, Justin

FROM: Leroy and Kate

DATE: September 19, 2011

RE: Docket D2011.1.8, Mountain Water/Carlyle Application for Approval of Sale and Transfer of Stock in Park Water Co.

Prior to a public hearing on a docketed matter before the Public Service Commission, Regulatory Division staff prepare a Fact Sheet that summarizes the application and the prefiled testimony. The hearing in this docket is scheduled to begin Monday, September 26, in Missoula.

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 24, 2011, Mountain Water Co. (Mountain) submitted to the Montana Public Service Commission (Commission) a Consolidated Petition for Declaratory Ruling and Application for Approval of Sale and Transfer of Stock in Park Water Company (Park). In the filing, Mountain requested the Commission issue declaratory rulings that there is no basis for the Commission to claim implied power to review the sale and transfer of Park stock to Carlyle Infrastructure Partners, LP (Carlyle) and that, even if it has the power to review and approve the sale and transfer, the Commission decline to exercise its jurisdiction. Mountain further requested, if the Commission asserts jurisdiction over the sale and transfer of Park stock to Carlyle, that the Commission approve the transaction.

A Notice of Application and Intervention Deadline was issued by the Commission on February 1, 2011. The Commission subsequently granted intervention to: Montana Consumer

Counsel (MCC); Carlyle; Clark Fork Coalition (CFC); and the City of Missoula (City).

The Commission declined to issue the requested declaratory rulings on June 28, 2011.

On May 17, 2011, the Commission issued Procedural Order No. 7149 establishing a schedule for consideration of the application. On June 30, 2011, the Commission granted MCC's and CFC's joint request for an extension of the deadline for filing intervenor response testimony due to discovery delays and established July 29, 2011, as the new deadline. The procedural schedule was further amended by the Notice of Commission Action issued July 20, 2011. The Commission issued Amended Procedural Order No. 7149b on August 3, 2011, which amended the deadline for identification of additional issues and set a hearing date of September 26, 2011. On August 11, 2011, the Commission issued a Notice of Additional Issues and Procedural Schedule. A Notice of Public Hearing was issued September 2, 2011.

APPLICANT'S PETITION

Mountain has owned and operated the Missoula water utility since Mountain was formed to acquire the utility from the Montana Power Company in 1978. The petition described Mountain as a closely-held Montana corporation wholly owned by Park, which is a closely-held California corporation almost entirely owned by Henry Wheeler and his family and subject to the jurisdiction of the California Public Utilities Commission. According to the petition, on December 21, 2010, Park entered into a merger agreement pursuant to which a wholly-owned subsidiary of Western Water Holdings, LLC, a Delaware limited liability company, controlled by Carlyle Infrastructure Partners Western Water, LP, will merge with and into Park. Park will continue as the surviving corporation as a wholly-owned subsidiary of Western Water. Carlyle Infrastructure Partners, LP, owns Carlyle Infrastructure Partners Western Water, LP. The Carlyle Group, a large privately-owned investment firm, created and manages the entities comprising Carlyle Infrastructure. Mountain maintained that the sale of Park's stock to Carlyle does not affect the ownership of Mountain or of Mountain's utility assets because, after the merger, Mountain will still be owned by Park.

Mountain attached to its filing a copy of the joint application for approval of the sale that the merging companies filed with the California PUC (California Application). The merger agreement was included with the application as Exhibit A. The merger agreement calls for Western Water Holdings to acquire 100 percent of Park's outstanding stock for a total purchase

price of $102 million, plus an estimated $1.5 million in closing costs. Park's outstanding debt of approximately $53 million will remain on Park's balance sheet. In response to a data request regarding Carlyle's plans for recovering its investment, Carlyle responded that it does not intend to seek rate recovery of any acquisition premium from Park's customers, including the customers of Mountain. According to Carlyle, the acquisition premium may be wholly or partly recovered in a future sale of Park stock to another owner. (Carlyle Response to PSC-8e.)

According to the California Application, the proposed transaction will have no adverse impact on utility operations or rates. Carlyle has a few existing infrastructure investments (waste/wastewater recycling in Texas, operation of highway service plazas in Connecticut, a lift-on/lift-off container operation for trucks and trains, and school bus transportation in Illinois), but none is a regulated public water utility. In Mountain's application, the utility asserted that the proposed Carlyle/Park transaction will have no impact on the ownership of Mountain, on Mountain's facilities, service or operations, on the Commission's jurisdiction, or on rates. Mountain asserted that Park's access to the capital markets could be enhanced by its access to Carlyle's resources.

SUMMARY OF APPLICANT'S PREFILED DIRECT TESTIMONY

Robert Dove (Carlyle)

Robert Dove is a managing director of the Carlyle Group, co-head of Carlyle Infrastructure Partners, LP, and board chairman of Western Water. He testified that Carlyle intends for Mountain and its management team to continue as they are today, resulting in no change to the service received by customers. He said Carlyle will not sell water from the Mountain system to any persons other than Mountain customers and added that Mountain's water rights will not be diverted elsewhere.

According to Dove, Carlyle intends to keep Park and its subsidiaries, including Mountain, for a long period of time and invest capital into the system as necessary. He explained that Carlyle will not try to quickly increase the value of the assets by increasing revenues or cutting expenses in order to sell the company for a large profit. Rather, he said Carlyle's investors expect to acquire low-risk assets that offer steady, predictable returns.

Dove identified Mountain's water main leakage problem as an area of concern that Carlyle will address in consultation with the Commission, customers and other stakeholders. He

acknowledged that infrastructure replacement will affect rates, but said Carlyle is aware of the need to balance infrastructure improvements with reasonable rates. Dove said Carlyle will perform cost-benefit analyses of any plans to improve Mountain's infrastructure.

Dove said Carlyle will also work with the Commission to promote rate designs and educational efforts that could accelerate the migration of existing flat-rate customers to metered service.

Regarding Carlyle's commitment to Missoula, Dove said Carlyle would protect the quality of Missoula's water, strive to keep rates reasonable, and be an active member of the community.

SUMMARY OF INTERVENORS' PREFILED RESPONSE TESTIMONY

Dr. John Wilson (MCC)

MCC consultant and economist Dr. John Wilson said the Commission should not be overly concerned about Carlyle's lack of experience in the water utility industry because Carlyle intends to retain Park's and Mountain's existing management and operate the utility without significant changes. However, Wilson did identify several concerns. One MCC concern is that Carlyle's business plan for Mountain apparently is to increase the utility's investment in infrastructure improvements/replacement, which will increase rate base and lead to rate increases. Wilson referred to an October 2010 internal Carlyle memo, provided in Carlyle's response to data request MCC-004, that summarizes the financial analysis that led to Carlyle's acquisition of Park.[1] The memo includes information about Carlyle's eventual exit from its investment in Park and the expected annual internal rate of return, a confidential number which Wilson termed "very large." Wilson said the memo does not indicate that Carlyle plans to recover the acquisition premium through dividend payouts, but rather that Carlyle intends to increase the utility's investment in infrastructure. According to Wilson, more rate base investment may not be a concern if the investments are justified by a benefit/cost analysis; however, he advised the Commission to monitor the utility closely if the transaction is approved. He recalled that leaky water mains were an issue in the last Mountain rate case, and Mountain's

[1] The "Investment Committee Memo," dated October 7, 2010, was initially provided on an entirely confidential basis in Carlyle's response to MCC-004(b), but a redacted version of the memo was subsequently submitted in Carlyle's 3rd Supplemental Response to MCC-004(b) on September 16, 2011.

testimony in that case was that the estimated cost of the water loss in 2009 was $366,000, but to replace all of Mountain's water mains over 40 years old would cost $128.6 million.

Wilson questioned Carlyle's assertion that it intends to be a long-term owner of Mountain because the Carlyle memo indicates that Carlyle will build up the utility's rate base and market value and then exit this investment after five years. Wilson said Carlyle in any case is a limited life entity that is scheduled to expire in 2019, which could be extended to 2021. (See Carlyle response to PSC-014(e).)

Wilson was also skeptical of the value of the "right of first refusal" (ROFR) that Park promised to the City of Missoula in a 1997 letter, since reaffirmed by Carlyle, in the event Mountain is for sale. (A copy of the 1997 letter, which was provided by the City as Exhibit A to City DR-008 to Carlyle, is attached to this fact sheet.) He referred again to the Carlyle internal memo, which advises that the letter clearly states the ROFR would apply only if Mountain were proposed to be sold on its own, separate from Park.

Wilson proposed several provisions to "ring-fence" Mountain's finances and operations, which he argued are needed to protect Mountain's ratepayers in light of Carlyle's apparent growth plans and potential inter-corporate transactions and financing. He said the major credit rating agencies support utility ring-fencing provisions, especially limits on dividend payments, affiliate loans, and capital structure, to strengthen utilities' financial ratings. Wilson recommended the Commission require implementation of the following ring-fencing conditions:

a. The Commission or its agents may audit the accounts of Mountain, its parent and its subsidiaries and affiliates which are the bases for charges to, or transfers from Mountain or its parent. Mountain shall cooperate fully with such Commission audits.

b. Mountain and its parent shall provide the Commission access to all books of account, as well as all documents, data and records of their affiliated interests, which pertain to transactions between Mountain or its parent and its affiliated interests.

c. Mountain shall maintain its own financial and business operating accounts, separate from its parent's and its affiliates' accounts. All financial and operating books and records of Mountain and those of its parent and subsidiaries shall be completely and immediately accessible at Missoula, Montana.

d. There is no provision that Mountain shall maintain its own debt, in recognition of the historic practice of Mountain's parent (Park) issuing debt on a consolidated basis. If these financing circumstances change or if debt is to be incurred for acquisition purposes, appropriate debt ring-fencing conditions may be required. If, at any time, Mountain's parent or affiliates intend to issue debt for the purpose of acquiring other companies, those financing intentions

must be filed with the Commission at least 120 days in advance of any such financing so that the Commission may implement appropriate debt ring-fencing provisions.

e. Mountain shall not make any distribution to its parent or to any affiliates that would cause Mountain's equity capital to fall below 45 percent of Mountain's net utility plant balance (utility plant in service less accumulated depreciation and amortization) without Commission approval. Also, Park shall maintain a capital structure equity percentage of at least 45 percent, on a Park-and-subsidiaries-consolidated basis, except to the extent that the Commission imputes a lower equity percentage for ratemaking purposes. The Commission may re-examine these minimum common equity percentages as financial conditions change, and may determine that they be adjusted.

f. Mountain and its parent shall provide the Commission unrestricted access to all written information provided to common stock, bond, or bond rating analysts, directly or indirectly pertains to Mountain, its parent, or any affiliate that exercises influence or control over Mountain. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to any written and printed material, audio and video tapes, computer disks and electronically stored information. Nothing in this condition shall be deemed to be a waiver of Mountain's right to seek protection of the information.

g. Unless such a disclosure is determined to be unlawful in an opinion of counsel provided to the Commission, Mountain shall notify the Commission of:

1. Its intention to transfer more than 5 percent of Mountain's retained earnings to its parent or subsidiaries or affiliates (or any combination thereof) over a six-month period, at least 60 days before such transfer begins.

2. Its intention to declare a special cash dividend from Mountain, at least 30 days before declaring such dividend.

3. Its most recent regular common stock cash dividend from Mountain within 10 days after declaring such dividend.

h. Mountain's parent, subsidiaries and affiliates shall not allocate to or directly charge Mountain expenses not specifically authorized by the Commission to be so allocated or directly charged.

i. Without the prior and specific authorization of the Commission, neither Mountain nor Park shall transfer, merge, sell, lease, encumber or otherwise dispose of Mountain's utility property which (a) has a net book value in excess of $1 million, which is included in Montana rate base, and (b) has costs recovered through rates regulated by the Commission.

j. The following principles shall apply to any new financing involving utility property of Mountain which (a) is included in Montana rate base, or (b) has costs recovered through Commission-regulated rates:

> 1. Proceeds of debt that is secured by utility assets much be used for utility purposes only;
>
> 2. If any utility assets that are pledged or encumbered to secure debt issuances are divested, the debt must "follow" the assets and be divested as well;
>
> 3. If utility assets financed by unsecured debt are divested to another entity, then a proportionate share of the debt must also be divested;
>
> 4. if assets financed with unsecured debt are divested, the associated unsecured debt must follow those assets. Specifically, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt likewise must "follow" the non-utility assets and if the non-utility assets are divested, then a proportionate share of the debt must follow the associated non-utility assets by being divested as well. The term "divested" in this context includes moving assets to both affiliated and non-affiliated corporations.

k. If Mountain or its parent participates in a "cash management pool" or "treasury pool" arrangement, or otherwise engages in intra-corporate financing with affiliates, Mountain shall file for Commission approval a cash management plan incorporating best practices for protecting Mountain's and its parent's credit from the risks associated with participating in a shared money pool with such affiliates.

Wilson suggested the Commission may also want to adopt, in addition to his ring-fencing conditions, the California approval conditions that Carlyle agreed to in the California PUC proceeding. (See Exhibit __JW-1, attached to Wilson's testimony.)

<u>Charles McKenna Rial (CFC)</u>

Charles Rial, principal of Stevensville-based Bass Creek Advisors, Ltd., stated that CFC's main concern is that the proposed acquisition of Park by Carlyle will lead, after the expected Carlyle ownership of 4 to 7 years, to a series of short-to-medium-term ownerships of Park by other private equity firms that may not have the what Rial said is the quality reputation of Carlyle. Rial said that CFC does not consider Carlyle ownership of Park to be a risk, but seeks in this proceeding to mitigate the longer-term risk posed by likely subsequent owners. Rial recommended the Commission condition approval of the Carlyle-Park transaction upon the

City's receipt from Carlyle of a ROFR or similar agreement to buy Mountain from Carlyle when Carlyle exits its Park ownership.

Rial stated that any sale of Mountain to the City should be at fair market value and take into consideration any reduction of value to Carlyle by selling Park without Mountain Water. Rial recommended that the City and Carlyle negotiate the terms of any sale agreement, but suggested that one simple mechanism for structuring the recommended condition and valuing Mountain would be to require both the City and Carlyle to obtain appraisals of Mountain' value and, if there is a difference between those appraisals, then have those two appraisers agree on a third whose valuation would be final.

John Engen (City)

John Engen, Mayor of Missoula, testified on behalf of the City that the City would like to purchase, own and operate Mountain. Engen commented that clean, safe drinking water is a fundamental resource and should be provided by a municipally-owned public utility. He said the City has decades of experience owing public utilities such as its wastewater treatment facility.

According to Engen, reasons for City ownership include providing more accountability and accessibility. He said there is a higher level of accountability to consumers when utilities are publicly owned. He asserted that municipal utilities are not profit-motivated and, therefore, typically cost less to operate and maintain, are more interested in conservation than a private utility, and are less likely to be sold. Engen stated that the City has some knowledge of Mountain's operations because the City works cooperatively with Mountain in several areas. Engen concluded by stating that the City has the financial capability and political will to purchase, operate and maintain Mountain. He recommended that, if the proposed Carlyle-Park transaction is approved, the City should be afforded an opportunity to negotiate an agreement with Carlyle to purchase Mountain at the time Carlyle decides to sell either Mountain or Park.

SUMMARY OF APPLICANT'S PREFILED REBUTTAL TESTIMONY

John Kappes (Mountain)

John Kappes, Co-CEO of Mountain, emphasized that the City's and CFC's advocacy of public ownership of Mountain is misplaced because the Commission does not have the authority to decide that Mountain should be transferred from private ownership by Park to City ownership.

He said that, no matter who owns the stock of Mountain's corporate parent Park, Mountain's status as a privately owned, regulated utility is unchanged. Kappes asserted that Park's stock transaction with Carlyle is subject to the jurisdiction of the California PUC, and that Mountain, which is subject to Montana PSC regulation, is not proposing an action of any kind.

In response to Engen's testimony on behalf of the City, Kappes argued that, if the City wants to own or acquire Mountain against the utility's wishes, the City must initiate and win an eminent domain proceeding. He recalled that the City tried to do so in the 1980s, but its efforts were rejected by Montana courts. Kappes also disagreed with the City's contention that it would serve and protect consumers better than Mountain does under the Commission's regulatory oversight. He said that Commission regulation is rigorous, consumer-oriented, and provides incentives for private utilities to ensure they provide service in a cost-effective manner. He added that the MCC protects consumer interests while Mountain is PSC-regulated.

In response to Rial's testimony on behalf of CFC, Kappes reiterated that the Commission does not have authority to require a sale of Mountain to the City. He rejected what he said was Rial's attempt to expand Mountain's ROFR to the City to make it apply to a sale of Park.

According to Kappes, the Commission should clearly and frankly tell both CFC and the City that the Commission has no authority to provide the relief they have requested in this case.

In response to MCC witness Wilson's concern that Carlyle plans to invest aggressively in main replacements, which will increase rates, Kappes said he agreed with Wilson that water mains should be replaced only when it is cost-effective to do so and that he had discussed with Carlyle the need to moderate its main replacement plans. Kappes pledged that Mountain will not conduct a main replacement program that is not cost-effective for customers and not fully supported by the Commission. He noted that when a former Commission pressed Mountain to more aggressively pursue main replacement, it was Mountain that urged moderation because of the rate impact.

Regarding Wilson's ring-fencing recommendations, Kappes responded that the proposed transaction between Park and Carlyle is a sale of stock of a non-jurisdictional entity (Park), not the acquisition of a jurisdictional utility by a non-jurisdictional entity. Therefore, he argued, the ring-fencing provisions proposed by Wilson might appropriately be considered by the California PUC as the regulator of Park, but not by this Commission. Kappes argued that the jurisdictional

utility, Mountain, has been owned by a non-jurisdictional entity, Park, for many years and the Commission has successfully regulated it without any ring-fencing provisions for many years.

Kappes further argued that some of Wilson's ring-fencing proposals, such as specifying a mandatory capital structure for Park and requiring Commission approval of Park's debt issuances, are actually attempts to directly regulate Park. He observed that the debt issuance restriction is not within the Commission's authority in any case when it concerns a water utility.

Kappes included his redlined proposed revisions to Wilson's ring-fencing conditions. Kappes' proposed revisions to the Wilson's recommended conditions are summarized below:

> Proposed Conditions (a) and (b) – revise to ensure that the auditing and access to books provisions do not extend to unregulated Carlyle.
>
> Proposed Condition (c) – eliminate requirement that Park's accounting records and systems be available in Missoula, which is contrary to current practice of auditing Park's records at its California location and Mountain's records in Missoula.
>
> Proposed Condition (d) – eliminate entirely this proposed condition regarding debt issuances because the Commission has no authority to regulate them for water utilities.
>
> Proposed Condition (e) – eliminate the parts that specify a mandatory capital structure for Park.
>
> Proposed Condition (f) – eliminate entirely this proposed condition requiring access to information provided by Park and/or Mountain to stock and bond analysts because neither company is publicly traded.
>
> Proposed Condition (g) – revise the provision to maintain its intent of providing the Commission with advance notice of any upstream dividends from Mountain to Park, while ensuring it does not apply to cash management agreements as well.
>
> Proposed Condition (h) – eliminate entirely this provision that prohibits Mountain's parent or affiliates from allocating any of Mountain's expenses in a way that was not specifically authorized by the PSC. Kappes argued the Commission has never prescribed a system of cost allocation for any regulated utility, but rather the Commission and MCC examine all cost allocations in rate cases.
>
> Proposed Condition (i) – revise to delete portions that apply to non-jurisdictional Park or that improperly allow Commission to authorize water utility security issues.
>
> Proposed Condition (j) – eliminate entirely this provision because, with the recent exception of the ARRA-financed main replacement, all debt capital is raised by Park, not Mountain.

Proposed Condition (k) – revise to reflect there is an existing cash management agreement between Mountain and Park and focus the provision on changes to that agreement.

SUMMARY OF APPLICANT'S PREFILED ADDITIONAL ISSUES TESTIMONY

Robert Dove (Carlyle)

Dove addressed the additional issues that were identified by the Commission as follows:

Issue(a)(i) – Local control and security of Missoula's drinking water. Dove said that because Carlyle intends for Mountain and its management team to continue unchanged, there will be no changes in local control, water rights or security of the resource.

Issue (a)(ii) – Carlyle's qualifications to own and operate a regulated public utility. Dove reiterated that the same qualified and experienced people who are managing and operating Mountain and Park today will continue to do so. Carlyle will not be directly involved in Mountain's daily operations, but the three Carlyle members of Park's board of directors will provide strategic guidance to Park.

Issue (a)(iii) - Balancing Carlyle's objective of maximizing returns with the requirement that rates must be just and reasonable. Dove testified that Park and Mountain have always been for-profit, regulated utilities providing reasonably priced service while trying to earn a reasonable return for investors. He said a change in Mountain's upstream owner will not change how it operates as a regulated investor-owned utility.

Issue (a)(iv) – Ensuring access to clean, safe drinking water and preservation of water rights. Dove referred to his direct testimony in which he said Mountain's water will not be sold off-system and Mountain's water rights will not be diverted for use elsewhere.

Issue (a)(v) – Carlyle's ethics policies, investigations. Dove said Carlyle conducts its business in accordance with investment guidelines developed in consultation with an environmental, social and governmental expert and drawing on internationally recognized norms, including the U.N. Principles for Responsible Investment and the U.N. Global Compact. He attached to his testimony a copy of Carlyle's 2010 report on its corporate citizenship. (Exh. RD-1.) Dove added that Carlyle, as a signatory to the Public Pension Fund Code of Conduct, provides on its website information regarding backgrounds of key Carlyle personnel, corporate political contributions, and certain investment fund fees and expenses. He said Carlyle received two corporate citizenship awards in 2010. Finally, according to Dove, Carlyle is not aware of

any material violations of federal, state or local laws by Carlyle Infrastructure or any of its portfolio companies (except for minor notices of environmental violations assessed to Synagro Technologies, the incidence of which he said Carlyle is attempting to reduce).

Issue (b)(ii) – Carlyle's position on ROFR. Dove responded that the Commission has no legal authority to require Park or Carlyle to sell Mountain to the City or to establish a sale condition to that effect. He reiterated that Carlyle will honor the August 1997 letter from Mountain to the City.

Issue (c) – appropriate standard for review of the transaction. Dove argued this is a legal issue that will be addressed in either a legal pleading or brief in this docket.

Issue (d) – Impact of Carlyle's business plan on customers. According to Dove, because Carlyle's investors seek low-risk investments that produce a predictable rate of return, maintaining reasonable rates and adequate service is a key part of the business plan. He said Carlyle plans to consult with the Commission, customers and other stakeholders to develop ways to address Mountain's leaking infrastructure and how and when to invest capital to fix the problem. Dove testified Carlyle is aware that infrastructure improvements must be balanced with keeping rates reasonable and affordable and, to that end, will analyze the long-term benefits of infrastructure investment compared to short- and long-term rate impacts.

SUMMARY OF CFC PREFILED ADDITIONAL ISSUES TESTIMONY

Karen Knudson (CFC)

Karen Knudson, executive director of CFC, said the additional issues identified by the Commission highlight the issues CFC is concerned about in this proceeding, such as the perceived remoteness and inaccessibility of Carlyle, the question of local control, and Carlyle's motivation and intentions.

Regarding the issue of local control, Knudson said that, despite Carlyle's stated intention to retain Mountain's current management, it is unclear whether any Mountain representative will serve on the Park board post-merger. She said CFC is also concerned about the effect on local control of Carlyle's recently announced plan for an initial public offering, Carlyle's short investment horizon, and Mountain's "outlier" status as the only Park-owned utility regulated in a different jurisdiction. Knudson said the lack of Commission parent-level management oversight

jeopardizes the security of Missoula's drinking water resources, a concern that she claimed is heightened by Carlyle's lack of experience in Montana or in the water utility industry.

Knudson testified that CFC is concerned that Carlyle has not provided any assurance that Mountain will not add large-scale commercial users, such as bottling companies, to the system, which Knudson said is a way Carlyle could increase Mountain's rate base.

According to Knudson, CFC opposes approval of the transaction unless Carlyle provides these assurances: (1) designation of the Rattlesnake Creek watershed as an emergency backup water supply only; (2) commitment to keep Missoula water in the Missoula-area watershed; and (3) granting of a ROFR to the City to purchase Mountain and/or any other assets of Mountain.

Attachment (Exhibit A to City DR-008)

Jim August

MOUNTAIN WATER COMPANY

P. O. Box 4826 • 1345 West Broadway • Missoula, Montana 59806 • Phone (406) 721-5570

ARVID M. HILLER
V.P. and General Manager
(406) 721-5570

RECEIVED
SEP 25 1997
MAYOR'S OFFICE
CITY OF MISSOULA

August 14, 1997

Mayor Mike Kadas
MISSOULA CITY HALL
435 Ryman
Missoula, MT 59802

RE: Mountain Water Company

Dear Mayor Kadas:

In our recent discussion, reference was once again made concerning the City's desire to secure an opportunity to purchase the Missoula Water System if the company decided it wished to sell.

This is to affirm our attorney's statement made in his letter to you, dated July 18, 1997 indicating "...that should Mountain Water determine to sell its Missoula Water System or to sell all the stock of Mountain Water, the City will be notified of that decision prior to any such sale."

It is recognized that in such an event, it would be necessary for the City to have a reasonable time to determine whether it wished to purchase the system, and as a consequence, the City may anticipate being granted a minimum of 90 days after the notice of the Company's intention to sell and the Company agrees that it would not sell the system to any third party during such period or an extension of that period if granted by Mountain Water Company.

Mountain Water Company is a Montana corporation, a wholly owned subsidiary of Park Water Company. It is conceivable that in the future Park Water Company may be involved in mergers, consolidations, reorganizations, restructuring, etc., which by their very nature would involve the stock and the assets of Mountain Water. This letter should not be interpreted to apply to any of such situations.

Respectfully submitted,

Arvid M. Hiller

Arvid M. Hiller
Vice President and General Manager

H.H. Wheeler, Jr.

H.H. Wheeler, Jr.
President

mwcity
c Ms Janet Stevens

EXHIBIT
A