

MEETING AGENDA
CITY OF EAST HELENA
CITY HALL – 306 EAST MAIN - ROOM 110
SPECIAL COUNCIL MEETING: 6:00 PM
DATE: THURSDAY, SEPTEMBER 25, 2025
JOIN ZOOM MEETING: <https://us06web.zoom.us/j/3787705872>
CONFERENCE CALL-IN: 1-253-205-0468 MEETING ID: 378 770 5872

MEETING CALLED TO ORDER: Mayor Harris

PLEDGE OF ALLEGIANCE: Councilmember Ferguson

PUBLIC COMMENTS: Note: This time is set aside for comments from the public on matters that are not on the meeting agenda. Public comments will be taken on agenda items prior to a motion. All public comments will be limited to a reasonable duration. Prior to your comments, please state your name and address in an audible tone of voice for the record.

NEW BUSINESS:

1. Discussion on City of East Helena Water Rights in Response to the Letter from Lieutenant Governor Juras – Mayor Harris
Action: Approve/Deny/Table

MEETING SCHEDULE:

1. East Helena City Council Meeting, Tuesday, October 7, 6:30 p.m., City Hall Rm 110
2. East Helena City Council Meeting, Tuesday, October 21, 6:30 p.m., City Hall Rm 110

ADJOURNMENT: Mayor Harris

ADA NOTICE

The City of East Helena is committed to providing access to persons with disabilities for its meetings, in compliance with Title II of the Americans with Disabilities Act and the Montana Human Rights Act. The city will not exclude people with disabilities from participating in its meetings, or otherwise deny them the City's services, programs, or activities. Persons with disabilities requiring accommodations to participate in the City's meetings, services, programs, or activities should contact the City Clerk as soon as possible to allow sufficient time to arrange for the requested accommodation, at any of the following:

(406) 227-5321 or TTY Relay Service 1-800-253-4091 or 711

cityclerk@easthelenamt.us - 306 East Main Street, P.O. Box 1170, East Helena, MT 59635

City Clerk

From: City Clerk
Sent: Monday, September 15, 2025 2:49 PM
To: Kevin Ore
Subject: FW: Prickly Pear Creek Water Rights
Attachments: 9.15.25 Ltr to Mayor Harris.pdf; METG-COEH Letter Agreement Regarding EH Water Rights (11-4-2024).pdf

From: Juras, Kristen <Kristen.Juras@mt.gov>
Sent: Monday, September 15, 2025 2:24 PM
To: Kelly Harris <kharris@easthelenamt.us>; City Clerk <cityclerk@easthelenamt.us>
Cc: Schenk, Bill <BSchenk@mt.gov>; Rechkoff, Kevin <Kevin.Rechkoff@mt.gov>; Meredith, Rachel <Rachel.Meredith@mt.gov>; Heggem, Chris <Christine.Heggem@mt.gov>; Hausrath, Katherine <KHausrath@mt.gov>; Martin, Douglas <dougmartin@mt.gov>
Subject: [EXTERNAL] Prickly Pear Creek Water Rights

Mayor Harris, I am attaching a letter setting forth the State's final effort to resolve the Prickly Pear Creek water rights presently held in trust by the Montana Environmental Custodial Trust. Also attached is the original offer dated November 4, 2024, which is referenced in my letter.

As noted in my letter, if you agree to the terms set forth in the initial November 4, 2024 offer, please sign, date, and return the executed document to the parties indicated in the November 4, 2024 letter no later than October 1, 2025.

Kristen Juras
Lieutenant Governor
State of Montana
406-444-5550

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

September 15, 2025

Kelly Harris, Mayor
City of East Helena
PO Box 1170
East Helena, Montana 59635

Re: Prickly Pear Creek Water Rights

Mayor Harris,

Thank you for meeting with us in July to discuss Prickly Pear Creek water rights presently held by the Montana Environmental Custodial Trust ("MECT").

In November 2024, the Montana Environmental Trust Group ("METG") wrote to you, notifying you of the decision made by the State of Montana and the United States Environmental Protection Agency (collectively "Beneficiaries") regarding the transfer of MECT-owned water rights to the City of East Helena ("City") and the Montana Department of Fish, Wildlife and Parks ("FWP"). As stated in that letter, the Beneficiaries offered the City approximately 40% of the industrial rights, in addition to other rights, to mitigate impacts from future groundwater developments. That letter also stated that the offer was not subject to negotiation. The City ultimately declined this offer.

Since November 2024, we have met several times. Each time, the City has stated that the amount of water offered is not enough to offset future development. This administration is deeply aware of Montana's need for affordable housing and of the water demands associated with development. That is why we have worked tirelessly with task forces and stakeholder groups to identify development opportunities and improve application and review processes associated with development. While great strides have been made on both fronts, more work remains to make homeownership attainable for Montanans across our state.

The State of Montana remains firm in the initial offer conveyed to the City in November 2024. While growing cities like East Helena will undoubtedly have future water needs, the State is also keenly aware of the need to protect instream flows for fisheries, especially given development pressures. Given the purposes of the MECT, the November 2024 proposal was a reasonable offer that addressed, albeit partially, both needs.

Mayor Harris
September 15, 2025
Page 2

If the City wishes to accept the November 2024 offer, the State is amenable and the City should respond as directed in that offer. If the City has not responded accordingly by October 1, 2025, the State will move forward with a transfer to MFWP.

Sincerely,

A handwritten signature in black ink that reads "Kristen Juras". The script is cursive and fluid, with the first name "Kristen" and last name "Juras" clearly legible.

Kristen Juras
Lieutenant Governor



Montana Environmental Trust Group, LLC
Trustee of the Montana Environmental Custodial Trust
PO Box 1189, Helena, Montana 59624
Telephone: (617) 448-9762

By Electronic Mail

November 4, 2024

The Honorable Kelly Harris, Mayor
East Helena City Council
City of East Helena
PO Box 1170
East Helena, MT 59635

Re: Transfers of East Helena Water Rights

Dear Mayor Harris and City of East Helena Councilmembers,

By this letter, the Montana Environmental Trust Group, LLC (METG), not individually but solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust (Custodial Trust), respectfully notifies the City of East Helena (City) of the decisions made by the State of Montana (acting by and through the Montana Department of Environmental Quality [MDEQ] and the Montana Natural Resources Damage Program [NRDP]) and the United States Environmental Protection Agency (EPA) (collectively, the Beneficiaries) regarding their willingness to approve the transfer of the METG-owned East Helena water rights to the City and the Montana Department of Fish, Wildlife and Parks (FWP) as enumerated in Attachment 1, subject to the terms set forth below (the Transfers).

The Beneficiaries' decision concerning approval of the Transfers was issued in response to the City's July 3, 2024 letter to Montana Lt. Governor Kristen Juras (enclosed here as Attachment 2) requesting that a portion of METG's industrial water rights be transferred to the City to mitigate future municipal water supply demands rather than to FWP for conversion to instream flow. To address the City's request, the Beneficiaries have reported that they worked with FWP and the Montana Governor's Office regarding the apportionment of the water rights between the City and FWP to maximize the benefit to aquatic habitat while also addressing the City's concerns. As shown in Attachment 1, (i) $\pm 60\%$ of the industrial rights would be transferred to FWP for conversion to instream flow; (ii) $\pm 40\%$ of the industrial rights would go to the City to mitigate impacts from future groundwater developments; (iii) all Prickly Pear Creek irrigation rights and associated stock rights would be transferred to FWP for conversion to instream flow; and (iv) the McClellan Creek irrigation rights and groundwater stock and domestic rights would be transferred to the City to assist in meeting its future water demands.

The Honorable Kelly Harris, Mayor
East Helena City Council
November 4, 2024

The Beneficiaries' approval of the Transfers is subject to the following conditions.

1. FWP and the City will agree not to object to each other's change applications once they are filed with the Montana Department of Natural Resources and Conservation. These provisions are memorialized as Covenants Not To Object in the Quitclaim Deeds effecting the Transfers to (i) the City (see Exhibit A, Section 6 in the attached Quitclaim Deed from the Custodial Trust to the City included here as Attachment 3), and (ii) FWP (see Exhibit A, Section 4 of the attached Quitclaim Deed from the Custodial Trust to FWP included here as Attachment 4).
2. The City and FWP will agree not to object to the Transfers, including all Transfers to the City and FWP set forth in Attachment 1).
3. The City and FWP will agree to publicly support each other in their efforts to obtain approvals of their water rights acquisitions from their respective board, commission, or council.

Given the need to resolve transfer of the Custodial Trust's East Helena water rights, the Beneficiaries' decision concerning approval of the Transfers as described in this letter is not subject to negotiation. If the City has any questions about this matter, the Beneficiaries must be included in any communications with the Custodial Trust, whether written or verbal. Written communications should include: (i) Bridget Williams at williams.bridget@epa.gov and Max Greenblum at greenblum.max@epa.gov for EPA; (ii) Katherine Hausrath at khausrath@mt.gov for NRDP; (iii) Jessica Wilkerson at jessica.wilkerson@mt.gov for MDEQ; and (iv) Cindy Brooks at cb@g-etg.com and Erica Menard at em@g-etg.com for the Custodial Trust.

If the City wishes to accept the water rights designated for transfer as described in Attachment 1 (subject to the requirements set forth in §§ 1, 2, and 3 above), please date and countersign where indicated below and return a fully executed copy of this letter via email to the Custodial Trust and the above-referenced contacts for EPA, NRDP, and MDEQ. We respectfully request the City's response by **December 16, 2024**.

Sincerely,

Montana Environmental Trust Group, LLC,
Trustee of the Montana Environmental Custodial Trust
By: Greenfield Environmental Trust Group, Inc., Member

Cynthia Brooks, President

The Honorable Kelly Harris, Mayor
East Helena City Council
November 4, 2024

Accepted and agreed to this ____ day of _____, 2024.

The City of East Helena, Montana

Kelly Harris, Mayor

Attachments

cc: Katie Garcin-Forba—MDEQ
Max Greenblum—USEPA
Katherine Hausrath—NRDP
Erica Menard—METG
Jen Roberts—METG
Amy Steinmetz—MDEQ
Sydney Stuart—NRDP
Alan Tenenbaum—USDOJ
Jessica Wilkerson—MDEQ
Bridget Williams—USDEPA

Attachment 1

Water Right Number	Priority Date	Source	Purpose	Flow Rate (cfs)	Volume (ac-ft)	Proposed Recipient
41I 121039 00	4/1/1865	Prickly Pear Creek	Industrial	0.44	316.75	City of East Helena
41I 121040 00	4/1/1865	Prickly Pear Creek	Industrial	1.13	814.5	City of East Helena
41I 121041 00	5/1/1865	Prickly Pear Creek	Industrial	0.55	397.49	FWP
	5/1/1865	Spring Creek ¹	Industrial	1	722.7	City of East Helena
41I 121042 00	9/30/1862	Prickly Pear Creek	Industrial	0.5	362	FWP
41I 121043 00	5/6/1866	Prickly Pear Creek	Industrial	2.5	1,180	FWP
41I 89117 00	4/20/1866	Prickly Pear Creek	Irrigation	0.85	408.97	FWP
41I 121032 00	5/6/1866	Prickly Pear Creek	Irrigation	1.25	452.93	FWP
41I 121033 00	6/1/1866	Prickly Pear Creek	Irrigation	0.94	340.6	FWP
41I 46238 00	6/15/1867	Prickly Pear Creek	Irrigation	3.35	16,318.45	FWP
41I 89118 00	5/1/1868	Prickly Pear Creek	Irrigation	2.5	1,202.85	FWP
41I 121035 00	1/1/1869	Prickly Pear Creek	Irrigation	0.88	318.86	FWP
41I 89109 00	10/8/1918	Prickly Pear Creek	Irrigation	7.58	2,281.28	FWP
41I 89110 00	10/14/1918	Prickly Pear Creek	Irrigation	7.58	2,281.28	FWP
41I 45275 01	10/15/1868	McClellan Creek	Irrigation	0.96	404.87	City of East Helena
41I 46237 00	6/15/1867	Prickly Pear Creek	Stock	--	4.2	FWP
41I 89113 00	5/1/1868	Prickly Pear Creek	Stock	--	5.17	FWP
41I 89114 00	4/20/1866	Prickly Pear Creek	Stock	--	--	FWP
41I 89115 00	4/20/1866	Prickly Pear Creek	Stock	--	--	FWP
41I 89116 00	5/1/1868	Prickly Pear Creek	Stock	--	--	FWP
41I 89106 00	3/25/1969	Groundwater	Stock	--	--	City of East Helena
41I 89108 00	05/15/1876	Groundwater	Stock	--	--	City of East Helena
41I 35461 00	8/20/1981	Groundwater	Domestic	0.05	3.75	City of East Helena
41I 89105 00	3/25/1969	Groundwater	Domestic	0.05	5	City of East Helena
41I 89107 00	05/15/1876	Groundwater	Domestic	0.08	5	City of East Helena

¹ Portion of right formerly owned by Montana Tunnels

City of East Helena

www.easthelenamt.us



Mayor
Kelly Harris

Council Members
Don Dahl
Wesley Feist
Suzanne Ferguson
Judy Leland

City Attorney
Peter K. Elverum

City Clerk/Treasurer
Amy Thorngren

Deputy Clerk
Scott Ferguson

**Public Works
Director**
Kevin Ore

Police Chief
Mike Sanders

Fire Chief
Roger Campbell

City Judge
Dennis Loveless

**P.O. Box 1170
East Helena
Montana 59635**

City Offices
406-227-5321

City Fax
406-227-5456

Police Admin.
406-227-8686

July 3, 2024

Lt. Governor Kristen Juras
Office of the Governor
P.O. Box 200801
Helena, MT 59620-0801

Re: City of East Helena Water Use Needs and Prickly Pear Creek Water Rights

Dear Lt. Governor Juras,

On behalf of the City of East Helena ("City"), I write you seeking your assistance in addressing the future water use needs of the City. For the reasons explained below, we believe the Governor's Office can be of great assistance in assuring the future water use needs of the City, and its citizens, can be secured.

In the Fall of 2023, the City became aware of the details of a proposed transfer of irrigation and industrial use water rights formerly owned by ASARCO from the Montana Environmental Custodial Trust ("MECT") to the Montana Department of Fish, Wildlife, and Parks ("DFWP"). The details of the proposed transfer included an explanation of plans to convert the water rights to instream flow purposes in Prickly Pear Creek. The details of the transfer and conversion were provided under an Environmental Assessment ("EA") issued by DFWP.

In response to the EA, the City provided comments to DFWP where we outlined the potential negative impacts of the proposal on the future water use needs of the City. Subsequent to our comments, the City also provided detailed explanations to the MECT, the State, EPA, and others on the future water use needs of the City, and the expected future development of groundwater sources necessary to meet expected future growth and demand on the City's municipal water system.

As the City has explained to Federal and State agencies, in meeting the existing needs of East Helena's municipal use demands, the City's existing portfolio of water rights is at this time sufficient. That said, within 5 years based on projected growth, the City's rights will be within 64 gallons per minute ("gpm") of being fully allocated. Further, in order to supply water to meet the needs of estimated future growth, near term (15 years) and long-term (30 years), additional municipal water supplies will be required. Areas already annexed by East Helena, and growth of those areas in the coming years will require additional municipal water right appropriations by the City. Shortages in the City's municipal supply are estimated to be about 1,740 gallons per minute ("gpm") in the 15 year horizon and up to 3,700 gpm within 30 years.

As the City has also explained, from a municipal water supply perspective, to meet the future demand, East Helena will need to appropriate groundwater from area aquifers. Given the



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Attachment 2

cost of surface water treatment, and the limits on area surface water supplies, groundwater will be the likely source of water for future use in the City's municipal system.

Presently, and for the foreseeable future, East Helena is situated in a legislatively "closed" basin. Under the Montana Water Use Act, in order to appropriate and use groundwater from future municipal wells, East Helena will need to comply with the terms of M.C.A. §§ 85-2-360, 85-2-361, 85-2-362, 85-2-364, and DNRC rules implementing these statutes. Given the proximity of adequate groundwater sources to surface water sources in the area, it is highly likely any new wells developed by the City would have some type of "calculable" impact or "depletion" effect on surface water sources, namely Prickly Pear Creek or to sources considered "tributary" to the stream. In order to receive a new beneficial use permit from DNRC, East Helena will be required to offset or "mitigate" depletions to Prickly Pear Creek, and potentially other surface water sources.

In order to mitigate impacts from future groundwater developments the City will need surface water rights to mitigate depletions to Prickly Pear Creek. The water right claims formerly held by ASARCO, now held by MECT, are more than sufficient to offset expected calculable depletions to Prickly Pear Creek associated with future groundwater needs and use by the City.

On April 3, 2024, the City provided to the parties holding the former ASARCO rights an explanation on the specific water rights which, if transferred to the City, would greatly assist in securing the future water use needs of the City municipal supply. The list of rights identified by the City was only a portion of the water rights proposed for transfer to DFWP for conversion to instream flow. Under the City's proposal, we believe both the needs of the City, and the potential instream flow use by DFWP could be accommodated using the former ASARCO Prickly Pear Creek water rights.

The City's request for a portion of the former ASARCO water rights is warranted. First, a portion of the lands formerly owned by ASARCO, and held by the Trust, have been annexed by the City. As a result, the City is obligated to supply municipal water to these areas. Expected growth includes the "Habitat for Humanity" project which will develop Equivalent Dwelling Unit ("EDU") demand of 1,500-1,700 EDUs, and the proposed Prickly Pear Estates development which will include 2,000 residential units and 1,000 high density units, plus expected commercial demands. Just these two projects alone result in 3,500-5,000 EDUs in growth and demand on the City's existing water use supply which presently serves about 900 EDUs.

Second, had the former ASARCO water rights stayed with the land annexed by the City, those rights would automatically have been available to assist in meeting the water use needs of these areas slated for development. Keeping a portion of the water rights available for use in development of the former ASARCO lands is consistent with the transition of these areas from former industrial sites to future residential and commercial use areas.

Attachment 2

Lastly, allowing the City to own a portion of the former ASARCO rights for mitigation use in order to meet the future demands on the City's municipal water system is consistent with local and state objectives to address much needed housing stock shortages and current and future housing needs and demands.

As such, we ask for your help, and the help of the Governor's Office, to expedite the City's request to have a portion of the former ASARCO water rights transferred to the City rather than entirely committed in perpetuity for instream flow by DFWP. The proposal of the City to transfer the industrial use rights to the City still allows the irrigation water rights to be converted to instream flow. The proposal is a balanced approach, and we ask for your support, and that of the Governor, in the City's request.

On behalf of the City of East Helena, we appreciate your attention to this issue and stand ready to assist in any manner required.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Harris", with a long horizontal stroke extending to the right.

Kelly Harris
Mayor of East Helena, Montana

Attachment 3

After Recording Return To:
Alan F. McCormick
Garlington, Lohn & Robinson, PLLP
350 Ryman, P.O. Box 7909
Missoula, MT 59807-7909

QUITCLAIM DEED

THIS INDENTURE (“Deed”) is made this ____ day of _____, 202_ (the “Effective Date”), between the MONTANA ENVIRONMENTAL TRUST GROUP, LLC, a Montana limited liability company having an address of P.O. Box 1230, East Helena MT 59635, not individually but solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust (“Grantor”), and THE CITY OF EAST HELENA, a Montana municipal corporation, having an address of 306 East Main Street, East Helena, MT 59635 (“Grantee”).

For valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby convey, remise, release and forever quitclaim unto Grantee and to Grantee’s heirs and assigns, all right, title and interest of Grantor in and to the following described water right claims, as indexed by the Montana Department of Natural Resources and Conservation (“DNRC”), with places of use located in the County of Lewis and Clark, State of Montana, all of which are subject to the limitations set forth on the water right abstracts maintained in the State of Montana water rights records (the “Water Rights”):

1. Claim No. 41I 121039 00;
2. Claim No. 41I 121040 00;
3. The portion of Claim No. 41I 121041 00 sourced from Spring Creek and formerly owned by Montana Tunnels Mining, Inc.;
4. Claim No. 41I 45275 01;
5. Claim No. 41I 89106 00;
6. Claim No. 41I 89108 00;
7. Claim No. 41I 35461 00;
8. Claim No. 41I 89105 00 (a water well and associated pumps and other infrastructure located in the SESWNE of Section 25, Township 10 North, Range 3 West, P.M.M., Lewis and Clark County, Montana [the “Dartman Well”]); and
9. Claim No. 41I 89107 00.

Attachment 3

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession claim and demand whatsoever as well in law as in equity, of Grantor of, in or to the Water Rights and the Dartman Well.

TO HAVE AND TO HOLD the Water Rights and the Dartman Well unto Grantee and to Grantee's successors and assigns forever.

SUBJECT, HOWEVER, in all instances to the terms and conditions of (a) this Deed, (b) all covenants, restrictions, easements, encumbrances and other matters of record, and (c) all present and future federal, state, and local laws, statutes, ordinances, regulations, and rules (collectively, "Laws").

The foregoing conveyance is made further subject to the following terms and conditions, each of which has been agreed to by Grantee:

1. Grantee, for itself and for Grantee's successors and assigns, releases, remises and forever discharges Grantor, the Montana Environmental Trust Group, LLC (individually, and not in its capacity as Trustee), Greenfield Environmental Trust Group, Inc., the United States, the State of Montana, and their respective officers, agents, members, directors, shareholders, representatives, servants, and employees (the "Grantor Parties") from and against, and irrevocably and unconditionally waives, all Claims (as defined below) and liability against the Grantor Parties for or attributable to any and all losses, costs, claims, liabilities, expenses, demands, fees or obligations of any kind or nature whatsoever, whether known or unknown and foreseen or unforeseen, attributable to the Water Rights and/or the Dartman Well (including, without limitation, the environmental conditions of the properties on which the places of use for the Water Rights are located), whether arising or accruing before, on or after the Effective Date, and whether attributable to events or circumstances which have heretofore or may hereafter occur, including all losses, costs, claims, liabilities, expenses, demands, fees and obligations relating to the presence, discovery, release or removal of any Hazardous Substances in, at, under or about the properties on which the places of use for the Water Rights are located. "Claim," as used herein, means all demands, actions, causes of action, suits, proceedings, covenants, contracts, agreements, damages, claims, counterclaims, third-party claims, cross claims, contribution claims, indemnity claims, executions, judgments, losses, penalties, obligations and liabilities whatsoever, of every name, kind, type, nature or description, in law or in equity, arising under federal, state or local law or other statute, law, regulation or rule of any kind, whether known, unknown, direct, indirect, absolute, contingent, disclosed, undisclosed or capable or incapable of detection. "Hazardous Substances," as used herein, shall mean any oil, hazardous material, hazardous wastes or hazardous or toxic substances under any Environmental Laws, and the rules and regulations adopted pursuant thereto (including, without limitation CERCLA, RCRA and any similar Laws, and shall include, without limitation (whether or not included in the definition contained in said statutes) any other chemicals which could be materially dangerous to the environment or to human beings. Grantee, for itself and for Grantee's successors and assigns, agrees that it and they will not institute any action, suit or proceeding, and will not implead, join, seek contribution or indemnification from, or otherwise involve any

Attachment 3

Grantor Party in any action, suit or proceeding which has been or could be brought by or against Grantee or any of Grantee's successors and assigns to the extent the same relates to or arises in any way out of the Water Rights and/or the Dartman Well.

2. The properties on which the places of use for the Water Rights are located are further subject to certain restrictions, covenants and actions set out in the following documents: (a) that certain Consent Decree entered on April 6, 1998, in United States v. ASARCO Incorporated, as modified by that certain First Modification of Consent Decree entered on January 17, 2012, in United States v. Montana Environmental Trust Group, LLC (the "First Modification"), Civil Action No. CV 98-3-H-CCL (D. Mt.) (collectively, "RCRA Consent Decree"); (b) that certain Environmental Custodial Trust Agreement dated effective as of December 9, 2009, and recorded at Document No. 3179376, Book M41, Page 2775, records of Lewis and Clark County, Montana ("Trust Agreement"); (c) that certain Consent Decree and Settlement Agreement Regarding the Montana Sites filed on March 13, 2009 in Case No. 05-21207 (Bkcty. S.D. Tex.) ("Settlement Agreement"); (d) that certain Final Record of Decision for the East Helena Superfund Site, Operable Unit No. 2, Residential Soils and Undeveloped Lands dated September 17, 2009 (as subject to Paragraph 38 of the First Modification, "OU2 ROD"); (e) rules and restrictions on groundwater use set forth in the designation of the East Valley Controlled Groundwater Area adopted Feb. 5, 2016, Mont. Admin. Reg. Notice No. 36-22-180 (the "EVCGWA"); and (f) the Lewis and Clark County Soil Ordinance (the "Soil Ordinance").

3. Grantor reserves the rights and imposes the restrictions set forth on the attached Exhibit A which are incorporated by this reference, which run with the land and which are binding on and accepted by Grantee and all parties claiming under Grantee.

Subject to the forgoing, this Deed releases all interest acquired by Grantor in and to the Water Rights and the Dartman Well from the Effective Date, through and including the date of recording.

Signatures on Following Page

Attachment 3

GRANTOR:

Montana Environmental Trust Group, LLC,
a Montana limited liability company, not individually
but solely in its representative capacity as
Trustee of the Montana Environmental Custodial Trust

By: Greenfield Environmental Trust Group, Inc., its sole Member

By: _____
Name: Cynthia Brooks
Title: President

GRANTEE:

The City of East Helena, Montana

By: _____
Name: Kelly Harris
Title: Mayor

Attachment 3

STATE OF MASSACHUSETTS)
 : ss
County of Middlesex)

On this __ day of _____, 202_, before me, the undersigned notary public, personally appeared Cynthia Brooks, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily as President of Greenfield Environmental Trust Group, Inc., sole member of Montana Environmental Trust Group, LLC, Trustee of the Montana Environmental Custodial Trust.

Printed Name
NOTARY PUBLIC FOR THE STATE OF
MASSACHUSETTS
My commission expires on _____, 20__.

STATE OF MONTANA)
 : ss
County of Lewis and Clark)

The foregoing instrument was acknowledged before me on the __ day of _____, 202_ by Kelly Harris, as Mayor of the City of East Helena.

Printed Name
NOTARY PUBLIC FOR THE STATE OF MONTANA
My commission expires on _____, 20__.

Attachment 3

EXHIBIT A RESERVATIONS AND RESTRICTIVE COVENANTS

Grantor reserves the following rights and imposes the following restrictive covenants that shall be deemed to run with the land.

1. Groundwater Protection. Grantee acknowledges that the property on which the place of use for certain of the Water Rights is located is subject to the rules and restrictions on groundwater use set forth in the EVCGWA, and covenants and agrees to comply with the EVCGWA. Grantee shall refrain from use of the Water Rights and/or the Dartman Well in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedy specified in the OU2 ROD or any Laws, including Environmental Laws. "Environmental Laws," as used herein, means any past, present, or future Laws relating to environmental matters, including, without limitation, provisions pertaining to or regulating air pollution, water pollution, noise control, wetlands, watercourses, wildlife, Hazardous Substances, or any other activities or conditions which impact or relate to the environment or nature.

2. Access. Grantee, on behalf of itself and Grantee's successors and assigns, grants perpetual and unconditional access to Grantor and the Grantor Parties to the Dartman Well and to the property on which the place of use for Claim Nos. 41I 89105-00 and 41I 89106-00 is located for the purpose of collecting water quality, water level and other data or information about groundwater. Grantee further covenants and agrees to cooperate with Grantor and the Grantor Parties in connection with the foregoing activities, including, without limitation, permitting Grantor to install and maintain access and sampling ports on the Dartman Well when permanent plumbing and piping is installed by Grantee.

3. Change of Use. Grantee acknowledges and agrees that Grantee shall be solely responsible for preparing and submitting any documents necessary to effectuate a change of any element of any of the Water Rights to the DNRC. Grantee further acknowledges that Grantor makes no representations and/or warranties that any such change application will be granted.

4. Compliance with Regulations. Grantee will maintain the Dartman Well, infrastructure and surrounding area in a condition that is protective of the groundwater and compliant with all Laws, including, without limitation, State of Montana water well completion regulations as listed in ARM 36.21, Subchapter 6.

5. No Representations or Warranties. Grantee expressly acknowledges and agrees that no representations, warranties or covenants of any kind, express or implied, have been made by Grantor or Grantor's agents or representatives to Grantee or Grantee's agents or representatives with respect to the Water Rights (including, without limitation, the existence, attainability, validity, or status of the Water Rights) or the Dartman Well (including, without limitation, the fitness for any particular purpose, condition, or quality of the Dartman Well or the fitness for any particular purpose, condition, or quality of any water that may be extracted therefrom). Grantor hereby expressly disclaims any and all representations, warranties, and covenants of any kind, express or implied. Without limiting the generality of the foregoing, Grantee, on behalf of itself and Grantee's successors and assigns, expressly acknowledges and

Attachment 3

agrees that it and they accept the Water Rights and the Dartman Well “as is,” “where is” and “with all faults.”

6. Covenant Not to Object. In the event that Grantor transfers any of its remaining East Helena water rights to the Montana Department of Fish, Wildlife and Parks (“FWP”) (“FWP Rights”), and FWP files a change application with the DNRC to convert the FWP Rights to instream flow (“FWP Change Application”), Grantee hereby fully and unconditionally waives any right it may possess to object to the FWP Change Application, and hereby covenants and agrees that it shall not file any objection to the FWP Change Application with the DNRC or any other individual or entity. This covenant is binding on the parties’ successors and assigns. In the event of any violation of this covenant, ownership of the Water Right(s) cited by Grantee in its objection to the FWP Change Application shall automatically revert to Grantor or its successor in interest, as then applicable. The parties intend this provision to be self-executing. However, this provision may be enforced by the Grantor or its successor in interest or a beneficiary of the Montana Environmental Custodial Trust via injunctive or any other appropriate relief from a court of competent jurisdiction.

After Recording Return To:
Alan F. McCormick
Garlington, Lohn & Robinson, PLLP
350 Ryman, P.O. Box 7909
Missoula, MT 59807-7909

QUITCLAIM DEED

THIS INDENTURE (“Deed”) is made this ____ day of _____, 202_ (the “Effective Date”), between the MONTANA ENVIRONMENTAL TRUST GROUP, LLC, a Montana limited liability company having an address of P.O. Box 1230, East Helena MT 59635, not individually but solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust (“Grantor”), and THE MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS, a Montana governmental agency, having an address of 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620 (“Grantee”).

For valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby convey, remise, release and forever quitclaim unto Grantee and to Grantee’s heirs and assigns, all right, title and interest of Grantor in and to the following described water right claims, as indexed by the Montana Department of Natural Resources and Conservation (“DNRC”), with places of use located in the County of Lewis and Clark, State of Montana, all of which are subject to the limitations set forth on the water right abstracts maintained in the State of Montana water rights records (the “Water Rights”):

1. The portion of Claim No. 41I 121041 00 sourced from Prickly Pear Creek;
2. Claim No. 41I 121042 00;
3. Claim No. 41I 121043 00;
4. Claim No. 41I 89117 00;
5. Claim No. 41I 121032 00;
6. Claim No. 41I 121033 00;
7. Claim No. 41I 46238 00;
8. Claim No. 41I 89118 00;
9. Claim No. 41I 121035 00;
10. Claim No. 41I 89109 00;
11. Claim No. 41I 89110 00;
12. Claim No. 41I 46237 00;

Attachment 4

13. Claim No. 41I 89113 00;
14. Claim No. 41I 89114 00;
15. Claim No. 41I 89115 00; and
16. Claim No. 41I 89116 00.

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession claim and demand whatsoever as well in law as in equity, of Grantor of, in or to the Water Rights.

TO HAVE AND TO HOLD the Water Rights unto Grantee and to Grantee's successors and assigns forever.

SUBJECT, HOWEVER, in all instances to the terms and conditions of (a) this Deed, (b) all covenants, restrictions, easements, encumbrances and other matters of record, and (c) all present and future federal, state, and local laws, statutes, ordinances, regulations, and rules (collectively, "Laws").

The foregoing conveyance is made further subject to the following terms and conditions, each of which has been agreed to by Grantee:

1. Grantee, for itself and for Grantee's successors and assigns, releases, remises and forever discharges Grantor, the Montana Environmental Trust Group, LLC (individually, and not in its capacity as Trustee), Greenfield Environmental Trust Group, Inc., the United States, the State of Montana, and their respective officers, agents, members, directors, shareholders, representatives, servants, and employees (the "Grantor Parties") from and against, and irrevocably and unconditionally waives, all Claims (as defined below) and liability against the Grantor Parties for or attributable to any and all losses, costs, claims, liabilities, expenses, demands, fees or obligations of any kind or nature whatsoever, whether known or unknown and foreseen or unforeseen, attributable to the Water Rights (including, without limitation, the environmental conditions of the properties on which the places of use for the Water Rights are located), whether arising or accruing before, on or after the Effective Date, and whether attributable to events or circumstances which have heretofore or may hereafter occur, including all losses, costs, claims, liabilities, expenses, demands, fees and obligations relating to the presence, discovery, release or removal of any Hazardous Substances in, at, under or about the properties on which the places of use for the Water Rights are located. "Claim," as used herein, means all demands, actions, causes of action, suits, proceedings, covenants, contracts, agreements, damages, claims, counterclaims, third-party claims, cross claims, contribution claims, indemnity claims, executions, judgments, losses, penalties, obligations and liabilities whatsoever, of every name, kind, type, nature or description, in law or in equity, arising under federal, state or local law or other statute, law, regulation or rule of any kind, whether known, unknown, direct, indirect, absolute, contingent, disclosed, undisclosed or capable or incapable of detection. "Hazardous Substances," as used herein, shall mean any oil, hazardous material, hazardous wastes or hazardous or toxic substances under any Environmental Laws, and the rules and regulations adopted pursuant thereto (including, without limitation CERCLA, RCRA and any similar Laws, and shall include, without limitation (whether or not included in the definition contained in said statutes) any other chemicals which could be materially dangerous to the

Attachment 4

environment or to human beings. Grantee, for itself and for Grantee's successors and assigns, agrees that it and they will not institute any action, suit or proceeding, and will not implead, join, seek contribution or indemnification from, or otherwise involve any Grantor Party in any action, suit or proceeding which has been or could be brought by or against Grantee or any of Grantee's successors and assigns to the extent the same relates to or arises in any way out of the Water Rights.

2. The properties on which the places of use for the Water Rights are located are further subject to certain restrictions, covenants and actions set out in the following documents: (a) that certain Consent Decree entered on April 6, 1998, in *United States v. ASARCO Incorporated*, as modified by that certain First Modification of Consent Decree entered on January 17, 2012, in *United States v. Montana Environmental Trust Group, LLC* (the "First Modification"), Civil Action No. CV 98-3-H-CCL (D. Mt.) (collectively, "RCRA Consent Decree"); (b) that certain Environmental Custodial Trust Agreement dated effective as of December 9, 2009, and recorded at Document No. 3179376, Book M41, Page 2775, records of Lewis and Clark County, Montana ("Trust Agreement"); (c) that certain Consent Decree and Settlement Agreement Regarding the Montana Sites filed on March 13, 2009 in Case No. 05-21207 (Bkcty. S.D. Tex.) ("Settlement Agreement"); (d) that certain Final Record of Decision for the East Helena Superfund Site, Operable Unit No. 2, Residential Soils and Undeveloped Lands dated September 17, 2009 (as subject to Paragraph 38 of the First Modification, "OU2 ROD"); (e) rules and restrictions on groundwater use set forth in the designation of the East Valley Controlled Groundwater Area adopted Feb. 5, 2016, Mont. Admin. Reg. Notice No. 36-22-180 (the "EVCGWA"); and (f) the Lewis and Clark County Soil Ordinance (the "Soil Ordinance").

3. Grantor reserves the rights and imposes the restrictions set forth on the attached Exhibit A which are incorporated by this reference, which run with the land and which are binding on and accepted by Grantee and all parties claiming under Grantee.

Subject to the forgoing, this Deed releases all interest acquired by Grantor in and to the Water Rights from the Effective Date, through and including the date of recording.

Signatures on Following Page

GRANTOR:

Montana Environmental Trust Group, LLC,
a Montana limited liability company, not individually
but solely in its representative capacity as
Trustee of the Montana Environmental Custodial Trust

By: Greenfield Environmental Trust Group, Inc., its sole Member

By: _____
Name: Cynthia Brooks
Title: President

GRANTEE:

The Montana Department of Fish, Wildlife, and Parks

By: _____
Name: _____
Title: _____

Attachment 4

STATE OF MASSACHUSETTS)
 : ss
County of Middlesex)

On this __ day of _____, 202_, before me, the undersigned notary public, personally appeared Cynthia Brooks, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily as President of Greenfield Environmental Trust Group, Inc., sole member of Montana Environmental Trust Group, LLC, Trustee of the Montana Environmental Custodial Trust.

Printed Name _____
 NOTARY PUBLIC FOR THE STATE OF
 MASSACHUSETTS
 My commission expires on _____, 20__.

STATE OF MONTANA)
County of Lewis and Clark) : ss

The foregoing instrument was acknowledged before me on the ____ day of _____, 202_ by _____, as _____ of the Montana Department of Fish, Wildlife and Parks.

Printed Name _____
 NOTARY PUBLIC FOR THE STATE OF MONTANA
 My commission expires on _____, 20__.

EXHIBIT A
RESERVATIONS AND RESTRICTIVE COVENANTS

Grantor reserves the following rights and imposes the following restrictive covenants that shall be deemed to run with the land.

1. Groundwater Protection. Grantee acknowledges that the property on which the place of use for certain of the Water Rights is located is subject to the rules and restrictions on groundwater use set forth in the EVCGWA, and covenants and agrees to comply with the EVCGWA. Grantee shall refrain from use of the Water Rights in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedy specified in the OU2 ROD or any Laws, including Environmental Laws. “Environmental Laws,” as used herein, means any past, present, or future Laws relating to environmental matters, including, without limitation, provisions pertaining to or regulating air pollution, water pollution, noise control, wetlands, watercourses, wildlife, Hazardous Substances, or any other activities or conditions which impact or relate to the environment or nature.

2. Change of Use. Grantee acknowledges and agrees that Grantee shall be solely responsible for preparing and submitting any documents necessary to effectuate a change of any element of any of the Water Rights to the DNRC. Grantee further acknowledges that Grantor makes no representations and/or warranties that any such change application will be granted.

3. No Representations or Warranties. Grantee expressly acknowledges and agrees that no representations, warranties or covenants of any kind, express or implied, have been made by Grantor or Grantor’s agents or representatives to Grantee or Grantee’s agents or representatives with respect to the Water Rights (including, without limitation, the existence, attainability, validity, or status of the Water Rights). Grantor hereby expressly disclaims any and all representations, warranties, and covenants of any kind, express or implied. Without limiting the generality of the foregoing, Grantee, on behalf of itself and Grantee’s successors and assigns, expressly acknowledges and agrees that it and they accept the Water Rights “as is,” “where is” and “with all faults.”

4. Covenant Not to Object. In the event that Grantor transfers any of its remaining East Helena water rights to the City of East Helena (“City”) (“City Rights”), and the City files a change application with the DNRC to convert the City Rights to mitigation use (“City Change Application”), Grantee hereby fully and unconditionally waives any right it may possess to object to the City Change Application, and hereby covenants and agrees that it shall not file any objection to the City Change Application with the DNRC or any other individual or entity. This covenant is binding on the parties’ successors and assigns. In the event of any violation of this covenant, ownership of the Water Right(s) cited by Grantee in its objection to the City Change Application shall automatically revert to Grantor or its successor in interest, as then applicable. The parties intend this provision to be self-executing. However, this provision may be enforced by the Grantor or its successor in interest or a beneficiary of the Montana Environmental Custodial Trust via injunctive or any other appropriate relief from a court of competent jurisdiction.