

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

October 22, 2025

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

Re: Prickly Pear Creek Water Rights

Mayor Harris,

Thank you for your letter dated October 1, 2025. You raise several points that I would like to address.

As part of ASARCO's bankruptcy proceedings, certain ASARCO property holdings were moved to a custodial trust to be managed for the benefit of the United States and the State of Montana ("beneficiaries") by the Montana Environmental Trust Group (METG). A purpose of the trust is to enable "environmental actions," which include, but are not limited to, natural resource restoration and long-term stewardship. While the properties annexed by the City of East Helena are, or were, part of the trust, the City is not a beneficiary of the trust and is not entitled to the water rights held by the trust.

During administration of the trust, METG sold certain properties, reserving ownership of the appurtenant water rights. This reservation was not done secretly, nor was it "inexplicable" given the purposes of the trust, which specifically call out natural resource restoration and long-term stewardship. In addition, the water rights sought by the City, reservations notwithstanding, are either appurtenant to land still held by METG or to land outside the annexation area. While the State of Montana certainly understands the gravity of the housing crisis and has passed reforms to increase the supply of affordable, attainable housing, the State must consider and balance all of the intended objectives of the trust.

In 2023, Montana Fish, Wildlife, and Parks (FWP) began analyzing acquisition of the water rights in question for instream flow purposes, an activity that clearly aligns with the trust's purposes. The City of East Helena opposed this, concerned that such a transfer would impact East Helena's ability to appropriate municipal water in the future. In your July 3, 2024 letter to me, you said:

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 [the custodial trust], are more than sufficient to offset expected calculable depletions to Prickly Pear Creek associated with future groundwater needs and use by the City.

Additionally, the State has not “place[d] the burden of subsidizing the water needs” of parcel development on the City of East Helena, as described in your letter. To the extent that any such burden exists, the City assumed that burden upon itself when it annexed the ASARCO properties without making sufficient provision for water.

In response to your request and these concerns, METG offered on behalf of the U.S. Environmental Protection Agency and the State of Montana to transfer approximately 40 percent of the water rights at issue to the City in an act of good faith, to help mitigate the water needs of future development. The beneficiaries consented to this offer, despite having no obligation to do so and with full knowledge that the City is not entitled to the reserved water rights, demonstrating a commitment to finding an agreement. Pursuant to that offer, the remaining rights would transfer to FWP for instream purposes. This offer was rejected by the City twice, most recently in your October 1, 2025 letter. This is unfortunate, for as you stated, the offer could have served 2,274 of the 6,250 homes planned in East Helena.

In light of this history and the facts, METG’s offer was more than reasonable. The State of Montana has made its last, best offer to assist the City and will initiate the process of converting the water rights to instream flow in furtherance of the restoration and stewardship purposes of the trust. The process will allow opportunity for public comment before any final decisions are made and is subject to review and approval by various state and federal agencies.

Sincerely,



Kristen Juras
Lieutenant Governor