

To: Cooke City – Silver Gate – Colter Pass Sewer Board

From: Concerned Citizens of the Valley 838

Re: Key outcomes and takeaways from the June 16, 2023, Stakeholders' Meeting

Date: June 19, 2023

Dear Directors:

Concerned Citizens of the Valley 838 (CCV) is a registered non-profit organization in the State of Montana. Our purpose is to promote environmentally and fiscally sound solutions to infrastructure challenges faced by the communities of Colter Pass, Cooke City, and Silver Gate in the Upper Soda Butte Valley. Our members and supporters come from all walks of life and have deep roots in the valley. The well-being of all the communities and the valley is our focus.

We write to summarize key outcomes and takeaways from the June 16, 2023, Stakeholder's Meeting. Thank you and the committee for organizing it. Thanks are also due to Mary Anne Keyes for facilitating the meeting. We thank all the presenters for their willingness to adjust their schedules so all could be there on the same day and for traveling significant distances. We also thank Senator Tester's Office for its continuing interest and support for this project.

Our comments are organized by the following topics: general; drain field site and land purchase; treatment method; roles and responsibilities; funding; and connection prioritization.

General

- The Stakeholders' meeting was a significant step forward in transparency and creating a solid foundation for moving forward. Attendees from throughout the Soda Butte Valley attended and left more informed. We sensed broad appreciation for your willingness to roll up your sleeves right away and growing confidence that you will keep this project moving forward.
- The meeting brought all of us together and set a unifying tone for working together towards a solution and getting it implemented. These are very positive outcomes.
- The SB and Cooke City can move forward with the current project to address sewer problems in Cooke City without jeopardizing or limiting future options for Silver Gate should a central sewer system ever be needed there. Future options for Silver Gate are not foreclosed by leaving Silver Gate out now and locating a drain field close to Cooke City.
 - What might foreclose a future sewer system for Silver Gate is if the SB selected Site E for Cooke City now because of the potential it actually might not be able to accept Silver Gate effluent if/when that day comes.
 - Grant and loan applications to fund a Silver Gate sewer system can be submitted in the future, even though ARPA funds would no longer be available. Funding agencies would look at needs and whether a Silver Gate project would benefit local resources (i.e. Soda Butte Creek) and public health/safety just as they did when Cooke City applications were considered. The Forest Service would consider selling land for a

Silver Gate system in the future if it can be justified and fulfills the Townsite Act requirements.

Drain Field Site and Land Purchase

- The Sewer Board (SB) is not bound by its prior selection of Site E west of Silver Gate. The SB is free to consider new locations much closer to Cooke City based on comments by the panelists.
- There are many alternative sites much closer to Cooke City that could work well and be permitted.
- Choosing a site closer to Cooke City will significantly lower the total project cost for construction and long-term operations/maintenance even though a pipeline between Cooke City and the drain field site is still required. The key differences are that sites closer to Cooke City require a shorter pipeline than Site E and would also avoid all the risks and liabilities triggered by a 3+ mile pipeline in the Highway 212 corridor.
- The SB can take a fresh look at *any* US Forest Service land that is potentially suitable and work directly with the Forest Service to confirm feasibility from their perspective.
 - The SB can select any site previously identified (or a portion thereof) or consider any other areas not previously identified that meet the requirements for either a conventional or a Level 2 drain field.
- The Forest Service's key points about the future drain field site were instructive:
 - Consider what the long-term needs will be. Plan now for future growth and the inevitable need for increased treatment capacity.
 - Clearly articulate the need and community benefit now and into the future when submitting a land purchase application. Do this for the primary drain field and for the replacement drain field, respectively, whether seeking to purchase one parcel or two parcels (i.e., one for present use and one for future replacement).
 - The underlying purpose and community benefits (present and future) are key criteria that will be considered by the Custer/Gallatin Forest Supervisor who makes the final decision. Describe these well and refer to the Townsite Act's requirements, which establish the criteria that must be met in order for the Forest Service to sell the land.
 - Avoid creating inholdings that will be difficult for the Forest Service to manage.
 - Look into the future, consider Cooke City's future needs and growth so that the Forest Service only has to process a land purchase application once for efficiency's sake.
- The Forest Service prefers that the SB rescind (or withdraw) the current application to purchase 30 acres at Site E west of Silver Gate rather than amend it. Submit a completely new application for the site you ultimately select closer to Cooke City. This creates a new project file, which is easier for the Forest Service.

- The Forest Service has not taken any action since receiving the initial land purchase application for Site E in June 2022. The Forest Service requested additional information, but nothing was ever received from Triple Tree Engineering or the SB after the initial one-page application letter signed by the prior SB president. The application has been sitting dormant in the Forest Service files pending receipt of the requested information.
- The SB can rescind the Site E application with a very simple letter to the Forest Service.
- Whatever parcel is ultimately selected for purchase, the SB will have to pay fair market appraised value. Land values have appreciated significantly in the valley, and vacant land appraised at fair market value will be expensive.
 - Land cost is a very important variable and should inform the decision of treatment method (i.e. conventional drain field vs. Level 2) because DEQ requires half of the amount of land for a drain field receiving discharge of Level 2 treatment systems. That means less total land must be purchased, which decreases the cost of the project and lowers the probability a bond would be needed.
 - No one at the Stakeholders' Meeting could identify the data source or any information that supported or informed the cost estimate of about \$11,000/acre in the preliminary engineering reports. The SB should not rely on that figure and plan for a higher land cost based on fair market value (presumably comparable sales of vacant land in this area or other similar mountainous settings where availability of land is constrained and demand for vacant land is high).

Treatment Method

- The SB can consider a central Level 2 treatment system and move away from a conventional drain field. A central Level 2 system was included as an option in the preliminary engineering reports.
- Montana Dept. of Environmental Quality (DEQ) can't require Level 2 treatment if a conventional drain field meets the minimum regulatory requirements. However, DEQ prefers it and incentivizes it by decreasing by 50% the amount of land needed for a drain field receiving Level 2 treated discharge. This means less land must be purchased for both the primary and the replacement drain field.
- Economic development and sustaining the community are integrally tied to a community sewer system. The funding agencies encouraged the SB to consider growth. Conventional drain fields are designed with a specific capacity in mind and once the primary field is "full" and no longer effective, the entire system has to shift to the replacement drain field (i.e., "one and done" without the capacity to scale up and expand). This is in contrast to Level 2 systems which can be designed for present needs and then accommodate future expansion and increased treatment capacity. Going with a central Level 2 system may allow the SB to

phase in connections and increase the size of the treatment system incrementally in the future.

- Given the valley's tight quarters, environmental concerns expressed by the agencies and the public, and the underlying purposes of the grants to safeguard public health/safety and protect Soda Butte Creek, Level 2 is worthy of objective, serious consideration. It is possible to optimize discharge location and treatment method by considering a range of variables including cost to build, maintain, and expand capacity to allow for future growth. That comparison has not been done to date and yet the idea of a central Level 2 system continues to come up in SB meetings.
- Level 2 systems require maintenance which is an operating expense, but so do conventional drain fields. The notion that a conventional drain field can be installed and then basically ignored thereafter is false. DEQ requires monitoring wells, and the SB already anticipates needing to hire a certified operator no matter what treatment method is selected. The preliminary engineering report already factored in about \$30,000 in annual maintenance costs for a conventional drain field. The estimated maintenance cost of a Level 2 system has not been explored or presented to the SB to our knowledge and yet that it remains a lingering question that could be addressed with additional research.
- CCV encourages the SB to independently consult with Level 2 system experts to inform themselves about this treatment method. Triple Tree seems reluctant to discuss Level 2 treatment options and provide the SB with factual, comparable information about them so that the SB can make a fully informed decision.

Roles and Responsibilities

- The state agency panelists did a good job of describing their roles and responsibilities. However the roles and responsibilities of other speakers were not as clear and warrant further exploration by the new SB and transparency with the public.
- It's not clear who is providing overall guidance and stepped down direction for the project as a whole. Presumably it is the SB's role, as earlier grant applications identified Sewer District staff as being responsible for the majority of the oversight and management tasks for the project.
 - The USFS speaker specifically asked the SB to identify the person who will speak for the SB for the land purchase process.
- The SB should begin attending the monthly project calls with the funding agencies mentioned by the DEQ and DNRC panelists. It appears that the prior SB president used to at least be invited.
- It appears that Triple Tree is hired as the project engineering firm to design and permit a central gravity collection system and conventional drain field project. Triple Tree may even be providing some grant management services. Triple Tree is also probably attending the

monthly project calls. Otherwise, Triple Tree's role and level of authority to speak for the SB on various matters and make autonomous decisions is not clear. It needs to be.

- The role of the Midwest Assistance Program Inc. (MAP) and Mr. Shope was not clear – either for the Stakeholders' Meeting or for the June 20th SB agenda. As an entity, MAP was not identified anywhere in the grant applications, scope of work, grant agreements, or invoices in the DNRC project files. Further, it's not clear why MAP representatives are invited and attending the monthly project calls with the funding agencies. MAP has not previously appeared or apparently attended prior SB meetings. It would be helpful to clarify if MAP is involved in the project and if so, how MAP became involved in the project and its role. If MAP does not presently have a role and the SB is considering bringing a MAP representative on board, that should be clarified as well. If Mr. Shope is a guest speaker and simply sharing his perspectives, the SB and the public may benefit from other guest speakers.
- Some attendees may have found Mr. Shope's comments during the Stakeholders' Meeting about conflict and mediation disconcerting. Your efforts to increase transparency, notice meetings properly, and consider input from the public throughout the valley are precisely how to avoid conflict and controversy. Conflict need not be artificially manufactured. The SB is to be commended for their efforts in this regard and the community is coming together to move this project forward and solve the septic problem.
- Involvement by Mary Anne Keyes and others with the Park County Extension Office has been very constructive. Mary Anne's facilitation of the Stakeholders' Meeting was excellent. It contributed to the sense that the valley community is coming together to move forward positively and collaboratively after some rocky times. Those times are now in the past and we are moving forward together. We encourage Mary Anne's continuing involvement as coach and facilitator. Her involvement builds trust and skills in our community.
- Park County has a larger role in the decision about how many commercial businesses and residential lot owners will be required to connect to the system right away than the Sanitarian's Office representative implied during the Stakeholder's Meeting. The Park County Sanitarian's Office and DEQ establish and implement regulations about septic systems, issue septic permits, inspect septic systems, and enforce permit and public health regulations. The SB does not. Only Park County and DEQ have that authority. Their knowledge about the present status of individual commercial and residential systems in Cooke City is needed by the SB. To say that the county's role is minimal is misleading.
 - The SB could reach out more directly or submit an information request to Park County to identify compliant, known non-compliant, likely non-compliant, and systems that have been granted a waiver by the Park County Health Board in the Cooke City Subdistrict. The SB could even request a map of each category to visualize the distribution within the Cooke City Subdistrict.
 - In reality, the county's information will partially dictate the SB's future decisions about whether connection to the new system is required and which properties must do so right away and which properties could, in theory, connect at a later time.

Funding

- The funding agencies want you to succeed and are likely to be very flexible and defer to the SB's decisions, so long as the sewer system meets the regulatory requirements and funds are spent appropriately and on time.
- The funding agencies will not dictate the means and methods of the project. The SB and Sewer District / Subdistrict members are the ones to figure out and identify the sewer system that will work best for present and future needs, including the discharge location and the treatment method.
- Funding agencies know and fully expect that projects will evolve between the application stage and completion. Grant agreements can be amended and project phasing can be altered. The term of some state grants can be extended through grant amendments, prolonging the availability of those funds.
 - Funding agencies expect good communication from the SB and its contractors about the potential changes.
- Funding agencies are closely watching how the project is progressing relative to the anticipated timeline. For the ARPA-funded grants, agencies will push to make sure that:
 - The SB obligates ARPA funds on paper (i.e. contracts in place) by December 31, 2024.
 - The SB expends all ARPA funds by December 31, 2025. Unspent funds must be returned to the U.S. Treasury and can't be carried forward.
- ARPA funds are an extremely rare opportunity. Adjusting the project phasing to design and install the collection system in Cooke City first will allow the SB to spend out ARPA funds. This is smart and the funding agencies support this change.
- Changing the project phasing gives the SB more time to make final decisions on the drain field site and treatment method. This is a very positive development.
- This Cooke City Subdistrict project ranked #1 for competitive funding in prior grant cycles because of the benefits to public health/safety and protection of Soda Butte Creek. This stretch of Soda Butte Creek sits downstream of a significant and successful mining reclamation site and just upstream of Yellowstone National Park. This project is thus likely to remain extremely competitive if future grants are sought to complete the project.
- It might be possible to avoid having to sell bonds to pay for the project. If the SB makes smart decisions, the existing grants, loans, loan forgiveness, and the highly competitive nature of this project in future grant cycles may make bonds completely unnecessary.
 - Not selling bond means the SB and District take on less debt that has to be serviced and paid for by fees paid by Cooke City Subdistrict members.

Connection Prioritization (Commercial, Residential)

- The question of whether hooking into the system will be mandatory as soon as the system is operational is clearly on the public's mind. Similarly, the public is concerned about potential monthly fees. This is understandable. Getting ahead of the rumor mill with objective information and transparent discussion during SB meetings will become increasingly important. The Stakeholders' Meeting was a good model and could be used in the future for more in-depth discussion about these two areas of uncertainty.
- Park County and DEQ are the proper entities to identify individual systems that are presently out of compliance, do not meet the mandatory setback requirements from property boundaries, have been granted waivers or variances by the Park County Board of Health, or otherwise have exceeded its life expectancy.
 - Only Park County knows how many permits it has issued or renewed that do not meet DEQ regulations or that have encumbrances on the land requiring the landowner to connect to the new system.
- The Park County representative alluded to the following more detailed information taken from grant applications. The state funding and permitting agencies expect that the system will address problems and circumstances, such as the following:
 - All properties with habitable structures are individually served by a wide range of on-lot systems varying from buried single tank cesspools to individual septic tanks with absorption trenches and beds that have been found in various conditions throughout the community.
 - County records are incomplete, and there is little certainty as to how many advanced treatment systems are installed, which properties they serve, or where exactly they are located.
 - In several instances, distinct and legally separate lots are known to share systems without easements or legal agreements and owners may or may not know.
 - Inadequate septic designs, installations, and repairs exist.
 - Installation of unapproved and unproven equipment configurations and manufacturers has occurred.
 - Undocumented components likely exist, including locations, styles, types and capacities.
 - Unmaintained Level 2 systems exist if operations agreements have not been renewed.
 - There exists in use unrepaired, antiquated, outdated, and inefficient technologies, among others which may threaten the public health or environment if left uncorrected.

- Most existing on-lot systems either do not meet current DEQ Circular 2 requirements or do not have sufficient replacement drain field areas available.
- Many existing on-lot systems do not have sufficient setbacks from the property lines due to small lot sizes. If so, it would not satisfy current regulations.
- Many of the commercial properties utilized heavily by tourists are located south of Main Street and more than half of these properties' on-site sewage disposal systems are located on land leased from the USFS because the lots do not have room to install a system.
- Balancing the needs of the local population with increasing Yellowstone Park tourist visitation is important from a technical and a financial point of view.
- This above list can help the SB work more directly with Park County officials and understand which parcels the county will require to connect to the system right away for any reason, whether commercial or residential. Thereafter, the circumstances on the ground could be used to conceptualize whether a phased approach is possible for the remainder and be acceptable to the county and DEQ, the entities which enforce septic and discharge regulations.
- Obtaining more specific information from Park County and DEQ will be important for the SB to truly understand how much discretion it actually has with respect to the question of how to prioritize connections and whether connection would be mandatory immediately or at some future date. The SB may have less discretion and flexibility than initially thought.
- Establishing objective decision criteria up front as to whether or not a commercial or residential property owner has to connect to the system immediately could be helpful and provide a transparent, structured way to make decisions. Criteria could also be developed to establish a phased timeline to reach 100% connection of all commercial and residential systems by some future date that is identified and known up front by property owners.
- Balancing local base needs with the episodic nature of high seasonal peaking system demand by Yellowstone Park visitors and by tour buses stopping in Cooke City is a challenge experienced by all communities bordering national parks. It comes before the SB as a question of fairness from those businesses that must hook into the new system and pay monthly service fees based on volume of usage.
 - The system has to be designed to accommodate pulse peaks in what is otherwise a generally low base level for a small population of residents.
 - This dynamic would benefit from more strategic community planning that might lead to more proactive management of tourist visitation in Cooke City. Rather than burdening individual businesses with the costs and sewer fees to fulfill this pulse need when the buses come through, could there be a dedicated location for tourists and buses to access public restroom facilities within the Cooke City

Townsite *other than* a local business or the Community Center which were not designed for that level and type of use?

- Land availability is an initial limitation, but don't let that stop the creative problem-solving around the question of equity and fairness.
- Water and sewer costs of a dedicated public restroom / rest stop facility could be offset using resort tax dollars so that monthly fees are fair and more equitable for local businesses based on their actual patrons, not a tourist bus full of visitors passing through in need of a flush toilet.
- This idea presents real opportunities for economic growth and sustained economic activity in Cooke City and could be a win-win. Perhaps the SB, the Chamber of Commerce, the Community Council, local business owners, the Cooke City Water District, and others could explore this idea more.

In closing, CCV again thanks the SB for holding the Stakeholders' Meeting and again thanks all the speakers. We reiterate our ongoing commitment to help and support efforts to find a viable, affordable, maintainable, and environmentally sound solution for a sewer system in Cooke City.

cc by electronic mail:

Brad Koon, Triple Tree Engineering
Cooke City Community Council
Cooke City Water District
Cooke City Chamber of Commerce
Silver Gate Water Users Association
Southwest Silver Gate Homeowners Association
Park County Commissioners
Mike Thom, USFS Gardiner Ranger District
Chris Boe and Steve Lipetzky, Montana Dept. of Environmental Quality
Mark Bostrom and Autumn Coleman, Montana Dept. of Natural Resources and Conservation
Kaleb Pearson, Park County Sanitarian's Office
Kristen Galbraith, Park County Grants and Special Projects
Senator Tester's Office, Bozeman Regional Director
Mary Anne Keyes and Trent Balestri, Park County Extension Office