

To: Cooke City/Silver Gate/Colter Pass Sewer Board
From: Concerned Citizens of the Valley 838
RE: Cooke City Sewer Treatment and Drain Field Project
Date: May 17, 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 welcome the new directors to their elected and appointed positions as members of the Sewer Board. We thank all the directors for their commitment to serve our community. We recognize it is a hard and often thankless job. And as you each know, the success of the Sewer Board in addressing the sewage treatment problems of Cooke City is vital to the future of all our communities and the valley that we all love and call home.

We want to assure you of our ongoing commitment to help find a viable, affordable, maintainable, and environmentally sound solution for a sewer system in Cooke City. We want to help although sometimes it may not appear that way. Our members and supporters have knowledge and expertise in a variety of subject areas that can be of value to the Sewer Board in tackling this project. We are prepared to offer that in the spirit of collaboration; solving this problem is vital to the economic future of the valley.

Over the last six months, CCV has both endeavored to work directly with the Sewer Board and engaged community members from throughout the Sewer District to understand their concerns and hopes for the project. Judging by the election turnout, we are confident we heard voters' concerns, issues, and hopes going forward. This letter highlights what we learned.

1. Public transparency builds trust and support for the project. Sewer District members and CCV desire greater transparency about the project's history, past Sewer Board decisions, Triple Tree Engineering's activities, and Sewer Board business. We applaud the Sewer Board's approach to the May 11, 2023, meeting and look forward to future meetings which follow that same approach to transparency and public participation.

Because financing the remaining debt for the project must be approved by District members through a public vote, we suggest the Sewer Board err on the side of greater public transparency than is minimally required by state law and the Sewer District Bylaws. Specific steps include the following:

- Publish agendas, meeting materials and documents relevant to the agenda items, meeting minutes, and key background documents to the Sewer Board website in advance of each meeting. To the extent you can recover and obtain the same going

back to the Sewer Board's formation in 2019, we encourage publishing the most relevant to the website as well.

- Continue to provide, whenever possible, a very brief meeting announcement in the Community Newsletter with the date, time, and location of future meetings. Include a link that directs interested community members to the agenda and other relevant meeting documents on the Sewer District website.
 - Continue to post meeting announcements, including agendas, at the Cooke City Post Office (i.e., date, time, location, agenda items) and direct interested community members to the Sewer District website to view the full agenda and meeting materials. In the past, public meeting notices fell short of making agendas and meeting materials properly available prior to meetings. It will also be important to bear in mind that internet connectivity in the upper Soda Butte Valley and District members' technical computer skills vary significantly. Take care to discern the difference between public notice that a meeting will occur and the requirement to publish actual agendas.
 - Minutes are a key communication tool to build trust and support for the sewer project. This is the only record of your deliberations when making key decisions. We also encourage you to use them to convey information about the Sewer Board and Triple Tree Engineering's discussions and activities. This means taking an approach to meeting minutes that exceeds the bare minimum of noting executive action and approved expenditures. Without overly burdening the secretary/clerk, we request that you include enough meaningful information so that District members who could not attend a meeting might be able to understand key discussion points and outcomes. This has the added benefit of bringing District members along with the Sewer Board contemporaneously so the public does not have to drag the Board back to topics covered in prior meetings to participate effectively. Meeting minutes will provide important continuity with District members, especially if you anticipate meeting more frequently.
 - Commit to use the Zoom platform, along with the call-in telephone option, for all meetings. The use of Zoom at the May 11 meeting was a dramatic improvement over past meeting formats and made the meeting more orderly for everyone. Our CCV members and supporters stand ready to help tutor other District members who are less familiar with Zoom. This will help the Sewer Board more easily manage public participation and ensure smooth meetings.
 - Set a welcoming tone and encourage community participation during Sewer Board meetings. The May 11, 2023, meeting was a great start, and we hope for more of the same.
2. **We urge the Sewer Board to identify prior substantive decisions made by the prior Sewer Board and reconsider them, following legal public notice requirements.** The prior Sewer Board's attorney conceded that the Sewer Board did not follow proper procedures in notifying the public about meetings and had made decisions in the absence thereof. Their attorney offered that the Sewer Board would identify those, provide proper public notice, and

re-do those decisions and critical actions taken without proper notification. While the new Sewer Board may seek different legal representation, the fact remains that many crucial decisions were made in the past that were not lawfully noticed to the public. Concerned Citizens of the Valley ultimately became so concerned about actions of the prior Sewer Board that it retained its own legal counsel and filed suit about that very issue.

We recognize that not all votes of the prior Sewer Board are substantive, critical decisions about the project and its future and may have had minimum impact on the public for its not knowing of Sewer Board actions and decisions. While there are still countless violations attributed to the prior Sewer Board, we are confident you will identify and review substantive decisions of the prior Sewer Board that commit Sewer District resources or those of permitting agencies and created liabilities or made commitments on behalf of the District. Thereafter, we request that you involve the public, by encouraging their input prior to decision making, when you revote on those major/critical actions. After you review the records maintained and passed along from the prior Sewer Board, please provide a list of the actions that you feel need to be re-voted to be compliant with Bylaws and applicable state statutes.

3. **We recommend you request and obtain Triple Tree Engineering's complete client file for this project so that you can have a complete understanding.** We have been somewhat skeptical about the adequacy of the Sewer Board's record keeping practices, given our past attempts to request them pursuant to the state statute. Even for whatever records that may have been given to you from prior Sewer Board members, we suspect those records will fall short of providing a complete picture. Triple Tree Engineering appears to be acting with a degree of independence and is obligated to deliver certain outcomes on behalf of the Sewer Board. A certain degree of independence is to be expected because Triple Tree was hired for its expertise in these matters.

Nonetheless, you, the Sewer Board remain the client even though the Board has completely turned over. The Sewer Board is entitled to request and obtain the complete client file from Triple Tree Engineering. The client file's contents will be important to understand past communications and activities Triple Tree Engineering has taken on the Sewer Board's behalf and in its dealings with the U.S. Forest Service, the permitting agencies, the financing agencies, and any third parties (e.g. Triple R Surveying). The Sewer Board will be in a much better position going forward for understanding Triple Tree Engineering's past work and the scope of work outlined in the current grant agreements and contracts.

4. **We urge the Sewer Board to take full advantage of its website to share information and build community support.** Use the Sewer District's website to its fullest potential to share past information and information going forward. The website is the most cost-efficient way to inform District members about the project's past and future. We encourage publishing all key communications with permitting and funding agencies, permit applications, grant agreements, contracts, financial records, resolutions, Triple Tree Engineering's scope of work and directives, and any other Sewer Board business documents on the website that will help District members understand what you are doing.

5. **We recommend that the Sewer Board obtain an independent financial audit.** Some of CCV's members and supporters have followed the Sewer Board and attended meetings since its formation in November 2019. At times, the finances and certain specific expenditures were not well documented or supported. We recommend that the Sewer Board secure the professional services of a qualified auditor and obtain a complete financial audit as soon as possible. By state statute, an audit must be performed every four years. This is the 4th year since the Sewer Board was formed, and an audit is due in 2023 anyway. Additionally, an audit will help the Sewer Board understand where it stands financially and will either give the Sewer Board a “clean” slate or identify “discrepancies” that need correcting. The results should also be made available on the website and to the public. We feel this is critical for the new Sewer Board to understand their financial position going forward.
6. **The Sewer Board training on May 17 will build skills and confidence.** We applaud the Sewer Board's upcoming May 17 training session on proper operations, the Sewer Board's legal obligations as a special district, and our rights to participate as members of the public and to inspect public records. We believe such training should be mandatory for all new Sewer Board members going forward. We also appreciate that the public and all District members will be invited to attend and observe as well.
7. **We request that the Sewer Board hold a special community meeting or two.** We urge the Sewer Board to hold a community meeting and have the various agencies involved present objective information directly to the community about their respective roles, responsibilities, permitting authorities, and processes. Presenters should include the Park County Commissioners, the U.S. Forest Service from the Gardiner Ranger District, Triple Tree Engineers, and the state funding agencies who help with financing (i.e., Dept. of Natural Resources and Conservation, Dept. of Environmental Quality, and Dept. of Commerce). Attendees can also ask questions directly of these experts. The purpose is to educate everyone, including the new Sewer Board members, about those unique roles in ensuring the project's success. Additionally, attendees can better understand various opportunities and constraints. Developing a shared understanding of the problem will help set the tone and future course for finding a solution and getting District members to vote in favor of funding the project.
8. **We recommend a thorough review and update of the Sewer District Bylaws.** We were glad to hear from the new President, Deb Purvis, that the Sewer Board intends to review the Sewer Board Bylaws. We are confident that the Sewer Board's review will be thorough and that the Bylaws be appropriately updated. Article IX specifically requires review of the Bylaws annually, and, to our knowledge, that was not done in the last year and probably not since 2019. We identified several areas that should be amended and look forward to working with the Sewer Board towards that end. For example, CCV members and our supporters strongly believe that the Bylaws should be amended to include specific language prohibiting actions that would generate a perceived or real conflict of interest by the Sewer Board or individual Sewer Board members when it comes to Board membership appointments, employment by the Board, or contracting. We also encourage consideration of an amendment that requires the Sewer Board have a representative each from Colter Pass, Cooke City, and Silver Gate, whenever possible, with the remaining two seats serving as at-

large from the District as a whole. We will watch the Sewer Board's agenda for this topic in the future.

9. **We request that the Sewer Board suspend all efforts to move forward with purchasing Site E and obtaining a groundwater discharge permit for Site E for a conventional drain field.** We request that the Sewer Board write a letter to Mike Thom, USFS Gardiner District Ranger, informing him that the entire Sewer Board has been replaced and is reconsidering all prior Sewer Board decisions, some of which were not properly noticed to the public. Specifically, the letter should tell the Forest Service to suspend investing any more agency resources processing and moving forward on the land purchase application to buy Site E submitted by the prior Sewer Board President Bob Smith on June 1, 2022, and subsequently amended or supplemented by Triple Tree Engineering.

We also request that the Sewer Board send a similar letter to the Montana Department of Environmental Quality, notifying them that you will be reconsidering all prior decisions.

We believe that it would not be a wise use of agency resources to continue reviewing applications or information submitted by Triple Tree Engineering and the prior Sewer Board related to Site E. Until such time as the new Sewer Board has thoroughly and objectively reviewed all aspects of the problem, the complete objective facts about the solution pursued up to this point and the alternatives, and the spectrum of treatment methods and discharge locations available, we do not think these public agencies should invest any staff time until further notice from the Sewer Board. Their workloads are significant and their time is valuable.

10. **We request that the Sewer Board take a fresh, new look at the full range of alternative treatment methods and discharge locations.** The Sewer Board should review the full range of alternatives presented in the original Preliminary Engineering Reports by Performance Engineering in March 2020 and Triple Tree Engineering in April 2022, respectively. Our understanding is that the Board can change directions and make new decisions about the treatment method and the discharge location within the scope of the two engineering reports without jeopardizing funding already in hand or pending grant applications. Furthermore, mechanisms exist and remain available to the Sewer Board if further studies or analysis are needed for any new aspect of sewage treatment method (e.g., advanced or level 2 treatment) or discharge location the Sewer Board may want to pursue. We strongly believe the permitting agencies, Park County, and the funding agencies are invested in and committed to your success and are willing to work with you to take the fullest advantage of all funding sources while also being mindful that the \$2 million ARPA grant should be fully expended by December 31, 2025.

Our major concern with the current approach to treatment method and discharge location is that it is utterly dependent on a 3+ mile pipeline adjacent to Highway 212 running from Cooke City to west of Silver Gate. The pipeline would have to cross creeks which have washed out numerous times in the last several years, numerous ephemeral runoff locations, and private lands requiring easements when there is not enough room in the present public right of way due to the presence of other utilities in the highway corridor. The pipeline would terminate just west of Silver Gate, a community that will not be served by this sewer

system. Furthermore, once this drain field and the mandatory replacement were full, all the infrastructure, including the pipeline, become obsolete and then abandoned. This location does not seem like a smart long-term investment in a wastewater infrastructure. We are not even confident that the Forest Service can lawfully sell Site E to the Sewer District, as a threshold matter. According to both PER's, Sites A, B, C, and D were sites recommended by the US Forest Service, and we are confident those sites can be legally purchased by the Sewer Board for a conventional drain field.

We consulted with several engineers, utilities directors, and a geologist, and solicited informal review of the direction the prior Sewer Board was taking. All of them indicated a 3+ mile pipeline would be a high risk, high maintenance, extremely costly approach and not recommended. Beyond the initial installation cost and maintenance risk, the risk to the environment is greatly elevated in the event of a malfunction or break in the system. We believe the threat to our communities, Soda Butte Creek, and Yellowstone National Park is too great and that better, smarter alternatives are available.

Both engineering firms hired by the Sewer Board considered drain field sites closer to Cooke City. Siting distance between the terminus of the central collection point and the drain field is a major factor to consider. Experts we consulted stated that the longer the line, the higher the maintenance cost and need for regular maintenance to keep the pipeline clear and ensure materials is moving properly.

Other experts we consulted stated that the cost estimate just to install the pipeline is likely underestimated by a factor of four, at a minimum. One expert even walked the proposed route along the Highway 212 corridor and stated that bedrock occurs 18 inches below ground, likely making the pipeline significantly more expensive to install and more difficult to maintain and repair than currently estimated.

We also consulted experts in alternative methods to treat the sewage and wastewater. We presented the idea of a Treatment Plant Tank (TPT) to the prior Sewer Board, which in turn met with a business which specializes in that technology. A video of that meeting is available on the Sewer Board website under the Documents Tab. A TPT offers a great deal of flexibility because it can be scaled to treatment demand and expanded to accommodate future growth. This is in stark contrast to a conventional drain field. Conventional drain fields eventually get "full" and no longer effectively treat the waste. At that time, the entire drain field is abandoned and replaced, which requires even more land in a valley where we already know that suitable sites are extremely limited. Furthermore, we understand that the site of the retired drain field can't accommodate any other land use after the field is retired. And, because discharge from a TPT is much cleaner, it can be sited in more locations, offering greater flexibility for finding more potential groundwater discharge locations that can be permitted.

In sum, we encourage the new Sewer Board to reconsider both the treatment method and the discharge location to find the best solution for today and for the future. As the decision body for the Sewer District, we believe you have full authority to review prior decisions, obtain new information, and make new decisions.

In closing, we want to assure you that we stand ready to help the Sewer Board get up to speed quickly by sharing our knowledge, expertise, research, professional contacts, and time. Thanks again for your service to our community. We look forward to working collaboratively with you now and in the future.

We can be contacted at Concerned Citizens of the Valley, P.O. Box 20094, Billings, MT 59104-0094 or concernedcitizens838@gmail.com. We hope you'll visit our website as well: www.concernedcitizens838.org.

cc by electronic mail:

Jason Crawford, 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, Montana Dept. of Environmental Quality
Mark Bostrom and Autumn Coleman, Montana DNRC Conservation and Resource Development Division