

To: Cooke City Silver Gate Colter Pass Sewer Board

From: Concerned Citizens of the Valley

RE: Concerns and Suggested Actions

Date: December 18, 2023

Thank you again for your ongoing commitment to develop a central sewer system. We recognize this project is a significant undertaking and value your willingness to lead our valley through it. We offer the following concerns and suggestion out of our own commitment to the project and your success.

**Concern #1:** The roles and responsibilities of Montana State University Park County Agriculture Extension Service personnel with this project and the Sewer Board (SB or Board) are unclear. While the added capacity to the Board's work can be helpful, the scope of their involvement should be discussed by the full Board and more clearly defined.

- **Discussion:** It appears at times that Extension personnel are performing duties and functions of the Board while neither formally employed or specifically engaged for discrete tasks after discussion by the full Board. Further, they are not duly elected by District members. The additional help can be valuable and add precious human capital to move a big project forward. Their efforts are appreciated, and it is encouraging that they want to help. However, their involvement during meetings and with official Board correspondence is confusing to the public and has created the appearance of officially representing the Board to the public and to third parties. On at least one occasion that came to light during a recent Board meeting, one of the Extension team members reached out directly to the Board's attorney for purposes of seeking clarification or legal advice. Even if it was not for purposes of seeking legal advice, consequences to the Board may still come up. And, if the attorney charged time, public funds would have been expended without Board approval. The attorney-client relationship is unique and between the Board and its attorney, no one else.

The Extension Service role in writing the RFQ for Owner's Representative Services and shepherding it seems very significant on the one hand but in reality is largely unknown and not transparent to the public. The way the RFQ process unfolded from the earliest idea for an owner representative vs. a project manager and leading up to the December 2023 meeting, is puzzling. Responsibility and accountability for the timely public release and why it was not advertised earlier and more widely than just the Livingston Enterprise is also murky. Other activities included setting up meetings with a potential funding agency and providing a proposed re-write of the Sewer District By-laws based in part on the wrong section of Montana Code. Short of a records request, it is unknown what Extension personnel are actually doing, what communications they are involved in, what input or advice may be flowing, and how that work overlaps with official Board duties and responsibilities. It's also not clear how their activities might relate to individuals already officially employed or contracted by the Board. It simply has not been discussed during a public meeting and should be.

- **Suggestion:** The full Board should discuss what it needs help with and whether the Extension personnel have the expertise and schedule availability to contribute. Roles and responsibilities should be clearly defined relative to the Board's responsibilities and the responsibilities of its

contractors and employees. If the Board decides to take advantage of their interest and skills based on what it needs, it should still require Board review and approval prior to any interaction or correspondence by Extension Service personnel with its attorney, any third parties, the District's contractors, and any employees. The scope of work should be shared with the public as greater transparency would benefit everyone.

**Concern #2:** Triple Tree Engineering has recently and appears to routinely submit information and data about the project directly to the funding agencies without prior Board review and approval. That information is critical to the project. Its accuracy is vitally important to the Board maintaining its credibility with funding agencies and to the agency's accurate understanding of the project status and future financial needs.

- **Discussion:** The Board is comprised of elected or appointed officials in accordance with Montana laws. That position comes with a lot of power, as well as responsibility. Neither are transferrable. Allowing Triple Tree, or anyone, to present information / data to state and federal agencies without prior review and approval ignores that responsibility. At a recent meeting, it became known that Triple Tree responded to a request for information and data about the project and provided it to the funding agencies without prior review and Board approval. It's not really clear if, when or how a decision was made that the entire Board did not need to review and discuss it first and what factors were weighed. Perhaps there was not sufficient time, which is still cause for concern. In effect, Triple Tree represented the Board and communicated to the funding agencies that the estimated cost of the project doubled without Board knowledge or approval. It also seems that some assumptions were carried forward when better information is available (e.g. amount of land for a drain field and the estimated cost per acre) and some basic contingencies (e.g. power and backup generators for two pump stations) were not brought to the Board's attention and discussion/inclusion. This resulted in an underrepresentation of future funding needs by at least a half million dollars. What else has been presented to whom concerning the project? How would the Board know? What systems and procedures are in place so the Board has confidence in what is being provided to others on its behalf? It was apparent in the recent meeting that the Board had no previous knowledge of what Triple Tree was presenting. As a Board or as individuals, this might be acceptable oversight of a contract for time and materials with multiple amendments in the last two years or so – and one that is already over budget and behind schedule. For District members and taxpayers, it probably would not pass as acceptable oversight and responsible stewardship of taxpayer funds.
- **Recommendation:** The entire Board should take a more active role in reviewing Triple Tree's progress reports and all correspondence with the funding agencies and any third party prior to sending it. If funding agencies or third parties request information or from Triple Tree directly, the request should be brought to the full Board and the response reviewed and approved by the entire Board. The Board can plan its meeting agendas and call special meetings as required to accommodate anything with a very short turnaround time. Draft information can be submitted to the Board 14 days (about 2 weeks) before it is due to the requestor and a special meeting limited to that item can held and open to the public. As the Board's contractor, Triple Tree can manage to the Board's schedule to ensure a complete, accurate representation of the District and the project, as is known at the time of the request.

Given the extent of the discussion and relevant updates to the Triple Tree provided to the funding agencies, the Board should consider writing a follow up letter to the funding agencies to supplement the previous information so the funders have a clear, accurate understanding of the project and expected funding short falls.

**Concern #3:** The Request for Qualifications (RFQ) for Owners Representative Services lacks specificity as to what exactly the On-Call Services on page 1 (#1-6) would be and what the Board's expected deliverables are for the entity performing On-Call services once the bidder finished reviewing things, coordinating with people, and attending meetings. As such, the RFQ also lacks detail as to what exactly is needed and expected to be addressed in a responsive, successful bid. It's not clear how a potential respondent can describe their capabilities to meet time and budget requirements as the Board's Owner Representative, when the Board has not clearly articulated and decided on what the project actually is.

If this Sewer Board has mentally embraced the project, as represented in Triple Tree's updated PER entailing required hook ups for all properties within the Water District Boundary when the system is activated, it should make that clear during an upcoming Sewer Board meeting. Eliminating that uncertainty allows respondents to submit accurate documentation to you about their qualifications and the Board would be better represented as a result.

The RFQ adopts another time/materials framework with no apparent estimated budget, upper dollar limit and no apparent expected duration. To the taxpaying public, it mostly looks like more overhead expenses and another layer of contracted services without real advantage for the Board. Deferring detail, scope of work, expectations, deliverables, and financials until a contract negotiation is not good governance.

- **Discussion:** When the RFQ was first posted on the Sewer Board website and discussed in a Board meeting, numerous comments were made by the public at the meeting it was too vague and had no required concrete deliverables -- only that a professional engineering firm would review work/documents from another engineering firm, but to what end? It is too broad and open and lists no concrete activity other than to review others' work. What are the Board's expectations after a review? Provide it with a written summary? A verbal summary? What if the review yields unfavorable information that requires a follow up response or there is disagreement between the two professional engineering firms as to acceptable industry practice? There is no plan or estimated effort nor timeline or description of what exactly will be required by the bidder. It lists no deliverables back to the Sewer Board as part of the contract. Unless a bidder made assumptions and clearly stated what they were, the Board can even begin to assess qualifications and estimate a cost for a potential contract, let alone a contract for unknown "on-call" services for "day to day" issues that could continue until project completion. The RFQ even lacks a requirement for the bidder to regularly attend Board meetings in person or remotely.

The RFQ's proposed On-Call services seem mostly similar to what Triple Tree Engineering has been hired to do -- namely engineering services. If the Board has doubts about that Triple Tree's professional capabilities to provide project design, construction and planning, survey work and other work in its contract and subsequent "task order" amendments, then address them directly with Triple Tree. Hiring an engineering firm to supervise a firm that the Board has hired to

provide professional engineering and other supporting services like permitting not only seems redundant, it seems to invite inefficiencies and duplicative work and will double the expenses for substantially the same work. What problem or gap is the Board trying to address?

While the RFQ should have included the overall project plan, it remains fundamentally unclear to the public that there is an overall plan. Since the first meeting of this Board, the public has asked and encouraged the Board to have a plan or vision for the whole project. If the Updated PER prepared by Triple Tree is “the project” that the Board is implementing, then make that decision during a public meeting so that it’s clear to everyone. At one point, Triple Tree has even said they did not have a project plan but was putting the whole project into a plan. Alternatively, Triple Tree has also stated that it is functioning as the Board’s project manager, but that plainly is not evident. It is unclear how an engineering firm can put together an individually phased approach to a central collection sewer project without an overall detailed plan. The Board itself must have an overall plan, estimated timeline, and schedule/cost estimates for any engineering firm to implement the Board’s plan successfully. Having a plan is even more vital to the Board deciding who and how an owner should represent it and providing that direction.

When discussing the possibility of a project manager, the Board seemed to gravitate to the idea. However, the term “owner’s representative” was used by Extension Service team and that’s the direction the Board took. Meeting attendees reinforced the view that a project manager was needed and for which professional certification requirements, statements of typical work activities and deliverables, and necessary skills sets already exist. In contrast, there is no common, universal understanding of what an owner’s representative does. It was acknowledged that if the Board used the term owner representative but assigned duties associated with a project manager role, a representative could work. However, it’s not clear from the RFQ what skill set the Board is looking to buy and what the job description and title are.

- **Recommendation:** The Board should table all action regarding the RFQ at this time. There is still a feeling of a complete lack of vision from the Board and even Triple Tree about the project and what it is in concrete terms. The public does not know where you are going and seems to alternate between apathy and a resolve to just vote down any bond. Board elections are coming up in a year for two, and possibly more, seats on the Board. As a part of the July vision meetings, it was stated that the Board should be able to articulate the vision and the project plan. Is it all structures with the Water District boundary all at the same time? Only commercial? All structures in a phased approach over 15-20 years? Do that before doing anything further with the RFQ.

The Sewer Board is not required to take any action on this RFQ to select a bidder from the two responses, and it shouldn’t. The Board has full discretion to not select either bid at this time. This decision could be made at your regular December meeting.

Once the Board has a vision and a project plan, then a revised RFQ could be released more broadly and allow for a longer response time. The revised RFQ should include the project plan, along with a job description and expectations of a project manager or a well-defined owner’s representative – whatever the Board decides to name the role. Define what the Board is looking

for and what services it needs, exactly. The revised RFQ should include detailed information such as: the project plan's stepped down details, an estimated timeline, estimated cost, completion date, specific statement of work and duties, deliverables, approach to resolving professional differences of opinion between two engineering firms, etc.

Despite our concerns, we remain committed to your success and seeing this project successfully implemented.

Respectfully Submitted,

Concerned Citizens of the Valley