

February 19, 2025

To: Cooke Pass – Cooke City -- Silver Gate Sewer District Board
From: Concerned Citizens of the Valley
Re: Written Public Comments for the February 21, 2025, Meeting

Dear Members of the Cooke Pass-Cooke City- Silver Gate Sewer Board:

Concerned Citizens of the Valley 838 (Concerned Citizens or 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. We come from all walks of life and have deep roots in the communities in the Soda Butte Valley. The well-being of all the communities and the valley is our focus.

Concerned Citizens is submitting written comment regarding several items on the agenda for the February 21, 2025, meeting. In some instances, CCV requests the Board and your contractors address specific information in their discussion and remarks.

Agenda Item #3 Triple Tree Engineering (TTE) Update

EDA Grant and Application Materials:

- The most recent status report on the Sewer Board’s website is Nov. 20, 2024. The Sewer Board and TTE were apparently still pulling together and submitting application materials. The TTE Engineering Update notes that the EDA grant has been awarded.
 - Many federal grant programs and other federal spending has been frozen by the new federal administration. It is anticipated that federal budgets will decline. What is the status of the federal commitment of EDA funds? Has the grant agreement been signed and the funds committed?
- Despite public requests to put grant applications on the Sewer Board’s website, the application supplement materials are not available on the Sewer Board Website apparently. Concerned Citizens again requests the Sewer Board publish the complete EDA Grant application to the website, including all supplemental materials, attachments, and exhibits submitted.
 - Of particular public interest is the “map” of the new infrastructure including the force main, subsurface wastewater treatment system, the U.S. Forest Service property purchase.
- The application itself states that EDA grant funds would be used to construct a 3+ mile force main, a subsurface wastewater treatment system, and purchase about 12 acres of U.S. Forest Service land. When did the Sewer Board make these decisions so that a map could be created?

Exhibit 1 Map in the TTE Update, page 4 -- “Remaining Collection System”:

- The map shows the “Remaining Collection System” in gray color.
 - The “Remaining Collection System” is not explicitly included in any of the Phases II-IV. Is this an oversight or somehow implied by the term “service connections” in Phase IV?
 - The funding call notes state a grant agreement is in place for the service connections, but planning and design of the “remaining collection system” is not included anywhere.

- Phase II is apparently limited to the collection system for the business district. When does the Board and TTE plan to address the “Remaining Collection System”? Certainly, this part of the project will cost more than the business district, but it is not addressed anywhere explicitly except the gray line on the map.
- Skunk Hollow is depicted in the Exhibit 1 map. Has the Board and TTE discussed how it will address these and other properties that are below grade for a gravity system? If not, when do you anticipate doing so?

Exhibit 1 Map vs. Updated Map of the Water District:

- Park County has [updated the Water District map](#), which is now visible on the interactive map on the Sewer Board’s website. This is helpful new information for the Sewer Board.
- The map illustrates areas included within the Water District but not the Sewer District and *vice versa*. When and how does the Sewer Board anticipate addressing boundaries of the Sewer District as a whole and specifically designating a Cooke City subdistrict?

Agenda Item #4 Land Conveyance for a Drainfield

By now, the Sewer Board is well aware that the deciding on a drainfield location will be consequential for a variety of reasons, not the least of which is the cost that will be born by those required to pay back a special assessment bond while also paying monthly service fees.

Concerned Citizens’ general understanding of this process is that Congress would direct the U.S. Forest Service to convey a specific parcel of land to the Sewer District directly. This approach would completely bypass the requirements of the Townsite Act – including public involvement and environmental analysis.

The legislative language would have to be very, very detailed. The Sewer Board must first decide on the drainfield location before Senator Daines or any member of the Montana Congressional Delegation tries to include rider language in a budget bill or any other bill. Just like all other decisions of significant public interest, the Sewer Board can’t make this decision in the back room or on the side with the Delegation.

Agenda Item "5. Board Member Comments on Non-Agenda Items / Board Initiatives." There is no opportunity for public comment on the agenda.

The list of topics under #5 appears to be an effort to respond to public questions and comments made during the January 29, 2025, Informational Meeting and during prior Sewer Board meetings. The documents in the FAQ folder on the Board’s website are helpful, and thank you for making them available. Concerned Citizens offers the following for the Sewer Board to more explicitly address in their discussion under #5.

- **Hard Data:** As Mr. Lipetzky’s email states, “The county has regulatory authority over onsite systems.” Thus, the “hard data” substantiating statements about failed systems and groundwater pollution should be provided by the county and Montana Dept. of Environmental Quality (e.g., impaired water bodies), respectively. Montana DEQ does not list Soda Butte Creek as an impaired water body. Soda Butte Creek is suitable for myriad beneficial uses, including drinking water if it is treated.

The two emails from Park County officials are not particularly informative. Both include numbers, but the emails do not state what the numbers actually are and the geographic area to which they apply. The emails lack context and key information because they do not include the question/s that were actually asked. Are these county violations? Complaints? Inspections performed? Are these numbers Sewer District wide? Only applicable to Cooke City?

Without providing the question the Park County officials were asked, their information is not actually responsive to the public's request for "hard data." For example:

- Mr. Inman's email:
 - provides a number by year for "ZCP." What is a "ZCP" and what geographic area does this number apply to?
 - How does the ZCP cross reference with the sanitarian's information?
 - Mr. Konley's email:
 - The bar chart states "Cooke City Septic Permits by Year" – are these applications for new septic permits for new construction? Variances for repairs to existing septic systems?
 - Does the title really mean only Cooke City or could parcels outside Cooke City's primary development footprint be included and the title is too narrow for the geographic area being represented in the graph? It's hard to imagine that 49 septic permit applications were submitted for new construction in Cooke City in the last six years. Is this Sewer District-wide?
 - Mr. Konley's information does not address the public's request for "hard data" to support statements that systems are aging or failing. Statements like that have implications for the value of real estate and the reputations of Cooke City businesses.
 - Generally, neither email is responsive to the public's request for the Board and TTE to provide documentation and information that supports the problem statement and assertions of failed systems and groundwater pollution in numerous grant applications.
 - The Sewer Board and its contractors can be most successful when information is objective, accurate, transparent, and supported with reliable documentation – regardless of where and how the information is used and the purposes of the statements.
- **Special Assessment Update:** Concerned Citizens appreciates the clarification from Mr. Semmens regarding subdistricts and special assessment bonds. However, until the Sewer Board actually defines a subdistrict and draws the boundary, the uncertainty remains as to what parcels would be subject to a special assessment whether through direct service connections or some future extension/s.

Whether or not public proceedings would be "significant" sidesteps the point that the Board has not directly addressed the scope of the project, connectivity requirements it will impose, and when these decisions will be made.

- The Sewer Board left the impression during the Jan. 29, 2025, meeting that it does not intend to delineate a subdistrict for quite some time. When will the Board do this?
 - When does the Board intend to reconcile an incremental design/build approach based on grant cycles with the remaining collection system depicted in gray in Exhibit 1 of Triple Tree Engineering's Update dated 2/10/2025 and Phases III and IV?
- **Drainfield Selection:** Concerned Citizens appreciates the cross references to two prior meetings in which the Board passed motions related to the drainfield location.

- During the 6/23/2023 meeting, the motion to rescind the application for Site E passed unanimously. There was also mention of an upcoming meeting with USFS about a new application.
 - Did the Sewer Board notify the USFS in writing that the application to purchase land at Site E was rescinded (or withdrawn)? CCV has not found documentation on the Sewer Board's website that the Board notified the USFS of the outcome of this motion (i.e., the motion was actually implemented with regard to communication to the USFS).
 - If the Sewer Board has not notified the USFS in writing that the Board voted to rescind the application to purchase land at Site E, when will the Board do so?
- **Other:** Lastly, Concerned Citizens shared its impressions of the Jan. 29, 2025, Informational Meeting and the status of the project overall with others via email. In the spirit of transparency, Concerned Citizens includes them below. To the extent anything is inaccurate, Concerned Citizens encourages the Board to address it.

Thank you for your hard work and service to the District.

On behalf of Concerned Citizens of the Valley,
Carolyn Sime

CCV's Recent Summary

Cooke City central collection system construction starting in spring 2025. The collection system is the network of pipes under the streets of Cooke City which will gather effluent and route it to the main sewer pipe leaving Cooke City. The Sewer Board hired Cop Construction to break ground this spring as soon as weather and snow conditions allow.

Cop Construction will start excavating and installing a portion of the central collection system based on the funds available. The precise schedule and construction areas are not yet fully known. It's also not clear how many seasons will be needed to fully build out the Cooke City collection system footprint. See the options and a map in a [Memo](#) on the Sewer Board's website. Contracting is underway.

It is still thought the collection system will be gravity-based so that all effluent drains to a central location. However, the Sewer Board has still not decided on the location of the lift station and has not addressed what to do about properties that are below gradient (i.e., Skunk Hollow). Because the Montana Dept. of Environmental Quality approved the engineering design of the collection system, the Sewer Board can move forward with the Cooke City collection system as funding becomes available.

Previously, the Sewer Board re-ordered the project to focus on the collection system first and delayed the decision about the drain field location. The budget for construction slated for this summer's portion is \$2.62 million, which will fully expend the ARPA funds.

Project cost is going up. The most recent cost estimate provided by Triple Tree Engineering was about \$16.5 million (for the project footprint as originally proposed – pipeline to a drain field west of Silver Gate). This is double the estimate in the 2022 preliminary engineering report. CCV and many others expect the cost will only go up, even if a drain field location is selected much closer to Cooke City.

The Sewer Board also hired a Butte-based engineering and environmental consulting firm as its “owner’s representative” to obtain independent advice (Water and Environmental Technologies or WET). The Sewer Board tasked WET to prepare a report considering the feasibility, cost comparisons, what it would take to meet the regulations and obtain permits to move forward with the original potential drain field locations and a site up the Lulu Pass Road.

WET’s November 8, 2024 Report is on the Sewer Board’s website. It is informative, although not decisive and certainly not the final word. WET borrowed some information from Triple Tree Engineering, added estimates for things that Triple Tree Engineering left out, and stated that some costs required further investigation (e.g., Northwestern Energy costs to bring power to the drain field site).

There are many unknowns, paper estimates, and assumptions – including the unknown trajectory of the U.S. economy. In WET’s opinion, costs for just the drain field alone vary from \$6.9 million to \$17.1 million depending on location (See the tables Appendix A). But WET estimated the drain field land purchase would cost \$350,000 for each location. The USFS has said it can sell land to the Sewer District based on an appraisal of the fair market value of the land. If true, it’s hard to see how the Sewer District could purchase 10-12 acres of land for an estimated total of \$350,000 near the boundary of Yellowstone National Park if Silver Gate Site E was eventually selected.

CCV continues to remind the Sewer Board that it is not locked into or limited to only a conventional drain field and that it should consider both treatment method and discharge location (i.e. drain field) as two separate variables in the hunt for the best, most affordable solution. The Sewer Board has not had a strategic conversation about a solution to optimize upfront capital costs to build the project vs. costs of long-term operations and maintenance which will be paid as monthly fees by those connected to the system (estimated at 90 or so hookups in Cooke City). What many would like to see is for the Sewer Board and its engineers to step out of the default road map of the 2022 preliminary engineering report and think more creatively about new options and alternatives.

The final cost won’t be known for a while. The Sewer Board is moving forward but will not know the final actual project costs until the very end. The Board intends to use loan forgiveness and grant funds to pay for as much of the project through incremental implementation and construction subject to funds available -- committing themselves, District members, and the project to a final outcome based on dozens of isolated decisions over several years without an overall project plan based on a comprehensive view and where the best alternatives were already selected.

The Board will eventually issue a bond to complete the project. The amount will be for the cost to actually finish the project minus any remaining grant funds and loan forgiveness.

While the Board deserves credit for its diligent pursuit of grants, most of the grant funding and loan forgiveness dollars come from the federal government as pass through funding to the state. Fair to say that there is a lot of uncertainty about what the federal government will do with these grant programs (e.g., EPA grants for local water and sewer infrastructure) and what Congress will ultimately appropriate if it pursues its stated intent to downsize the government and rein in spending. A decline in federal appropriations for these federal grant programs shifts more to project proponents like the Sewer District. Time will tell.

Ultimately, the final project cost and resulting debt won’t be known until the very end. By this point in time, it will be impossible to re-design the project to bring down either the up-front capital costs to build it or the long-term operations and maintenance costs paid by individual users. Too many isolated

decisions will have been made and too much pipe will already be in the ground. It will be impossible to go back.

A special assessment bond will likely be used to obtain the money to finish the project, and the final amount is unknown. The Board seems to favor a special assessment bond to cover the expected funding shortfall at the very end - but the bond amount won't be known until then. The Board has authority to issue a special assessment bond without District members voting to approve it. This bond puts a lien on the property and Park County will include it on property tax statements. Payments would be twice a year until the District's bond is fully repaid. The assessment stays as a lien against the land in any future real estate transaction. The amount of the special assessment for each property will ultimately depend on how much the Board needs to borrow to finish the project, the interest rate, and the number of years the Sewer Board selected to pay it off (e.g. 20 years). The assessment cost per property won't be figured out until the very end – it will be the big reveal.

Property owners could protest the special assessment as an individual, but that's a hard road uphill. By then, the burden to get out of the District or alter the assessment amount for that property has already shifted to the landowner. Individual landowners could try to “pool” their individual protests and if enough do so and clear a threshold, then the Sewer Board can't issue the bond.

The Sewer Board has made conflicting statements about which property owners would be assessed. At times, the Board has said that only property owners in Cooke City who connect to the sewer system will be assessed. However, a slide in the presentation last week stated “only the property owners within the District will be assessed.” Remains to be seen how this or future Boards will approach that decision.

While the special assessment will be placed on the property tax bill of the property owner, renters could also feel the pinch if rents go up to offset the new special assessment.

To learn more, here are links to last week's informational meeting:

[Minutes of the 1/29/25 Sewer Board Meeting.](#)

[Video of the 1/29/25 Sewer Board Presentation and public Q/A.](#)

Is your property located in the Sewer District? CCV learned that the Sewer District boundary was initially created based on the school district boundary decades ago. The Sewer Board has finally published a District map on its website. It was provided by Park County and based on the original water and/or sewer district formation papers filed with the county decades ago. The map reflects the new exclusion (by petition) of some properties in the Silver Gate area. Although the county mislabeled the legend on the right, CCV believes the map is accurate.

The Sewer Board's actions are taken on behalf of all property owners within the District shown on the map. Currently, the Sewer Board does not have liability insurance, although it has been working on it for over a year. The 2019 By-laws state the Board is “working towards sewerage properties within the original townsite of Cooke City in alignment with the boundaries of the Cooke City Water District” but it has not yet established a sub-district. Based on comments made by the Board's bond attorney and the Board Chair, it does not appear that the Board will focus on the boundary issue any time soon.

Interactive Map: Look for the plus / minus symbols in the upper left corner to zoom in or out. Zoom in and then click/hold your mouse button or touch pad to move around and to see individual parcel details for the entire Sewer District.

The Silver Gate Petition for Exclusion was granted. A [petition](#) to exclude some individual properties in the Silver Gate area was organized and submitted to the Sewer Board by Vic Tabor on September 18, 2024. The Sewer Board eventually granted the petition to exclude the properties within the petitioned area on November 20, 2024. These properties are now excluded from the District, and these landowners are no longer bound by the Sewer Board's decisions or subject to a future special assessment bond. Accordingly, owners of the excluded properties cannot vote in future Sewer Board elections and may not serve on the Sewer Board. This exclusion removed Jenny Heckathorn from the Sewer Board, but she was reappointed as an ex-officio member of the Board. Her seat is currently vacant and the Board could appoint someone who qualifies under state law to fill the remainder of her term (e.g. owns land or a business in the District, a Montana resident, etc).

CCV was not involved in this petition and did not take an official position, although we learned a lot about the petition process as it unfolded and attended Sewer Board meetings. Many CCV donors who receive our updates signed the petition or would have if their property had been included in the area proposed for exclusion. Many other CCV donors and District members who "opt in" to receive our updates own land outside the excluded area in Silver Gate. CCV will continue to engage with the Sewer Board going forward to ensure transparency, accountability, and advocate for smart outcomes for people and the environment.

While CCV's focus is the infrastructure challenges of the Valley, CCV has openly and strongly opposed a conventional drain field west of Silver Gate and the pipeline to get the effluent there on the grounds of financial affordability for those who will have to pay for it, very close proximity to private wells and Silver Gate's public water supply, and the environmental risk of a 3+ mile pipeline from Cooke City in the Highway 212 right-of-way to a drain field on the boundary of Yellowstone National Park. That has not changed.

Other petitions for exclusion likely. At this time, CCV believes it unlikely that the Sewer Board will proactively take up the issue of realigning the Sewer District boundaries to match the Cooke City Water District – which the Sewer Board intends as the sewer's service area. The Board does not seem inclined to even formally and legally create a Cooke City subdistrict so it can proactively identify the properties to be served up front and design/plan accordingly.

State law allows property owners to organize themselves and submit a petition to remove their properties from the Sewer District within a "petitioned" area. The petition must meet certain requirements. To grant a petition for exclusion, the Sewer Board has to determine that: (1) it is in the best interest of the District that the petitioned area be excluded; OR (2) the petitioned lands will not be benefited by their continued inclusion in the District.

The Board's decision criteria are not about the current project or potential drain field locations. Their decision should be guided by whether the property will connect to the central sewer system and "benefit" from the infrastructure. Would a toilet flush into Cooke City's central system?

Some believe that a property could benefit indirectly by some future possibility of connecting to the system if the sewer main or drain field is nearby. It is hard to imagine how lands outside of Cooke City would ever be added to the system given the financial and environmental constraints. Besides, the Sewer Board has previously said Silver Gate will have to build its own sewer system if ever needed and at no point has the Board even broached the idea of planning the current project so that more properties in close proximity to the infrastructure could connect in the future. Some may believe that the Sewer Board should not exclude lands because everyone benefits from Cooke City having a central sewer system and

that everyone should pay for it. To be clear, special utility districts have a specific and narrow purpose -- to provide water and sewer services to their members as a unit of local government because those properties are not serviced by a local municipality (i.e. Park County).

It is possible to support Cooke City and the Sewer Board in their endeavors while not owning property in the Sewer District. These things are not mutually exclusive. Anyone interested in exploring the possibility of submitting a petition for exclusion can reach out and read more about it in a few passages from state law [here](#). Click “Next Section” or “Previous Section” in the upper right corner. Montana Code Annotated 7-13-2343 to 7-13-2347. Lands must be excluded from the Sewer District prior to any special assessments levied by the Sewer Board.

Both the 3% and 1% resort taxes were renewed. CCV created a 1-page fact sheet and took out an ad in the Community Newsletter prior to the election. Voters approved both the 3% and the 1% resort tax in a low turnout election. Results are available on the [Park County Elections website](#).

The 1% resort tax is dedicated to the Sewer District. The Sewer Board anticipates using this to help offset costs. Unfortunately, it does not generate that much revenue in the face of the project they are pursuing at the moment, but every little bit helps. In its first few years, the 1% resort tax generated an estimated \$215,000.

Drain field location has not been decided, but Silver Gate still in play. The Sewer Board has not yet selected a drain field location. Moreover, the Board has not officially ruled out any of the prior locations with any degree of finality. While the Board did previously vote to not consider Site E by Silver Gate any further in the summer of 2023, this location continues to show up on all relevant Triple Tree Engineering documents and paper cost estimates. CCV is concerned that it will become the location by default, based on faulty logic, poor decision-making, lack of a comprehensive project plan, no cost:benefit analysis, and the existing preliminary engineering report.

Two new drain field locations were identified: up the Lulu Pass Road and the bench west of Sheep Creek. The Montana Dept. of Environmental Quality (DEQ) is the state agency that issues groundwater discharge permits for drain fields. DEQ has pointed the Sewer Board to an old gravel pit up the Lulu Pass Road and seems to favor that location. DEQ has said that detailed site studies would not be required to permit this location. Triple Tree Engineering is supposed to do some field work at the Lulu Pass gravel pit this summer.