

January 14, 2023

To: Cooke City – Silver Gate – Colter Pass Sewer District Board  
From: Concerned Citizens of the Valley  
Re: Proposed Sewer Treatment and Drain Field Project, Follow up on the December 21, 2022, meeting

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

We write as Concerned Citizens of the Valley (CCV) to continue our engagement with you to find the best, affordable solution for Cooke City's sewage wastewater challenges. This letter has three parts: 1. Summary; 2. Request for Information and Public Records; and 3. Written Comments about the December 21, 2022, Sewer Board Meeting.

### **Summary**

We remain committed to working with you to find solutions that will maintain economic activity, support tourism to and from Yellowstone National Park, and maintain the character of the valley we all love. But, we express our strong reservations about the Sewer Board (Board) moving forward to develop and permit the wastewater collection and sewage system identified as the Proposed Project (C3-T6) in the April-2022 Preliminary Engineering Report by Triple Tree Engineering (Apr-22 PER) and the order in which it is doing so. The Board is pursuing a conventional gravity sewer collection system in Cooke City where sewage would be placed in a pressurized pipeline and pumped 3.1 miles west to a traditional drain field adjacent to the Silver Gate Water Users Association's two public water wells and many other private water wells. Effluent would move through the drain field and flow into Soda Butte Creek just upstream from the Yellowstone National Park boundary.

We support searching for and implementing the best solution, and we want to work with you. However, we do not support the Board's singular, narrow-sighted pursuit of its solution for a variety of reasons. The Board has not objectively considered other alternatives (treatment method and discharge location) that are cheaper, smarter, and more appropriately target the actual problem – namely that the U.S. Forest Service intends to terminate several individual special use permits; and, some individual septic systems (with documented records of failure) need to be replaced due to repeated failures. Increased tourism, the need for adequate public restrooms, and increased sewage treatment capacity are certainly contributing factors that complicate the problem.

We request the Board immediately suspend all efforts to obtain permits, purchase land, spend money it has been awarded, and efforts to obtain loans. We also request the Board immediately pause the work of all its contractors and agents. Since April 2019, the Board has and continues to hold itself out and make representations to third parties on behalf of District and Sub-district members it can't identify with any legal force and effect. For at least 3 ½ years the Board has knowingly exercised its authorities, made decisions, risked liability exposure, entered legal and financial agreements, incurred debt and recurring financial obligations, contracted with third parties, and paid District employees. These actions have legal consequences to the Board and

individual citizens who may own property within the District or Cooke City Sub-district. These actions obligate the Board and bind the District and its “members” as a whole. The Board simply cannot continue acting on behalf of a hypothetical membership within an assumed jurisdiction.

We do not support the Board utilizing any of its authorities until the Board has an enforceable, legally-binding map of the District (Appendix A) and the Sub-District (Appendix B) described in the Nov-2019 By-laws. The Board should provide notice to Montana Dept. of Natural Resources and Conservation (DNRC), Montana Dept. of Environmental Quality (DEQ), the U.S. Forest Service (USFS) Gardiner Ranger District of the fact that it does not have anything more than mere assumptions about the District and Sub-District boundaries. This is the only ethical course of action the Board can take. Notice should also be provided that the Board is suspending its activities until this issue is remedied. That the Board has persisted this long, knowing it could not identify the legal boundaries of the District and Cooke City Sub-District raises serious ethical questions and sows doubt about a whole host of things, including the Board’s ability to undertake and manage such a complex \$8-10 million dollar project as outlined in Triple Tree Engineering’s Apr-22 PER.

We oppose a traditional drain field at Site E in Silver Gate. The financial and environmental costs and risks have not been objectively considered. Site E is simply too close to drinking water wells in Silver Gate, some of which have not yet been documented in the Board’s materials. A pipeline rupture anywhere along the Hwy 212 corridor would contaminate more than just private water wells in Silver Gate and along the route between Cooke City and Silver Gate. A rupture would contaminate Soda Butte Creek that flows parallel and down gradient of the pipeline. A rupture would threaten the safety of the Cooke City Water District’s public water system comprised of three wells that are located along Hwy 212 and next to the proposed sewage pipeline. A rupture would threaten the safety of the Silver Gate Water Users Association’s public water supply system comprised of two wells that are located next to the proposed pipeline route. A rupture would most certainly garner an immediate, strong response by Yellowstone National Park officials. And, a rupture would shut down the entire system, impacting Cooke City residents and businesses. Insuring against all these risks would be extremely expensive and increase the debt and recurring financial obligations carried by the Sewer District – which is borne by taxpayers.

The feasibility and actual cost to construct and operate the proposed pipeline are frankly unknown. There has been no investigation into what it would cost to insure this pipeline infrastructure against natural hazards like earthquake or flooding or even an errant backhoe. Furthermore, other ways of treating the waste (e.g., treatment plant) are smarter, require less land, and discharge cleaner effluent. A treatment plant opens far more possibilities for siting a polishing drain much closer to the sewage source because the discharge is much cleaner. This equates to a much shorter pipeline, less infrastructure, less risk, and lower property taxes.

We oppose the Sewer Board purchasing more land than is absolutely necessary for purposes of a drain field and its equivalent replacement, generously estimated at 10 acres. This will help keep debt and property tax assessments to only that which is necessary. We oppose the Board

expanding its activities beyond the purpose and scope of the Nov-2019 By-laws, specifically the Board's intent to acquire excess land or develop housing.

We do not support the Board submitting a groundwater discharge permit application and the permit fees to Montana DEQ for a traditional drain field in Silver Gate at Site E. Likewise, we do not support submitting an application to purchase USFS land at Site E. Both applications should be delayed until Sites A, C, and D have been objectively considered using actual field data and quantitatively compared using common metrics documented for each site, respectively (e.g. miles of new roads, miles of new power, feet of new pipeline). The Forest Service may even be open to other locations not previously considered. The Board is sequencing its decisions and expenditures to permit and purchase Site E by June 2025 and expend millions of dollars – *before* it has done any feasibility work on the pipeline the lynchpin of the whole project. The Board should make smaller investments up front to find the best, most affordable solution that optimizes the combination of centralized waste collection, treatment method, and discharge location. Doing otherwise is not a wise use of public funds entrusted to the Board's discretion, nor a proper exercise of the Board's power to tax property owners.

We disagree with the Cooke City-centric view of both the problem and the proposed solution in the Apr-22 PER and in documents put forth to obtain public financing and permits for the project and alternative. Both the Board and Triple Tree Engineering have and continue to state the problem and solution as pertaining to the District. But, according to the 2019 By-laws, Cooke City is actually the Sub-District (not the District as stated in nearly all the publicly available documents we found, including many sponsored, sanctioned, or signed by the Board). The problem is confined to the Sub-district and a narrow set of property owners within the Sub-District at that. Solutions for the Cooke City Sub-District should not come at the expense of or pose a risk to others in the District. Conflating the District and the Sub-District misleads the public, permitting agencies, and those entities from whom the Board is soliciting public financing to pay for the project.

We believe the Board should adhere to its November-2019 By-laws and all applicable state and federal laws. We also believe the Board's patterns and practices since April 2, 2019 when it was first appointed fall short of what's required of local units of government.

### **Requests for Information, Documents, and Public Records**

Please consider the following our second formal request pursuant to Montana's Constitution and applicable state laws for information, documents, public records, and communications related to the Cooke Pass-Cooke City-Silver Gate, County Water and/or Sewer District Board's efforts to develop a wastewater treatment and collection system since the Board was first appointed by the Park County Commissioners on April 2, 2019. This request goes directly to the Board's stated purpose in the 2019 By-laws, its conduct, and its practices while exercising its authorities.

We have previously requested many of the documents and information in the enumerated list below – both in writing and during prior Board meetings. The Board has not yet responded or clearly acknowledged receipt. Your response is kindly requested by February 16, 2023.

1. Records, public notices, and/or announcements regarding the 2019 Cook City Sewer District Election, any subsequent elections, any subsequent appointment of Board Directors, or reappointment of any Board Director/s.
1. Certificate of appointment by the Park County Commissioners in April 2019.
2. Documents and correspondence (e.g., letters, emails) between individual Sewer District Board Directors (i.e., each other) and between any Board Director/s and Park County Officials such as the Clerk and Recorders Office, individual county commissioners, or the Board of Park County Commissioners regarding terms of office for the Board of Directors, past or future elections, appointments to the Board, or reappointments. including but not limited to:
  - Reappointments, election, or any reelection of any Director since April 2, 2019;
  - Changes in the terms of office for any Director since April 2, 2019;
  - Names of each current Director and the date his/her term began and expires, respectively;
  - Present vacancies on the Board of Directors and the date on which any Director positions became vacant;
  - Notice of filing for the 2023 election of any of the current Directors; and
  - Public notices or announcements regarding 2023 elections.
3. Documents or correspondence between Board Directors, or between the Board or individual Directors regarding the appointment, status, or service of Director Krusniak, including vacancy, resignation, or forfeiture.
4. Document/s illustrating which currently-sitting Board Director is serving as president, vice president, and Secretary, respectively.
5. Document/s illustrating or identifying the person serving as the secretary hired by the Board and the person serving as the Board's employee as a Clerk/Treasure/Bookkeeper; the scope of work performed; and how much they are being paid, respectively.
6. If the Board has hired a general manager, documents showing who was hired and when; duties and responsibilities of that individual or entity; compensation; and expected duration of employment.
7. Document/s or correspondence or other records identifying all current and/or past employees, consultants, contractors, or subcontractors, or any other type of hire; the role or work they were hired to perform, including but not limited to contracts, statements of employment or appointments, and job description/s.
8. Reports filed with the Montana Secretary of State's Office.

9. Reports or updates filed or provided to Park County officials, including but not limited to the Treasurer's Office, the Clerk and Records Office, the Health Department, the Sanitarian, the Planning Office, and the Park County Commissioners Office.
10. Any ordinances or resolutions related to the development of a wastewater treatment and collection system.
11. Copies of any audits performed by or caused to be performed by the Board, including documentation of income sources; expenditures; and any obligated or on-going expenses, debts or financial obligations to other parties. If no audits have ever been performed, provide records of the audit schedule the Board has adopted by resolution.
12. Financial documents, bank statements, tax filings, and/or other records documenting funds acquired and expended by the Board for any reason; the source of any funds acquired; and the purpose for any funds spent, when the funds were spent, who was paid, and how much was paid.
13. Communications between Board Directors using personal email accounts, personal cell phones at all points in time prior to creation of the Board's new official email account (a single email account created sometime between November 21 and December 8, 2022); and, at any point after the Board's official email account was established, any written correspondence when conducting Sewer District business related to development of a wastewater treatment and collection system whether it was done using the Board's single email account or the private email accounts of any of the Directors.
14. Public notices, agendas, and minutes for every board meeting between April 2, 2019, and January 18, 2022, including voting records for each Director for all decisions made by the Board.
15. Public notices, announcements, agendas, meeting materials used by or referred to by the Board, and minutes of the public hearing held April 6, 2022.
16. Materials used by, referred to, and discussed by, the Board and any of its contractors or subcontractors during every monthly public meeting of the Board, and any public hearing since the Board held its first public meeting or hearing.
17. Enforceable, legally binding map of the Cooke Pass-Cooke City-Silver Gate Sewer District described in the Nov-2019 By-laws in "Appendix A: District Boundaries"; and "Appendix B Sub-District Boundaries for Proposed Project as of 2019", respectively; and evidence of the certificate of survey by a qualified, licensed professional.
18. All preliminary map/s provided by Triple Tree Engineering to the Board or individual Directors at any time, including during the December 21, 2022, Board meeting that purport to illustrate land included within Appendix A: District Boundaries and within Appendix B Sub-District Boundaries for Proposed Project as of 2019, respectively.

19. Any questions or requests for additional research compiled by the Board and transmitted to Triple Tree Engineering regarding the preliminary map/s given to the Board during the December 21, 2022, Board meeting in anticipation of discussion during the January 2023 meeting or any future meeting.
20. Complete copies of any and all permit applications and supporting materials submitted to Montana DEQ, including but not limited to all exhibits or appendices, any field data collected from Site E, evidence of permit application fees paid, the status of the application, and correspondence between Montana DEQ and the Board Directors, any individual Director, its agents, employees, contractors, and subcontractors regarding any and all groundwater discharge permit applications for Site E or any other site identified in the Apr-22 PER for a traditional drain field.
21. Complete copies of any and all land purchase applications submitted to the U.S. Forest Service Gardiner Ranger District or the Custer-Gallatin National Forest Supervisor's Office, including but not limited to all site plan descriptions, statements of purpose for which the land would be used, number of acres sought for the purchase, maps and schematic drawings, exhibits, appendices, and correspondence between the Board, any individual Director, its agents, grant managers, contractors, subcontractors, or employees and USFS representatives regarding any and all potential land purchases.
22. Documents, maps, data sheets, soil testing protocols, sampling locations, names of persons who collected the samples, names of persons who analyzed the samples, soil analysis test results; or reports regarding the soils sampled at Site A stated in the Apr-22 PER as having been completed and forming the basis for rejection of Site A.
23. Applications submitted for any grant, loans, or public funds, including all exhibits, appendices, amounts requested; grant agreements or loan documents or Memoranda of Understanding or Statements of Work or grant agreement amendments or task orders related to any money awarded or received or sought; status of any pending grant or loan application, including, but not limited to:
  - ARPA Competitive Grant Award, ARPA MAG Award, WRDA grant application, application/s for State Revolving Fund Loan funds and related documents:
    - Grant application submitted for ARPA funds submitted in January 2022;
    - Award letter for the \$2,000,000 ARPA grant;
    - All documents related to the \$200,000 Park County ARPA MAG – awarded in October 2021;
    - All documents related to the \$500,000 Montana Community Endowment Program contingently awarded in May 2021;
    - WRDA grant application for \$1,000,000 submitted in July of 2022;
    - Montana Community Endowment Program application for \$750,000 submitted in May 2022;
    - Any contracts or grant agreements entered into between the Cooke City Sewer District and any office of Park County specifying the terms and conditions of the ARPA subaward to the Sewer District;

- Any Memorandum of Agreement or other document executed by the Sewer District Board and Park County Commission for the purposes of any grant or loan to finance the collection system and treatment, including one entitled “Memorandum of Agreement Between Pass-Through Subrecipient and Third-Party Subrecipient”;
  - The “Scope of Work” Statement related to ARPA funding provided by the Sewer District to Park County which includes a description of the work to be performed, a schedule for completing the work, and a budget; and
  - A copy of the executed Grant Agreement Number AM-22-0068.
  - Montana Department of Natural Resources and Conservation Renewable Resource Grant and Loan (RRGL) grant applications, notices or award, or executed grant agreements including all attachments, exhibits, statements of work, or grant agreement amendments, including but not limited to:
    - \$125,000 awarded in June 2021; and
    - \$125,000 application submitted May 2022.
  - Grant agreements, contracts, or other instruments executed between DNRC, Park County officials, and/or the Sewer District Board, and/or Triple Tree Engineering, including all exhibits, appendices, agreement modifications or amendments, or task orders.
  - Any and all documentation submitted to DNRC or Park County submitted by Triple Tree Engineering or any other contractor of the Sewer District Board for payment and the amount of the “draw” or amount requested for reimbursement, including the statement of work that was performed.
  - Documents, requests for funding, or applications and all supporting materials that were submitted for consideration, ranking, and placement on State Revolving Fund Loan Program Priority Lists for loans for Phase 2 Funding Strategy activities and Phase 3 Funding Strategy activities; and documents, applications, requests submitted for loan forgiveness from the State Revolving Fund loan program, as enumerated in the Uniform Application signed by the District President on April 20, 2022.
  - Any other documents soliciting public sources of funding submitted to the State of Montana, including but not limited to the Dept. of Commerce.
24. Documents, statements, or requests for bids or quotes issued by the Board soliciting goods or professional services since April 2, 2019, including each statement of work for each bid received.
25. Documents and records of the evaluation forms and criteria for evaluating bids or quotes that were submitted to the Board (in response to a request or solicitation), completed evaluations used to determine the bid winner and documenting why non-winning bids were not selected for each contract awarded.
26. Documents and records of each statement of work for all awarded contracts and subcontracts, including name of entity and award amount, all modifications, amendments, and task orders following a bid award for any contractor selected by the Board.

27. Documents and records of each statement of work for all noncompetitive quotes, contracts, subcontracts, fee for service work, or awards that the Board issued, approved, and paid since April 2, 2019.
28. Documentation provided by any entity awarded a competitive contract or a non-competitive contract for purposes of documenting work to be performed, and obtaining payment for services; whether the instrument between the parties is memorialized as a reimbursable grant agreement or a contract; and the individual payments disbursed from the Board's own accounts or accounts being held or managed by Park County Officials or Offices on behalf of the Sewer District Board.
29. Any documents executed between the Board and Triple Tree Engineering, including but not limited to current and past contracts for goods or professional services; statements of employment; any contract amendments, task orders, addenda, exhibits, statements of work or scope of services related to the Board's efforts to develop a wastewater treatment and collection system.
30. Correspondence, including emails, statements of scope of work, task orders, or cost estimates provided to the Board by Triple Tree Engineering related to any proposed community drain field sites that are presently being evaluated (Site E) or being reevaluated (e.g., Sites A, B, C, and D) or any other potential location being considered.
31. Correspondence and other documents sent to or received from the Cooke City Water Board, a sister unit of local government in the area with which the Sewer Board must coordinate its activities.

The requested information can be emailed to [concernedcitizens838@gmail.com](mailto:concernedcitizens838@gmail.com). Alternatively, the information can be postal mailed to Concerned Citizens of the Valley, P.O. Box 20094, Billings, MT 59104-0094. We are also willing to make an appointment with the Board and photocopy our requested documents at the Board's place of business at our own expense. Please contact us with any questions about our request for this public information.

### **Comments Regarding the Board Meeting on December 21, 2022**

Due to severe weather constraints many of us could not travel to attend the Board's December 21, 2022, meeting in person. We participated by telephone, but again, did not see an agenda published to the Board's website. We also could not see or access the agenda and meeting materials used and discussed by the Board during the meeting.

We reiterate our request that the Board publish all agendas and meeting materials to the Board's website retroactively since its first meeting after being appointed in April 2019 and for all future meetings. These items should be accessible to all Sewer District members, for each and every meeting. We also reiterate our request that the Sewer District Board follow the Cooke City Water District's practice to enable participation by video for its meetings, which are held in the same meeting room in Cooke City.



## **Preliminary Map/s of the District**

For the first time on December 21, 2022, the Board saw a preliminary map of the District boundary created by an interpretation of Appendix A of the Nov-2019 By-laws. The Board also probably saw a preliminary map of the Cooke City Sub-District boundary corresponding to the drawing included in Appendix B of the Nov-2019 By-laws. We can only surmise what the Board Directors were looking at and discussing based on what we heard because meeting materials were not made available to the public on the website prior to or during the meeting and the Board has not chosen to conduct its meetings by video even though one of the Directors routinely participates by telephone.

Triple Tree Engineering apparently had previously been authorized to create an interpretive map/s. Triple Tree Engineering explained that it reached out to a licensed surveyor who created the preliminary map that was presented to the Board at the December 21, 2022, meeting. Triple Tree Engineering inferred that it had hired a subcontractor because it did not have the expertise in house to interpret the verbiage in Appendix A of the Nov-2019 By-laws. Triple Tree Engineering implied that developing an official, legally enforceable map would require field work by a licensed surveyor to tie the narrative description to the actual property corners on the ground.

Board Directors seemed confused, if not surprised, by what they saw and said the map was hard to read. Portions of the Silver Gate Townsite and local community may not be encompassed within the boundary of the District from the sounds of it. The same may be true of the Colter Pass area. Apparently, the Board and Triple Tree Engineering provided all information they and Park County have available to subcontractor who created the preliminary map/s. Whether to do additional research was discussed. It sounded to us like Board members agreed that additional research would not be fruitful.

Board Directors were told to assemble their questions and provide them to Triple Tree Engineering so that the questions and requests for any additional research could be forwarded to the subcontractor. The Board then tabled this topic until the next meeting. We look forward to hearing what was learned and what the Board plans to do about the fact that there is no official map of the District and likely even the Cooke City Subdistrict. Until more is known, CCV submits the following comments.

Legally establishing the District boundaries on a map by formal survey by a qualified licensed professional is foundational to the entire project and the Board's legitimacy. The Board has been exercising its authorities on behalf of the Cooke Pass-Cooke City-Silver Gate, County Water and/or Sewer District whose members and property owners it cannot identify in any legal sense. Actions have included: 1. taking on debt in the past and presently, the payment of which or the default thereof are liabilities held against the Sewer District and its members; 2. signing contracts that commit the Sewer District and its members to future financial obligations; 3. hiring and paying employees such as administrative personnel, a bookkeeper or treasurer, or a grant administrator; 4. signing grant and loan applications and subsequent agreements for awarded funds either directly or authorizing an agent to do so on the Board's behalf; 5. accepting and receiving funds to the Board's checking account; 6. paying for goods, permit fees, or services

using the Board's checking account; 7. accepting all estimates, data, and information cited in the Apr-22 PER as true and working towards implementing the C3-T6 recommendation; 8. the potential for other legal liabilities; and 9. holding itself out to the Cooke City Water District, lenders, grantors, permitting agencies, valley residents, and others in person or in writing as if the Board knew the full scope of the number of properties, their location, and who the actual members of the District and Cooke City Sub-district are, respectively.

We urge the Board to prioritize determining the legal boundaries of the District and Cooke City Sub-district by securing the appropriate professionals. We also urge the Board to pause all efforts to apply for permits, purchase land, incur any new financial debt or contractual obligations, make legal representations and similar until the proper foundation is established for the Sewer District, Sub-district, and the Board's exercise of authority.

### **Paper Evaluation of Sites A and D**

Triple Tree Engineering had previously provided an email to the Board with cost estimates a "tabletop" or paper evaluation of Sites A and D since this can be done in the winter period. No test pits, monitoring wells, or other field-based data collection would be included. Triple Tree explained that different discharge sites are evaluated using common variables like slope, soil types, distance to surface water etc. A tabletop evaluation readily considers the same basic metrics, regardless of whether the treatment method is a traditional drain field or an advanced treatment plant similar to AquaTech Systems. If the Board opts for a treatment plant, the treatment is considered "advanced" and discharge is cleaner, which then decreases the distance required between the treatment plant discharge and surface waters and less land is needed for a polishing drain field (when compared to a traditional drain field which is not considered "advanced" treatment).

The Board voted to direct Triple Tree Engineering to conduct more evaluations for Sites A and D in terms of what can be accomplished at this time of year. Existing District funds will cover this work. Triple Tree Engineering will report back to the Board at the next meeting. We look forward to hearing that report and offer the following comment.

We appreciate this initial step to complete a tabletop, paper evaluation of Sites A and D. We don't think the Board should stop there. Field work should be conducted just as soon as conditions allow this spring and summer. The Mar-2020 PER and the Apr-22 PER both identified many positive attributes of Sites A and D. We encourage the Board to keep an open mind and make evidenced-based decisions that optimize the treatment method (e.g. traditional drain field vs. treatment plant) and the discharge location to identify the best, cheapest solution.

We also submit that the Board is not limited to only considering Sites A and D as alternatives to Site E. Our meeting with USFS officials left us with the impression that the USFS wants to work with the Board and is genuinely open to other alternative sites that also meet the requirements of the National Forest Townsites Regulations.

## **Groundwater Discharge Permit Application for Site E**

The Board strongly affirmed its present course to submit a groundwater discharge permit application for a traditional drain field on Site E on the west boundary of the Silver Gate Townsite. Board Director/s stated that there are no reasons to stop efforts to obtain this permit and it will move forward, as planned. The Board and Triple Tree Engineering also apparently believe that moving the drain field site to the west would not impact the pipeline route or feasibility. Because no feasibility studies have been done on the original pipeline in the first place, adjustments necessary to reach a drain field farther to the west are also unknown.

Triple Tree Engineering stated it was “under contract” to submit a groundwater permit discharge application to DEQ by February 1, 2023. However, it’s unclear whether this date is an explicit contractual obligation that Triple Tree Engineering has or simply a suggested date or even a Board request.

We direct the Board’s attention to statements of opposition in this letter and two prior letters regarding Site E and for all the reasons cited. Further, we urge the Board and Triple Tree Engineering to refrain from submitting a groundwater permit application for Site E until alternative sites, in combination with a buried treatment plant, are objectively reviewed through both a tabletop exercise and subsequent collection of field data. One of the meeting attendees suggested that amending the contract between the Board and Triple Tree Engineering accordingly could be very straightforward so that Triple Tree Engineering would not violate its contract.

We also direct the Board to review our prior comments about incurring all the expenses of permitting and constructing a traditional drain field and purchasing USFS land at Site E without first focusing on the pipeline between the Cooke City final collection point and the drain field 3.1 miles away (though farther if the drain field is actually moved to the west). We have previously commented that both preliminary engineering reports purchased by the District were utterly devoid of any feasibility analysis, route information, or realistic cost estimates for construction or subsequent operation expenses of a pressurized pipeline that requires lift stations.

After some discussion later in this meeting, we thought we heard the Board state that Triple Tree Engineering would hold off on submitting the groundwater discharge permit application for Site E and that this topic will be on the agenda for the January 2023 meeting. We have previously urged the Board to refrain from paying any permit application fees and incurring other expenses associated with Site E until it has reevaluated other sites and treatment methods to find the optimum solution. The 3.1 mile pipeline in the Hwy 212 corridor must be factored into that decision rubric far more realistically than in the past, along with any pipeline needed for an alternative discharge location.

## **Limiting Time for Public Comment during Board Meetings and Roberts Rules of Order**

The Board discussed whether to vote to limit public comment during meetings, and the time allotted to fifteen minutes total (not per person) for this and potentially future meetings. It sounded to many of us like this outcome had previously been discussed by Board Directors and the desired outcome had been predetermined. Wisely, the Board refrained from taking executive

action to adopt that limitation during this meeting. We did not have an agenda to know whether it was actually on the agenda for a vote or not.

And, the Board may still be considering this limitation for future meetings. We believe doing so would stifle genuine public involvement in the Board's discretionary decisions and the decision-making process. The opportunity for public comment is already unclear to the public and members of the public are routinely interrupted and cut off by Board members when speaking, even after having been acknowledged by the Board Chair. Members of the public are similarly not clearly provided an opportunity to comment on any items not appearing on the Board's meeting agenda.

The Board's lack of transparency and reluctance to squarely and forthrightly provide information when asked during meetings, upon written request or even proactively to District members and the community at large over which the Board has the power to tax is quite different from our experiences with other Montana state or local government bodies. We take no comfort in this anomaly, given the public's right to know and participate and the gravity of the outcomes of the Board's decisions.

If time and meeting management are problems, one solution would be to make agendas and all meeting materials available to the public ahead of the meeting using the website under the Documents tab where draft minutes of the immediately prior meeting are available. We have suggested this to the Board on many occasions. We also encourage the Board adopt a more proactive approach towards communicating information to the citizens affected by its decisions

In addition, a meeting attendee commented that the Board could get training on the Roberts Rules of Order. We encourage the Board to educate itself on the Roberts Rules of Order and apply them during future meetings. In fact, Article IV, Section 8 Conduct of Business of the Board's Nov-2019 By-laws requires the Board to follow Robert's Rules of Order, 11<sup>th</sup> Edition, for small boards as amended.

Additionally, we remind the Board of its obligations under Montana state law for public notice and public participation during its meetings.

### **Video Meeting with AquaTech Systems Representatives**

Sometime between November 23 and December 21, 2022, some Sewer District Board Directors met with AquaTech Systems representatives to hear their presentation and learn more about their wastewater treatment plant products and design. Thank you for uploading video of that meeting to the Board's website. Our comments follow below.

We found the presentation by AquaTech Systems representatives both informative and promising. Yet in the end, there was no clarity about next steps or a follow up call to continue drilling down into greater detail about their treatment plant system alternative. To be sure, that video call is more than a "check the box" task now marked "done" that allows the Board to say it met with AquaTech representatives. It truly is an opportunity for better treatment for less money and lower taxes.

AquaTech professionals custom design each wastewater treatment plant to meet client needs so that treatment plants scale according to the problem needing a solution, while also allowing for future growth and expanded capacity.

We especially noted a very high degree of flexibility and adaptability to lay out the sewage collection system and locate the treatment plant in close proximity because the plant is fully enclosed – whether buried or not. Various possible layouts for the Cooke City Sub-District were brainstormed and actually sketched out on the spot and visible during the video meeting.

Notably, AquaTech representatives even sketched an idea for a micro-collection system and treatment plant that could be specifically designed for commercial businesses in Cooke City which currently have special use permits from USFS, failing systems, or otherwise would benefit from connecting to the system. A micro-collection system and treatment plant could even include the Cooke City Visitor's Center / Museum / Chamber Building or a newly established separate rest stop and picnic area to accommodate the influx of summer visitors to Yellowstone National Park and large groups passing through Cooke City on tour buses. An inviting public space where Cooke City visitors could linger would surely increase economic activity and expenditures at local businesses.

We heard that the treatment plant unit could even be located in a building that is within or very close to the Cooke City Townsite itself, either above or below ground. Doing so would avoid and overcome many of the complications and expenses of the Board's solution – i.e., a gravity system collecting and transferring effluent through a pipeline to a traditional drain field located 3+ miles away (Site E). Putting a treatment plant in a building could very well eliminate the need for new powerlines and new roads. Winter access is assured because the enclosed nature and relatively small size of the plant itself allows it to be placed in much closer proximity. In contrast, these were all reasons cited for why Sites A through D were eliminated based solely on qualitative, categorical statements without quantified data. Changing the method to a treatment plant opens a lot of new possibilities that still solve the problem now and allow for future expansion if planned for appropriately.

We learned that construction could be far less disruptive to private property owners and local Cooke City businesses during the summer construction season because of the construction methods used. Summer is also a key window of economic activity for local businesses that corresponds with the height of Yellowstone National Park visitation.

We saw mandatory reporting data sheets and numbers showing that the quality of water discharged to a polishing drain field after treatment fall well within Montana DEQ's regulatory requirements and likely exceed minimum permit discharge standards. In fact, the discharged water is so clean that it can be and is used for subsurface irrigation at public recreation sites directly and without further treatment. It can also be discharged into the ground closer to surface waters because it is so clean. Even if a pipeline was needed between the treatment plant and a polishing drain field at a different location, the discharged water is so clean that it would not pose nearly the environmental hazards and legal liabilities for the Sewer District caused by pipeline breaks or malfunctions due to natural disasters such as earthquake or flood, inadequate

design or installation, material failure, compromised or failed appurtenances, or an errant backhoe.

We also heard AquaTech representatives explain that the required operations, maintenance, and sampling for a system commensurate with Cooke City's needs would take about three to four hours per week. Spare parts, pumps, and other equipment could also be stored on site so that repairs could be made very quickly, whether at the individual business or homesite or the treatment plant. A local valley resident could become trained, certified, and paid to do this work. In the alternative, maintenance is so straightforward, that a person could travel to the area once a week, while someone local would be on call to fix immediate issues like a pump.

We are challenged to reconcile statements we heard by AquaTech representatives during this video meeting with statements made by the Board and Triple Tree Engineering at the Board's December 21, 2022 meeting. We heard the Board and Triple Tree Engineering representatives discussing the cost of operating and maintaining an AquaTech Systems treatment plant. It was stated that the treatment plant would require two full time employees to operate it, at a cost exceeding \$100,000 per year. These statements do not seem factually correct or accurately reflect information shared by AquaTech representatives during the video meeting about what is required to operate and maintain their treatment plants. Moreover, such statements by the Board and/or Triple Tree Engineering of \$100,000 far exceed the estimated annual operations and maintenance cost of \$37,130 in the Apr-22 PER that the Board is relying on to obtain financing (Apr-22 PER pp. 48, 59). Contradictions between the Apr-22 PER estimates and these new statements by the Board and Triple Tree Engineering are very concerning and go to the heart of future monthly fees paid by property owners and businesses.

Still further, AquaTech representatives *did not* state that their systems require onsite housing or operator presence full time or 24/7. They said some capability for remote monitoring is inherently engineered and designed into the treatment plant. In stark contrast, the Board reiterated its own prior statements that employee housing would also have to be built and provided onsite for the operator. We'd like to set the record straight that AquaTech representatives are the authoritative source of information when it comes requirements for operating their own systems, not characterizations made by the Board or Triple Tree Engineering.

We, and others, have sought clarification of the Board's intentions with respect to how much land it intends to buy and whether it intends to develop housing at Site E or elsewhere. The Board has not yet provided that clarification on the record. Regardless, a treatment plant would require less land than a traditional drain field, a significant savings to taxpayers.

To be clear, we are not advocating specifically for an AquaTech Systems treatment plant. We know that there are treatment plant manufacturers similar to theirs already in use in Montana. Triple Tree Engineering also confirmed that and so do DEQ's materials. However, we are confident AquaTech's treatment plant is a viable system and legitimate alternative, based on our interactions with AquaTech representatives and our own research. And, it is affordable even for the "advanced" treatment it provides. The system provides better treatment for less money than what the Board is pursuing.

Advanced treatment and cleaner discharge for a cheaper price in this environment and adjacent to Yellowstone National Park is actually desirable, not disqualifying or cause for dismissal. Shifting the Site E drain field to the west and farther away from the Silver Gate community water wells also moves the discharge closer to the Park boundary. Yellowstone National Park officials have not weighed in yet as to whether the Park prefers or would push for advanced treatment prior to discharge as a requirement of any permit issued by Montana DEQ (i.e. a condition or stipulation of granting the permit that must be implemented for the permit to be valid). In the end, advanced treatment will likely be required. The Board absolutely can use its discretion to select advanced treatment without being told to do so. Do not wait until after advanced treatment becomes required to do the right thing, especially when the right thing is cheaper.

In stark contrast, the Sewer District Board is taking actions leading to a wastewater collection and treatment project that will cost at least \$5-6 million dollars more right off the bat, without even accounting for what are likely underestimates in the April-2022 PER. For example, we think it highly unlikely that extremely desirable land adjacent to USFS lands and Yellowstone National Park would appraise at the highest and best use at fair market value for \$10,938.00 per acre (see Apr-22 PER, pp. 48, 50, 52, 57). We also think it unlikely that estimates for the proposed 3.1 mile pipeline construction and operation will even be close to the estimate (see Apr-22 PER pp. 48). This is because geophysical feasibility, engineering requirements in this terrain with our natural disaster hazards, actual route, cost of potentially necessary private easements to site and/or access infrastructure, construction costs for the “final” pipeline, and insurance have not been investigated, documented, and properly considered to date.

The Board seeks to utilize a wide variety of public funds, derived from taxes paid by citizens. The Board even seeks to finance the project through outright loan forgiveness – another form of reliance on public funds derived from taxpayer dollars. Moreover, the Board's actions and decisions will directly translate to increased property taxes for whomever the Board ultimately decides should be assessed and eventually charged monthly fees.

We encourage the Board to think about your decisions in those terms and as the subunit of government that you are. Be good stewards of the public taxpayer funds you are responsible for so they are spent wisely. Be conscious of how your decisions will affect those who own property and pay taxes within either the District or the Cooke City Townsite Sub-district.

## **Other**

The Board stated it is preparing a Q/A document that will be published on the Board's website so it does not have to address repetitive questions posed by the public attending the Board's meetings or presented to the Board in writing. When we last checked, nothing was published to the Board's website. We agree that a Q/A sheet would be helpful. However, the Board's obligations for disclosure to the public (and specifically District members) as a local unit of government trying to develop, finance, construct and eventually operate a \$10+ million dollar system to collect and treat wastewater in perpetuity far exceed a simple one-time Q/A. It is an ongoing obligation of any unit of government in Montana.

The Board has previously stated its intent to assess all property owners in the District to spread out the cost, regardless of whether that property owner or business connects to the system. At this meeting, the Board was again asked about who the Board intends to tax, how much assessments will be, how decisions would be made, and when. The Board responded to the local property owner that it did not know who would be taxed or even when any of those decisions would be made.

As unacceptable as this answer is, it aligns with the fact that the Board is and has been making decisions blindfolded because it lacks even a basic understanding of the District boundaries and who's in it. The same can be said for the Sub-District. That issue needs to be remedied before the Board can ethically or legitimately exercise its authorities.

In closing, many of us will attend the January Sewer District Board meeting either in person or by telephone. Thank you for making a dial-in number available. We look forward to a collaborative discussion.

Sincerely,  
Concerned Citizens of the Valley

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