

Director Gary Spackman
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RE: Written Comments on Proposed Teton Creek Flood Control District

Dear Director Spackman,

Please consider these written comments on the proposed Teton Creek Flood Control District (“TCFCD”), submitted on behalf of the Petitioners requesting the TCFCD and the Teton Creek Stakeholders Committee.

As described in the Petition, and acknowledged in the Idaho Department of Water Resources Report on Establishment of the Proposed Teton Creek Flood Control District (“IDWR Report”), several parcels included within the proposed TCFCD contain lands outside of the 100-year flood plain. At least one participant at the January 14, 2014 public hearing raised concerns about uplands being included within the proposed TCFCD. These written comments seek to address those concerns.

This issue arises in part because Teton County has indicated it can only assess taxes on entire parcels. It will not, and perhaps legally cannot, divide legal parcels into multiple, smaller, taxable quasi-parcels. Consequently, if a landowner wishes to exclude upland portions of a parcel from the TCFCD, the only option would be to subdivide the parcel into multiple legal parcels, which could have unintended tax and other consequences, as outlined below.

As an initial matter, as acknowledged in the IDWR Report, Idaho law does not require that lands included within a flood control district be part of the 100-year floodplain (or any other area defined by features of the physical landscape). However, recognizing that landowners who feel geographically disconnected from Teton Creek might have concerns with being included within the TCFCD, Petitioners specifically sought to limit the proposed TCFCD to those parcels connected to the 100-year floodplain, given current parcel boundaries. Of course, some included parcels contain uplands, but Petitioners sought to avoid including these uplands wherever possible.

Recognizing that future land divisions might legally disconnect these uplands from the floodplain, the Petition includes a provision allowing landowners to request to be removed from the TCFCD should subsequent subdivisions isolate parcels from the floodplain (and from subdivision common areas within the floodplain). While Idaho law is apparently silent on this point – when a flood control district’s area can be *reduced* in size rather than expanded – all Petitioners agreed on this proposed method to attempt to address future land divisions in the uplands. Petitioners remain dedicated to ensuring that the TCFCD be created and operated in a fair and equitable manner, taking into account the concerns of all affected individuals and landowners.

As a practical matter, many of the concerns raised about this issue have been based on apparent misunderstandings about the effects of the TCFCD and the actual amount property taxes might change. For example, one landowner expressed concerns that TCFCD creation would make all of the uplands on his parcel legally part of the 100-year flood plain. Another landowner mistakenly believed that the increase in his property taxes would be almost 20 times the actual projected amount.

The FCD's actual effects on upland areas will be much less than the landowners may fear. As one example, one of the largest parcels in the proposed TCFCD is the B Triple J parcel (~140 acres). Approximately 23 acres of this parcel are within the 100-year floodplain. This parcel currently receives the agricultural exemption for tax purposes, and is subsequently valued at \$135,649 (according to Teton County tax records). The current property tax for this parcel is approximately \$1,362.80.¹ The FCD tax increment would be \$81.39. While this is an increase in the total tax burden, it represents only a 6% increase over the current property tax.

In contrast, if the 23 acres of floodplain were legally divided from the upland parcel, it likely would be classified as residential (according to a phone conversation with the Teton County assessor). The County currently values residential land at \$6,100/acre, giving this new parcel a taxable value of approximately \$140,300 and an FCD tax increment of \$84.18 (over and above the base property tax). The remaining upland parcel would see the assessed value decrease to approximately \$121,664 (based on the current assessed land value per acre, minus the 23 acres in the floodplain). The landowner's total property tax obligation, excluding the FCD tax, would therefore almost double—from a "before" assessed value of the single parcel of \$135,649 to an "after" combined assessed value of approximately \$261,964. In addition, the FCD tax increment would also increase from ~\$81.39 to ~\$84.18. Under this scenario, the total property tax for the two parcels would be \$2,716.02 (a 99% increase over the current property tax), with \$1,493.72 allocated to the 23 acres of floodplain, and \$1,222.31 allocated to the uplands. The proposed TCFCD boundary therefore represents a far lesser tax increase for this parcel than would this potential alternative.

Most of the large parcels within the proposed TCFCD also receive the agricultural exemption, and thus would experience similar relative tax increases from the TCFCD or similar alternative parcel divisions.

This discussion is not intended to minimize legitimate landowner concerns about increases in property taxes. Petitioners recognize that no one likes tax increases. As important, petitioners also recognize that what may seem like an insignificant tax increase for one landowner could be much more important to another, for any number of reasons, both economic and not. We provide these examples only to provide some context for some of the concerns raised at the public hearing.

¹ This tax figure was estimated from the property's assessed value and 2013 Teton County tax levy rates, all of which are publicly available on Teton County's website. Teton County levy rates are included as an attachment and here: http://www.tetoncountyidaho.gov/pdf/additionalInfo/Clerk_certoflevies_2013.pdf. The total tax rate for properties in unincorporated Teton County appears to be 1.0046588%. The state average in 2012 was 1.048% for rural properties.

In sum, it appears that the best approach for any of these landowners currently receiving the agricultural exemption on the upland portions of their parcels is to leave the parcels undivided and included in the TCFCFCD, unless and until changing market conditions or other factors justify dividing the parcels for reasons unrelated to the TCFCFCD. Attempting to exclude portions of the uplands from the TCFCFCD likely would only increase a landowner's total tax burden, perhaps significantly, in addition to whatever costs might be required to achieve the land division (e.g., costs of surveying and government fees).

Thank you for your consideration of these written comments. And thank you much more for all of the work you and your colleagues have performed as a consequence of this proposal. Petitioners recognize that this proposal has required both new and additional work; that work is much appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'JL', with a stylized, cursive flourish.

Jerry Long

submitting these comments for:

Petitioners for the Teton Creek Flood Control District, and
Teton Creek Stakeholders Committee

Please address any correspondence regarding these comments to:

Jerrold (Jerry) Long
Associate Professor of Law
University of Idaho College of Law
875 Perimeter Dr. MS 2321
Moscow, ID 83844-2321
(208)885-7988
cell (608)215-3271
jlong@uidaho.edu

Attachment: Teton County tax levy rates