

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE JULY 22, 2013) **ORDER RECOMMENDING**
PETITION TO ESTABLISH A FLOOD) **ORGANIZATION OF FLOOD**
CONTROL DISTRICT ON TETON CREEK) **CONTROL DISTRICT NO. 18**

On July 22, 2013, the Idaho Department of Water Resources (“Department”) received a Petition Requesting the Establishment of a Flood Control District on Teton Creek in Teton County, Idaho (“Petition”). Idaho Code § 42-3105 sets forth the filing requirements for a petition to establish a flood control district.

Pursuant to Idaho Code § 42-3106, the Department is required to review any petition to establish a flood control district to verify that the filing requirements have been satisfied. The Department prepared a report (“IDWR Report”) reviewing the information contained in the Petition and found that the filing requirements had been met and that the proposed Teton Creek Flood Control District (“TCFCD” or “proposed district”) was necessary, practicable, and feasible.

In accordance with Idaho Code § 42-3107, the Department scheduled a public hearing to collect additional evidence relating to the proposed district. Notice of the hearing was advertised in the Teton Valley News on December 26, 2013 and January 2 and 9, 2014.

The Department conducted the public hearing on January 14, 2014 at 2:00 pm at the Teton County Courthouse in Driggs, Idaho. Participants offered testimony and documents into the administrative record. Written comments were also provided to the Department. Based on the information provided in the Petition, the IDWR Report, the written comments, and the evidence collected at the hearing, the Department makes the following findings of fact:

FINDINGS OF FACT

1. Teton Creek is a tributary to the Teton River. The creek begins in the state of Wyoming and flows westward across the Wyoming-Idaho state line into Teton County, Idaho. Within the state of Idaho Teton Creek flows approximately eight miles, from the Idaho-Wyoming state line to the confluence with the Teton River.

2. Teton Creek is used by the local community for irrigation, recreation and aesthetic values. The creek also provides important aquatic and riparian habitat. The amount of flow in the creek is largely determined by snowmelt and runoff and, therefore, the creek is subject to large fluctuations in flow over the course of the year.

3. The 100-year flood flow of Teton Creek is calculated to be 2,050 cfs. Teton Creek flows have not been regularly monitored or measured.

4. Over the last 30 years, human alterations to the Teton Creek stream corridor have caused damage to the stream channel. In the early 1990s, a section of 4,000 linear feet of the creek was channelized illegally (without a stream alteration permit). The alterations and channelization resulted in increased erosion, loss of riparian vegetation, and sediment deposition. The channel's capacity to dissipate the energy of the creek during flood events was greatly diminished.

5. Because of the damage to the stream channel, some of the historic flood plain has become disconnected from the creek. The existing active flood plain through the proposed district area is not sufficient to handle large flood events, dissipate flood energy, or effectively filter and transport sediment. The increased erosion and energy from flood-stage flows poses a risk to roads, bridges, homes, and irrigation structures in and near Teton Creek.

6. In recent years, local groups have undertaken projects to reconstruct and restore certain sections of Teton Creek. As of June 2013, approximately \$2.3 million in federal, state and private funds have been raised, including a \$1.3 million grant from the Federal Emergency Management Agency ("FEMA"), to develop restoration design plans and reconstruct a 1.2 mile reach of Teton Creek. This restoration project was completed in 2013.

7. The Petition identified several projects that have been completed or are in progress towards completion including a bridge replacement, stabilization of eroding stream banks, and removal of debris that could cause flood damage. These projects have been accomplished through collaborative efforts of land owners, developers, conservation groups, and government agencies. Fifteen stream channel alteration projects have been approved on Teton Creek since 2007. Annual maintenance is required to preserve the integrity of the projects that have already been completed on Teton Creek.

8. The Petition identifies projects that could be completed in the future to further prevent damage to property from flooding. The future projects identified are reasonable projects that could reduce flood risk. A local flood control district is an ideal entity to prioritize and oversee these types of projects. The Petition states that future projects will be "prioritized and developed through stakeholder collaboration and community participation."

9. A local flood control district will be able to undertake projects to maintain and protect the work that has already been completed to restore the Teton Creek channel. The proposed district will also be practical to address emergency flood control work during times when Teton Creek flows are above flood-stage.

10. The proposed district includes all of the parcels between the Idaho-Wyoming state line and a point on Teton Creek 0.4 miles downstream of Idaho State Highway 33 which are wholly or partly within the 100-year flood hazard zone as designated by FEMA. The proposed district also includes all of the subdivisions or other community developments with portions of Teton Creek within their common areas.

11. Small portions of the 100-year flood hazard zone between the Idaho-Wyoming state line and Highway 33 were not included in the proposed district boundary. Exclusion of these areas is of little consequence and the parcels can be annexed into the proposed district at a later time. The proposed district boundary also includes a portion of the 100-year flood zone for Spring Creek, a tributary to Teton Creek.

12. At the time the Department reviewed the Petition, there were 54 qualified voters residing within the boundary of the proposed district. 27 (or 50%) of the qualified voters signed the Petition.

13. The Petition also included letters of support from 24 non-resident land owners who own property within the proposed district. These individuals do not qualify as registered voters within Teton County, but would still be subject to any assessments levied by the proposed district.

14. The Petition included letters of support from the primary homeowners associations within the proposed district: Aspen Point Homeowners Association, Creekside Meadows Homeowners Association, and the Aspens Homeowners Association. The Petition also included letters of support from the City of Driggs, the Teton County Board of Commissioners, and the Friends of the Teton River.

15. The proposed district will be comprised of three divisions: Upper, Middle, and Lower. The petition identified a resident and qualified voter for each division to act as commissioners once the proposed district is organized.

16. The total area of the proposed district is about 2.2 square miles. There are a significant number of residential lots within the proposed district. Most of these are located between the Idaho-Wyoming state line and Highway 33.

17. There are six irrigation diversions from Teton Creek within the proposed district boundary. Five are located between the Idaho-Wyoming state line and Highway 33. The other diversion is downstream of Highway 33.

18. A portion of Teton Creek, from Highway 33 downstream to the confluence of Teton Creek and the Teton River, is designated as a protected waterway and a "Recreational River" by the Idaho Water Resource Board in the Comprehensive State Water Plan for the Henrys Fork Basin (1992). Pursuant to Idaho Code § 42-1731(9), a Recreational River is "a waterway which possesses outstanding fish and wildlife, recreation, geologic or aesthetic values, and which might include some man-made development within the waterway or within the riparian area of the waterway."

19. Based on its designation as a protected waterway, stream channel alteration activities are prohibited on Teton Creek downstream of Highway 33 "except those necessary to maintain diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; for new diversion works; and for public agencies to construct

public access facilities and fishery enhancement facilities.” (Comprehensive State Water Plan for the Henrys Fork Basin (1992))

20. Local flood control districts are generally created to undertake projects designed to prevent or reduce damage to life and property caused by floods. The Petition states that, among other things, the proposed district will be created “[t]o protect human lives, homes, lands, roads, bridges, irrigation structures and other private and public investments from floods or high water events on Teton Creek; [t]o restore and maintain the natural flood carrying, distribution, and dissipation capacity of Teton Creek; . . . [and] [t]o protect and maintain intact floodplains and [] previous restoration efforts”

21. Under Idaho Code § 42-3115(1), the proposed district will be limited to a tax assessment of no more than 0.06% of the market value of any parcel within the proposed district. If the full 0.06% is assessed for the parcels within the proposed district, it is anticipated that the annual assessment income of TCFCD will be about \$18,000 per year.

STATEMENT OF LAW

Idaho Code § 42-3108 states, in pertinent part:

The director shall make his findings upon facts alleged in the petition and any objections presented at such hearing, and any other facts necessary for the determination of the practicability and feasibility of said district.

If the director shall recommend that said district be organized, he shall make and enter an order and record the same in the office of the county recorder of each county wherein the lands of the said district thereof are located. The order shall set forth facts as found by him upon the hearing of the petition. Upon entering and recording the order, in the manner provided, the district shall be considered as organized.

ORDER

Based on the Findings of Fact listed above, the Department finds that the formation of a local flood control district for Teton Creek is feasible, practicable and reasonable and hereby recommends that Flood Control District No. 18 for Teton Creek be organized. Pursuant to Idaho Code § 42-3108, a copy of this recommendation shall be filed with the county recorder of Teton County, Idaho. Once this order has been recorded with Teton County, Flood Control District No. 18 shall be considered organized.

The initial Board Members of Flood Control District No. 18 shall be William Belk (Upper Division), Robert McKittrick (Middle Division), and Aaron McKee (Lower Division). The

boundary of Flood Control District No. 18 (including the delineation of the three divisions) is shown on the map attached hereto as Attachment A.

The Petition included a number of minimum standards, preferred techniques, and design criteria for projects occurring within the proposed district. The Department does not have the authority to require adoption of these standards. The Department's role in this matter is limited to determining whether the proposed district should be organized. The elected board of commissioners for the proposed district will have the power to adopt minimum standards, preferred techniques, and design criteria for the district. (See Idaho Code § 42-3115(3))

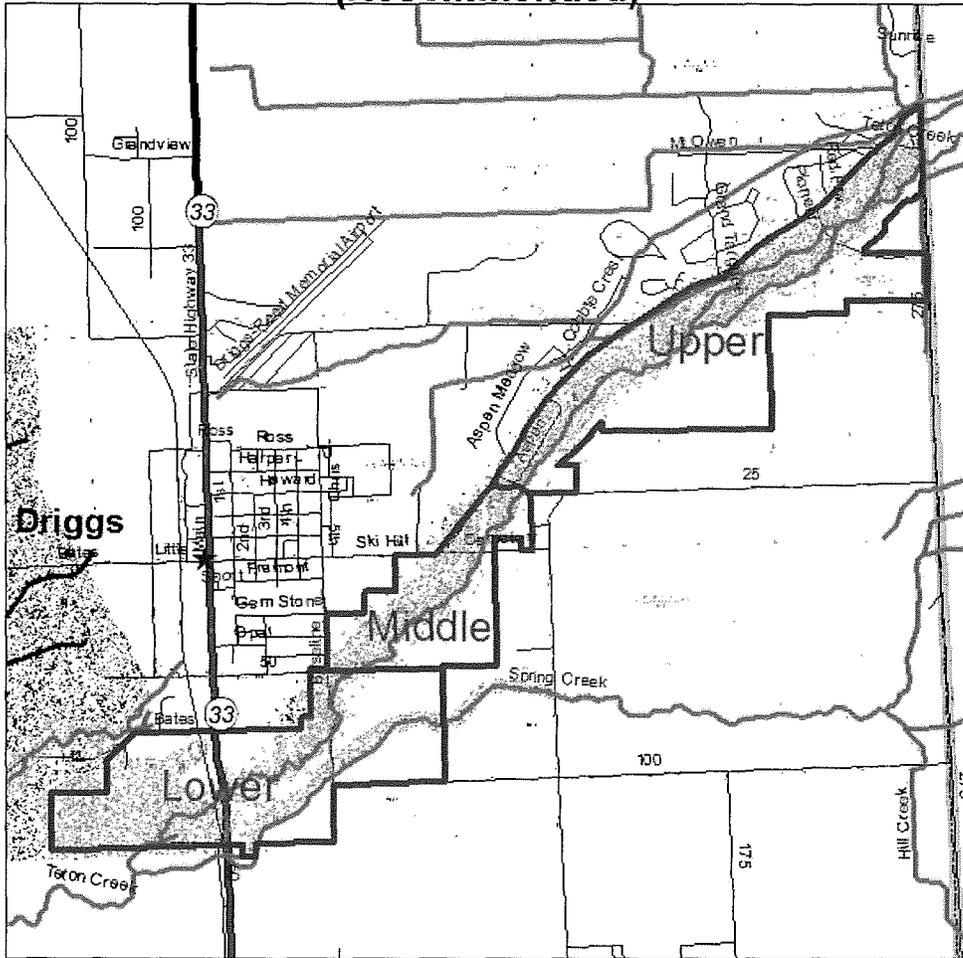
All projects requiring a stream channel alteration permit from the Department must meet the minimum standards set forth in the Stream Channel Alteration Rules (IDAPA 37.03.07). Pursuant to Idaho Code § 42-3806, none of the stream channel alteration projects proposed by TCFCD shall interfere with the diversion of water rights from Teton Creek under existing water rights.

Dated this 23rd day of April, 2014.


Gary Spackman
Director

ATTACHMENT A

**Flood Control District No. 18 - Teton Creek
(Recommended)**



Legend

- TCFCD Boundary & Divisions
- Streams/Ditches
- State Highway
- State Boundary
- Taxlots
- FEMA 100-yr Flood Zone

