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Local Flood Control: Using Idaho’s Flood Control District Statute to Enable Place-Based Stream Restoration

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During the 1980s and 1990s, a Teton County developer slowly converted a one mile stretch of Teton Creek’s wide floodplain and riparian area, which was historically comprised of three distinct stream channels, into a single, straight, deep, un-vegetated sluice. This alteration of the natural stream channels caused floodwater to pick up both speed and sediment, leading to recurring damage to the surrounding property. If this sounds inappropriate, it is. The developer’s activities violated Section 404 of the Clean Water Act, which requires a federal permit before discharging any dredged or fill material into “waters of the United States.” While he did not go willingly, the developer ultimately served time in federal prison for criminal violations of the Clean Water Act.1

But what of the stream? Prior to the stream’s channelization, and dewatering by the Grand Teton Canal Company, Teton Creek provided important habitat for Idaho’s native Yellowstone Cutthroat Trout. Now, with an eroding headcut migrating upstream, and increased sediment loads depositing downstream, parts of the stream serve more as an erosive force and sediment transport system than a stream. With its damaged aesthetics and compromised ecological health and function, Teton Creek begs for attention. Although local government and community organizations have begun to restore part of the degraded stream corridor, much of the damage still remains.

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In other words, due to dewatering, stream channelization, erosion, or other degradation of the stream channel and floodplain, these 7,000 miles of streams cannot serve the beneficial uses designated by the people of Idaho. An additional 7,364 miles of streams are impaired due to increased temperatures, and 4,780 miles are impaired by sediment or siltation. Idaho is not alone in this. Across the Intermountain West, silt, sediment, temperature, low flows, and other morphological alterations impair thousands of stream miles.3 These streams are compromised not only ecologically and aesthetically, they also lack natural flood control properties. This leads to increased frequency and severity of flood events.

Idaho communities do have the capacity to remedy these failings and restore their degraded streams. Idaho’s Flood Control District Statute4 allows for grassroots, place-based, locally-managed efforts to restore degraded stream systems and allow for the natural control and mitigation of floodwaters, while simultaneously providing for the conservation of Idaho’s water resources. Historically, flood control districts have mitigated floods by implementing stream-channel-altering flood control methods such as dikes, levees, dams, and canals. But more recently, local communities are exploring creating flood control districts that take advantage of a stream’s natural flood control properties through stream restoration. Place-based stream restoration has the benefit of improving locally-desired aesthetic, health, ecological, and economic resources, in addition to flood control. The Idaho Department of Water Resources (“IDWR”) should encourage the use of flood control districts to achieve locally-identified stream restoration — and flood control — goals.

In Idaho local communities can petition the Director of the IDWR to create flood control districts.5 Flood control districts are local taxing districts authorized to levy a small property tax to fund and implement flood control operations.6 The powers granted to flood control districts are broad, allowing for a wide range of actions, but arguably limited by the general policy statement of the enabling statute: “to provide for the prevention of flood damage in a manner consistent with the conservation and wise development of our water resources.”7

While it appears that all Idaho flood control districts have historically limited their efforts to traditional physical stream-channel-altering flood control methods, the statute does not require that approach. The statute does not specify any required methods of flood control. Rather it only requires that the petition explain the “method or system of flood control” to be used by the proposed district, and demonstrate that such flood control methods are “a

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proper and advantageous method of accomplishing the relief sought or the benefits to be secured.\textsuperscript{78} The statute's general purpose is clear, but it leaves the specific means of achieving that purpose in the hands of the local community.

In articulating the numerous powers granted to flood control district commissioners, the statute specifically recognizes that natural stream systems can serve a flood control purpose. The statute grants commissioners the power "to use natural streams and to improve the same for use as a flood control structure."\textsuperscript{83} The statute further provides that "in the event that use of the natural stream involves alteration of the stream channel," such alteration requires approval by the IDWR Director.\textsuperscript{10} This provision indicates that the use of natural streams as contemplated by the statute does not necessarily include stream channel alteration — it may include it, but may instead involve preservation or restoration of the natural system.

These elements of the flood control district statute — broad authority to act in the public interest, a preference for local control, and the specific authorization of the use of natural streams for flood control purposes — suggest several flood control alternatives. A community may use a flood control district to fund stream restoration activities that both reduce the potential for flood damage and achieve locally-desired ecological, aesthetic, and economic development goals. In other words, the historical use of flood control districts in Idaho for constructing physical flood control methods is not mandated by the statute. In many cases, preservation or restoration of the natural stream may be a better flood control approach.

\textbf{Using Natural Control Leads}

Of course, using stream restoration or preservation as a flood control tool requires that natural stream conditions actually serve flood control purposes. The evidence for this is overwhelming. As demonstrated tragically by Hurricanes Katrina in 2005 and Sandy in 2012,\textsuperscript{11} and through hundreds of on-the-ground research projects over several decades,\textsuperscript{12} natural riparian systems play a vital role in absorbing flood waters and reducing the harm to land and structures built near flood plains. This role cannot be replicated fully by artificial flood control approaches. Natural stream systems contain many mechanisms to control floodwaters, and restoring an altered stream to its natural state can improve the flood control capacity of that stream.

Because stream restoration achieves both flood control and local ecological or aesthetic goals, several western states already use restoration as part of the tools available to flood control districts. In Washington, the Donald Wapato Levee Removal Project in Yakima County — funded and implemented by the Yakima County Flood Control Zone District\textsuperscript{13} — restored 100 acres of floodplain. This has reduced flood overflows, and improved riparian habitat, native plant communities, and fish populations. Similarly, Arizona’s flood control district statute specifically advocates for flood control solutions that use stream restoration practices.\textsuperscript{14} In the Arlington Valley Flood Plain Acquisition Project,\textsuperscript{15} the Maricopa County Flood Control District purchased an elementary school in a flood prone area, demolished the building and restored the floodplain's natural conditions. While this might seem a drastic measure, relocating the school was more cost effective than leaving it in place and attempting to protect it from the flooding Gila River. In both cases, local communities implemented stream restoration under flood control authority enabled by legislation very similar to Idaho’s flood control district statute.

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\textbf{Restoring Uncertainty and Enabling Local Control}

While Idaho’s flood control district statute should allow for the use of place-based stream restoration efforts, two uncertainties exist in the statute. First, although natural streams can be used for flood control purposes under the statute’s broad purpose and delegated powers, apparently no Idaho flood control district has implemented stream restoration as a flood control tool. Further, neither the statute nor the IDWR explicitly support that particular tool. Second, and perhaps more troubling, the statute’s broad grant of authority to district commissioners — with few explicit restrictions on how that authority is used — leaves flood control districts prone to capture by interests that might favor traditional, stream-channel-altering flood control approaches, even where the local community may prefer otherwise. Legislative attention to these two issues is unnecessary. When a petition contemplates the use of stream restoration as the method of flood control, the IDWR Director should clarify when granting the petition that the authority of the flood control district is limited by “proposed method or system of flood control” described in the petition. The proposed method or system may specifically include and be limited to stream restoration.

The statute requires that the petition to establish a district contain two elements that suggest that the legisla-
In approving flood control districts, the IDWR Director should clarify that the district created is limited to the purposes and tools described in the petition, which can include stream restoration.

The procedure by which a petition is approved also indicates that the authority granted a specific district can and should be constrained as described in the petition itself. After considering a petition, the Director has three options. The Director may approve the petition as submitted, may deny the petition, or may recommend a district different from that described in the petition. When the alternative district recommended is “materially different” from that described in the petition, the registered voters in the proposed district must approve the revised district in the same manner required for the original petition. Because the original petition need only describe the “temporary boundaries of the proposed district,” and because the materially different provision refers to the petition in its entirety, the materially different language must refer to more than simply the proposed district’s geographic boundaries. A materially different flood control district would be a district with a different purpose, or with a different proposed system or method of flood control. If the statute did not limit the authority of flood control districts to the purpose, and system or methods, described in the petition, this “materially different” language would be irrelevant.

A plain reading of the statute indicates that it both authorizes the use of stream restoration and limits the acceptable tools and powers of a specific district to those that carry out the specific purpose, and use the specific system or methods, described in the petition. Any other interpretation renders significant aspects of the statute largely meaningless and would invalidate the goals and desires of the taxpayers who approved and funded the district. In approving flood control districts, the IDWR Director should clarify that the district created is limited to the purposes and tools described in the petition, which can include stream restoration.
Each community should have the flexibility to design and use the flood control tools that best fit its condition, economy, and culture.