

# University of Idaho news

- Northwest Institute for Dispute Resolution
  - Moscow – May 19-23
    - Basic Family Mediation
    - Basic Civil Mediation
    - Facilitating Agreements in Environmental and Public Policy Disputes
  - Boise – May 20-21
    - Making Magic... Advancing your Mediation Practice
- Natural Resources and Environmental Law Field Course
  - McCall – August 17-23

# Making 'Conservation' Work for the 21<sup>st</sup> Century – Enabling Resilient Place



# Overview – Using ‘conservation’ statutes to enable Resilient Place

- Teton Creek Case Study
- “21<sup>st</sup> Century Conservation” Regimes
  - Idaho Flood Control District Statute
  - Boise Flood Control District
  - Examples from other western states
- Teton Creek Flood Control District proposal
- Enabling Resilient Place

# What is a Resilient Place?

- Place is the product of the recursive interactions of law, culture, and landscape.
- “Resilience” describes a system’s capacity to absorb internal and external shocks or changes while maintaining a similar or consistent set of structures or system processes.
- A Resilient Place realizes a particular community’s social, cultural, and ecological goals

# Teton Valley

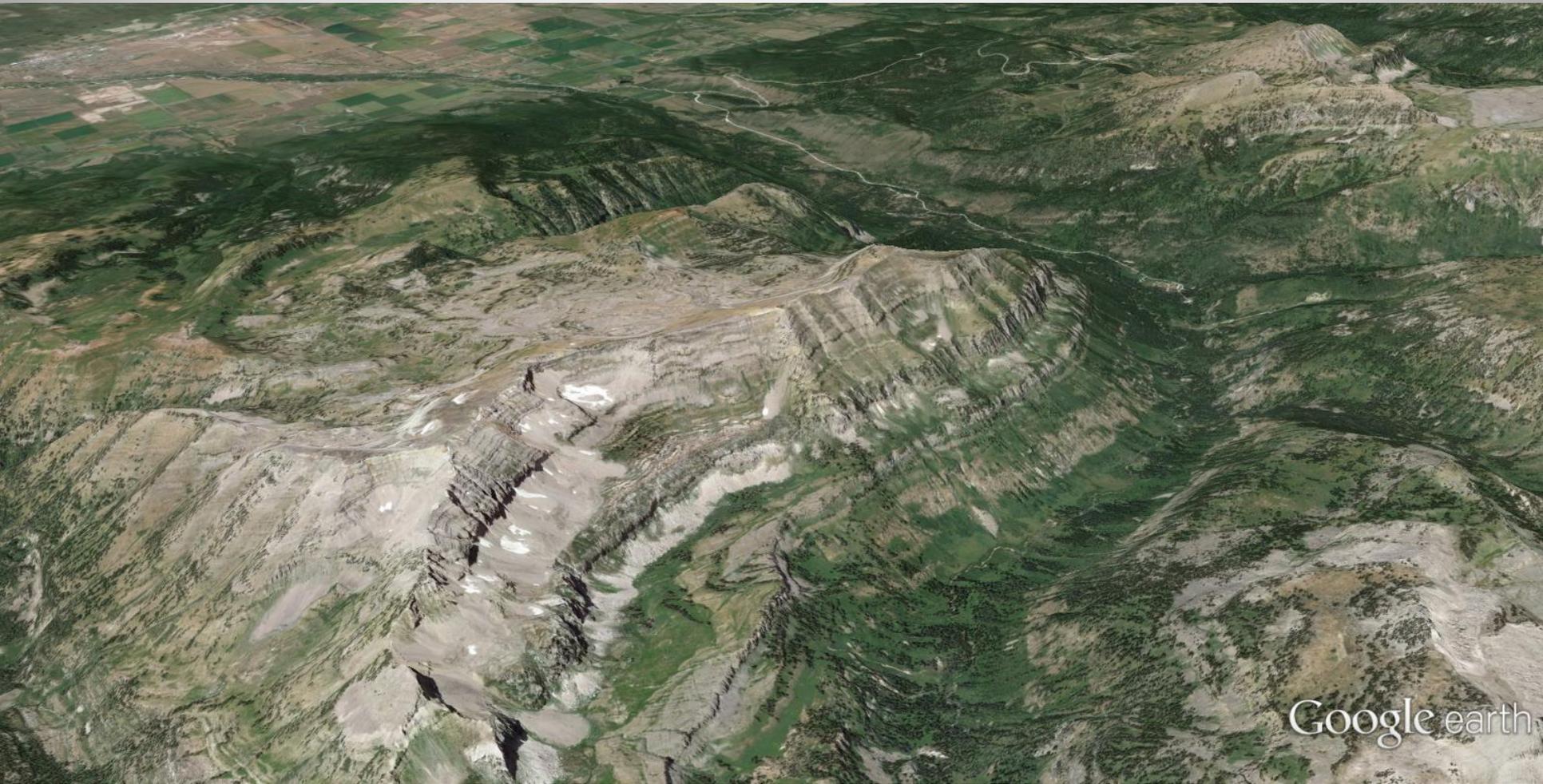


Idaho Falls, ID, USA

Image Landsat

Google earth

# Teton Creek



Google earth

# Flooding on Teton Creek



1981 Flood – over Ski Hill Road  
and into Driggs



2006 Flood (a 3-year flood  
event) – Creekside Subdivision

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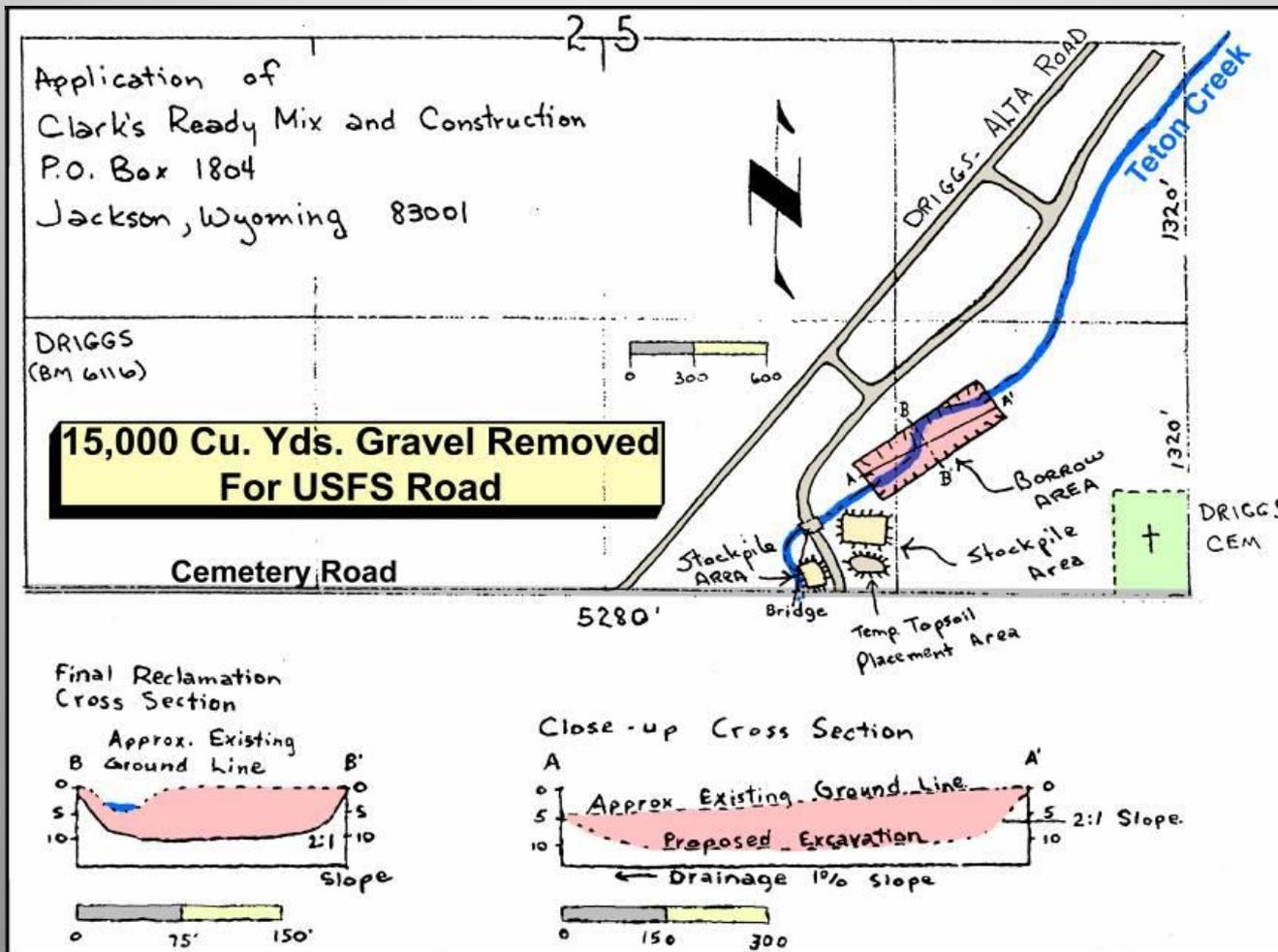


1981 Flood – over Ski Hill Road  
and into Driggs



2006 Flood (a 3-year flood  
event) – Creekside Subdivision

# Gravel Mining for USFS Road Construction in 1983



# Developer Disturbances



**Reference Reach under  
Natural Conditions**

## **Developer Disturbance: The Aspens Stream Channel Improvement Project**



**6,000 Linear Feet Disturbed,  
120,000 Tons of Sediment Displaced**

# Aerial View of Channelization

1960



2008



# Aerial View of Headcut



1960



2004

# Threats to Landowners



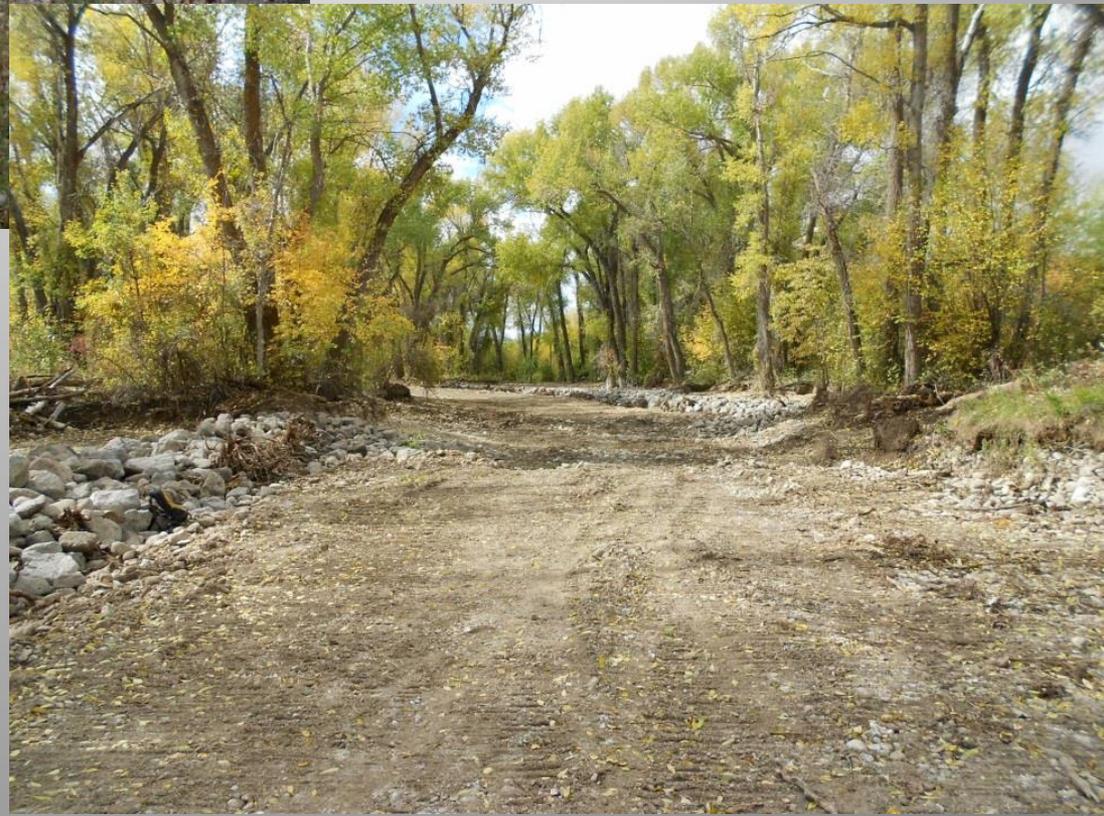
Headcut eroding laterally



Banks migrating toward homes



Before



After

2013 stream  
restoration project --  
\$2.3 million funded  
by a combination of  
public and private  
grants

Willow plantings



Riffle grade control



Rock bank protection



Root wad bank protection



Deep pool



# Total Project Budget: \$2.85 million

## Grants and Donations received: \$2.30 million

### Federal Matching Funds:

● National Fish and Wildlife Foundation	\$21,255
● Natural Resources Conservation Service	\$100,000
● US Fish and Wildlife Service	\$25,256
● US Forest Service (RAC)	\$8,000
● National Forest Foundation	\$36,000
● Western Native Trout Initiative	\$20,000
● Idaho State Wildlife Grant	\$30,000
● Aquatic Species Conservation Fund	\$30,000
● FEMA Flood Mitigation Act	\$1,000,000
● Idaho Department of Environmental Quality	<u>\$494,425</u>
Total:	\$1,764,936

### Non-Federal Matching Funds:

● Teton County	\$85,000
● The Orvis Company	\$60,000
● Individual Donations	\$50,000
● One Fly Foundation	\$10,000
● Landowner Contributions	\$100,500
● Business In-Kind Donations	\$104,172
● Volunteers In-Kind	\$22,000
● Friends of the Teton River	<u>\$103,000</u>
Total:	\$534,672

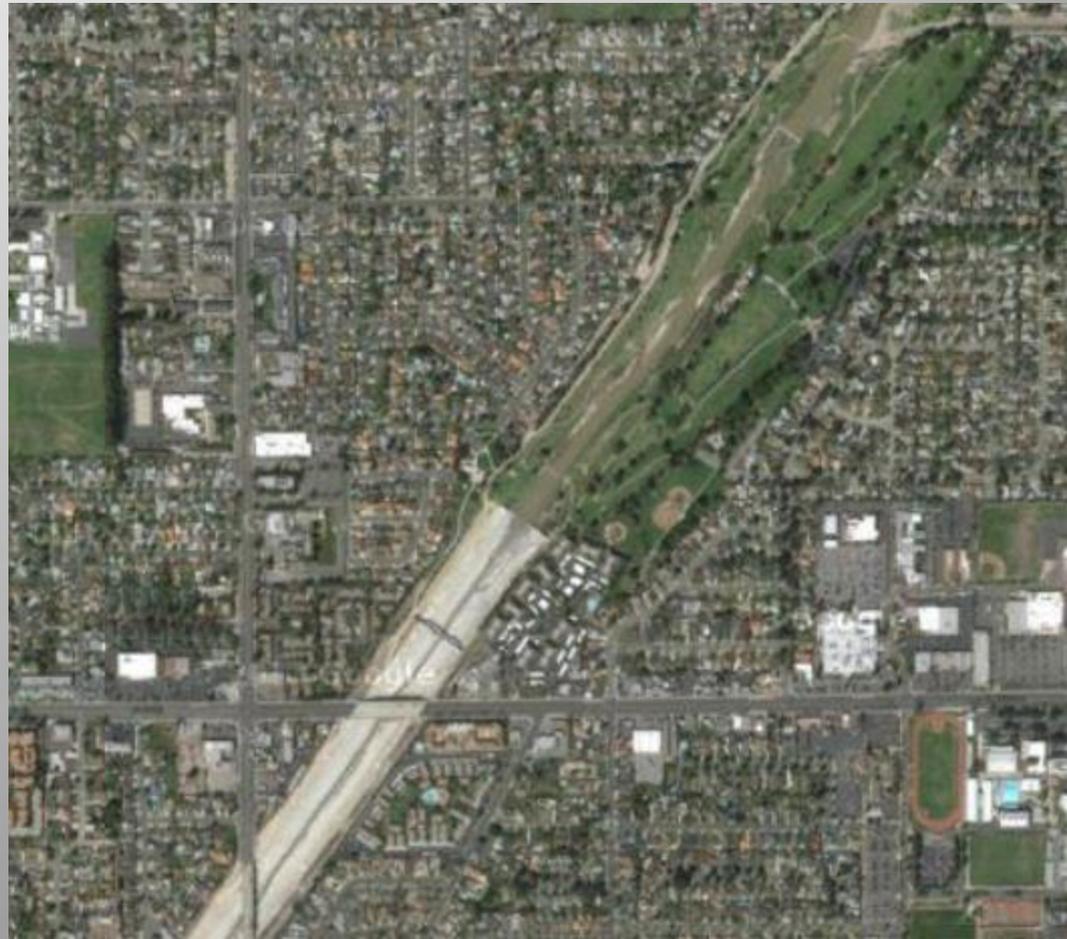




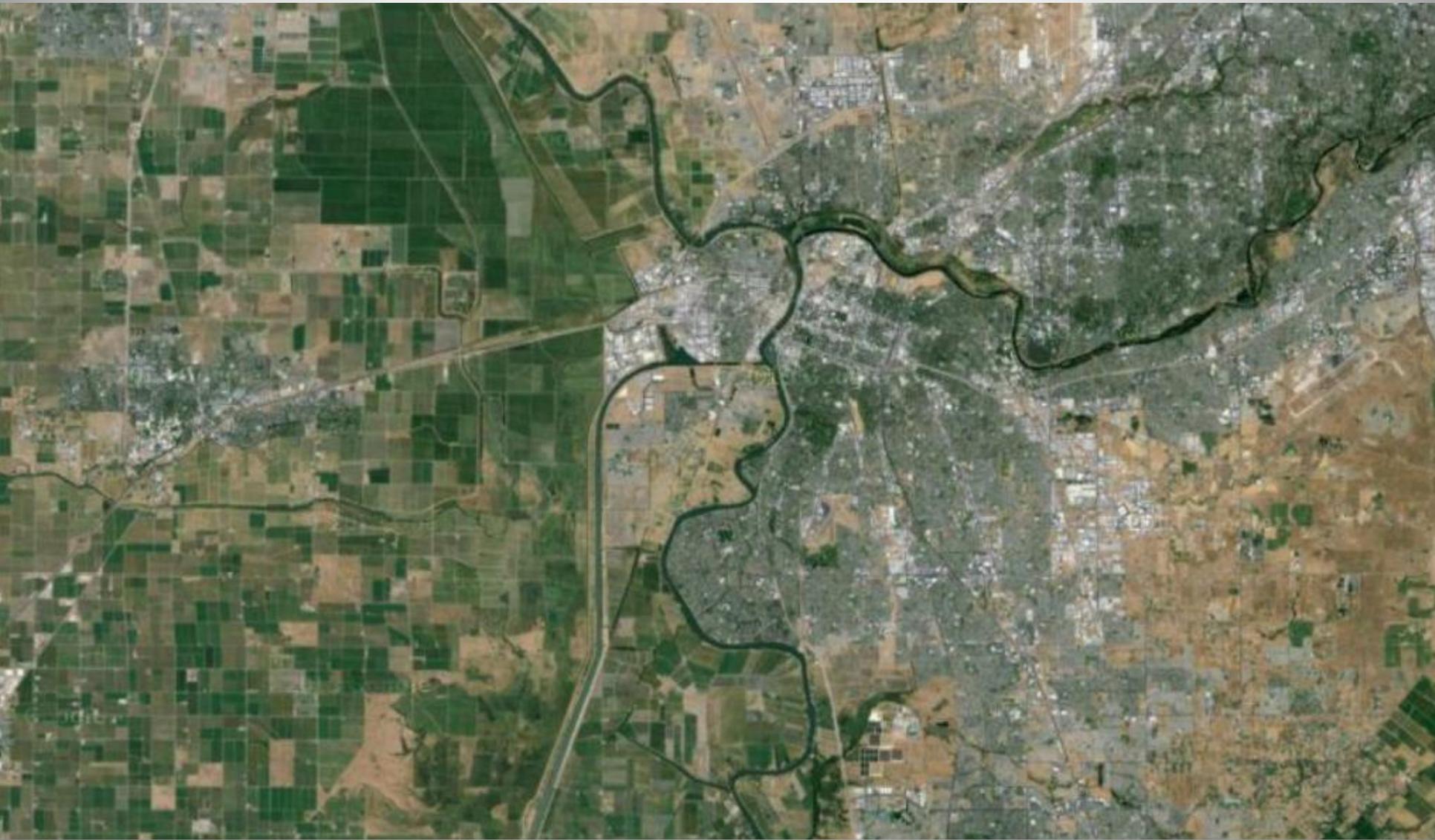
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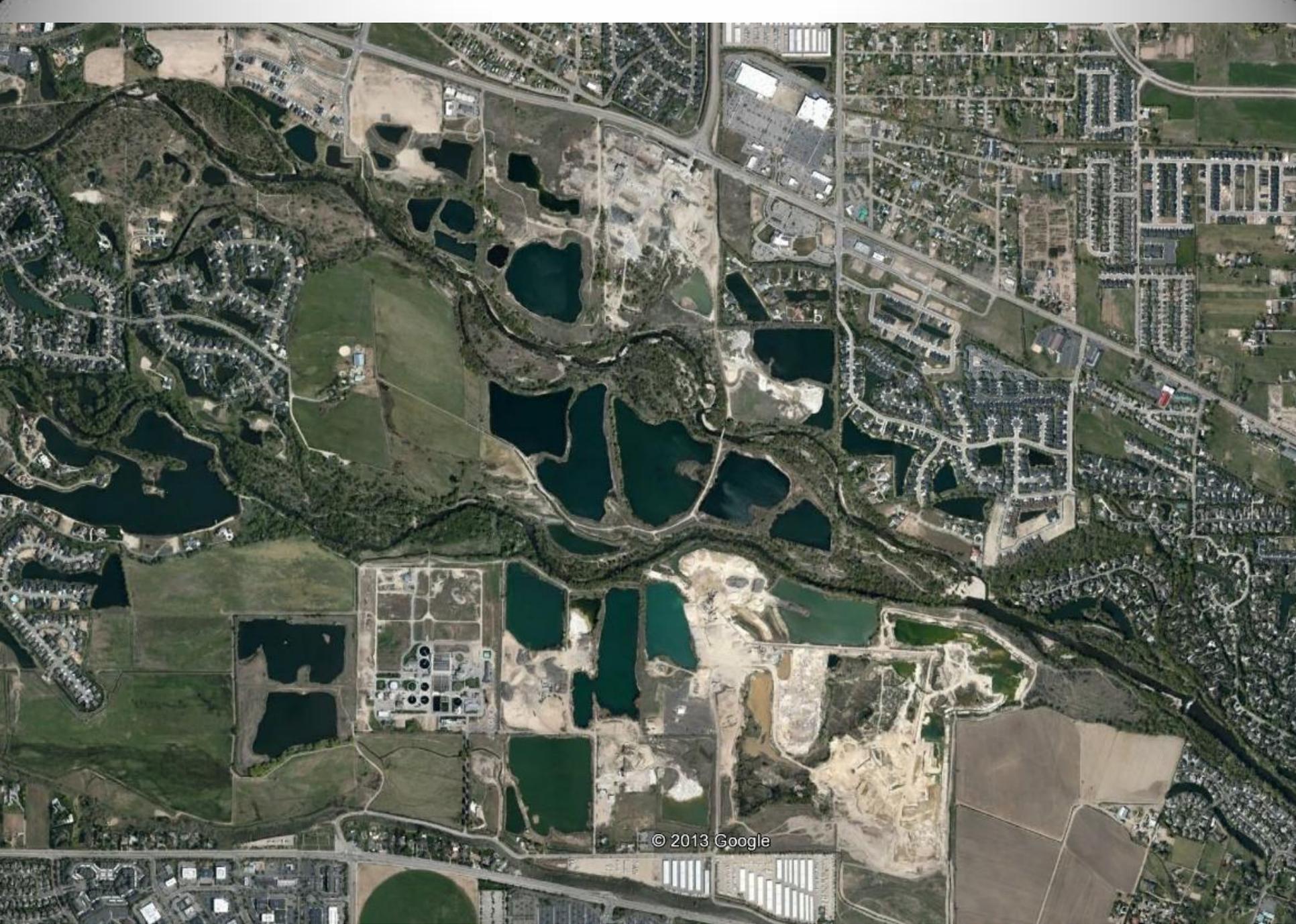


What is the relevance of a small project on a small creek in Idaho?



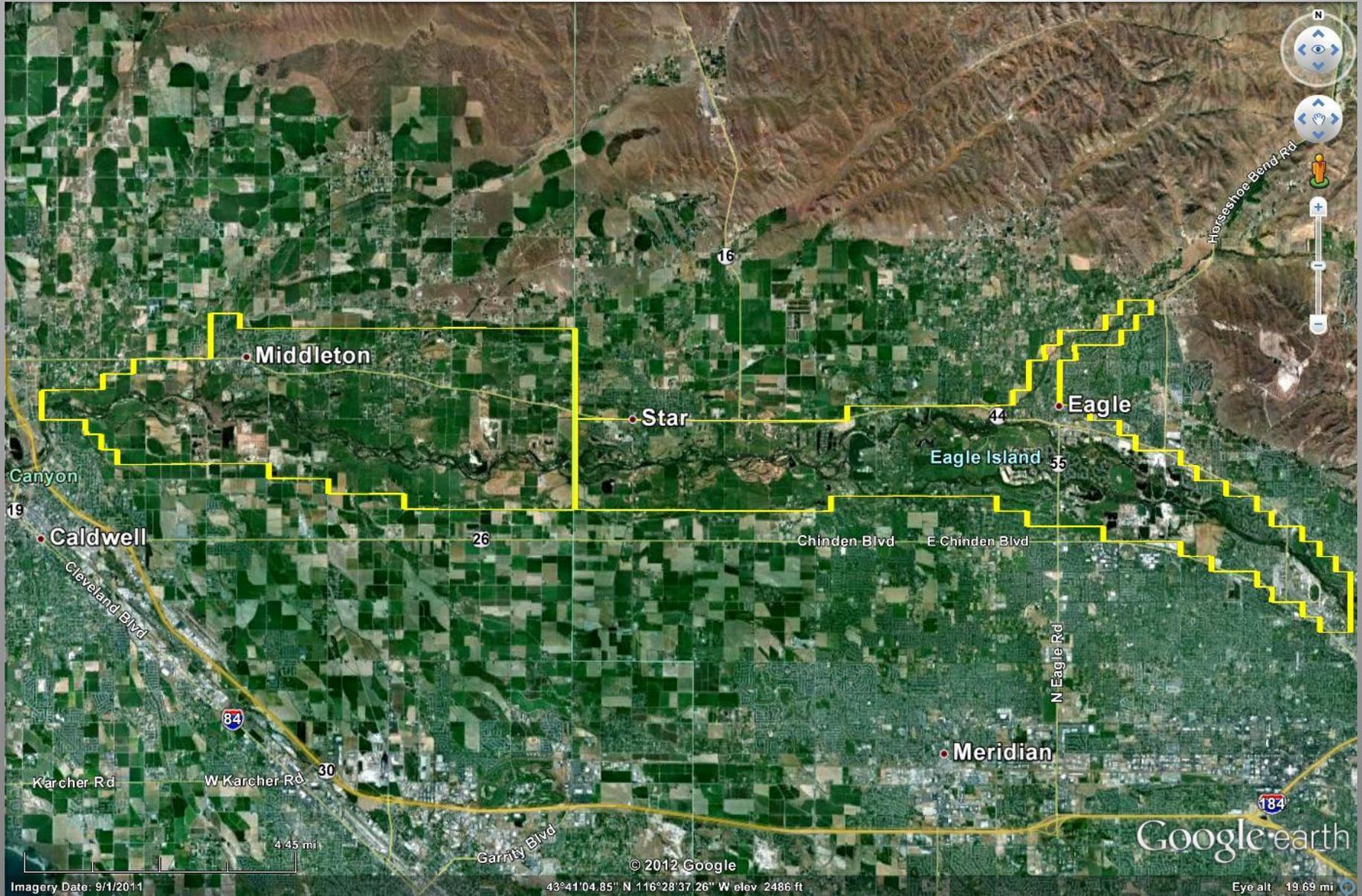






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# Boise River Flood Control District



# Eagle Island Ecosystem Restoration Project

- U.S.A.C.E. *proposed* project with Boise River Flood Control District, Ada Soil and Water Conservation District, and Idaho Foundation for Parks and Lands
- “The purpose of the Boise River at Eagle Island Ecosystem Restoration Project is to improve aquatic and wildlife habitat while improving floodplain functions at the head of Eagle Island to a more natural-functioning and self-sustaining state [.]”
  - Eagle Island Ecosystem Restoration Project Draft EA

# Eagle Island Proposed Action (Alt. 7)

- Create emergent wetlands within ponds
- Create emergent wetlands along pond shorelines (both benching and fill)
- Rehabilitate Boise River channels to create rainbow trout rearing habitat
- Construct rainbow trout spawning channel in Boise River
- Create areas with suitable conditions for cottonwood seedling recruitment and plant cottonwood groves.
- Perform weed control

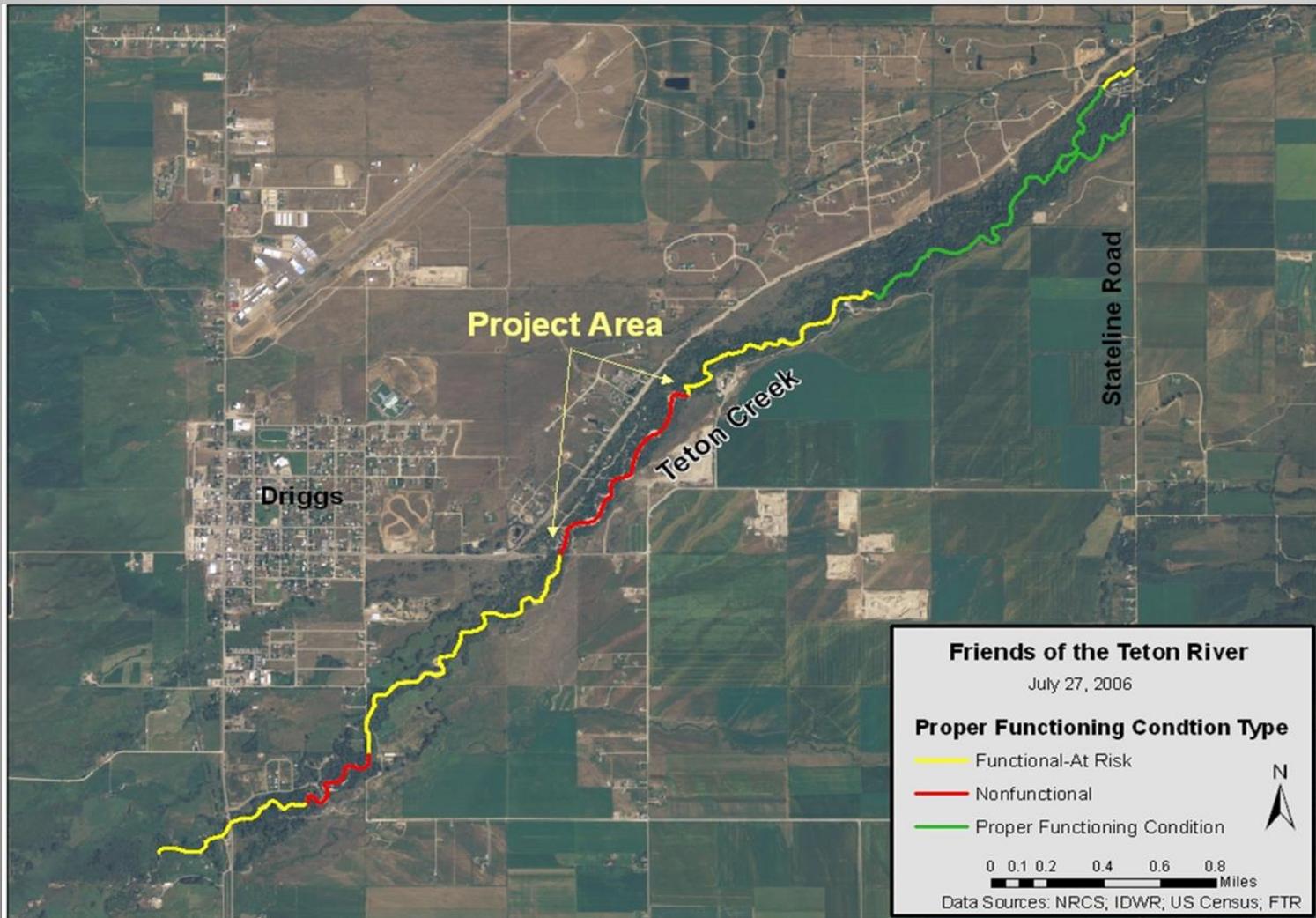
# Eagle Island Proposed Action



# But if Teton Creek has been restored, what is left to do?

- Maintain completed restoration projects
- Restore and stabilize reach upstream of 2013 restoration project
- Restore Creekside Meadows Subdivision reach
- Stabilize Creekside Meadows bridge
- Restore and stabilize grade between Cemetery Road bridge and Creekside Meadows
- Stabilize south Stateline bridge
- ....

# But if Teton Creek has been restored, what is left to do?



But how are we going to pay  
for all of that?

# Teton Creek Flood Control District Proposal

- A Flood Control District is a local special purpose district,
- Proposed by the local community,
- Implemented by the local community,
- With taxing authority,
- And on the ground action authority.
  - Powers described at Idaho Code §42-3115.
- None have been created in Idaho since 1984.

# Teton Creek Flood Control District Proposal

- Petition to the Director of the IDWR signed by one-third of the voters in the proposed district, setting forth:
  - The ***object*** of the proposed district,
  - Temporary boundaries,
  - How the proposed methods or system of flood control attains relief or benefits sought, and
  - How district is conducive to public health and welfare.
    - Idaho Code §42-3105.

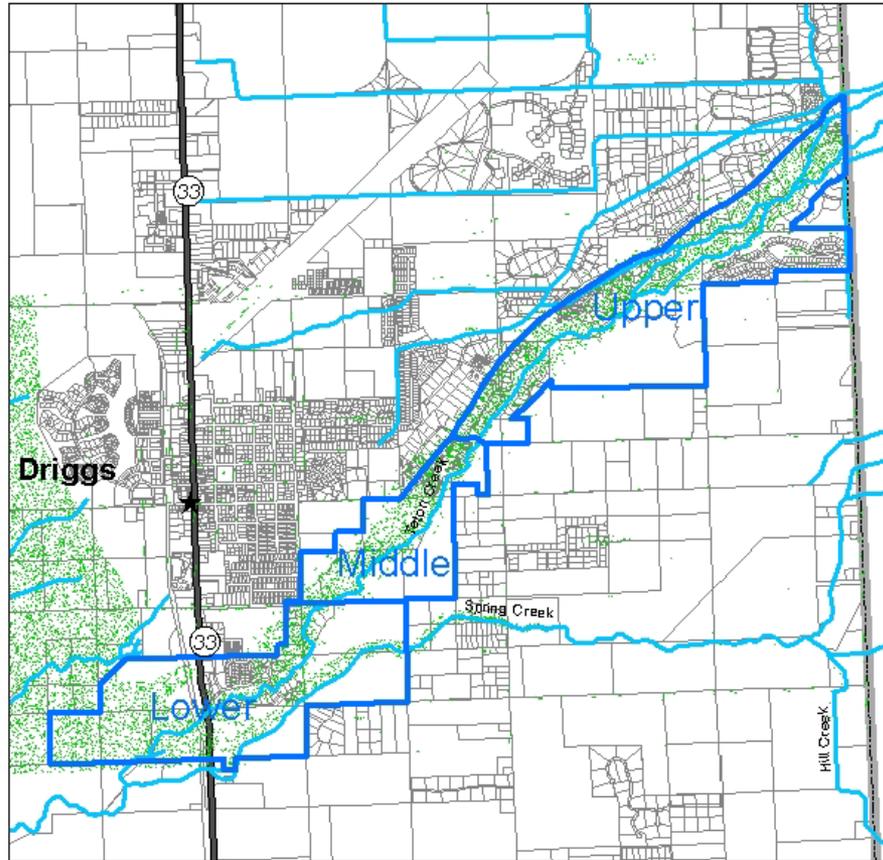
# Teton Creek Flood Control District Proposal

- The petition and all related documents are available on IDWR's website:

<http://www.idwr.idaho.gov/WaterManagement/WaterRelatedDistricts/floodcontrol/TetonCreek.htm>

- Google "Teton Creek Flood Control District"

# Proposed Teton Creek Flood Control District



## Legend

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

0 0.4 0.8 1.6 Miles



# Teton Creek Flood Control District Proposal

- Two interesting questions:
  - Can Idaho Flood Control Districts use stream channel, floodplain, riparian system, etc., preservation or restoration for flood control?
    - YES!
  - Can an Idaho FCD *limit* its authorized activities to preservation or restoration of natural systems?
    - Maybe.

# Teton Creek Flood Control District Proposal

- Idaho Flood Control Districts
  - Policy:
    - “to provide for the prevention of flood damage in a manner consistent with the conservation and wise development of our water resources.”
  - Authority:
    - “to **use** natural streams and to **improve** the same for use as a flood control structure.”
    - “to **repair** and **stabilize** stream banks.” (eff. July 1).
    - “Works of Improvement.” Now uses Federal definition (16 U.S.C. §1002) (eff. July 1).
    - All other powers necessary, convenient, or incidental...

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# Where are we now?

“IDWR staff finds that the proposed TCFCD is reasonably necessary and a practical organization to provide flood control and protect both public and private property and promote the health and welfare of landowners and water users within the district and the surrounding community.”

# SB 1344 – 2014 Revisions to FCD statute

- Revised definitions.
  - Most significant is change to “structural works of improvement.”
- Expanded (a bit) and clarified authority.
- Increased compensation amounts for FCD commissioners.
- Clarified when permits are required for stream channel alterations.

# Other western states

**Arizona:** “[A]ny other flood control district [may] implement flood control enhancement solutions including: ...(b) Preservation and restoration of the floodplain.”

**Oregon:** Water Improvement Districts may provide for recreation and enhancing water quality, pollution control, and fish and wildlife resources.

**Washington:** allows “cooperative watershed management arrangements and actions ... for purposes of water supply, water quality, and water resource and habitat protection and management.”

# “Conservation” for the 21<sup>st</sup> Century

- Pinchot:
  - “The first great fact about conservation is that it stands for *development*.”
    - Newlands Act
    - National Forests
    - Flood Control Act of 1936 (and later acts)
- CONSERVATION FOR A NEW GENERATION
  - Conservation is primarily about Leopoldian “land health.”
    - Endangered Species Act
    - Conservation Biology

# A 21<sup>st</sup> Century Conservation Regime

- Place-based taxing and regulatory district.
- Clear and explicit authority to preserve, protect, and restore natural systems.
  - and?
- Some limitation on authority to use structural approaches.
  - if desired (?)

# Resilient Place

- Why would a “watershed restoration district” enable resilient place?
  - Enables realization of local (evolving?) cultural understandings of place, people, and the natural environment.
  - Connects the costs (taxes) and benefits on the same land.
    - i.e., the taxed are also the benefitted, and the benefitted the taxed.
  - Decision-making authority stays “on the ground” (subject to broader policy goals, limitations, or regional plans).
- Therefore(?): Both the socio-ecological system and the legal system become *less* prone to regime shifts.

# Driggs, Idaho, city website first paragraph

Nestled in the Teton Valley at an elevation of 6200 ft between the majestic Tetons and the beautiful Big Hole Mountains, Driggs is at the center of an *UnReal recreation paradise*, including snorkel deep powder and big air biking at Grand Targhee Resort, top ranked golfing at Huntsman Springs Resort, uncrowded world-class fly fishing, snow machine tours, glider flying, trail riding, road biking, and more! Come find us on the 'Yellowstone-Grand Teton Loop' between Jackson Hole (35 minutes) and West Yellowstone (105 minutes).

