

# Lake Ballinger/McAleer Creek Watershed Forum

City of Edmonds • City of Lake Forest Park • City of Lynnwood • City of Mountlake Terrace • City of Shoreline • Snohomish County

2/23/2010  
Agenda Item 1a

## AGENDA

### LAKE BALLINGER/McALEER CREEK WATERSHED FORUM

Tuesday, February 23, 2010

2:00PM – 3:30PM

City of Lake Forest Park

17425 Ballinger Way NE

Lake Forest Park, WA 98155

- I. Welcome and Introductions
  - a. Approval of Agenda
  - b. Approval of Minutes from January 27, 2010 Meeting
- II. Resource Analysis/Financing Strategy
- III. Future Governance Options
- IV. Overview of “Lake Forest Park Flood Reduction Study—McAleer and Lyon Creeks”
- V. Public Comment: 3 minutes per speaker
- VI. Adjournment

Next Meetings:      March 23, 2010, hosted by the City of Shoreline  
                                 April 27, 2010, hosted by the City of Edmonds  
                                 May 25, 2010, hosted by the City of Mountlake Terrace  
                                 June 22, 2010, hosted by the City of Lynnwood

---

Lake Ballinger/McAler Creek Watershed Forum  
Lynnwood Council Chambers  
Meeting Minutes  
January 26, 2010

2/23/2010  
Agenda Item Ib

Members Present

Mayor Jerry Smith, Chair (Mountlake Terrace), Don Fiene, Vice Chair (Lake Forest Park City Council), Dave Gossett (Snohomish County Council, Chair), DJ Wilson (Edmonds City Council, President), Chris Eggen (Shoreline City Council), Jared Bond (Stormwater Program Manager and Alternate Forum Member, City of Lynnwood)

Staff Present

Jerry Shuster (Edmonds Stormwater Engineering Program Manager), Aaron Halverson (Lake Forest Park Stormwater Technician), Noel Miller (Edmonds Public Works Director), John Caulfield (Mountlake Terrace City Manager), Curt Brees (Mountlake Terrace Public Works Director), Mike Shaw (Mountlake Terrace Stormwater Program Manager), David Cline (Lake Forest Park City Administrator), Gene Williams (Snohomish County Stormwater Manager)

Others Present

Pete Mills (Congressman Jay Inslee's office), Joe Simmler (Otak), Mayor Dave Hutchins (Lake Forest Park), Strom Peterson (Edmonds City Council), Bob White, Frank Zenk, Ken Pierce, Kathleen Cody, Janet Morley, Maria Crosse (Fahey Sisters)

Documents Attached

CIP Spreadsheet

I. Welcome and Introductions

Chair, Mayor Jerry Smith called the meeting to order at 2 p.m. at the Lynnwood City Council Chambers. The agenda for the January 26 meeting and minutes from the October 27, 2009 meeting were approved.

II. 2010 Water Resources Development Act (WRDA) Project Request

Mountlake Terrace City Manager John Caulfield reported that he was contacted December 3, 2009 by Jay Inslee's Office to submit a request on behalf of the forum for \$1.2 million from the 2010 Water Resources Development Act (WRDA) in support of the Lake Ballinger Watershed Forum. Pete Mills thanked the forum for the quick response. He explained that WRDA works like any other legislation, and will go to the Corps of Engineers, through committee to be prioritized, then to the House, Senate and on to the President or it could be eliminated in the process. He stated that it was a big benefit as it puts projects on the Corps' radar.

III. Draft Capital Improvement Program (CIP)

Mike Shaw, Mountlake Terrace Stormwater Program Manager presented a memo from the Forum Staff Committee regarding the CIP project list to take action on flooding issues for Hall Creek, Lake Ballinger, and McAler Creek. The Staff Committee reported that additional analysis would be needed if the Forum wanted to include a cost/benefit analysis for each of the selected options in the CIP. They also noted that the staff committee chose to focus on projects that are directed at the unique issues within the watershed from a high water and flooding standpoint. Projects affecting water quality and habitat preservation or acquisition were given

secondary consideration. They are not unique to the watershed and are being addressed through other programs including the Endangered Species Act, the WRIA 8 Salmon Recovery Board, Puget Sound Partnership and NPDES Phase II.

Mr. Shaw gave a PowerPoint presentation on the Lake Ballinger/McAleer Creek Watershed Forum CIP. He explained how projects are segregated into the lower and upper watershed. Lake Forest Park and Shoreline are in the lower basin and part of Shoreline, Mountlake Terrace, Lynnwood and Edmonds are in the upper basin. Projects are also divided into Phase I and II components. Phase I items reflect immediate flood relief, while Phase II covers more long-term projects. Phase I items include the highest ranked watershed-wide FEMA flood plain modeling, along with private flood proofing, Lyon Creek Bypass/Lyon Creek Channel modifications, McAleer Creek Weir and McAleer Creek Bypass Intake Retrofit.

Jerry Shuster, Edmonds Stormwater Engineering Program Manager stated the advantages of the FEMA Flood Mapping Project include providing accurate flood risk information; accurate elevations for flood proofing private homes; redevelopment considerations; possible financial aid for homeowners after a flood; help with the weir to lower the lake level and information acceptable to FEMA for cost effective projects. He mentioned that mapping and modifications of the weir might take the pressure off some of the other projects.

The staff committee recommended that the Forum accept the CIP.

Discussion: Snohomish County Council Chair Dave Gossett asked about re-adjudication. Mike Shaw explained that the level of Lake Ballinger is set by Court order and listed all of the agencies that would be involved in a re-adjudication process. Vice Chair Don Fiene asked about the flood mapping process. He also asked how long it might take. Joe Simmler of OTAK commented that it could take 6 to 18 months to complete, with additional time for FEMA review. Councilmember DJ Wilson was concerned that rather than taking more time on a study, that the Forum move forward to fix the flooding problems as quickly as possible. John Caulfield stated that the Forum could accept the CIP contingent on a review of funding opportunities, add to the motion "pending review on how to allocate finances". County Council Chair Dave Gossett commented that many items on the CIP need the FEMA study, but the Lower McAleer Creek items B, C, D and E may go forward prior to flood analysis. The rest of the priorities need the mapping study and re-adjudication. John Caulfield stated that the Forum could leverage the \$1.2 million to obtain additional funding. He stressed the staff position on the importance of the flood mapping analysis because it results in other opportunities for which we currently cannot apply or qualify. It was also the top priority because it deals with so many other issues.

Councilmember DJ Wilson moved and Vice Chair Don Fiene seconded a motion to accept the staff recommendation and the CIP with the caveat that staff look at resources available and how priorities might be phased in and return to Forum for direction. Councilmember Wilson asked if individual Councils should adopt the CIP at this point. Jerry Shuster stated that the staff recommends that the Forum adopt the CIP and incorporate it into the next interlocal agreement and everything could be sent for approval to the different Councils at one time. Motion passed.

#### IV. Request for Letter Supporting Lake Forest Park's Funding Request to reduce flooding and for the McAleer Creek High Flow Bypass Retrofit

Vice Chair Don Fiene presented two letters from the Forum in support of Lake Forest Park's funding requests. Forum members discussed the idea that the Lyon Creek Bypass or Channel

Modifications and McAleer Bypass Retrofit were not the top priorities in the CIP. A motion was made and seconded to change the Lyon Creek Bypass or Channel Modifications letter to replace “as top priority” to “among the priorities”. The letter on the McAleer Creek Bypass Retrofit would be changed by deleting the word “top” from the last sentence in the second paragraph. Motion passed.

#### V. Future Governance Options

This topic was moved to the next meeting due to inadequate time left to fully discuss the options.

#### VI. Next Steps for the Forum

It was recommended that the next four meetings be scheduled and posted on the websites.

Mr. Caulfield recommended that he and Mr. Wilson meet with Hugh Spitzer and return to the next meeting with a proposal on a scope of work to develop future governance options.

Vice Chair Don Fiene asked that the Forum send out copies WRIA 9 study that included some financing options. It was decided that a pdf be posted online and link sent to Forum members. Vice Chair Fiene added that pages 15-36 were the key section to review.

Councilmember DJ Wilson stated that the draft letter to the State Legislature requesting funding for the Forum was not sent because it needed more direction and there was a lack of opportunity in this session. He recommended that the Forum start preparing a letter this summer and make a request next year.

#### VII. Public Comments

Ken Pierce asked the Forum to consider adding one or two primary stakeholders to serve on the Forum in the next Interlocal Agreement. He suggested maybe someone from the Lake Ballinger Community Association and Lake Forest Park as non-voting members. He asked the Forum to stay proactive on water quality issues, cleaning catch basins and installing pervious surfaces.

The Fahey Sisters are concerned about flooding and money available to help them find a solution. They are interested in what other options may be available for their situation.

#### VIII. Adjournment

Chair Jerry Smith adjourned the meeting at 3:45 pm.

Next meeting is scheduled for Tuesday, February 23, 2010 at the City of Lake Forest Park Council Chambers.

**Lake Ballinger/McAleer Creek Forum Funding Summary (DRAFT)**

Funding Sources	Total	2007	2008	2009	2010	2011	2012	2013	2014
Federal									
WRDA	\$ 1,200,000	-	-	-	1,200,000	-	-	-	-
Future Federal Appropriations	-	-	-	-	-	-	-	-	-
<b>Federal Subtotal</b>	<b>\$ 1,200,000</b>								
State									
Lake Ballinger/McAleer Creek	\$ 200,000	-	200,000	-	-	-	-	-	-
Future State Appropriations	-	-	-	-	-	-	-	-	-
<b>State Subtotal</b>	<b>\$ 200,000</b>								
Local Resources *									
Edmonds	\$ 278,000	10,500	10,000	10,000	47,500	50,000	50,000	50,000	50,000
Lynnwood	257,350	-	18,700	18,700	16,600	103,750	33,200	33,200	33,200
Lake Forest Park	269,700	-	72,350	72,350	25,000	25,000	25,000	25,000	25,000
Mountlake Terrace	637,000	12,000	25,000	100,000	100,000	100,000	100,000	100,000	100,000
Shoreline	2,500	2,500	not curr avail.	not curr avail.	not curr avail.	not curr avail.	not curr avail.	not curr avail.	not curr avail.
Snohomish County	948,000	-	948,000	-	-	-	-	-	-
<b>Local Resources Subtotal</b>	<b>\$ 2,392,550</b>								
Grant Funds									
Ecology Centennial	-	-	-	-	-	-	-	-	-
EPA Puget Sound Funds	-	-	-	-	-	-	-	-	-
NOAA Open Rivers	-	-	-	-	-	-	-	-	-
FEMA	-	-	-	-	-	-	-	-	-
Municipal Stormwater Grants	-	-	-	-	-	-	-	-	-
<b>Grant Funds Subtotal</b>	<b>-</b>								
<b>Total Funding Sources</b>	<b>\$ 3,792,550</b>								
* Excludes in-kind services (e.g., staff resources, legal) provided by Forum partners.									

## **GREATER LAKE BALLINGER/MCALEER CREEK SCOPE OF WORK**

This Scope of Work describes the responsibilities of Foster Pepper PLLC (“Foster Pepper”) with respect to developing a Cooperating and Governance Plan for the Greater Lake Ballinger/McAleer Creek Watershed (the “Watershed”).

### **PROJECT ELEMENTS**

This Project is being undertaken to develop the best regional framework, going forward, for intergovernmental cooperation and action on water quality and water quality management in the Watershed. The lead parties involved (the “Parties”) are the City of Edmonds, the City of Lake Forest Park, the City of Lynnwood, the City of Mountlake Terrace, the City of Shoreline, and Snohomish County. The Project would involve:

- Discussing and developing agreement on common goals, values and level-of-service needs for the watershed (and clarifying separate goals of the individual parties)
- Discussing and developing agreement on the responsibilities to entrust to a regional entity
- Identifying options for the form/structure of a regional entity
- Identifying the governance (decision-making) choices for the organization
- Developing an approach for stable funding for watershed management activities
- Developing a common approach or plan for ownership of watershed management assets
- Developing an approach for continued effective operation of the watershed
- Identifying any transition issues for moving to a new entity or approach
- Drafting foundational and organizational documents for the continued governance of the Forum beyond the current interlocal agreement

### **PROJECT APPROACH**

#### **Foster Pepper Responsibilities.**

Major activities of Foster Pepper include:

1. Conduct three workshops at meetings of the Greater Lake Ballinger/McAleer Creek Watershed Forum at its March, April and May meetings. The meetings would cover the following topics:

- March meeting topics: Review of organizational and governance options for interlocal cooperative action; Discussion of common goals, values and level-of-service needs for the watershed, the separate goals of the individual parties, and the responsibilities to entrust to a regional entity.
  - April meeting topics: Review and agreement on organizational and governance preference; discussion and agreement on approach for stable funding of watershed management activities; discussion of ownership of cost of operating watershed management assets.
  - May meeting topics: Review and agreement on ownership and operation of watershed management assets, and discussion of transition issues (if necessary). Review of draft organizational documents (for example, a new interlocal agreement).
  - Follow-up meeting: Wrap-up of outstanding issues; approval of final form of new interlocal agreement.
2. Prepare new interlocal agreement incorporating the Parties' agreed-upon approach. Identify other legal documents necessary to carry out that approach.
  3. Meetings with at least one elected official and at least one staff person from each jurisdiction, to better understand the individual jurisdictions' needs and goals, and to ensure that concerns that are not voiced at the Watershed Forum meetings are brought forward.
  4. Meetings or phone calls with each city attorney (or prosecutor) to ensure that they are up to speed on the process and any proposed interlocal agreement.
  5. Review minutes of each of the Watershed Forum workshops.
  6. Prepare monthly invoices with detail on work performed, time and billed amount.
  7. Coordinate Project activities with a lead staff or elected official (Project Manager, or "PM") designated by the Watershed Forum.
  8. Document any requested changes to the scope of work. Any changes in scope would need to be signed off by the PM.

**Watershed Forum Responsibilities.** Provide the following:

1. Timely review of products and decisions on issues critical to scheduled progress.
2. Identification and involvement of appropriate Watershed Forum elected officials and/or section staff.
3. Coordinate collection of comments and resolution of any conflicting comments from all Watershed Forum reviewers prior to returning to Foster Pepper.

**Work Products.**

1. Summary of key meeting issues
2. Interlocal Agreement
3. Monthly invoices
4. Project Change Requests

**Time, Costs and Billing Rates.**

\$400/hour for Hugh Spitzer and other members (“partners”), \$220/hour for associates.

Estimated time for Project components would be as follows:

Preparation for three workshop meetings and follow-up meeting: 10 member hours, 4 associate hours

Attendance at workshop and follow-up meetings: 16 member hours

Drafting organizational documents, and redrafting based on comments: 12 member hours and 12 associate hours

Meetings with local officials and staff: 14 member hours and 10 associate hours

Meetings/phone calls with city attorneys: 4 member hours

Coordination with Watershed Forum PM: 6 member hours

Miscellaneous: 3 member hours and 3 associate hours

Total: 65 member hours and 29 associate hours = \$32,380

## **Greater Lake Ballinger/McAleer Creek Watershed Forum**

### **Organization/Governance Decision Agenda**

The existing Interlocal Agreement provides a basic framework for intergovernmental cooperation concerning basic planning for watershed protection activities in the Greater Lake Ballinger/McAleer Creek Watershed (the "Watershed"). Several key decisions are involved with moving beyond the Watershed Study phase to a more active phase involving the identification of funds for carrying out elements the Strategic Action Plan (the "Plan"), and moving ahead on those Plan elements.

Key decisions include:

- Form/structure of organization
- Governance
- Funding for programs
- Staff
- Long-term Organization Choices

### **Legal Form of Organization**

Decision: Unincorporated Joint Board or Public Nonprofit Corporation?

For the initial phase of carrying out the Plan, and perhaps for the long term, joint intergovernmental activities can be carried out through an intergovernmental entity formed under the Interlocal Cooperation Act (Chap. 39.34 RCW). As outlined in the Intergovernmental Structure Options outline distributed at the last meeting, an intergovernmental body can be organized in several ways, including a joint board, a nonprofit corporation or a limited liability corporation. The first two are most common.

A joint board is a loose arrangement, and that is essentially what the parties have now. The Forum is the joint board with representatives of each of the Member Jurisdictions. The Forum is basically the instrumentality of the Members, but has no separate legal existence. It is simple, and is unlikely to become an independent actor. But a joint board cannot employ staff, which must instead be employed by one of the members or through a contract. Joint boards also provide little or no protection of the Members from liability.

A public nonprofit corporation is a formal legal actor, while remaining the instrumentality of its members. It has clear authority to enter into contracts, to receive and spend grants, to own property, and has limited powers of borrowing, at least from other governments. Many interlocal agreements today provide for creation of a nonprofit corporation because it protects the member governments from liability.

The Members have a fair amount of flexibility in how governance is structured for either a joint board or a nonprofit corporation.

Decision: If Organized as a Nonprofit Corporation, Should the Entity be Designated as a Watershed Management Partnership under RCW 39.34.190?

A watershed management partnership is a special type of intergovernmental entity that focuses on watershed management, water supply, water quality and protection, and other water-related issues. Watershed management partnerships are formed under RCW 39.34.190-.220 (copy attached). Their main advantage is that they have clearer borrowing powers than other entities formed under the Interlocal Cooperation Act.

### **Governance Issues**

Decision: What Type of Board? Who Serves?

Who should serve on the governing board of the entity? A board composed of elected officials only? A mixed board of elected officials and staff? Should there be a separate staff committee?

The existing Interlocal Agreement provides for the Forum, which is composed of elected officials, and a separate staff committee. This could provide a perfectly good model going forward. The advantage of a governing board of elected officials is that it involves the people who have the ultimate responsibility to the public for the entity's success. The only "disadvantage" is that the designated representatives of the jurisdictions must have a commitment to attending meetings regularly in order for the enterprise to succeed. Some interlocal organizations are set up for the elected board members to meet less frequently than the staff representatives, perhaps four times a year to approve an organization's plan, budget, allocation of funds, and to make other key decisions.

Decision: How is Voting Structured on the Board?

The current Interlocal Agreement requires a unanimous vote on key issues. Sometimes this approach leads to a stalemate if just one member regularly dissents, thus blocking collective action. The Forum may wish to consider a majority vote approach, or perhaps a super-majority vote requiring 5 out of the 6 members voting in the affirmative for important decisions. The Cascade Water Alliance, which is a watershed management partnership, uses "dual voting" where key decisions must be adopted with both a majority (or super-majority in some instances) vote of the members, and by a majority (or super-majority) vote by water usage. The WRIA 8 Forum (which includes jurisdictions in both King and Snohomish Counties) also has dual voting, requiring both a majority of the members and a majority measured by financial contributions. Dual voting may be a bit too complicated for the new Lake Ballinger/McAleer Creek entity, at least at this phase. But the WRIA 8 Forum has declared that its goal is to operate on a consensus basis, and to use formal voting mechanisms only for the most important decisions.

If the Forum desires to require super-majority votes on some decisions, examples might include adoption of the Strategic Action Plan or Plan amendments, admission of new members, amendments to the Interlocal Agreement, approval of the annual budget, prioritization of use of funds, or prioritization of the organization's support for grant applications by individual members (*i.e.*, whom to support when members are considering applying for the same grant funds).

## **Financial Matters**

### Decision: How is the Entity Financed?

How do members finance the organization? Do they contribute equal annual assessments (which is the simplest approach)? Or do they contribute based on contribution to the watershed problems? Or benefit from programs? Or population? Or impervious surface? These are difficult issues, and it may be advisable to use a simple approach until the group has a much stronger consensus on how programs should be paid for in addition to grant funds.

Financing on-the-ground programs may involve rates and assessments. If the members agree to impose them, should they do so independently, according to a common plan? For example, each member could impose special stormwater charges or surcharges that would go into a Lake Ballinger/McAlier Creek fund. Or one of the members could form a local improvement district that might include adjoining jurisdictions. (This has been permitted, with the agreement of all parties, since legislation was adopted earlier this year.) Direct fees, taxes or charges for major improvements might require formation of a new special purpose district (see below).

### Decision: Who Should Manage the Organization's Funds?

Under the Interlocal Cooperation Act, the members may designate a treasurer for the organization. If it is organized as a watershed management partnership, the treasurer must be the treasurer of a city or county member of the organization (*i.e.*, not a special purpose district treasurer).

## **Staff**

### Decision: Should Staff be Employed Directly by the Organization, or by a Member?

If the entity is an unincorporated joint board, any staff must be either employees of a member, or contractors. If the entity is organized as a public nonprofit corporation, that entity can hire staff. For a small organization, this is very much a matter of simplicity. It may be much easier for a staff of one or two persons to be on the payroll of a member, so long as it is made clear that they answer to the board of the entity rather than to the jurisdiction that formally employs them.

## **Longer Term Governance Issues**

### Decision: Should a Separate Special District Later be Formed?

An intergovernmental entity may serve the member's purposes perfectly well, particularly in the short and medium term. In a later phase, if the organization desires to finance much more robust programs than can be financed through state and federal grants and modest contributions by the members, it may wish to consider the organization of a special district with stronger powers to directly impose fees, taxes and assessments. Special districts that might be considered could include: Lake/Beach Management Districts under Chapter 36.61 RCW, which *can* include areas within two counties. (See RCW 36.61.070.) Diking and Drainage Districts also may be formed within two counties. (See Chapter 85.24 RCW.) Or the members could consider forming a metropolitan municipal corporation under Chapter 35.58 RCW. "Metros" do not have to be large, but they have very robust powers.

### **Next Immediate Steps**

### Decision: Amend the Existing Interlocal Agreement or Draft a New One?

If the Forum wishes to create a new or more developed entity than what now exists, it can (1) amend the existing Interlocal Agreement, just changing some provisions as required, (2) amend and restate the existing Interlocal Agreement, which would be close to writing a new agreement, or (3) adopt a new interlocal agreement to replace the existing one.

Regardless of which approach the Forum chooses to take, the existing Interlocal Agreement provides a good start for the next steps. Some of its provisions can be modified to serve the next entity. Others should be replaced.

**WATERSHED/LAKE MANAGEMENT:  
COMPARISON OF LOCAL GOVERNMENT AUTHORITIES**

<b>Type of Organization</b>	<b>Permitted Activities</b>	<b>Legal Citations (RCW)</b>	<b>Revenue Sources</b>	<b>Constraints</b>
<p>Cities and towns</p>	<p>Operate systems of sewerage (<i>i.e.</i>, a system of “sanitary sewage collection, treatment and/or disposal facilities and services, including...on-site or off-site sanitary sewerage facilities, inspection services and maintenance services for private or public on-site systems....” (RCW 35.67.010)</p> <p>Cities have strong finance powers, and city sewerage utilities may make loans to low-income persons and structure rates and services to assist low-income customers. (RCW 35.92.020, -.017; 74.38.070)</p>	<p>35.67; 35.88 35.92 35A.80 35A.56 35.41 35.21.210-.215 35.22.280(29)3 5.23.440(35) 35.27.370(5)</p>	<p>Rates and Charges General Obligations Bonds Revenue Bonds Fines and Penalties Permit Fees General Taxes State and Federal Grants &amp; Loans</p>	<p>Fees and charges, whether imposed under utility powers or police powers, must be reasonable and must be deposited in a separate account and used solely for the purposes or programs for which they are collected.</p>

Type of Organization	Permitted Activities	Legal Citations (RCW)	Revenue Sources	Constraints
Counties	<p>Operate "systems of sewerage" including sanitary sewage handling and treatment, storm and surface water systems, point and nonpoint water pollution monitoring, septic inspection and maintenance programs, and various other services. (RCW 36.94.010-.020) County systems of sewerage may exercise <i>all</i> powers of aquifer protection areas, lake management districts and shellfish protection districts (RCW 36.94.020).</p> <p>Counties have strong finance powers under Chap. 36.94 RCW, and county sewerage utilities may make loans to low-income persons and waive various fees for low-income customers. (RCW 36.94.140, -.370, -.430; 74.38.070)</p>	36.94 36.89	Rates and Charges General Obligations Bonds Revenue Bonds Fines and Penalties Special Assessments Permit Fees General Taxes State and Federal Grants & Loans	<p>Must be described in county's general sewerage plan after "review committee" process. Special notification must be provided to all residences with on-site systems within area to be served. Under most circumstances, county utility may not "provide inspection, pumping services, or other maintenance or repair services under this [statute] using county employees." (RCW 36.94.020, -.050)</p> <p>Fees and charges, whether imposed under utility powers or police powers, must be reasonable and must be deposited in a separate account and used solely for the purposes or programs for which they are collected.</p>
Metropolitan Municipal Corporations	As part of a water pollution abatement program, may exercise all the powers relating to systems of sewerage authorized to counties under RCW 36.94.010, -020 and -.140. (See above under "Counties")	35.58.200 35.58.210 35.58.215	Rates, Charges and Fees General Obligation Bonds Revenue Bonds State and Federal Grants	A metropolitan municipal corporation may engage in water pollution abatement activities <i>only if approved by the voters</i> upon the initial formation of the entity, or if approved at a later vote. (RCW 35.58.050 - .114)

Type of Organization	Permitted Activities	Legal Citations (RCW)	Revenue Sources	Constraints
Boards of Health, Health Districts, Health Departments	County and health district boards of health, health departments, and their health officers, are responsible for enforcing the public health statutes and regulations of the state. Because they are carrying out traditional public health and safety functions, inspection and enforcement activities may be carried out by county or health district employees (in contrast with the private-sector inspector requirement for city & county inspection and maintenance utilities). It should be noted that, counties and cities have broad inherent police (regulatory) powers to the extent such powers are not pre-empted by the state.	70.05 70.46  WAC Chap. 246-272A  Wash. Const. art. XI, sec. 11	Permit Fees Regulatory Fees State and Federal Grants & Loans	Health district and health department programs governing on-site inspection and maintenance are significantly affected by state regulations and statutes.  Permit fees and other regulatory fees must be deposited in a separate account and used solely for the purposes or programs for which they are collected.  Health districts have no effective borrowing power.
Aquifer Protection Areas	Provide for the costs of monitoring and inspecting on-site sewage disposal systems, planning, enforcement and education. (RCW 36.36.040)	36.36	Fees for Withdrawal of Groundwater Fees for On-site Sewage Disposal (Must be per household) State and Federal Grants & Loans	Requires voter approval for creation. Must rely on county government and other agencies to carry out programs.

Type of Organization	Permitted Activities	Legal Citations (RCW)	Revenue Sources	Constraints
Lake Management Districts	Provide for costs of water quality programs, focused mainly on "lake improvement and maintenance activities." RCW 36.61.020	36.61	Rates and Charges Special Assessments Revenue Bonds State and Federal Grants & Loans	Creation must be approved by majority of landowners, with votes weighted based on estimated special assessments or rates & charges.
Water-Sewer Districts	Operate an on-site inspection and maintenance utility as part of the district's system of sewerage (RCW 57.08.005). Water-sewer districts may make loans to low-income persons and adjust various fees and charges for low-income persons. (57.08.014, -.160; 74.38.070)	57.08	Rates, Charges and Fees General Obligation Bonds Revenue Bonds State and Federal Grants	Must be described in district's comprehensive sewerage plan, which must be approved by county engineer, county health officer and county legislative authority.
Public Utility Districts	Operate systems for the collection, treatment and disposal of wastewater, and for the "control and protection, preservation, and rehabilitation of surface and underground waters" (RCW 54.16.310). PUD's may adjust rates for low-income elderly and other low-income persons, and may make loans to low-income persons. (RCW 54.16.032; 74.38.070)	54.16	Rates, Charges and Fees General Obligation Bonds Revenue Bonds State and Federal Grants & Loans	

## Wastewater/Water Quality Program – Intergovernmental Structure Options

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
<b>Separate Legal Entity?</b>	No	Yes	Yes	Yes	N/A
<b>Statutory Authorization</b>	Ch. 39.34 RCW	Ch. 24.03 RCW or Ch. 24.06 <sup>2</sup> & Ch. 39.34.030(3)(b)	Ch. 25.15 RCW & Ch. 39.34.030(3)(b)	Ch. 35.58 RCW. Must include two or more cities. Requires public vote for creation. RCW 35.58.070-.090	RCW Chapters 36.94, 35.67, 35.92, Title 57 and 54.16
<b>Scope of Powers</b>	"Any power or powers, privileges or authority exercised or capable of exercise by a public agency" 39.34.030 Powers can be delegated to a member to exercise on behalf of the joint board (Administering Agency)	"Any power or powers, privileges or authority exercised or capable of exercise by a public agency" (39.34.030).  May not engage in business for profit.  General powers: RCW 24.06.030, RCW 24.03.035  "Corporations may be organized under this chapter for any lawful purpose..." RCW 24.06.015	"Any power or powers, privileges or authority exercised or capable of exercise by a public agency" (39.34.030).  "may carry on any lawful business activity unless a more limited purpose is set forth in the certificate of formation" and unless otherwise specified "do all things necessary or convenient to carry out its business affairs." RCW 25.15.030	"All powers which are necessary to carry out the purposes of the metropolitan municipal corporation and to perform authorized metropolitan functions." (35.58.180)  Water pollution abatement powers: RCW 35.58.200  Metropolitan municipal corporations have as broad (or broader) powers as any other category of municipal corporation in Washington State.	Full powers to finance, own and/or operate wastewater facilities (with public vote in case of public util. districts)
<b>Specific Powers Issues</b>					
Enter into contracts?	No (but a member agency may do so for the benefit of the joint board and its members if each	Yes	Yes	Yes	Yes

<sup>1</sup> Lead entity could be Snohomish County, any of the cities, a water-sewer district or Snohomish PUD.

<sup>2</sup> Discussion of nonprofit corporations in this document is focused on Ch. 24.06, as opposed to Ch. 24.03. Ch. 24.06 is somewhat more flexible than Ch. 24.03.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
	member so approves)				
Own property (real or personal)? <sup>3</sup>	No (but a member agency may do so for the benefit of the joint board and its members if each member so approves).	Yes	Yes	Yes	Yes
Receive gifts and grants?	Yes (if members so individually authorized)	Yes. Gifts would be tax deductible by grantor	Yes. Gifts would be tax deductible by grantor	Yes. Gifts would be tax deductible by grantor	Yes. Gifts would be tax deductible by grantor
Sue and Be Sued?	No; but members can sue and be sued	Yes	Yes	Yes	Yes
Issue debt (as in bonds)	No <sup>4</sup>	No <sup>4</sup>	No <sup>4</sup>	Yes	Yes
Establish funds and accounts?	A public agency may hold an operating fund for a joint board	Yes	Yes	Yes	Yes
Hire employees?	No.	Yes	Yes	Yes	Yes
Can employees qualify for PERS, MEBT?	N/A	Yes	Yes	Yes	Yes
Operate with employees whose services are "loaned" from a member?	Yes	Yes	Yes	Yes	Yes

<sup>3</sup> Note that under any scenario member local governments may not do *indirectly* what they cannot do *directly*. That restriction would extend to any of these alternative corporate entities.

<sup>4</sup> May have bonds issued on its behalf by a member or by the Washington Economic Development Finance Authority under Chap. 43.163 RCW.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
<b>Oversight / Governance Board Requirements</b>	<p>ILA must specify governing board members, election process, voting, Administrator responsible for undertaking business on behalf of joint board.</p> <p>No limitations on membership of committees</p>	<p>Board of Directors (not less than 3 persons). Powers: amend bylaws, articles of incorporation, approve sale or purchase of assets, dissolution or mergers. Board maximum term: 3 years. Corporate officers must be appointed: President, one or more VPs, secretary, treasury.</p> <p>Officers can be <i>ex officio</i> members of board (need not be members of Corporation). Can hold more than one position (except that the president cannot also be secretary). Committees can be established; each must have at least 2 board members on it.</p>	<p>By "one or more managers" –all other terms as determined in agreement.</p> <p><i>Unless agreement of formation otherwise provides:</i> a simple majority of members is required to act; unanimous agreement needed to amend agreement; managers are elected by simple majority but not need be LLC members</p> <p>No limitations on membership on committees</p>	<p>Metropolitan municipality "a metropolitan municipal corporation shall be governed by a metropolitan council composed of elected officials of the component counties and component cities, and possibly other persons, as determined by agreement of each of the component counties and the component cities" under rules established in RCW 35.58.120</p>	<p>ILA may specify oversight or involvement by representatives of other entities.</p>
<b>Weighted voting? Can Members have different rights and obligations?</b>	Allowed	Allowed – specify in Articles of in corporation	Allowed, if specified in LLC agreement.	Allowed, if metro council so provides in its rules of procedure. RCW 35.58.130.	May be specified in ILA

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
Can non-government entities join as members/partners?	No	Yes, if allowed by Articles of Incorporation, and subject to prohibitions on municipalities <sup>5</sup>	Yes, if allowed by agreement, subject to general municipal law. But Interlocal Cooperation Act appears to restrict membership to governments if the LLC is formed under that statute.	No	Yes, as specified in ILA
Can new Members be allowed to join after start-up?	Yes	Yes	Yes	Yes. Requires vote in annexed territory. RCW 35.58.530-.550	Yes, as specified in ILA
Meetings	As specified in ILA.  Subject to Open Public Meetings Act	Must conduct an annual meeting at specified time (per Articles of Incorporation).  Subject to Open Public Meetings Act (if municipalities are members)	As specified in agreement of formation. No requirement for annual meeting.  Subject to Open Public Meetings Act (if municipalities are members)	Subject to Open Public Meetings Act.	Subject to Open Public Meetings Act
Liability issues / Immunity / Indemnification	Individual members are fully liable for actions of the Joint Board. Joint Board cannot indemnify members or directors, agents, employees. Members may indemnify one another for their respective actions	Corporation can indemnify officers, agents and employees, and members.  Immunity of officers and directors provided by law, except for intentional misconduct. (RCW 4.24.264)	Can indemnify managers, agents, employees.  Can limit liability of members for LLC conduct except intentional misconduct of a member. Liability for actions of LLC limited to LLC (but may pierce corporate veil in some cases, as is true with a general corporation or nonprofit corporation).	Corporation can indemnify officers, agents and employees, and members.	May indemnify officers, agents, employees, and other governmental participants.

<sup>5</sup> Note: Membership of non-governmental entities can raise significant federal tax issues and state constitutional issues.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
Withdrawal of Members	As defined by ILA	As allowed per articles or bylaws.	As agreement defines	No provision for withdrawal.	May be provided in ILA, subject to bond covenants
Dissolution/Termination	Flexible. ILA must specify	Upon resolution of the board, subject to 2/3 vote of members. Assets distributed first to creditors and then per Articles.	As per agreement.  Assets distributed first to creditors and then per agreement.	Permitted under Chap. 53.48 RCW.	Lead entities won't dissolve, but ILA may dissolve under its terms
Duration	Flexible. ILA must specify.	As per agreement; may be perpetual or for term of years.	As per agreement	Perpetual.	As per agreement
Member "Right of Dissent" to certain corporate actions, rights to share of assets	N/A	Certain major actions (merger, sale of all or substantially all assets, diminution of shares, etc.) require advance notice. Members may object; if the action is nevertheless approved, dissenting members may request payment for their interest in the corporation and withdraw. <i>Articles of Incorporation may provide payment is at less than fair value.</i>	Very similar to nonprofit; certain major actions (merger, sale or all or substantially all assets, etc) require advance notice. Members may object in advance; if action is approved, dissenting members may withdraw and receive fair value for their interest in the LLC.	N/A	N/A
<b>Budget and Finance Issues</b>					
Budget Approval Process	Individual jurisdictions must each approve their share of the Joint Board budget	Individual jurisdictions must each approve their share of the corporation budget.	Individual jurisdictions must each approve their share of the corporation budget.	Determined by rules established by Metro Council.	As specified in ILA
Receive loans or grants?	Yes.	Yes. Gifts would be tax deductible by grantor.	Yes. Gifts would be tax deductible by grantor.	Yes. Gifts would be tax deductible by grantor.	Yes.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
Books and Records, Audits	Through administering agency	Entity would need to establish and maintain its own books and records and would be subject to audit as other local governmental entities.	LLC would need to establish and maintain its own books and records and would be subject to audit as other local governmental entities.	Subject to audit by State Auditor.	Subject to audit by State Auditor.
Taxation <sup>6</sup>	Not subject to federal income tax or state property tax	As a governmental instrumentality, not subject to federal income tax or state property tax	As a governmental instrumentality, not subject to federal income tax or state property tax—if for non-profit / governmental purpose	Not subject to federal income tax or state property tax	
<b>Formation Process</b>					
Initial Formation	ILA adopted by each member jurisdiction	ILA adopted by each member jurisdiction.  Articles of Incorporation similarly approved by each member.  Corporation is deemed formed when articles are signed and filed with the secretary of state. Bylaws adopted at initial meeting of Board of Directors.	ILA adopted by each member jurisdiction.  Certificate of formation (name, office, agent, place of business, term, how managed) filed with state together with "initial report" (names of managers, description of business);	Formed after petition by a potential member jurisdiction, public hearing, and public vote. RCW 35.58.070-.090	

<sup>6</sup> There are options in terms of federal tax status – 501(c)(3), 501(c)(4), etc. However, there is no reason to take the steps to file in this capacity under federal tax law, since as an instrumentality of its governmental members, charitable contributions to any of these entities (nonprofit, LLC, partnership) would be deductible pursuant to section 115 of the Internal Revenue Code, which covers governments and their instrumentalities.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
Ongoing state registration/licensing requirements	None—must file interlocal agreement (ILA) with county auditor or post the ILA online.	Annual report and registration filing, with an associated nominal fee. Must have a registered office and registered agent (for receipt of process service, etc.)  Articles of Incorporation and any amendments must be filed with secretary of state.	Annual report and registration required with associated nominal fee. Must maintain registered office and agent.  Certificate of formation and any amendments to certificate of formation must be filed with secretary of state.	N/A	N/A