

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.