



Le Sueur County, MN

Tuesday, February 19, 2019

Board Meeting

Item 6

9:55 a.m. Holly Kalbus, Environmental Resources Specialist (15 min.)

1. One Watershed One Plan-Joint Powers Agreement

Staff Contact:

FACT SHEET

Cannon River One Watershed, One Plan

The goal of One Watershed, One Plan (1W1P) is to align local water planning on major watershed boundaries rather than county boundaries. The Minnesota Board of Water and Soil Resources (BWSR) is the state agency that provides guidance on Plan development and is the responsible authority to approve final Plans.

In 2012, the Minnesota legislature required BWSR to develop a process to transition from a county water plan to a watershed based plan (Plan). During that process 63 major watersheds within the State of Minnesota were identified. Currently five major watersheds have approved Plans and another 11, including the Cannon River Watershed Planning Area, are in the process of developing their final Plan for adoption. The goal is to have a Plan for all 63 watersheds by the year 2025.

This locally led process, that is intended to align with State strategies, will result in a Plan that address the highest priorities to restore or protect our water resources. Working collaboratively across county lines to develop a watershed based plan makes the watershed eligible to receive non-competitive state funds to implement projects and activities.

As a requirement to obtaining final Plan approval from the BWSR, the Plan must include information on the organizational structure that will be used to implement the Plan.

Policy Committee	One representative from each of the 14 local water management authorities within the Cannon River Watershed Planning Area including six counties, six soil and water conservation districts, the Belle Creek Watershed District and the North Cannon River Watershed Management Organization. They have been meeting throughout the planning process. The following is a summary of Policy Committee meeting information related specifically to organizational structure for Plan implementation.
November 2017	Three different watershed structures in southern Minnesota were invited to share how they operate including the Root River (Plan adopted), Cedar River Watershed District, and the Greater Blue Earth River Basin Alliance.
January 2018	A representative from the Minnesota Counties Intergovernmental Trust (MCIT) provided information on different structures and the legal considerations of each. Four different structures were presented and the Policy Committee eliminated two; the Watershed District and informal agreement option or Memorandum of Agreement. The Policy Committee chose to focus on either a collaboration structure among the 14 Members or a joint powers board structure.
April 2018	Reviewed details of both the collaboration approach or the joint powers board option. The Policy Committee unanimously supported the joint powers board option as it provides the most flexibility to accomplish watershed wide activities and they directed staff to draft a joint powers agreement for review and consideration.

Next Step: The Policy Committee currently operates under a Memorandum of Agreement for Plan development that was approved by each of the 14 member Boards in December 2016. The Policy Committee is now seeking action from each member Board to approve a structure that will implement the Plan and establish a Cannon River Watershed Joint Powers Board (CRWJPB).

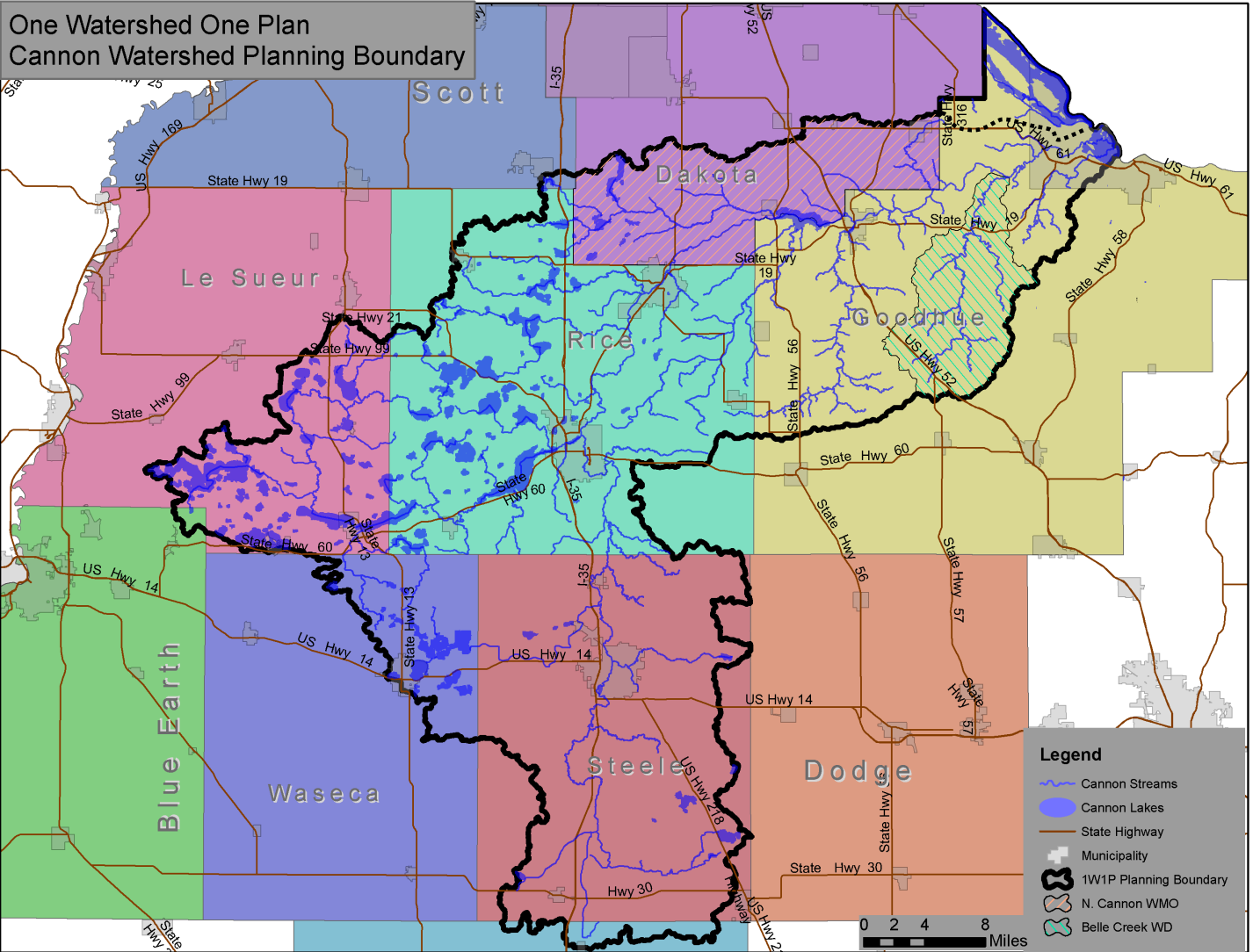
Watershed Planning Area

Counties by Percentage

Rice County	27.8%
Steele County	24.1%
Goodhue County	22.1%
Dakota County	9.9%
Le Sueur County	9.6%
Waseca County	5.2%
Non-participating Counties (Blue Earth, Dodge, Freeborn, Scott)	1.3%

Planning Area Quick Facts

- 963,717 acres**
- 1,506 square miles**
- 800 linear miles of water courses**
- 51% agricultural**
- 10% within Metro Area**
- 5 cities > 10,000 people**



**JOINT POWERS AGREEMENT
FOR CANNON RIVER WATERSHED**

This Joint Powers Agreement (Agreement) is entered into between the following parties (sometimes referred to as members):

The Counties of Dakota, Goodhue, Le Sueur, Rice, Steele and Waseca (Counties), by and through their respective County Board of Commissioners, and the Dakota, Goodhue, Le Sueur, Rice, Steele and Waseca Soil and Water Conservation Districts (SWCDs), by and through their respective Soil and Water Conservation District Board of Supervisors, and the Belle Creek Watershed District (WD) and the North Cannon River Watershed Management Organization (WMO) by and through their Board of Managers

WHEREAS, Minnesota Statutes § 471.59 authorizes local governmental units to jointly or cooperatively exercise any power common to the contracting parties; and

WHEREAS, the Counties of this Agreement are political subdivisions of the State of Minnesota, with authority to carry out environmental programs and land use controls, pursuant to Minnesota Statutes Chapter 375 and as otherwise provided by law; and

WHEREAS, the Soil and Water Conservation Districts (SWCDs) of this Agreement are political subdivisions of the State of Minnesota, with statutory authority to carry out erosion control and other soil and water conservation programs, pursuant to Minnesota Statutes Chapter 103C and as otherwise provided by law; and

WHEREAS, the Watershed Management Organizations and Watershed Districts of this Agreement are political subdivisions of the State of Minnesota, with statutory authority to carry out conservation of the natural resources of the state by land use controls, flood control, and other conservation projects for the protection of the public health and welfare and the provident use of the natural resources, pursuant to Minnesota Statutes Chapters 103B, 103D and as otherwise provided by law; and

WHEREAS, the parties to this Agreement have a common interest and statutory authority to prepare, adopt, and assure implementation of a comprehensive watershed management plan in the Cannon River Watershed Planning Area to conserve soil and water resources through the implementation of practices, programs, and regulatory controls that effectively control or prevent erosion, sedimentation, siltation and related pollution in order to preserve natural resources, ensure continued soil productivity, protect water quality, reduce damages caused by floods, preserve wildlife, protect the tax base, and protect public lands and waters; and

WHEREAS, with matters that relate to coordination of water management authorities pursuant to Minnesota Statute Chapters 103B, 103C, and 103D and with public drainage systems pursuant to Minnesota Statute Chapter 103E, this Agreement does not change the rights or obligations of the public drainage system authorities.

WHEREAS, pursuant to Minn. Stat. Section 103B.101 Subd. 14, the Board of Water and Soil Resources (BWSR) “may adopt resolutions, policies, or orders that allow a comprehensive plan, local water management plan, or watershed management plan, developed or amended, approved and adopted, according to chapters 103B, 103C, or 103D to serve as substitutes for one another or be replaced with a comprehensive watershed management plan,” also known as the “One Watershed, One Plan”.

WHEREAS, it is understood by all the parties to this Agreement that the One Watershed, One Plan for the Cannon River Watershed Planning Area does not replace or supplant local land use, planning, or zoning authority, but, instead, provides a framework to provide increased opportunities for cooperation and consistency on a watershed basis.

WHEREAS, it is understood by all parties to this Agreement that the One Watershed, One Plan for the Cannon River Watershed Planning Area is intended to provide a framework for consistency and cooperation on a watershed basis and to allow local governments to cooperatively work together to implement projects with the highest return on investment for improving water quality/quantity issues on a watershed basis.

NOW, THEREFORE, in consideration of the mutual promises and benefits that the parties shall derive herefrom, all parties hereby enter into this joint powers agreement for the purposes herein.

I. Purpose.

The purpose of this Agreement is to establish a joint powers board that will (1) exercise leadership in the development of policies, programs and projects that will promote the accomplishment of the purposes found at Minn. Stat. § 103B, including the preparation, adoption and implementation of the plan required by Minn. Stat. § 103B.801 for the Cannon River Watershed Planning Area and (2) guide and assist the parties in acting jointly and individually to take actions that will promote the goals listed in Minn. Stat. §103B.801 and fulfill their responsibilities under Chapter 103B.

II. Joint Powers Board.

A. Creation and Composition of Joint Powers Board.

A joint powers board, known as the Cannon River Watershed Joint Powers Board (CRWJPB), is established for the purposes contained herein with the powers and duties set forth in this Agreement.

The CRWJPB shall be comprised of up to 14 qualifying members with membership composed of the following eligible members: one (1) County Commissioner from each qualifying County, one (1) Soil and Water Conservation District Supervisor from each qualifying County, one (1) Manager from the qualifying Watershed District, and one (1) Manager from the Watershed Management Organization with the respective individual representatives designated by the governing board of each qualifying member local unit of government.

B. Terms.

Each representative shall be appointed for a two-year term, with the ability of a member to appoint a representative for successive terms. In the event that any representative was not appointed by the governing board of each respective member or prior to expiration of the representative's term, the incumbent representative shall serve until a successor has been appointed.

C. Vacancies.

If a representative resigns or is otherwise unable to complete a term on the CRWJPB because of the circumstance outlined in Minn. Stat. §351.02 exist or if a representative fails to qualify or act as a representative, the CRWJPB will advise the appointing authority of the vacancy as soon as practicable and the vacancy will be filled according to the requirements of the respective local unit of government.

D. Chair and Vice-chair.

The CRWJPB shall elect a chair and a vice-chair from its membership for one-year terms.

The chairperson shall serve as chairperson for all meetings and sign and deliver in the name of the CRWJPB any correspondence pertaining to the business of the Cannon River One Watershed, One Plan and shall perform other duties and functions as may be determined by the CRWJPB.

The vice-chair shall discharge the chairperson's duties in the event of the absence or disability of the chairperson

E. Secretary.

The CRWJPB shall elect a secretary from its membership for a one - year term.

The secretary shall: maintain records of the CRWJPB; certify records and proceedings of the CRWJPB; ensure that minutes of all CRWJPB meetings are recorded and made available in a timely manner to the CRWJPB, and maintain a file of all approved minutes including corrections and changes; provide for proper public notice of all meetings; and the secretary may delegate a representative to record the minutes and perform other duties of the secretary. The elected secretary will sign the official minutes of all meetings following approval by the CRWJPB.

F. Treasurer:

The CRWJPB shall elect a Treasurer from its membership for a one - year term.

The Treasurer shall assist the Chair in overseeing the CRWJPB budget and finances. In absence of the Chair or Vice Chair, the Treasurer shall preside over the CRWJPB meetings.

G. Meetings.

All meetings of the CRWJPB shall comply with statutes and rules requiring open and public meetings.

The conduct of all meetings of the CRWJPB shall be generally governed by the most recent edition of Robert's Rules of Parliamentary Law.

A quorum of the CRWJPB shall consist of a simple majority of the members. A quorum shall consist of 50 percent, plus one of the total membership.

All votes by CRWJPB members or alternate member shall be made in person.

Notice of CRWJPB meetings and a proposed agenda shall be mailed to all Board members not less than five (5) days prior to the scheduled meeting date of the Policy Committee.

The minutes of any meeting shall be made available to all CRWJPB members prior to the next meeting.

All regular meetings of the CRWJPB will be held at a Rice County Government Services Building. The CRWJPB, at its own discretion, may change the location.

H. Voting.

Each representative who is present shall be entitled to one vote.

A motion or resolution shall be approved by a favorable vote of a simple majority of the members present, provided enough members are present to make a quorum.

A supermajority vote of 75 percent of those members present shall be required for final plan submittal or changes to the bylaws or Joint Powers Agreement.

I. Staff.

The CRWJPB shall not have authority to hire staff. Any staff providing services in conjunction with this Agreement shall remain an employee of the respective member entity.

J. Duties of the CRWJPB.

The CRWJPB shall have the responsibility to prepare, adopt and implement a plan for the Cannon River Watershed Planning Area that meets the requirements of Minn. Stat. § 103B.801. with the exception of separate jurisdictional authorities granted to the North Cannon River Watershed Management Organization and the Belle Creek Watershed District.

Upon adoption of a watershed plan, the CRWJPB may amend the watershed plan without approval from the governing boards of individual members

III. Powers of the CRWJPB.

A. General Powers.

The CRWJPB is hereby authorized to exercise such authority as is necessary and proper to fulfill its purposes and perform all duties described herein. Such authority shall include, but not be limited to, authority and responsibility to oversee revenues and expenditures.

B. Contracts.

The CRWJPB may enter into any contract necessary or proper for the exercise of its powers or the fulfillment of its duties and enforce such contracts to the extent available in equity or at law. Additionally, the CRWJPB may enter into agreements pursuant to Minn. Stat. § 471.59. The CRWJPB may approve any contract consistent with goals of the CRWJPB and may authorize its chair to execute these contracts.

The CRWJPB shall pay to any member services performed consistent with the purpose of this Agreement or contractors for services performed pursuant to contract. No payment on any invoice for services performed by a member, consultant, contractor, or any other person or organization providing services in connection with this Agreement shall be authorized unless approved by the CRWJPB. The CRWJPB may develop a process to expedite payment of invoices but any such payments shall be ratified by the CRWJPB at their next meeting.

C. Funds.

The CRWJPB may disburse funds in a manner which is consistent with the Agreement and with the method provided by law for the disbursement of funds by the parties to this Agreement.

D. Bylaws.

The CRWJPB shall have the power to adopt and amend such bylaws that it may deem necessary or desirable for the conduct of its business. Such bylaws shall be consistent with this Agreement and any applicable laws or regulations.

E. Grants and Loans.

The CRWJPB may apply for and accept gifts, grants or loans of money, other property or assistance from the United States government, the State of Minnesota, or any person, association or agency for any of its purposes; enter into any agreement in connection therewith; and hold, use and dispose of such money, other property and assistance in accordance with the terms of the gift, grant or loan relating thereto.

F. Property.

The CRWJPB has no authority to purchase property or equipment. Any

property or equipment that is provided to the CRWJPB to accomplish the goals of the One Watershed One Plan shall continue to be owned by the entity providing such property or equipment for use by the CRWJPB.

G. Insurance.

The CRWJPB may obtain any liability insurance or other insurance it deems necessary to insure itself for any action arising out of this Agreement.

H. Exercise of Powers.

All powers granted herein shall be exercised by the CRWJPB in a fiscally responsible manner and in accordance with the requirements of law.

I. Public Participation.

The CRWJPB shall provide for such public participation in the conduct of its activities as will promote understanding of its activities among the public and local governmental units affected by its activities and the informal resolution of disputes or complaints.

IV. Reservation of Authority.

All responsibilities not specifically set out to be jointly exercised by the CRWJPB under this Agreement are hereby reserved to the respective governing bodies of the members.

V. Budgeting and Funding.

A. Budget.

Annually, the CRWJPB shall adopt a budget.

B. Funding.

The CRWJPB has no authority to levy taxes. Local funding may be provided by establishing a “membership dues” system payable by March 15 of each year.

The amount of membership dues will be based on a tiered approach established by the percentage of land each member has within the Cannon River Watershed Planning Area subject to this agreement. The CRWJPB will have the authority to establish annual dues for each Member. When establishing annual dues, the following limits shall apply:

Tier 1 Membership dues will not exceed \$5,000 annually. Tier 1 shall consist of members with more than 15% of total land within the Planning Area and includes Goodhue County, Goodhue SWCD, Steele County, Steele SWCD, Rice County and Rice SWCD.

Tier 2 Membership dues will not exceed \$3,500 annually. Tier 2 shall consist of members with more than 8% but less than 15% of total land

within the Planning Area and includes Le Sueur County, Le Sueur SWCD, Dakota County and Dakota SWCD.

Tier 3 Membership dues will not exceed \$2,000 annually. Tier 3 shall consist of members with less than 8% of land within Planning Area and includes Waseca County and Waseca SWCD.

Tier 4 Membership dues will not exceed \$500 annually. Tier 4 shall consist of Belle Creek Watershed District and North Cannon River Watershed Management Organization.

C. Administrator, Fiscal Agent and Legal Counsel.

The CRWJPB may enter into agreement with one or more of its members, or select a contractor, to carry out administrative, fiscal, and legal services.

D. Accountability.

All funds shall be accounted for according to generally accepted accounting principles.

E. Debts.

The CRWJPB may not incur debts.

VI. Committees.

A. Creation.

To expedite and facilitate the business of the CRWJPB and the orderly and efficient consideration of matters coming before it, the CRWJPB may create committees as it deems necessary to review and examine specific issues or topics of concern. The Chair, or by a majority vote of the CRWJPB, may appoint standing or ad hoc committees to address issues or facilitate the CRWJPB activities.

B. Member Selection.

Any committee must include at least one CRWJPB member or proxy. A committee should also include other related service providers and subject matter experts.

C. Officers.

The CRWJPB Chair shall appoint the Chair and Vice Chair of a committee or a pair of Co-Chairs at his/her discretion.

D. Member Resignation.

A committee member may resign at any time from the subcommittee upon providing 30 days written notice.

E. Member Removal.

Any member of a committee who is not a member of the CRWJPB may be removed by a two-thirds majority vote of the members present at a scheduled CRWJPB meeting. For this purpose, each CRWJPB member is provided one vote.

F. Conflict of Interest.

Persons who have a private pecuniary or property interest in an issue(s) or topic(s) under the subject matter of a committee's work shall not serve as a member of such committee or subcommittee.

VII. Indemnification.

Each party to this Agreement shall be liable for the acts of its officers, employees or agents and the results thereof to the extent authorized or limited by law and shall not be responsible for the acts of any other party, its officers, employees or agents. The provisions of the Municipal Tort Claims Act, Minnesota Statute Chapter 466 and other applicable laws govern liability of the parties. To the full extent permitted by law, actions by the Parties, their respective officers, employees, and agents pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity." It is the intent of the Parties that they shall be deemed a "single governmental unit" for the purpose of liability, as set forth in Minnesota Statutes§ 471.59, subd. 1a(a). For purposes of Minnesota Statutes§ 471.59, subd. 1a(a) it is the intent of each party that this Agreement does not create any liability or exposure of one party for the acts or omissions of any other party.

VIII. Records Retention and Data Practices.

The parties agree that records created pursuant to the terms of this Agreement will be retained in a manner that meets their respective entity's records retention schedules that have been reviewed and approved by the State in accordance with Minnesota Statutes§ 138.17. The Parties further agree that records prepared or maintained in furtherance of the agreement shall be subject to the Minnesota Government Data Practices Act.

IX. Duration.

This Agreement is effective and binding on all members upon the date of the last signature required all members. All members need not sign the same copy. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any counterpart signature transmitted by facsimile or by sending a scanned copy by electronic mail or similar electronic transmission shall be deemed an original signature.

This signed Agreement shall be filed with the responsible authority for records retention and data practices, which shall notify all members in writing of its effective date.

This Agreement shall continue until terminated in the manner provided herein.

X. Termination, Withdrawal, Amendments.

A. Termination.

This Agreement may terminate upon the occurrence of any one of the following events, whichever occurs first:

When necessitated by operation of law as result of the decision by a court of competent jurisdiction; or

When necessary due to failure to obtain necessary funding from the members or grant funding from the State of Minnesota or the United States government or other sources, or

When a majority of members agree by resolution to terminate the agreement upon a certain date.

B. Withdrawal.

Any member may withdraw from this Agreement upon 90 days written notice.

A withdrawing member shall not be entitled to the distribution of any assets or funds.

In the event of withdrawal by any member, this Agreement shall remain in full force and effect as to all remaining members.

C. Adding Additional Parties.

A qualifying party within the Cannon River Watershed Planning Area that is responsible for water planning and resource management under Minnesota State Statutes desiring to become a member of this Agreement shall indicate its intent by adoption of a governing board resolution that includes a request to the CRWJPB to join the One Watershed, One Plan for the Cannon River and a statement that the qualifying party agrees to abide by the terms and conditions of this Agreement; including but not limited to the bylaws, policies and procedures adopted by the CRWJPB.

D. Amendments.

Upon recommendation from the CRWJPB for changes to this agreement, this Agreement may be changed, amended, modified, or replaced by an amendment or addendum document or by an entirely new Joint Powers Agreement.

Any changes, amendments, or modifications to this Agreement may only be by, and are effective only when reduced to writing and approved and signed by all members hereto.

XI. Distribution of Surplus Funds and Property.

Upon termination of this Agreement, funds and property held by the CRWJPB shall then be distributed to members in proportion to their contributions.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

IN TESTIMONY WHEREOF the Parties have duly executed this agreement by their duly authorized officers.
(Repeat this page for each participant)

PARTNER: _____

APPROVED:

BY: _____
Board Chair Date

BY: _____
District Manager/Administrator Date

APPROVED AS TO FORM *(use if necessary)*

BY: _____
County Attorney Date

Frequently Asked Questions

Why not continue to operate under the memorandum of agreement (MOA)?

The Policy Committee concluded that establishing a joint powers board generates more collaboration among the 14 Members and ultimately more flexibility watershed-wide to implement the Plan. If the MOA structure continues after Plan adoption, each Member would be responsible for their own undertakings to implement the Plan. This is a less flexible and less efficient structure to implement watershed wide activities. It was decided that the best approach to implement the Plan is a joint powers board where Members work across county boundaries to communicate ideas and share resources.

Would the Cannon River Watershed Joint Powers Board (CRWJPB) have Land Use Authority?

No. Language within the Joint Powers Agreement (JPA) to establish a CRWJPB will not allow for independent land use authorities.

Would the CRWJPB have taxing authority?

No. The JPA will not allow for the CRWJPB to have independent taxing authority.

Would a Cannon River Watershed Joint Powers Board just create another layer of government?

The answer depends some on each individuals perspective. Creating a joint powers board will require more administrative functions as the new entity is subject to open meeting law, records retention policy, liability insurance etc. However, the Policy Committee felt that a joint powers board is a more transparent process to residents of the watershed, stakeholders and the State of Minnesota who will be contributing grant funds to implement the Plan. Since the CRWJPB would not have land use or taxing authorities, there is reduced concern about adding a layer of government and more focus on working cohesively to accomplish watershed wide goals. This collaborative approach to solve shared goals is similar to other multijurisdictional joint powers boards such as the Minnesota Drug Task Force, the Emergency Communications Board or Technical Service Areas for Minnesota soil and water conservation districts.

Where does funding come from to implement the Plan and pay for the administrative costs?

The majority of project dollars to implement the Plan will come from state and federal grant sources. The legislature, through recommendations by the local government water roundtable which includes the Association of Minnesota Counties, the Minnesota Association of Soil and Water Conservation Districts and the Minnesota Association of Watershed Districts, has indicated a desire to move Clean Water Funds derived from the Clean Water Land and Legacy constitutional amendment from a competitive grant process to a watershed based funding approach. Only watersheds that have approved Plans will be eligible for watershed based funding grants.

Frequently Asked Questions

Who covers risk and liability?

Development of a CRWJPB will require liability insurance. It is anticipated that The Minnesota Counties Intergovernmental Trust (MCIT) would be hired to cover risks and liabilities of the CRWJPB.

Who will provide administrative tasks and fiscal responsibilities?

One or more member local governmental units part of the joint powers agreement will be selected to provide day to day administration and fiscal responsibilities through an agreement with the CRWJPB.

Will the CRWJPB employ staff?

No. The Plan may show a need for more staff in order to achieve the goals of the 10 year plan. However, language within the JPA will prohibit the ability for the CRWJPB to employ staff thus eliminating the risk involved with personnel issues, the obligation to carry workers compensation and development of personnel policies and procedures. Additional staff that may be needed to implement the Plan will be employees of individual Members or the CRWJPB will contract for services.

How will the CRWJPB pay for administrative costs and provide matching funds to State grants?

The joint powers agreement will outline a method for each member to provide membership dues. The membership dues will assist with offsetting operating and administrative costs of the CRWJPB. State watershed based grants also allow for a percentage of total funds to be used for administrative activities but requires a 10% local match for each grant dollar received. Local match can be in many forms including local cash match, non-state grants, landowner contributions and in-kind services of local staff or partners.