



Board of County Commissioners Agenda Request

30
Agenda Item #

Requested Meeting Date: August 11, 2020

Title of Item: Organizational Arrangement Options For Rum River 1W1P Policy Committee

<input checked="" type="checkbox"/> REGULAR AGENDA <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of hearing notice that was published</i>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing*
Submitted by: Jessica Seibert		Department: Administration
Presenter (Name and Title): Jessica Seibert, County Administrator		Estimated Time Needed: 10 minutes
Summary of Issue: <p>At the conclusion of 1W1P planning, the State requires that the partners have some formal arrangement for implementing the plan. This arrangement provides structure for deciding how the group will use Watershed Based Implementation Funding (non-competitive State grants). There are 3 options to choose from: 1. Memorandum of Agreement, 2. Joint Powers Collaboration (JPC), or 3. Joint Powers Entity (JPE). Each option has a description in the attached document. It is the recommendation from County Attorney Jim Ratz that Option 2 - Joint Powers Collaboration (JPC), will be in the best interest of the County.</p>		
Alternatives, Options, Effects on Others/Comments:		
Recommended Action/Motion: Approve Resolution of Joint Powers Agreement		
Financial Impact: Is there a cost associated with this request? <input type="checkbox"/> Yes <input type="checkbox"/> No What is the total cost, with tax and shipping? \$ Is this budgeted? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i>		

Legally binding agreements must have County Attorney approval prior to submission.

Implementation Organizational Arrangement Options For Rum River 1W1P Policy Committee

The information below is a summary of information from the [MN Counties Intergovernmental Trust](#) and [MN Board of Water and Soil Resources](#). Compiled by Jamie Schurbon of the Anoka Conservation District.

Decision Needed:

At the conclusion of 1W1P planning, the State requires that the partners have some formal arrangement for implementing the plan. This arrangement provides structure for deciding how the group will use Watershed Based Implementation Funding (non-competitive State grants). There will be approx. \$1M every two years in State dollars for 1W1P implementation.

Timeline for Decision:

May-Aug 2020

Learn the options. Get your governing boards up to speed.
Recommendation: Policy Committee member and your staff Steering Committee member present it together to your board.

Aug-Sept 2020

Policy Committee selects a favored option.

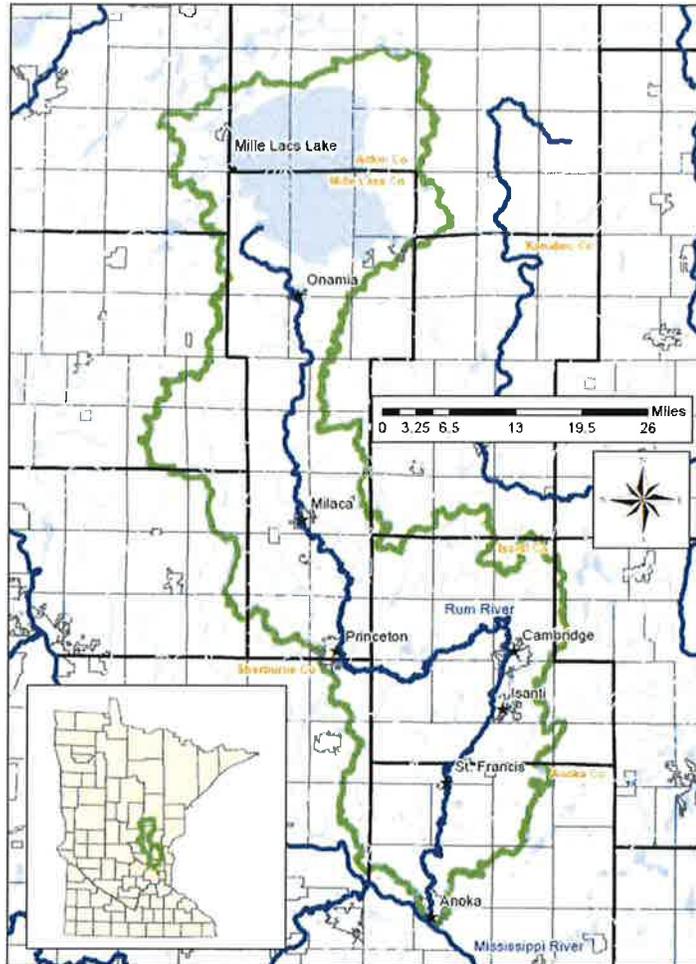
Oct-Nov 2020

Legal review and fine tuning.

Dec-Feb 2021

Governing board approvals

Rum River Watershed



Summary of Options:

1. Memorandum of Agreement

Description

- Formal and outward commitment to work together.
- Being used for 1W1P planning.
- A document titled an MOA but citing MN Statue 471.59 is really a joint powers agreement (option 2 or 3).

Pros:

- Simple for cooperative planning.

Cons:

- Not legally enforceable. Not recommended by BWSR for this reason.
- Partnership cannot directly receive grant funds, placing all risk with the grant agreement holder(s).

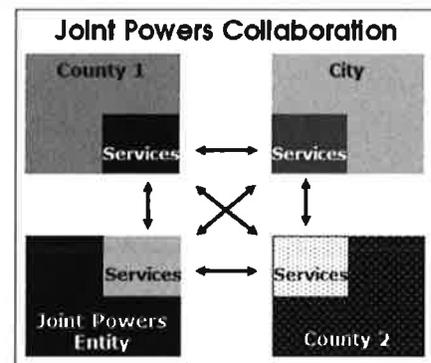
Who's using this:

- I'm not aware of any other 1W1P's in MN using this.

2. Joint Powers Collaboration (JPC)

Description

- Agreement to jointly deliver a service or product.
- Legally binding.
- Does not create a new entity. The collaboration cannot enter into any contracts.
- Any board or committee formed acts solely in an advisory capacity to the forming member boards. Member entities (counties, SWCDs, etc) maintain autonomous decision making.
- Funds are obtained and expended by participating governmental units each separately.
- Duties of administration, managing projects or other tasks can be contracted out to member entities.



Pros:

- No additional layer of government. The collaborative does still meet to do work.
- Participants' governing bodies maintain autonomous decision-making authority.
- One statutory liability limit.
- Possibly less administrative cost.

Cons:

- Participants may share liability. Every collaborative participant can be liable for the actions of the group. If sued, one statutory liability applies to the group, which is far better than in option 1 where each participant may be liable up to its legal limit. It is possible to allocate liability percentages amongst participants in the agreement, such as based on land area.
- Decision making can be slower because of the number of separate boards all needing to make decisions.
- There usually needs to be a voting structure that allows for decisions that are not unanimous.
- Programs would need to have one lead partner that accepts the funds and manages the project. This includes programs spanning multiple jurisdictions. It is possible to have subcontracts with other entities that pass the liability as appropriate.

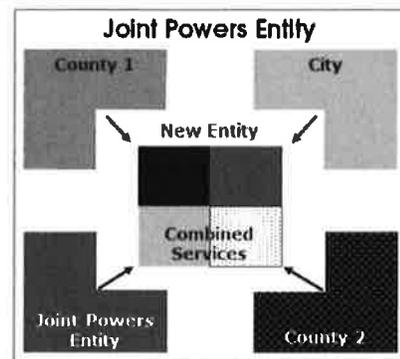
Who's using this:

- At least six other 1W1Ps. Most 1W1Ps in MN, including Lake Superior North 1W1P (4 participants), North Fork Crow River 1W1P (14 participants), Red Lake River (7 participants), Root River 1W1P (13 participants), Yellow Medicine 1W1P (10 participants) and Lower St. Croix 1W1P (17 participants).
- While groups using this option have wanted to minimize administration, many seem to be finding that they still need someone, likely one of the partners, paid to coordinate the collaborative.

3. Joint Powers Entity (JPE)

Description

- Creates a new entity with authorities imbued upon it by its members. As such, a JPE can never have more authority or jurisdictional purview than that which all of its members can give it. So a JPE in this case could not have taxing or land use planning authority because that is not common to all participants. In practice, JPEs authorities are often much less than its members.
- The JPE board has autonomous decision-making authority and can enter into contracts.
- The new entity must purchase its own insurance, have its own bank account, undergo financial audits, and has liability apart from the member parties.
- Duties of administration, managing projects or other tasks can be contracted out to member entities.



Pros:

- New entity's authorities can be limited in the agreement to only those that the partnership chooses. Often, the limits are very strict, including a prohibition of regulation, taxation, etc.
- Liability apart from the participants helps to insulate individual members from liability while undertaking joint endeavors. In this way, it is analogous to a "shell company" that shields the participants from liability. It does not, however, protect participants from liability for their independent actions.
- Simplified decision-making by a new autonomous board. All participants have a representative vote in decision-making, but those decisions don't go back to full boards of the participating entities.
- Possible to have a single grant agreement between the state and the JPE covering many projects over many jurisdictions. If the new entity receives a grant covering multiple projects, it can shift funds amongst programs to balance any unforeseen costs on one project with lower than expected expenditures on another.
- Grant match could be met by the group collectively. Excessive match by one partner could reduce match needed from others.
- Any equipment purchased might be shared amongst participants.

Cons:

- New entity is formed even if its authorities are limited.
- Costs of insurance and administration for the new entity. Cost may need to be split among participants.
- Need to decide the voting leverage that Questions about whether all participants get equal votes (for example, those with small and large land areas in the watershed)?

Who's using this:

- Cannon River 1W1P.

Options Presented as a Continuum

Option 1: Memorandum of Agreement – Excluded from below because the partnership will be dealing with public dollars and this agreement type is not legally enforceable, and therefore not recommended.

Agreement Type



Speed of Decision-Making



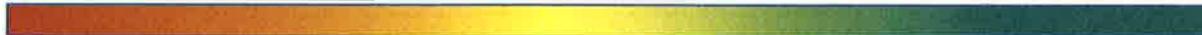
Slowest	Medium	Fastest
Governing boards of each entity make decisions, which are then somehow pooled into a group decision	Participants vote on behalf of, and in consultation with, their governing boards	Autonomous board with reps from each participant

Autonomy of the Collaborative's Board



No autonomy	Medium	Autonomous
Decisions made by governing boards	Participants vote on behalf of their governing boards	Board with decision-making authority with reps from each

Liability to Participating Entities



Highest	Medium	Lowest
Every participant can be liable for the collaborative's actions	Agreement allocates liability based on land area, involvement, etc	New entity insulates participants from individual liability

Who can Receive Watershed Based Implementation Funding Grants



Individual participants only.	The Collaborative or individual participants.
Any projects with multiple collaborators must one lead who accepts grantee liabilities	Facilitates projects across multiple jurisdictions. and allows shifting funds amongst projects as needed

Trust needed



Least	Medium	Most
Every decision must go back to your county board, SWCD board, etc. Could require unanimous decisions	Voting structure might allow dissent, but an action passes when most governing boards approve	Trust the new entity, with your rep, will act in your and the group's interest

Administration and Insurance Costs



Lowest	Medium	Highest
No separate insurance or bank account. Project planning coordination remains significant	Collaborative project coordination is significant in most any option	Insurance and bank account for new entity. Collaborative project coordination

Example Decision-Making Processes

For simplicity, we're assuming State Watershed Based Implementation Funding (WBIF) is the funding source.

Example candidate projects:

- Install retrofits in City A to treat stormwater that otherwise drains to the Rum River untreated.
- Hire an agricultural outreach specialist to encourage agricultural practices in multiple counties.
- Implement aquatic invasive species prevention plans at lakes watershed-wide.
- Fix a particular riverbank erosion problem.

Step	Description	Applicable to Joint Powers Collaboration	Applicable to Joint Powers Entity
1	Projects/programs must be in the 1W1P or other eligible plan to make the project eligible for State Watershed Based Implementation Funding (WBIF).	Yes	Yes
2	Steering Committee creates a work plan of recommended projects each biennium. Steering Committee is staff of entities that are party to the agreement.	Yes	Yes
3	Willing grant recipient is identified for each project. It will be one of the participating entities who wishes to manage the project and willing to accept the liability. There can also a separate fiscal agent named.	Yes. The collaboration can't be the recipient.	Yes. The JPE can be the recipient in which case it may subcontract with member entities to perform grant management.
4	Steering Committee recommends the project package to the Policy Committee for funding this round.	Yes	Yes – Policy Committee makes final decision.
5a	Policy Committee makes final decision on funding package. Consultation with governing boards may occur. A voting structure will be specified in the joint powers agreement.	No	Yes
5b	Policy Committee recommends the project to the governing bodies. That decision is likely made by voting or consensus. The voting structure might give some parties more voting power than others based on land area or other considerations, or may not.	Yes	No
6	Every governing body considers approving the project. Each Policy and Steering Committee member is the liaison to their governing board. The JPC agreement should specify how many governing boards need to approve the project in order for it to be approved, and what to do about those who don't act.	Yes	No