



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, April 17, 2024

Agenda Item

Item 8. A. – Lower MN River East One Watershed One Plan

Prepared By

Linda Loomis, Administrator

Summary

Review of Joint Powers Organization

Legal Counsel has reviewed the Joint Powers Agreement for the Implementation of the Lower Minnesota River East Watershed Comprehensive Water Management Plan (the “JPA”). The current JPA is attached with comments by LMRWD Legal Counsel. In addition, he provided an explanation as follows:

“I read through the agreement several times. It is hard to understand exactly what the parties are envisioning for implementation.

I have provided several marginal comments calling the basic structure and requirements into question. The agreement contains elements of both a Joint Powers Authority (separate governmental entity) formation and a Joint Powers Collaborative (non-entity cooperative/collaborative arrangement). For this reason it is very difficult to understand how plan implementation will occur and who will have what authority.

As written, I cannot advise that LMRWD be a “party” to the agreement. However, I do believe that the LMRWD can adopt the “plan” as it pertains to portions of the WD and as much as it does not conflict with the current LMRWD Comprehensive Watershed Management Plan (CWMP).

There is no definition given to the term fiscal agent, but I assume there is an intent to designate a fiscal agent to receive and administer the WBIF grant as a minimum.

I think the “entity” needs some help envisioning implementation. That visualization will lead, I believe, to a more coherent agreement and structure for plan implementation.”

Attachments

the Joint Powers Agreement for the Implementation of the Lower Minnesota River East Watershed Comprehensive Water Management Plan with comments by JKolb

Recommended Action

Motion to provide comments to Lower Minnesota River East One Watershed One Plan Steering Committee and Policy Committee

**JOINT POWERS AGREEMENT FOR THE IMPLEMENTATION OF
THE LOWER MINNESOTA RIVER EAST WATERSHED COMPREHENSIVE WATER
MANAGEMENT PLAN**

Pursuant to Minnesota Statutes, section 471.59, this Joint Powers Agreement (“Agreement”) is entered into by and among the political subdivisions, and local governmental units of the State of Minnesota identified as follows:

The Counties of Le Sueur and Rice each by and through its respective Board of Commissioners;

The Le Sueur, Rice, and Scott Soil and Water Conservation Districts, each by and through its respective Board of Supervisors (collectively referred to as the “SWCDs”); and

The Lower Minnesota River Watershed District, by and through its respective Board of Managers (referred to as the “Watershed District”).

Together, the above identified Counties, SWCD’s, and Watershed District collectively formed the Lower Minnesota River East Watershed Implementation Partnership and, for purposes of this Agreement, said political subdivisions, local units of government, and those added in accordance with the terms of this Agreement, are herein collectively referred to as “Parties” and individually as a “Party.”

Recitals

WHEREAS, pursuant to Minnesota Statutes, sections 103B.305, subdivision 5 and 103B.3363, each of the Parties to this Agreement is a local unit of government having the responsibility and authority to separately or cooperatively, by joint agreement pursuant to Minnesota Statutes, section 471.59, to prepare, develop, adopt, implement, and administer a comprehensive local water management plan, or a substitute thereof, and carry out implementation actions, programs, and projects toward achievement of goals and objectives of such plans; and

WHEREAS, pursuant to Minnesota Statutes, sections 103B.101 and 103B.801, the Minnesota Board of Water and Soil Resources (BWSR) is authorized, to coordinate the water and resource planning and implementation activities of counties, SWCDs, watershed management organizations, and watershed districts and to administer and oversee the Minnesota Comprehensive Watershed Management Planning Program, known as the One Watershed, One Plan program; and

WHEREAS, each of the Parties exercises water management authority and responsibility within the Lower Minnesota River East Watershed Management Area, a geographical area consisting of those portions of Le Sueur, Rice, and Scott counties that drain into the Lower Minnesota River East Watershed as depicted on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, some of the Parties had previously entered into the Lower Minnesota River East Watershed Memorandum of Agreement (“MOA”) with the last date of signature being April 11, 2022, to develop the Comprehensive Watershed Management Plan (“Plan”) for the Lower Minnesota River East Watershed. Under the terms of the MOA, the Plan will be completed, be submitted to the Minnesota Board of Water and Soil Resources (“BWSR”) for approval and will then be considered for adoption by the Parties to this Agreement. Those governmental entities

that approve the Plan shall be eligible to be a part of this Agreement. The terms of the MOA also require that the structure for administration of the Plan be determined. The MOA will expire on June 30, 2025 which is one year after the term of the BWSR the One Watershed, One Plan grant dated June 30, 2024. This Agreement shall not be construed as to modify or supplant the terms or provisions of the MOA; and

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

WHEREAS, this Agreement and the Lower Minnesota River East Comprehensive Watershed Management Plan does not replace or supplant local land use, planning/zoning authority of the respective Parties, existing watershed management plans of the respective Parties that are a part of the 7 County Metro Area, and the Parties intend that this Agreement shall not be construed in that manner.

TERMS AND CONDITIONS

NOW THEREFORE, pursuant to Minnesota Statutes, section 471.59 and other relevant state law and in consideration of the mutual promise and benefits that the Parties shall derive herefrom, all Parties hereby agree:

1. Purpose and Establishment

- a) Purpose: This Agreement establishes the terms and conditions, governing structure, and processes by which the Parties will institute the implementation of the Plan. The Plan provides a framework for consistency and cooperation for entities that operate within the Lower Minnesota River East Watershed to allow for the implementation of projects within the watershed that provide the highest return on investment for addressing water quality, water quantity, and habitat issues within the watershed, and to allow the funding from the Minnesota Board of Water and Soil Resources (“BWSR”), the Minnesota Department of Natural Resources (“MNDNR”), the Minnesota Pollution Control Agency (“MPCA”), the Minnesota Department of Health (“MDH”), the Minnesota Department of Agriculture (“MDA”), or any other local, state, federal and nonprofit funding to be passed through to the Parties for administration consistent with State statutes and guidelines and the Plan. Consistent with its terms and conditions, this Agreement authorizes the Parties to cooperatively exercise their common and similar power of local water planning and management notwithstanding the territorial limits within which they may otherwise exercise separately and to take action that will promote the goals listed in Minnesota Statutes, section 103B.801 and fulfill responsibilities under Minnesota Statutes, chapter 103B.
- b) Established: This Agreement establishes a joint powers entity (hereinafter, the “Entity”). The name of the Entity is “Lower Minnesota River East Partnership (LoMRE).”

Commented [JK1]: Is it possible for an entity to approve the plan and not be part of the agreement? What is the status of such parties? Would one be able to nominate projects, programs or activities for funding under the CWMP and access WBIF without becoming a party to this agreement?

Commented [JK2]: Again, what about non-parties to the agreement that have otherwise adopted the plan and committed to implementing its priorities within their boundary?

Commented [JK3]: Query whether it is the actual intent of the parties to form a joint powers authority (entity) or collaboration providing framework for plan implementation and fiscal administration for WBIF.

- c) Recitals: All recitals set forth above are hereby incorporated into this Agreement.

2. Eligibility and Procedure to Become A Party

- a) Qualifying Party: A county, SWCD, watershed management organization, watershed district, or tribal government authorized to carry out water planning and resource management responsibilities and are located within the Lower Minnesota River East Management Area is eligible to become a Party to this Agreement. To become a Party, the county, SWCD, watershed management organization, watershed district or tribal government shall have first adopted the Plan.
- b) Initial Parties: A county, SWCD, watershed management organization, watershed district, or tribal government may be an Initial Party by qualifying under section 2(a), by adopting the Plan and by its governing board agreeing to become a Party and be bound by the terms of this Agreement within 60 days of State approval of the Plan. Such local unit of government shall also give notice of plan adoption in accordance with provisions of Minnesota Statutes, chapters 103B and 103D. Any qualifying county, SWCD, or water management organization, watershed district, or tribal government that desires to become a Party after expiration of the 60-day period for joining as an Initial Party, will be eligible to become a Party as an additional party pursuant to Section 2.c., below.
- c) Adding Additional Parties: A qualifying local unit of government or tribal government that desires to become a Party to this Agreement at any time later than 60-days following State approval of the Plan, may become a Party upon the adoption of the Plan by the Party's governing board and by submitting to the Entity evidence its governing board agrees to the terms and conditions of this Agreement and to be bound by the same.

Commented [JK4]: Same comment

Upon receipt of such evidence, the governing board shall issue a signature page to the local government unit or tribal government and instructions to execute and return the same to the Entity along with the name and contact data of the representatives appointed by the local government unit or tribal government to serve on the governing board.

3. Powers and Formation of the Governing Board

- a) Board: A joint powers board, known as the Lower Minnesota River East Watershed Joint Powers Board (LMREWJPB), shall be formed to oversee the implementation of the Plan. The Board shall consist of one individual selected by each Party to the Agreement. The Party shall determine its representative and an alternate to serve in the absence of the representative. Members of the Board are neither deemed employees of the Board nor entitled to any compensation from the Entity.

Commented [JK5]: Is this individual to be an elected or appointed member of the governing board of a party or any individual selected by a party?

- b) Board Term and Vacancy: The term of a Board representative shall be staggered with 50% of the board members serving a period of two years and 50% of the board members serving a period for four years with the ability of the Party to appoint a representative to successive terms. If the Party fails to appoint a representative, the incumbent shall serve until such appointment occurs. If a representative resigns or is no longer able to serve, the alternate shall serve until a representative is appointed.
- c) Officers: The Board shall elect from its members a Chair and a Vice Chair at the first meeting of each new calendar year. The duties of the Chair include presiding at all meetings, acting as the administrative leader of the Entity, and carrying out such functions as the Board assigns to the Chair. The Vice Chair shall act as the Chair in the Chair's absence. The Board may elect or appoint such other officers as it deems necessary to conduct the affairs of the Entity.
- d) Meetings: The Board shall comply with all statutes and rules requiring open and public meetings. The conduct of all meetings of the LMREWJPB shall be generally governed by the most recent edition of Robert's Rules of Parliamentary Law. A quorum of the LMREWJPB shall consist of a simple majority of the members; 50 percent, plus one of the total membership. All votes by LMREWJPB members or alternate member shall be made in person or virtually. Notice of LMREWJPB meetings and a proposed agenda shall be emailed to all Board members not less than five (5) days prior to the scheduled meeting date of the Joint Powers Board meeting. The minutes of any meeting shall be made available to all LMREWJPB members prior to the next meeting.
- e) 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 66 percent of those members present shall be required for final plan submittal, comprehensive watershed management plan amendments, changes to the bylaws, or changes to the Joint Powers Agreement.
- f) Operations: The Board shall meet twice a year or more often as deemed necessary by the Board.
- g) Bylaws: The Board may adopt bylaws consistent with this Agreement and applicable law and may amend the same on a vote of simple majority of all the Board representatives. The Board may act only if there is a quorum.
- h) Budgeting and Funding:
 - i. Annually, the LMREWJPB shall adopt a budget, and at a minimum biennially approve a work plan to implement the Comprehensive Watershed Management Plan.

- ii. The LMREWJPB has no authority to levy taxes.
- iii. Local funding may be provided by establishing a “membership dues” system payable by January 31st 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 Lower Minnesota River East Watershed Planning Area subject to this agreement. The LMREWJPB 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 \$4,000 annually. Tier 1 shall consist of members with more than 8% of total land within the Planning Area and includes Le Sueur County, Le Sueur SWCD, and Scott SWCD.
 - Tier 2. Membership Dues will not exceed \$2,000 annually. Tier 2 shall consist of members with less than 8% of total land within the Planning Area and includes Rice County, Rice SWCD, and the Lower Minnesota River Watershed District.
- iv. Accountability
 - 1. All funds shall be accounted for according to generally accepted accounting principles and will administered through the Fiscal Agent.
- i) Committees: The Board may create committees as it deems necessary to review and examine specific issues, topics of concern, and carry out implementation of this plan. The Chair, or by a majority vote of the LMREWJPB, may appoint standing or ad hoc committees to address issues or facilitate the LMREWJPB activities.
 - i. Any committee must include at least one LMREW board and/or staff member or proxy.
 - ii. A committee should also include other related service providers and subject matter experts.
 - iii. The LMREWJPB Chair may appoint the Chair and Vice Chair of a committee or a pair of Co-Chairs at his/her discretion.
 - iv. A committee member may resign at any time from the subcommittee upon providing 30 days written notice.
- j) Powers: The Board shall have the following powers:

Commented [JK6]: What is the purpose of the "dues"? How will they be used? WBIF grant agreement allow a portion of the funds to be used for administration. This would appear to eliminate the need for dues.

Commented [JK7]: This will be defined later. There should be a clear delegation of responsibilities and authority

Commented [JK8]: The proxy process should be clearly defined.

- i. The Board may apply for and accept gifts, grants or money, other personal property or assistance that is available through the United States government, the State of Minnesota or any person, association or agency in the furtherance of the goals and objectives of the Plan;
- ii. Agreements and Contracts: The Board may enter into such agreements or contracts as necessary to implement the terms of the Plan including the contracting for a project coordinator, administrative, legal or expert services. The Board may contract with a Party to implement a Project set forth in the biennial Implementation plan;
- iii. Insurance: The Board shall obtain any liability insurance or other insurance it deems necessary to insure itself for any action arising out of this Agreement.
- iv. The Board shall pay for services performed consistent with the purpose of the Agreement and the Plan. The Board may develop a process to expedite the payment of invoices provided that all payments shall be subject to ratification by the Board at the next meeting. The Board shall account for disbursement of funds in a manner consistent with generally accepted accounting practices; and
- v. Property: The LMREWJPB has no authority to purchase property, equipment, or an easement right. Any property or equipment that is provided to the LMREWJPB to accomplish the goals of the Comprehensive Watershed Management Plan shall continue to be owned by the entity providing such property or equipment for use by the LMREWJPB . Any easements that are provided to the LMREWJPB to accomplish the goals of Comprehensive Watershed Management Plan shall be held with the respective member entity in which the easement is located.
- vi. Staff: The LMREWJPB shall not have the authority to hire staff. Any staff providing services in conjunction with this Agreement shall remain an employee of the respective member entity.
- vii. Reservation of Powers: All responsibilities and powers not specifically set out to be jointly exercised by the LMREWJPB under this Agreement, Bylaws, or Watershed Policies are hereby reserved to the respective governing bodies of the members.
- viii. Funding of Operations: The funding of the Entity and the implementation of the plan shall be limited to grant revenues, gifts, or monies from any person, entity, or association. The Parties shall

Commented [JK9]: Much of this could be eliminated from the Board's obligation and delegated to the fiscal agent in implementing a Board-adopted biennial work plan.

Commented [JK10]: This begs the question of how technical review and decision making occurs and the relative burden being place upon each entity.

only be responsible for agreed upon contributions of in-kind services and staff time, unless the Party's governing board, in its sole discretion, affirmatively elects to do otherwise.

4. Term and Termination

- a) Effective Date: This Agreement is effective upon signature of all Initial Parties and will remain in effect unless terminated consistent with terms of this Agreement or as otherwise provided under the law.
- b) Termination: The Parties acknowledge their respective and applicable obligations, if any, under Minnesota Statutes, section 471.59, subdivision 5 after the Agreement has been terminated or the purpose of the Agreement has been completed. This Agreement terminates upon the occurrence of any one of the following events, whichever occurs first:
 - i. By motion or resolution adopted by the governing bodies of all then-existing Parties;
 - ii. By resolution or motion by the Board upon ongoing failure to obtain adequate funding for Plan implementation;
 - iii. By order of a Court of competent jurisdiction.
- c) Asset Disbursement: Upon termination, any assets remaining shall be disbursed as follows:
 - i. Assets that have been purchased with pass through funding wherein the agreement requires tracing of the asset and specific disposal requirement shall be disposed of in accord with the funding agreement;
 - ii. Remaining assets shall be liquidated and any monies shall first be applied to any debt or obligation remaining;
 - iii. After satisfaction of any debt or obligation there remains any assets, it shall be divided evenly to the then remaining Parties to the Agreement at the time of termination.
- d) Withdrawal: Any member may withdraw from this Agreement upon 60 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. The withdrawal shall not relieve any Party of an obligation in effect for the existing terms of a grant agreement nor shall it relieve LMREWJPB of paying for any obligation assumed by the Party until such time as the withdrawal is effective. Notice shall be done by certified US Mail delivered to the fiscal agent and the current Board Chair.

5. General Provisions

- a) Compliance with Laws/Standards: The Parties agree to abide by all applicable federal, state, and local laws, statutes, ordinances, rules, and regulations.
- b) Timeliness: The Parties agree to perform obligations under this Agreement in a timely manner and inform each other about delays that may occur.
- c) Applicability: The Entity shall be considered a separate and distinct public entity to which the Parties have transferred all responsibility and control for actions taken pursuant to this Agreement. The Entity shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of Minnesota Statutes, chapter 466.
- d) Indemnification and Hold Harmless: The Entity shall fully defend, indemnify, and hold harmless the Parties against all claims, losses, liability, suits, judgments, costs and expenses by reason of the action or inaction of the Governing Board and/or employees and/or the agents of the Entity. This Agreement to indemnify and hold harmless does not constitute a waiver by any participant on limitations on liability provided under Minnesota Statutes, section 466.04 or any other statutes regarding the limitation of liability for political subdivisions of the State of Minnesota.

To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity” and 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, section 471.59, subdivision 1a(a); provided further that for purposes of the statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of the other Party.

The Parties of this Agreement are not liable for the acts or omissions of the other participants to this Agreement except to the extent to which they have agreed in writing to be responsible for acts or omissions of the other Parties.

- e) 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.
- f) Amendments: Any proposed amendments to this Agreement may be initiated by the Board and, if approved by the Board by a supermajority of

Commented [JK11]: I question, given the disparity of authority between the various entities purporting to be a part of this agreement, whether, as an entity, this JPA will be operating in a manner consistent with chapter 471.

Commented [JK12]: This, again, begs the question: is a separate entity really being formed with a separate, joint powers authority governing board, or is this really just a collaborative/cooperative agreement to facilitate plan implementation and fiscal/grant administration for WBIF and other funds that might support implementation of the plan?

66 percent, the Board may send the same to the Parties' governing bodies for consideration. No amendment to this Agreement is effective until all Parties' governing boards have approved the amendment.

- g) Dispute Resolution: If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the Parties to the dispute are unable to resolve the issue through good faith discussions, the Parties may agree to attempt to resolve the dispute by mediation within 30 days of notice of the dispute. If the Parties to the dispute agree to mediation, they shall work cooperatively to select a mediator, the cost of which shall be shared equally among the Parties to the dispute.

6. Miscellaneous

- a) Counterparts: 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 executed Agreement, including all counterparts, shall be filed with each Party to this Agreement with a notification of the Agreement's effective date.
- b) Savings Clause: In the event any provision of this Agreement is determined by a court of law to be null and void, the remaining provisions of this Agreement shall continue in full force and effect.

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UPDATE WITH YOUR SIGNATURE BLOCK, BELOW IS AN EXAMPLE

County of NAME

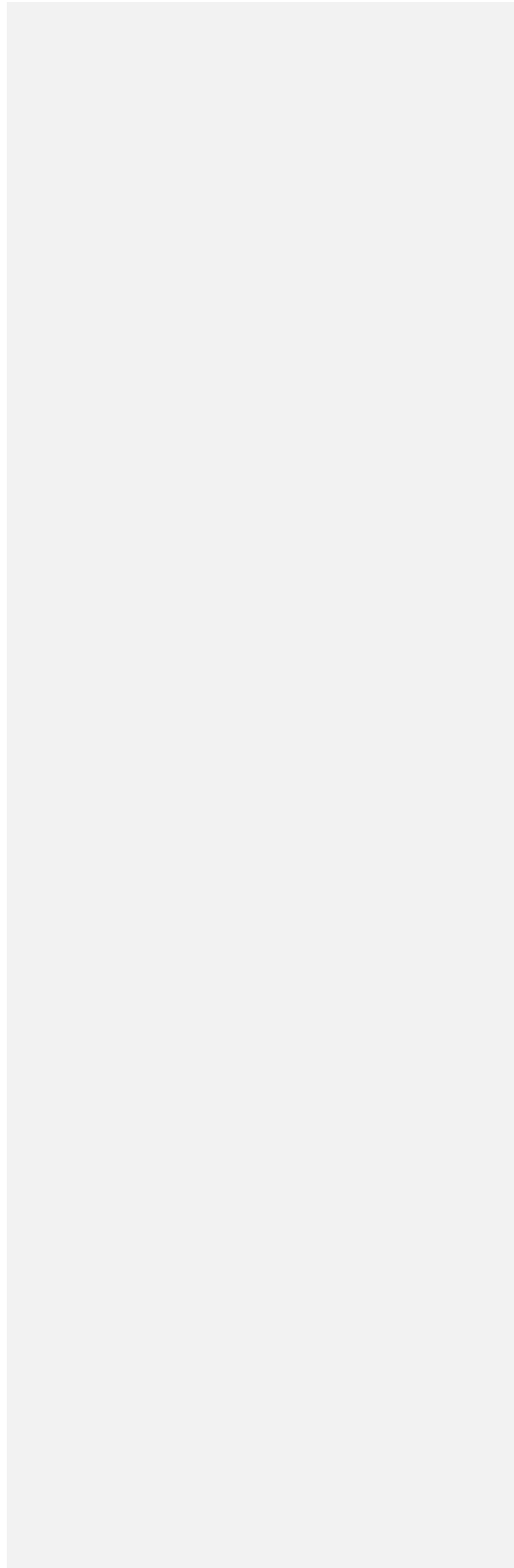
Chair

Dated: _____

Approved as to form and execution:

NAME County Attorney

Dated: _____



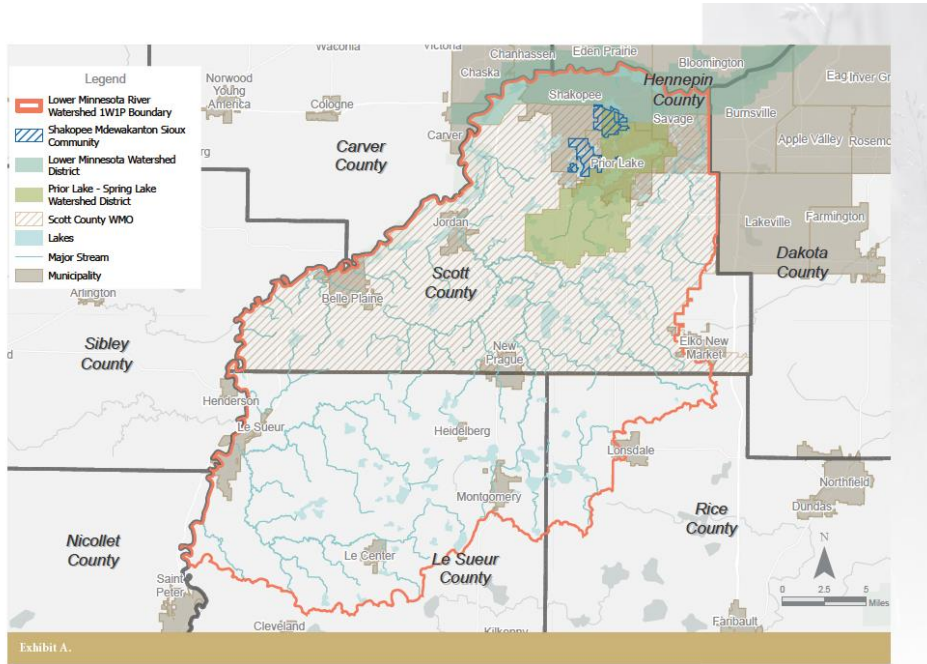


Exhibit A.