



# Buffer Program Implementation Update

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**Date:** February 3, 2017

**To:** County Board Chairs and Watershed District Chairs

**From:** John Jaschke, Executive Director  
Board of Water and Soil Resources

A handwritten signature in black ink, appearing to read "John Jaschke".

The Board of Water and Soil Resources (BWSR) has developed policies and guidance to support implementation of the Buffer Program by counties, watershed districts and soil and water conservation districts. We have done this by actively seeking the input of local governments, farmers and the public.

The key to making the Buffer Program work best for affected landowners is for counties, watershed districts and soil and water conservation districts to fully implement it. We encourage deliberate assessment and coordination of potential options and will make BWSR staff available to help provide information upon request. Conversations with other local government(s) that overlap some or part of your jurisdiction are encouraged to ensure a coordinated approach.

This message includes information on several topics to support your deliberations and local consultations.

**1. Election of Jurisdiction.** The BWSR Board adopted Policy 8: Election of Jurisdiction (available on the BWSR website: <http://bwsr.state.mn.us/buffers/>) on January 25 to provide consistency for county and watershed district decision-making regarding Buffer Program enforcement. Consistent with the state statute, this policy:

- Makes a distinction between public waters and public drainage systems as shown on the Buffer Protection Map;
- Defines an orderly approach to determining local Buffer Program enforcement jurisdiction based on primacy within each entity's jurisdictional boundary and a right of first refusal associated with existing local responsibilities for shoreland management and public drainage systems;
- Requires counties and watershed districts to submit the official controls they intend to use to carry out the compliance provisions of the Buffer Law for BWSR review and establishes that this review will be completed within 60 days; and
- Addresses the option of a county or watershed district to change a previous election of jurisdiction.

**2. March 31, 2017 - Election of Jurisdiction timing.** Statute provides that counties and watershed districts are to "affirm their jurisdiction and identify the ordinance, rule or other official control" and provide notice to BWSR by March 31, 2017. The law allows a subsequent jurisdiction decision to be made that includes providing a 60 day notice to BWSR.

The purpose behind this date was to allow time for counties and watershed districts to adopt their ordinance or rule and for BWSR to have time to develop adequate capacity to manage any potential enforcement workload. However, the March 31, 2017 date is soft, in that counties and watershed districts can change a jurisdiction election by providing notice to BWSR.

With this in mind and the potential near-term consideration of funding provisions this legislative session, *counties and watershed districts should not feel compelled to make a decision on buffer enforcement jurisdiction by March 31, 2017*. This is especially the case if a legislative appropriation would affect a county or watershed decision. It also bears mention that Governor Dayton has proposed \$10 million per year in Riparian Aid to counties and watershed districts for Buffer Program implementation and enforcement.

Finally, if you have not done so already, you are encouraged to start your decision making process, including discussing implementation and enforcement options with the soil and water conservation district and watershed districts.

**3. Enforcement Mechanism Options.** Counties and watershed districts can enforce the buffer requirements through existing authorities or through administrative penalty orders (APO). BWSR, when a county or watershed district has chosen not to elect jurisdiction, can only use APOs.

County, watershed districts and BWSR staff are collaboratively working on several documents that can be resources to counties and watershed districts as they are considering their options for buffer program enforcement. These include the following:

- *A model county ordinance* – Developed by the Department of Natural Resources and BWSR in consultation with the Association of Minnesota Counties and Minnesota Association of County Planning and Zoning Administrators;
- *A model watershed district rule* – Developed by the Smith Partners Law Firm under the direction of the Red River Watershed Management Board and the Minnesota Association of Watershed Districts; and
- An upcoming BWSR policy for the review of county and watershed district official controls, enforcement procedures, and administrative penalty orders. These items are expected to be available for public review and comment in April on the BWSR website.

As counties and watershed districts have more enforcement options than BWSR, landowners would likely be better served with counties and watershed districts assuming enforcement jurisdiction.

**4. Public Drainage Law Authorities and Buffer Establishment.** The Public Drainage Law (Minnesota Statutes Chapter 103E) can be an important tool for enabling landowners to achieve compliance with the Buffer Law, which includes a provision for public drainage system acquisition and compensation of buffer strips or alternative practices in accordance with Drainage Law. Minnesota Statutes Section 103E.021, Subd. 1 (spoil banks must be spread and permanent vegetation established) and Subd. 6 (incremental implementation of vegetated ditch buffer strips and side inlet controls) are two of the provisions that may be useful when counties and watershed districts are acting as drainage authorities.

BWSR will be developing information that can help drainage authorities use these pre-existing mechanisms to acquire and establish the 16.5 foot buffer strips as part of public ditch system management that will support landowner compliance with the Buffer Law. Watch for more details on this information in the coming months.

We believe that this program will be successfully implemented, and landowners best served, through local collaboration - counties, watershed districts and soil and water conservation districts working together. These local relationships will be most effective through communicating early and often.

If you or your staff have any questions please contact your BWSR Board Conservationist or Buffer Program Coordinator Tom Gile at 507-206-2894, or at [tom.gile@state.mn.us](mailto:tom.gile@state.mn.us).