



MEMORANDUM

To: MCWD Board of Managers
From: Becky Christopher
Date: September 6, 2016
Re: Buffer Law and MCWD's Role

Purpose:

At the September 8, 2016 Board Workshop, staff will provide an update on the development of the new State Buffer Program and the option for the District to assume enforcement authority.

Background:

At the July 14, 2016 Board Workshop, staff provided an update on the State Buffer Program and draft policies that the Board of Water and Soil Resources (BWSR) had released for comment concerning its implementation. The Board directed staff to draft a comment letter requesting further clarity regarding the MS4 exemption. The Board reviewed and authorized submittal of the comment letter at its July 21, 2016 Meeting.

BWSR did not provide responses to the comments, though some minor revisions to the policies were made based on the feedback they received. The revised policies were adopted by the BWSR Board on August 25, 2016 and can be found at: <http://www.bwsr.state.mn.us/buffers/>.

Also at the July 14, 2016 Workshop, staff explained that the District has the option to assume enforcement authority under the law and recommended against the District taking on this role. The Board requested that additional information be brought back to inform a decision regarding the enforcement role.

Applicability within MCWD

The Buffer Law applies to all public waters and public ditches in the state and requires a buffer of perennially rooted vegetation, 50 feet and 16.5 feet in width, respectively. The law is intended to address areas of bare soil, such as can be found on lands that are in agricultural production. Developed areas that have impervious surface, turf grass, or other vegetation are considered compliant.

The Department of Natural Resources (DNR) has developed a map of all public waters and public ditches that are subject to the law. It can be found at: <http://arcgis.dnr.state.mn.us/gis/buffersviewer/>. Soil and Water Conservation Districts (SWCDs) are charged with identifying sites that are not in compliance. To do so, SWCDs are completing a GIS desktop review of all parcels that are classified as agricultural land

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use that intersect with the required buffer areas. From there, the SWCDs will review aerial photos and conduct field reviews as needed to determine compliance.

Both Carver SWCD and Hennepin County are in the process of conducting their analyses. Based on Carver SWCD's review to date, they believe there are only 2-3 potentially non-compliant sites within the Carver portion of the MCWD, located in the Turbid-Lunsten corridor of the Six Mile Creek subwatershed. Hennepin County has identified 363 parcels county-wide that have agricultural land use intersecting buffer areas. It is not yet known how many of these parcels fall within the MCWD or how many are non-compliant.

Enforcement Role

As discussed at the July 14, 2016 Workshop, watershed districts and counties have the option to assume the role of enforcement authority under the law. If neither choose to exercise jurisdiction, then the enforcement role falls to BWSR. Staff recommends that the District not assume the enforcement role at this time but rather serve as a technical resource and potential partner working with the landowner, SWCD/County, and BWSR to identify solutions in cases of non-compliance.

At this time, there are a number of unknowns and disincentives associated with taking on the enforcement role. It could be a significant administrative burden to develop the procedures and enforcement mechanisms required to execute the program, and it is likely to apply to only a small number of parcels within the District. There is no funding assistance provided at this time, though there are efforts by the state to secure funding. The District would be at risk of losing grant eligibility if it is determined to not be fulfilling its enforcement duties. Finally, staff feels the District would be better positioned to work with landowners to develop solutions if serving in a technical assistance role rather than an enforcement role.

Next Steps:

Staff will provide an overview of this information for Board discussion at the September 8 Meeting, but a decision need not be made at this meeting. The District has until March 31, 2017 to notify BWSR if it chooses to exercise jurisdiction for enforcement. The District can also choose to take on the role after this date, provided that 60-day notice is given to BWSR.

If there are questions in advance of the meeting, please contact Becky Christopher at 952-641-4512 or bchristopher@minnehahacreek.org.

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