



Procedure 8: Election of Jurisdiction

Buffer Law Implementation

June 28, 2017

This document was adopted by the Board of Water and Soil Resources (BWSR) pursuant to Minn. Stat. §103F.48, subs. 1(j) and 7 to describe how counties and watershed districts should consider and/or elect jurisdiction to enforce the requirements of this section. It is a guide; not a rule. It is not a statement of general applicability and future effect. It is not designed to amend statute. Statutes are subject to change and if the language of this procedure differs from statute, the statute controls. In addition, users of the document are encouraged to obtain legal advice of an attorney regarding their specific application of Minn. Stat. §103F.48 and their own legal authorities.

It is encouraged that when boundaries overlap local governments units (LGUs) will discuss which waters Buffer Law enforcement jurisdiction is being elected within each entity's boundary.

Procedure

To provide orderly administration of statutory responsibilities, the following provisions are necessary for counties and watershed districts electing jurisdiction for enforcement of the Buffer Law:

1. *When a county elects jurisdiction, it **must** (see Minn. Stat. §103F.201 to 103F.227 and chapter 103E) include all public waters within its boundary that require a minimum 50' average, 30' minimum width buffer, as identified on the Buffer Protection Map, and all public drainage ditches within its boundary that require a 16.5' width buffer, as identified on the Buffer Protection Map, for which it is wholly or jointly the drainage authority. A county:
 - a. **May** also elect jurisdiction on all public drainage ditches identified on the Buffer Protection Map within its boundary for which it is not the drainage authority, if the drainage authority does not elect jurisdiction.
 - b. **Must** provide a notice at minimum 60 days prior to the effective date of its decision to BWSR and to all watershed districts and soil and water conservation districts within its boundary.*

2. *When a watershed district elects jurisdiction, it **must** (see Chapter 103E) include all public drainage ditches within its boundary that require a 16.5' width buffer, as identified on the Buffer Protection Map, for which it is the drainage authority. A watershed district:
 - a. **May** elect jurisdiction on all public waters identified on the Buffer Protection Map within its boundary, if the county does not.
 - b. **May** elect jurisdiction on all public drainage ditches identified on the Buffer Protection Map within its boundary for which it is not the drainage authority if the drainage authority does not.
 - c. **Must** provide a notice at minimum 60 days prior to the effective date of its decision to BWSR and to all counties and soil and water conservation districts within its boundary.*

3. Counties and watershed districts must submit to BWSR a copy of the rule, ordinance or official control, consistent with Procedure 9; BWSR staff will make a determination of adequacy within 60 days of receipt.
4. A county or watershed district may change a previous election of jurisdiction by providing notice to BWSR, all counties, all soil and water conservation districts and all watershed districts within its boundary at least 60 days prior to the effective date of the decision.
5. Should a change in jurisdiction occur after November 1, 2017 the following procedures are recommended to ensure a smooth transition of enforcement authority:
 - a. A county or watershed district that elects to discontinue jurisdiction should provide all records related to compliance and enforcement of Minn. Stat. §103F.48 to BWSR prior to the effective date of the change in election.
 - b. BWSR should provide all records related to compliance and enforcement of Minn. Stat. §103F.48 to a county or watershed district that elects jurisdiction prior to the effective date of the change in election.

Background

The water resources riparian protection requirements of the Buffer Law are related to the buffer provisions of the Public Drainage Law (Chapter 103E) and state shoreland management standards. Counties and watershed districts serve as drainage authorities and counties locally administer the shoreland management program. The election of jurisdiction provisions of the Buffer Law does not place a preference on which waters should be under the jurisdiction of which local government. However, the aforementioned relationship with other laws and authorities that are directly connected to a specific jurisdiction warrants acknowledging these other pre-existing responsibilities of counties and watershed districts that will enhance the efficiency and effectiveness of enforcement of the Buffer Law through local authorities.

Program Need

- 1) BWSR needs to provide a consistent basis for determining which LGU has primacy for electing jurisdiction for public waters and public drainage ditches identified on the Buffer Protection Map.
- 2) Landowners, local governments, and BWSR need clear, consistent and comprehensive enforcement of the Buffer Law.
- 3) SWCDs and the public need to understand which government unit will carry out enforcement authority in the instances when corrective actions are needed.

Statutory Basis

- Minn. Stat. Chapter 103E. the Public Drainage Law
- Minn. Stat. §103F.201 to 103F.227. Shoreland Management
- Minn. Stat. §103F.48 subd. 3(b). Water resource protection requirements on public waters and public drainage systems
- Minn. Stat. §103F.48, subd. 6. Local implementation and assistance

- Minn. Stat. §103F.48, subd. 7. Corrective actions
- Minn. Stat. §103F.48, subd. 8. Funding subject to withholding
- Minn. Stat. §103B.101, subd. 12(a). Authority to issue administrative penalty orders
- Minn. Stat. §471.59. Joint exercise of powers