MEMORANDUM

RE: Buffer Legislation 2015

The new buffer legislation contained in 2015 Minn. Laws ch. 4, art. 4, §§ 72, 79 is summarized below. (Section 72 will be codified as Minn. Stat. § 103B.101 (12a) (2015); Section 79 will be codified as Minn. Stat. § 103F.48 (2015)).

Buffer Requirement: Landowners owning property adjacent to a water body identified and mapped on a “buffer protection map” must maintain a buffer as follows:

(DNR will be putting this map together in which it will include those public waters and public ditches that must be buffer protected. DNR will have the map completed by July 3, 2016, and will be seeking input from the various local governmental units in drafting it.)

A. Public Waters. The more restrictive of: (1) a fifty-foot average buffer width with a 30-foot minimum width; or (2) the state shoreland standards and criteria adopted by the DNR Commissioner under Minn. Stat. § 103F.211.

B. Public Drainage Systems. Public drainage systems established under chapter 103E, and some private ditches within the benefitted area of the public ditch system, must have a 16.5-foot minimum width buffer of perennially rooted vegetation. DNR in its map will establish which public ditches and private ditches within the benefitted area are subject to the buffer requirement. DNR will be working with the counties and watershed districts to obtain the benefitted area maps and public ditch information.

C. Other Waters Not Included In Buffer Protection Map. Other waters determined by the Soil and Water Conservation Districts and adopted into water management plans to accomplish targeted voluntary or local regulatory measures. By July 1, 2017 the Soil and Water Conservation Districts must develop, adopt and submit to each local water management authority within their boundaries a summary of watercourses for inclusion in the local water management authority’s plan.

Buffer Width Measurement: The width of the buffer is measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level.

Exemptions: Land adjacent to waters as described above is exempt from the buffer requirements if it is:

(1) enrolled in the federal Conservation Reserve Program;

(2) used as a public or private water access or recreational use area, including stairways, landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented structures;
(3) covered by a road, trail, building, or other structures;

(4) regulated by a NPDES/SDS permit, and provides water resources riparian protection in any of the following categories:

   (i) MS4’s (municipal separate storm sewer system);
   (ii) CSW (construction storm water); or
   (iii) ISW (industrial storm water);

(5) part of a water-inundation cropping system; or

(6) in a temporary non-vegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or construction or conservation projects authorized by a federal, state or local government unit.

**Compliance:** The county or watershed district must elect to have jurisdiction over the site subject to the buffer requirements. It is initially the Soil and Water Conservation District (SWCD) that determines if a landowner is not in compliance with these statutory buffer requirements. If the SWCD determines that a landowner is not in compliance, it must notify the county or watershed district with jurisdiction over the noncompliance site [it is this language that suggests either the county or watershed district must elect to enforce and exercise jurisdiction over the subject site]. The county or watershed district with jurisdiction over the site must provide the landowner with a list of corrective actions needed to come into compliance and a practical timeline in which to meet the requirements. The enforcing authority must also provide a copy of the corrective action notice to BWSR.

**Penalties for Non-Compliance:** The county or watershed district with jurisdiction over the site may issue an order requiring violations be corrected and administratively assess monetary penalties for violations. The enforcing entity may assess monetary penalties up to $500 for non-compliance, commencing on day one of the 11th month after the non-compliance notice was issued. One-half of the penalty proceeds would be retained by the county or watershed district with jurisdiction over the non-compliant site; the other half must be transmitted to the State’s General Fund. Before exercising this enforcement authority, the county or watershed district with jurisdiction over the site must adopt a plan containing procedures for issuing administrative penalty orders, and may issue orders beginning November 1, 2017. If the county or watershed district elects not to have enforcement authority, BWSR may issue and enforce the penalty orders under the authority granted in section 103B.101 (12a). [The county or watershed district may pass the enforcement up to BWSR under 103B.101 (12a).]

**State Enforcement:** The state may withhold funding from a local water management authority [a watershed district, metropolitan water management organization, or county] or a soil and water conservation district that fails to implement the requirements of this buffer legislation. Funding may be restored upon BWSR’s approval of a corrective action plan.
Appeals of Validations and Penalty Orders: A landowner or agent or operator may appeal the terms and conditions of a soil and water conservation district validation or an administrative penalty order to BWSR within 30 days of receipt of written or electronic notice of the validation or order. The request for appeal must be in writing. The request must include a copy of the validation or order being appealed, the basis for the appeal, and any supporting evidence. BWSR’s Executive Director shall review the request and supporting evidence and issue a decision within 60 days of receipt of an appeal. The Executive Director’s decision is appealable directly to the Court of Appeals under Minnesota sections 14.63 to 14.69.