COON CREEK WATERSHED DISTRICT
Request for Board Action

MEETING DATE: June 26, 2017
AGENDA NUMBER: 6
ITEM: Buffer Law Update and Potential Assumption of Enforcement Responsibilities

AGENDA: Policy

ACTION REQUESTED
Consider adoption of Coon Creek Resolution 17-03 Resolution Regarding the Election of Jurisdiction for The Minnesota Buffer Law

BACKGROUND
The 2017 Legislature allocated monies for the enforcement of the buffer law.
$8M July 2017 - Coon Creek share $11,500
$10M July 2018 Coon Creek Share $13,500

- The District’s allocation is part of a $40,000 (2017) and $50,000 allocation (2018) made to the Anoka County.
- By November 2017, owners of property adjacent to Public waters must have a 50 foot buffer, or be in violation of the law.
- By November 2018, owners of property adjacent to public ditches must maintain a 16.5 foot buffer, or be in violation of the law.
- The Anoka Conservation District has the responsibility to identify those parcels that are not in compliance with the law.
- The Conservation District has the responsibility to communicate with the land owners as to what needs to be done to bring their property in to compliance.
- If the landowner is not in compliance by the effective date, The Conservation District would inform the enforcement authority of the non-compliance.

At the June 12, 2017 meeting, the Board reviewed and discussed the merits of assuming or not assuming enforcement responsibility for the state buffer law.

The Board asked that this issue be continued at the next meeting and that staff bring forward what the County intends to do, a map of properties staff feel may be in violation and ACD’s assessment of possible violations.
ISSUES/CONCERNS

Anoka County Actions: On June 19 the Anoka County Transportation Committee adopted and forwarded a recommendation to the Anoka County Board that they assume enforcement responsibility under the buffer law for state protected waters. The County Board is expected to act on and adopt this recommendation at their June 27 meeting.

Map of Properties within District in Potential Violation of Buffer Law:
**Assessment of Potential Violations:**

<table>
<thead>
<tr>
<th>Description</th>
<th>District Wide</th>
<th>Adjacent Agriculture</th>
<th>%</th>
<th>ACD Assessment of Potential Violations</th>
<th>%</th>
<th>CCWD Assessment of Potential Violations</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>103E Public Ditches (miles)</td>
<td>120.4</td>
<td>31.9</td>
<td>27%</td>
<td>8.2</td>
<td>7%</td>
<td>11.1</td>
<td>9%</td>
</tr>
<tr>
<td>Natural Channels (miles)</td>
<td>22.0</td>
<td>0</td>
<td>0%</td>
<td>0.0</td>
<td>0%</td>
<td>0.0</td>
<td>0%</td>
</tr>
<tr>
<td>Total (miles)</td>
<td>142.4</td>
<td>31.9</td>
<td>22%</td>
<td>8.2</td>
<td>6%</td>
<td>11.1</td>
<td>8%</td>
</tr>
<tr>
<td>Public Waters (acres)</td>
<td>8,891</td>
<td>7,216</td>
<td>81%</td>
<td>0.0</td>
<td>0%</td>
<td>13.2</td>
<td>0%</td>
</tr>
<tr>
<td>Public Waters (count)</td>
<td>94</td>
<td>26</td>
<td>28%</td>
<td>0.0</td>
<td>0%</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>Agriculture (acres)</td>
<td>4,965.5</td>
<td>NA</td>
<td>NA</td>
<td>16.4</td>
<td>0.3%</td>
<td>22.1</td>
<td>0.4%</td>
</tr>
<tr>
<td>Agriculture zoned parcels</td>
<td>358</td>
<td>NA</td>
<td>NA</td>
<td>45</td>
<td>13%</td>
<td>46</td>
<td>13%</td>
</tr>
<tr>
<td>Unique Landowners</td>
<td>177</td>
<td>NA</td>
<td>NA</td>
<td>26</td>
<td>15%</td>
<td>19</td>
<td>11%</td>
</tr>
</tbody>
</table>

**Size of Problem and Required staff Resources within Coon Creek:**

In 2017 the Anoka conservation District identified 45 parcels (16.4 acres) owned by 26 individuals that are affected by the law. The Conservation District has been in contact with landowners however are focusing on those adjacent public waters as they have the first compliance date. The District would ‘fit’ this in to our existing 9 step enforcement procedures. Staff time and costs would depend on the number of potential violators who would not work with the Conservation District. Scenarios of potential staff time and costs are shown below:

| Number of Owners | 26  | 5.2 | 1  | 1 |
| Staff Hrs        | 175.5 | 35.1 | 8.8 | 3.5 |
| Time Involved (Pct 1 Staff)(Full Time Equivalent-FTE) | 8.4% | 1.7% | 0.4% | 0.2% |
| Total Cost (Staff + Overhead) | $ 13,583.70 | $ 2,716.74 | $ 679.19 | $ 271.67 |

Reviewing the list of potential violators, staff believes that the 20% or 5 owner scenario is the most probable

**Receipt of Legislative Allocated Funds – Adoption of a Resolution Required:**

If the District wishes to receive its $11,000 allocation of State funds, a resolution must be submitted and received by the BWSR by June 28, 2017.

It is not known what happens to the allocation should the District or any other Board choose not to participate during the yearly cycle.
Program Implementation:
Public Waters: 11/1/17
Public Ditches: 11/1/18

PRIOR DECISIONS
- **1/12/17**: Board provided Update and Key Dates on Buffer Law Implementation. The Board’s general preference was to let BWSR deal with the Buffer Law for a while.
- **2/13/17**: Board provided a BWSR Memo on proposed schedules and actions expected of local government. This official update indicates the March 31, 2017 may not be a hard date to elect jurisdiction.
- **2/24/17**: Board provided an update on Buffer Program. The staff report provided to the Board identified the following issues and concerns; the enforcement mechanism, lack of funding, withholding of funding by BWSR, quantity of resources, and the ever-changing guidance and policies associated with the Buffer Law. Board direction was to wait until further clarifications from BWSR are received before making a decision to elect jurisdiction.
- **5/8/17**: BWSR continues to provide information on the enforcement options for the buffer program.
- **6/12/17**: Board provided update on buffer program, reviewed and discussed the merits of assuming or not assuming enforcement responsibility for the state buffer law. Directs staff bring forward what the County intends to do, a map of properties staff feel may be in violation and ACD’s assessment of possible violations.
- **6/19/17**: Board was shown areas that would and would not be covered by the law. Commissioner West indicated that the County Transportation Committee would be recommending that Anoka County assume enforcement responsibility initially for the state protected waters portion of the bill.

OPTIONS
The District can choose to participate or decline to participate with a 60-day notice. Under BWSR Policy 8: Election of Jurisdiction, a watershed district may elect jurisdiction over public ditches and public waters within its boundary if the county has not elected jurisdiction. Therefore there are four options:
1. Accept the authority and responsibility on all public waters located within its boundaries
2. Accept the authority and responsibility on all public drainage ditches for which it is the drainage authority located within its boundaries

3. Accept the authority and responsibility on all public drainage ditches for which it is the drainage authority and public waters located within its boundaries

4. Do not assume responsibility for the program and potentially reconsider in the future

**RECOMMENDATION**

Options 1 and 3 are the most prudent.

Option 1 only addresses ‘Public Waters’, which all that is required of the law at this time.

This option would require the Board to revisit the public ditch authority issue in a year

Option 3 addresses both public waters and public ditches and would not require additional action in a year

1. Accept the authority and responsibility on all public drainage ditches for which it is not the drainage authority and public waters located within its boundaries

2. Adopt Resolution 17-03 Resolution Regarding the Election of Jurisdiction for The Minnesota Buffer Law
RESOLUTION 17-03
A RESOLUTION REGARDING THE ELECTION OF JURISDICTION FOR THE MINNESOTA BUFFER LAW

WHEREAS, provisions in Minnesota Statute 103F.48 (Buffer Law) allow a county or watershed district to affirm jurisdiction to carry out the compliance provisions regarding riparian vegetated buffers and alternative water quality practices for those waterbodies identified or identified on the Department of Natural Resources’ Buffer Protection Map; and

WHEREAS, a watershed district with jurisdiction over a noncompliant site shall enforce corrective actions through a coordinated approach under the authority granted in the Minnesota statute 103B.101, subd. 12a, the Buffer Law and Minnesota Chapter 103D; and

WHEREAS, the Coon Creek Watershed District agrees to carry out corrective actions on a parcel basis to ensure compliance with the buffer requirements, which may include an Administrative Penalty Order (APO) plan under the authority provided in Minnesota Statutes 103B.101, subd. 12a and 103F.48; and

WHEREAS, the Coon Creek Watershed District is electing jurisdiction on all public drainage ditches for which it is the drainage authority identified on the Department of Natural Resources’ Buffer Protection Map located in the individual counties as follows:

<table>
<thead>
<tr>
<th>County Name</th>
<th>Anoka</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miles of 103E Public Drainage Ditch</td>
<td>120.37</td>
</tr>
</tbody>
</table>

; and

WHEREAS, the Coon Creek Watershed District is electing jurisdiction on all public drainage ditches for which it is not the drainage authority and public waters located within its boundaries if the county has not elected jurisdiction for the Buffer Law; and

WHEREAS, the Buffer Law requires that each Local Government Unit provide notice affirming jurisdiction and identify the rule, ordinance, or other official controls that will be used to carry out the compliance provisions of the buffer requirements to the Board of Water and Soil Resources, including a copy of the adopting resolution.

THEREFORE, BE IT RESOLVED that the Coon Creek Watershed District hereby accepts the authority and administrative responsibility to implement the Buffer Law as the Local Government Unit within the legal boundaries of Coon Creek Watershed District for the water features identified above as of June 26, 2017 in accordance with Minnesota Statute 103F.48.
Estimated Percentage of Parcel Buffer Law Preliminary Compliance

These preliminary compliance estimates were conducted by soil and water conservation districts based on parcel reviews via aerial/satellite imagery. It is important to note that these estimates do not imply or represent non-compliance. Additional field-level reviews will be the next step in the inventory process.

As of 3/13/2017