The “B” Word: Buffers
Becky Alexander – Cottonwood SWCD

In Sponsorship with
- Cottonwood County Corn and Soybean Growers
- Cottonwood County Farm Bureau
- Cottonwood County
- Cottonwood Farm Service Agency
- Cottonwood Natural Resources Conservation Service
- Cottonwood Soil and Water Conservation District
What’s This Buffer Law?

- June 2015, Buffer Initiative passed into law (Statute 103F.48)
- Had some issues, some clarifying points made and passed April 25, 2016
- Perennial vegetation required on all public waters and public drainage ditches

How did this happen?

- Studies from MPCA and other groups have found that our waters are impaired by nutrient runoff, sediment loading, and other pollutants
- Anecdotal evidence... “I remember when...”
MPCA 2004 Phosphorus Study – Total Phosphorus Yields to surface waters by watershed area

15-40% Upland erosion
60-85% Ravines, bluffs, streambanks

Why the huge range? It’s only literature in the last 10 years or so that has told us this much.
What are we going to do about it?
So Let's talk Details

What is a Buffer?

- "Buffer" means an area consisting of perennial vegetation, excluding invasive plants and noxious weeds, adjacent to all bodies of water within the state and that protects the water resources of the state from runoff pollution; stabilizes soils, shores, and banks; and protects or provides riparian corridors. (103F.48)
How do I know if I need a buffer under the law?

- The Buffer map is available through DNR at [http://arcgis.dnr.state.mn.us/gis/buffersviewer/](http://arcgis.dnr.state.mn.us/gis/buffersviewer/)
- Enter “DNR Buffer Map” into your favorite search engine
- Visit the SWCD and they can help you
- All maps are online only, there are no paper maps
Buffer Map: Public Ditch

Buffer Map: Public Waters
DNR Buffer Maps

- Official release date July 12, 2016
- Two more updates:
  - October 2016
  - January 2017
  - Updates to help with DNR field review from comment period in May/June

How much buffer do I need?

- Public waters: 50 feet
- Public drainage ditches: 16.5 feet
- Public Drainage ditch with shoreland classification: 50 feet
Vegetation!

- Grass (introduced or natives) and this includes pasture (provided it doesn’t become feedlot conditions)
- Trees
- Must be perennial vegetation under the wording of the law

50 Average? What?

- The law states that a 50 foot average must be maintained from the “top or crown of the bank” and be a minimum of 30 feet
- What does that even mean??
- Let’s look at some maps!
Example 1: A site visit completed earlier this year to determine top of bank and buffer requirements.

30 foot – Yellow
50 foot – Red

50 foot average requirements:

East buffer: 1.7 ac
West buffer: 2.0 ac

Example 1: Is it compliant?

Existing vegetation acres:

East buffer: 0.9 ac (1.7 ac)
West Buffer: 0.7 ac (2.0 ac)

30 foot minimum met on all buffers? No.

Compliant? No.

How to get in compliance?

Add more acres to reach 50 foot average and to meet 30 foot minimum.
Example 2: A site visit completed earlier this year to determine top of bank and buffer requirements.

- 30 foot – Yellow
- 50 foot – Red

50 foot average requirements:

Buffer: 1.8 ac

---

Example 2: Is it compliant?

Existing vegetation acres:

Buffer: 1.9 ac (1.8 ac)

30 foot minimum met on all buffers? No.

Compliant? No.

How to get in compliance?

Add more vegetation in 30 foot minimum areas
Example 3: Landowner has the 30 foot minimum, but doesn’t meet 50 feet in some areas.

**Is it compliant?**

Yes. This landowner is enrolled in CRP and under the eligibility they didn’t need to have more than 40 feet to resolve their resource concern.

Example 4: Landowner has pasture surrounding the river.

**Is it compliant?**

Yes.

This landowner has the 30 foot minimum and exceeds the 50 foot average.
Where do you measure from?

- Statute 103F.48, subd. 3, part c “The width of a buffer on public waters must be 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. The width of the buffer on public drainage systems must be measured as provided in section 103E.021, subdivision 1.”

Examples: **Draft Policy**

- The obvious case scenario: a steep rising bank with a distinct “break” at the top
Examples: **Draft Policy**

- Less obvious: A very steep drop off with a steep slope. Well, we would look for when the slope decreases more than 50% for more than 10 feet to find top of bank.
Examples: Draft Policy

- Less obvious: No distinct break in slope. Determine the point at which the slope is less than 10° for more than 10 feet.

Which do we encounter most often?

- So far we have very obvious breaks in the top of bank, making it easy for landowners and staff to determine and measure.
On the Computer
No defined bank

- What if there isn’t a definable bank?
- If there is no definable bank, which is possible on larger bodies of water (lakes, large river systems) then we measure from the “normal water level” under the law.
What if it’s not so easy?

- First: The law was worded to make the most common sense for landowners and staff. Start here.
- We will work through the policy first with the examples.
- If all else fails, the landowner will need to provide a professional survey of multiple cross sections with elevation data.

Who’s responsible to measure?

- **The landowner is**
  - the law has been worded to try and make it as intuitive as possible

- Technical Assistance: Upon request a landowner or agent can ask SWCD staff to assist them with compliance (103F.48, subd. 3 (d))
Determining Compliance
- Determined on an individual Tax Parcel basis
- Each side of the bank is determined separately from each other

Example 1: Landowner owns 3 separate tax parcels adjacent to each other.

Parcel A is compliant, Parcel B is compliant, Parcel C is not compliant
Determining Compliance

Example 2: Landowner owns 1 tax parcel.
Parcel is compliant.

Verification of Compliance

- Under statute, landowners or their agents can request a verification of compliance.
- What’s that??
- A form that indicates whether the parcel and banks are compliant or not.
- Landowner would receive a form with supporting documentation (maps, photos, etc) that on “this date” the buffer met compliance.
- Streambank migration, loss of buffer, or discontinuing the use alternative practices will put it out of compliance.
Exemptions: Alfalfa

- Can alfalfa be planted?
  - Short answer: Yes
  - Long answer: There’s some stipulations under the law.
- Alfalfa can be planted, but you must maintain another perennial crop with it to maintain a buffer after the alfalfa is no longer viable. Temporary non-vegetation is allowed when re-establishing the alfalfa.

Exemptions: CRP

- Riparian buffer areas enrolled in CRP are exempt from the buffer law (Riparian! If your CRP is across the section not next to a watercourse it doesn’t count)
- Why is this relevant?
  - Under the eligibility requirements, the technical authority (generally NRCS) assesses the resource concern to determine the buffer width (See NRCS standard 393)
    - This can be anything between 30 feet to >120 feet if it’s determined to mitigate the resource concern
Exemptions: CRP

- So I could have less than 50 feet?
  - Potentially, yes. But if it is determined that you need 100 feet to resolve your resource concern, then you will have to enroll for that 100 feet, not 30 feet or 50 feet.

- What if only half of my buffer is enrolled in CRP, and the other half isn't?
  - The CRP exemption is only for land under a current CRP contract, your other field will be required to follow the Buffer Law.

Exemptions: CRP

- My contract expired, am I still good?
  - Maybe. If you let your CRP contract lapse then you must follow the requirements of the buffer law. This may mean that you have enough or you may need to add more, or maybe you have more than enough.
Haying and Grazing

Can I hay or graze my buffer?
- Yes.
- Highly encouraged to have a haying or grazing plan to maintain the vegetation’s vigor and stand
- Be aware of program rules if you are enrolled in CRP or if you used State Cost-Share money to install it or federal money to install it (EQIP, CSP). You may not be able to or there may be restrictions.
Alternative Practices

What’s that?
- Under statute a landowner can have alternative practices on their land that provide comparable water quality benefits to that of a buffer
- A combination of structural, vegetative, and management practices based on NRCS standards or approved by the Board

Alternative Practices

Draft Policy
- We are still waiting to receive final policy from the Board of Water and Soil Resources.
- Must result in no area within the parcel without treatment of runoff
- Demonstrate protection from erosion and runoff pollution
- Demonstrate stability of soils and banks within a parcel
- Achieve the necessary water quality benefit
- **Landowner is responsible for providing this information**
Ditch Maintenance

- The buffer vegetation shall not impede future maintenance of the ditch (103F.48, subd. 3)

When do I have to do this by?

- Public Waters:
  - November 1, 2017
- Public Drainage Ditches:
  - November 1, 2018
SWCD Requirements

- Must track progress towards compliance
- Must notify the county or watershed district with jurisdiction and/or the board (BWSR) for non-compliant parcels after the deadlines

Penalties

- Counties and/or watershed districts can adopt an administrative penalty order, if they choose not to have jurisdiction, the State will issue the penalties
- The entity with jurisdiction must also provide the landowner with a list of corrective actions
Jurisdiction

- If a county does not elect to have jurisdiction then the State will enforce the law.
- Would you prefer to have local or State authority? Please let us or your commissioner know!

The Holy Grail???
Next Steps...

- Determine if you need to add more buffer or talk with SWCD staff about any requirements for your specific parcels
- Decide what you might want to do if you need to install more buffer
  - Programs, self-install
State Cost-Share

- Through the SWCD
- A reimbursement of part of the installation costs (no yearly payments)
- Filter strips, riparian forest buffers
  - Cost-share on seed, site preparation, and seeding
- Haying or grazing will require an operation and maintenance plan provided by the SWCD to be followed

MAWQCP ("Mak-Quap")

- Minnesota Agricultural Water Quality Certainty Program
  - Any farm certified through the Certainty Program is considered to be in compliance with the buffer law
- Whole farm assessment, must be compliant with all State Rules and Regulations
- Certified for 10 years
- Contact Danielle Evers for more information @ Pipestone SWCD 507-825-1199
Buffer Initiative Workshop

Farm Service Agency

The Buffer Initiative is a Minnesota State Law.

The Farm Service Agency offers a voluntary option for financial assistance through the federal Conservation Reserve Program (CRP).
What does the Conservation Reserve Program do for our environment?

- Reduce soil erosion
- Protect nation’s ability to produce food and fiber
- Reduce sediment in streams and lakes
- Improve water quality
- Establish wildlife habitat
- Enhance forest and wetland resources

CRP Signup Eligibility

Who is Eligible?

- Owner and/or operator on the land for at least 12 months
- Participant earning the payment must meet Average Adjusted Gross Income provisions: $900,000 or less for the last 3 completed tax years
CRP Signup Eligibility

Eligible land must meet ALL the following:
- Currently being cropped
- Planted or considered planted to an agricultural commodity at least 4 of 6 years from 2008-2013
- Physically and legally capable of being planted in a normal manner to an agricultural commodity
- Must meet location and size

CRP Continuous Practices

Continuous signups are ongoing. You can stop in the office at any time and place an offer. Land eligible for continuous signups must have a resource concern. Practices include:
- Grassed Waterways
- Shelterbelts
- Riparian Buffers
- Living Snow Fences
- Field Windbreaks
- Pollinator Habitats
- Wellhead Protection Areas
- Wetland Restorations
- SAFE State Acres for Wildlife Enhancement
- Pheasant Habitat

Contract Length 10 - 15 years (Not a permanent easement)
CRP CP21 Filter Strip

What is the purpose of a CRP Filter Strip?
- To remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow
- To protect surface water and subsurface water quality
- To enhance the ecosystem of the water body

CRP CP21 Filter Strip Eligibility
- Cropland offered must be immediately adjacent and parallel to 1 of the following:
  - Stream having perennial flow
  - Seasonal Stream
  - Sinkholes
  - Wetlands
  - Other permanent water bodies (lakes/ponds)
- Minimum width is 20 feet from edge of streambank
- Minimum average suggested width is 30 ft from edge of streambank
- Maximum average width is 120 ft from edge of streambank
CRP CP21 Filter Strip Example

Existing grass is ineligible for CRP payments, but must be maintained as part of the CRP contract.

Infeasible to Farm Example

- An area that is too small or isolated to be economically farmed
- Producers may enroll up to 25 percent of the enrolled cropland acreage of a filter strip as part of the filter strip
- 20% rental rate incentive is not
CRP CP21 Payment Information

- **Annual Rent**
  - Based on relative productivity of the soils and average cash rent
  - 20% incentive included in annual rental payments
  - Cottonwood average $224, Watonwan average $260
    - Cottonwood rates range from $172 - $264/acre
    - Watonwan rates range from $203 - $309/acre
  - Based on county where physically located
  - Paid at the end of every year in October for the length of contract

CRP CP21 Payment Information

- **Signup Incentive Payment**
  - Issued after contract approval
  - $100 per acre
  - Only available on NEW land

- **Practice Incentive Payment**
  - Equal to 40% of eligible installation costs
  - Issued after practice is installed

- **Annual Payment Limitation $50,000**
  - Annual Rental Payment and Incentive Payment
CRP CP21 Filter Strip Cost-Share Assistance

- Provided for establishing cover
- Cannot exceed 50% of the participants cost
- Reimbursement for:
  - Seedbed Prep and Seeding on new land
  - 1-3 Species Grass Mix
  - 4 or more species Native Grass Mix
  - 1st weed control after establishment

- Not to exceed $43/acre up to 50%
- Not to exceed $30/acre up to 50%
- Not to exceed $75/acre up to 50%
- Not to exceed $11/acre up to 50%

(50% of producers cost)

Operation & Maintenance

- Must follow seeding plan
- Noxious weeds must be controlled at participants expense
- Spot clipping and spraying weeds in problem areas during the primary nesting season (May 15-Aug 1) may be authorized by FSA ~ problem areas must be controlled.
- Haying/grazing is prohibited on filter strips
- Haying/grazing may be authorized on certain practices with FSA approval
- Trees must be controlled/removed on grass filter strips
Mid – Contract Management (MCM) Activities

• Designed to improve plant diversity and wildlife benefits
• Required once during the contract
• Cost-share is available
• Most common practices:
  • Prescribed burning by owner or vendor
    • Contact FSA for a burn plan prior to burning.
    • Be mindful not to burn if area contains plastic tile intakes
  • Mowing or clipping
  • Light disking

Unauthorized Uses of CRP Acres

• Failure to control noxious weeds and volunteer trees
• Unauthorized crop planted on CRP – corn, soybeans, small grains
• Unauthorized haying or grazing
• Using CRP as a campground and parking lot for vehicles/machinery
• Applying sludge or animal byproducts
• Piling tree debris on CRP
• Construct a road, driveway, house, remove dirt, fill, gravel
Interested in CRP – Now What?

• Contact your local FSA office to set up an appointment

• Work together with FSA/NRCS to determine eligibility

• FSA can provide an estimated rental rate at no cost

• Determine the field acreage
  • In office or on site measurement is available

• FSA will draw up an offer on the determined acreage
  • Exact acreage and location must be determined before offer can be placed

Interested in CRP – Now What?

• Offer sent to NRCS for conservation planning and seeding plans

• Final paperwork signed in FSA office

• Seeding must be completed within 12 months of start date

• Participant responsible for establishment

• MCM required halfway through your CRP contract

• Annual payments made at end of each year in October
Dates, Dates, Dates

- **Start Dates**
  - Continuous CRP can start at any time during the year
  - Must be the 1\textsuperscript{st} day of the month
  - Crop must be harvested prior to start date
  - Start date may be deferred 6 months from date offer is placed

- **Compliance Dates if Enrolled in CRP**
  - November 1, 2017 – must have an approved contract in place
  - Cover does NOT need to be planted/established by Nov 1, 2017
  - Land eligible for CRP until owner receives a violation letter from SWCD.

<table>
<thead>
<tr>
<th>Seeding Requirements</th>
<th>Conservation Reserve Program (CRP)</th>
<th>Landowner Establishment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 – 3 Native or Introduced grass species mix per NRCS standard</td>
<td>Perennial Cover</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Compliance Dates Public Waters</th>
<th>Approved contract in place by Nov. 1, 2017</th>
<th>Cover seeded by Nov. 1, 2017</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Compliance Dates Public Ditches*</th>
<th>Approved contract in place by Nov. 1, 2018</th>
<th>Cover seeded by Nov. 1, 2018</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Haying/Grazing Allowed</th>
<th>NO</th>
<th>YES</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Establishment Cost-Share Available</th>
<th>50% not to exceed maximum rates</th>
<th>To Be Determined</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Annual Rental Payment</th>
<th>YES for life of CRP contract</th>
<th>NO</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Permanent Easement</th>
<th>NO</th>
<th>NO</th>
</tr>
</thead>
</table>

*Please visit the Cottonwood County SWCD or the Watonwan County Land Management to verify if your ditch is part of a public water system.*
Frequently Asked Questions

What can I do with the acres after the CRP expires?

- Re-enroll if eligible
- Hay/graze
- Leave grass standing
- Crop if eligible
Can I re-enroll a CRP filter strip contract after expiration?

• Possibly
  • Land where the producer is required to perform a practice as an obligation to comply with local, state or federal law is ineligible.
  • Land restricted by a permanent easement is ineligible.
  • It will depend on national procedure in place at the time of expiration.

What happens to the CRP if I sell the land?

• New owner has an opportunity to succeed to the contract
  • If no succession, refunds required from current owner/CRP contract holder
  • Current participant may remain on the contract earning the payments
  • Contract is revised to reflect new ownership
What if I want to terminate my contract before the expiration date?

- Partial or full terminations must be requested in writing by all participants
- Refunds required for all payments with interest from the date issued
- Liquidated damages of 25% of one year’s payment times the acres terminated
- Termination of CRP does NOT terminate an easement
- Termination of CRP does not negate your responsibility to comply with State and Local laws

What happens to the CRP if I pass away?

- Heirs have the opportunity to succeed to the all, part, or none of the CRP contract acres
- No refunds are required if the heirs do not wish to succeed to all or part of the contract
What happens to my farm base acres?

• If you seed to a perennial cover, you will report this planting at the FSA office annually. The planting protects base acres and you can still earn payments through the Agricultural Risk Coverage program.

• If you enroll the acres in CRP, the base acres will be set aside while the contract is enrolled. The base acres may be restored after contract expiration.

QUESTIONS
For an Appointment Contact FSA

Cottonwood County FSA Office  
County FSA Office  
339 9th St  
Suite 1  
Windom, MN 56101  
56081

Watonwan  
823 1st Ave S,  
Saint James, MN  
56081

(507) 831-1550  
3191

Kelly Quade  
Kristina Fast

Kelly.quade@mn.usda.gov  
Krisitina.fast@mn.usda.gov

Cottonwood County  
Informational Buffer Meeting

KELLY HEATHER PFARR  
DISTRICT CONSERVATIONIST

Windom Field Office  
339th 9th street  
Windom, mn 56101  
507.831.1153 ext. 3  
kelly.pfarr@mn.usda.gov
PROGrams

EQIP
ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

CSP
CONSERVATION STEWARDSHIP PROGRAM

ACEP
AGRICULTURAL CONSERVATION EASEMENT PROGRAM

NATURAL RESOURCES CONSERVATION SERVICE

ENVIronmental QualiTy Incentives Program (EQIP)

- EQIP PROVIDES TECHNICAL & FINANCIAL ASSISTANCE TO AGRICULTURAL PRODUCERS AND LANDOWNERS FOR CONSERVATION PRACTICES THAT PROTECT SOIL & WATER QUALITY
- WIDE VARIETY OF CONSERVATION PRACTICES ARE AVAILABLE
- EQIP APPLICATIONS CAN BE SUBMITTED ON A CONTINUOUS BASIS
- APPLICATIONS MUST BE SUBMITTED BY FRIDAY AUGUST 19, 2016 FOR 2017 FUNDING

NATURAL RESOURCES CONSERVATION SERVICE
CONSERVATION STEWARDSHIP PROGRAM (CSP)

- Through CSP, the NRCS will provide financial & technical assistance to eligible producers to conserve and enhance soil, water, air and other related natural resources on their land.
- CSP is a voluntary program that encourages producers to address resource concerns in a comprehensive way.
- Wide variety of enhancement activities to choose from.

AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP)

- Through ACEP, NRCS provides financial & technical assistance to help conserve agricultural lands & wetlands and their related benefits:
  - ALE – Agriculture Land Easement
  - WRE – Wetland Reserve Easement
- Permanent easements or 30 year easements.
QUESTIONS

Kelly Heather Pfarr
NRCS Windom Field Office
339th 9th street
Windom, mn 56101
507.831.1153 ext. 3
kelly.pfarr@mn.usda.gov

USDA IS AN EQUAL OPPORTUNITY PROVIDER, EMPLOYER AND LENDER