MEMORANDUM
Comfort Lake-Forest Lake Watershed District

To: Board of Managers
From: Mike Kinney, Administrator
Subject: MN Buffer Law

Date: November 10, 2016

Background / Discussion

Jay Riggs from the WCD will be attending the Board meeting to discuss the new Buffer Law and the role they will play in implementing it. Sometime between now and next March, the District must formally declare to BWSR its decision to assume an enforcement role or not. This meeting will be an opportunity to discuss with Mr. Riggs what this role might look like for the District. Attorney Holtman will also be present to provide input.

The attached article is simply to highlight some of the challenges and opportunities this new law provides.

Attached: Star Tribune article
Putting the buffer law to protect public waters in effect is no easy job
Minnesota’s buffer strip law is taking hold in farm country as farmers prepare the land.
October 8th, 2016 | By Tom Meersman

Joe Merten has 2,200 acres of crops to harvest this month with his brother, a number that will shrink next year.

Merten watched recently as county technicians staked out ground along Orchard Creek in Mower County to show where he will need to plant grasses next spring instead of soybeans or corn. The change is required by the state’s new water quality protection law that mandates larger buffer strips between crops and creeks.

“I know it’s coming, so I might as well do it,” said Merten, as he scanned the pink flags poking up amid his soybeans, demarcating next year’s border for planting. Merten, who farms just south of Austin in Mower County, already has 15 feet of mixed grasses along each side of the creek, but next year he will expand it to at least 50 feet to meet the new state standards.

The buffer law — passed in 2015, amended this year and set to go into effect Nov. 1, 2017 — requires farmers to plant perennial vegetation at least 30 feet and an average of 50 feet from public streams, creeks, rivers and lakes, or propose an alternative method of conservation that provides equal or better water quality benefits.

But making changes across the state’s water-rich rural landscape is a more complicated process than it might seem.

The goal is to slow down and filter runoff from farm fields that might contain sediment, phosphorus, nitrogen and pesticides. The law also applies to public ditches that feed into waterways, and requires 16.5-foot buffers along them to be planted by Nov. 1, 2018.

Merten shares the sentiments of many farmers about the law: He’s not happy about losing productive cropland, in his case about eight acres. He realizes that the law might do some good, but not so sure how much it will improve water quality. And he feels that farmers have received too little credit for efforts they have already made in recent years to reduce erosion, use fewer chemicals and apply fertilizers more precisely.
David Simonsen, who grows mainly corn and soybeans on about 800 acres near Morgan in southwestern Minnesota, estimates he will lose about seven acres of cropland because of the 16.5-foot buffers that he will need to install along both sides of several ditches.

“We’re thinking it’s somewhat of a land grab because we’re supposed to do this, and we still have to pay the [property] taxes, and we have to maintain it and keep weeds down and everything,” Simonsen said.

Who does the work?
The Minnesota Department of Natural Resources estimates that the law will require planting 110,000 acres of perennial vegetative buffers along lakes, rivers, streams and ditches. The DNR also published a state map in July showing all the waterways and public drainage ditches that are covered by the law. But the biggest job has just gotten underway: determining how much land along those waterways already has buffers, and how much is going to need work to comply with the law.

That task has fallen mainly to farmers and those who help them, especially drainage authorities and soil and water conservation districts.

Every county has a district, which for decades have given farmers technical advice about conservation practices, including whether any federal or state programs might foot part of the bill. Many districts have held information meetings and developed fact sheets to educate producers about what the buffer law entails. They have also been using aerial photography to identify which cropland will probably require buffers.

“We’re the boots on the ground working with producers,” said Darren Newville, district manager of the East Otter Tail and Wadena soil and water conservation district in west-central Minnesota. Most of that county’s 1,048 lakes are developed and have grass or other perennial vegetation around their shores, he said, but the county has 1,174 miles of rivers and streams that flow mainly through cropland.

Otter Tail County estimates that 1,143 farm fields along those waterways do not have 50 feet of required permanent vegetation, Newville said, and that planting buffers would use up about 1 acre on each parcel, on average. The county sent letters to about 600 producers and landowners explaining that their land might need buffer strips, and so far about one-third of the farmers have responded and taken action.

“They’re not happy about it in some cases, but they understand that it needs to happen for the most part,” Newville said.

Tom Gile, buffer and soil erosion program coordinator for the Minnesota Board of Water and Soil Resources, said counties are at different stages of implementing the law, and everyone is focused on meeting upcoming deadlines rather than enforcement. But Gile said that the law authorizes fines for those who refuse to comply, and his agency is in the process of finalizing those and other enforcement details.

Mower County in southern Minnesota has also been moving quickly to implement the law. “Our message to ag folks is that you guys are 94 percent of the way there, and most of the time that means you’re getting an A grade,” said district manager Justin Hanson. “We’re just asking you to get an A-plus, and let us help you get there.”

Even so, that small remaining percentage probably means that about 400 fields still
need buffers, Hanson said. Some producers might do the work on their own, he said, and others are seeking technical advice from his office.

Helping to cushion the financial hit of lost production, Hanson said, is that some producers have been able to enroll buffer land in federal programs such as the Conservation Reserve Program that will compensate them. But not all land is eligible, he said, and some programs have long waiting lists.

Marilyn Bernhardson, soil and water district administrator in Redwood County, said her office has been inundated with farmers asking what they need to do to comply. The county in southwestern Minnesota has 520 miles of open drainage ditches, three major rivers and more than a dozen tributaries.

“People expected that this is going to be a horrible thing,” she said. “We probably have not heard from people who are opposed to it,” but so far the process has gone smoothly.

Not everyone is satisfied

Environmental groups favor the law, but have been critical of its implementation and say it doesn’t go far enough.

Trevor Russell, water program director for Friends of the Mississippi River, said the DNR should have included public wetlands in its maps of what waters need buffers, and instead omitted them for the most part. The DNR also should look more closely at sections of creeks that have been straightened into ditches, he said, and they should be required to have the larger 50-foot buffers.

DNR officials say it was impractical to map small, shallow wetlands whose shorelines fluctuate considerably and already often have a vegetated fringe.

Others have also raised questions about how effective the buffers will be in improving water quality, since many farm fields have underground pipes or tile that drain water, sediment and ag chemicals directly into creeks and ditches.

Gile, of the water and soil resources board, said the main intent of the law is to control overland runoff, which happens during heavy rains even where cropland is tiled, or whenever rains fall on ground that contains frost.

“This is not a silver bullet that is going to fix everything, and it will not make everything fishable, swimmable and drinkable,” Gile said. “But there’s good research and science that it will have a measurable positive benefit on the landscape.”

Tom Meersman
Reporter | Agriculture
Tom.meersman@startribune.com
612-673-7388