



# Policy 8: Initial Election of Jurisdiction

## Buffer Law Implementation

DRAFT December 12, 2016

It is encouraged that, when boundaries overlap, local governments units (LGUs) will engage in dialogue to discuss which waters Jurisdiction is being elected for within each entities boundary.

### Policy

The Board of Water and Soil Resources (BWSR) has a statutory responsibility to enforce the requirements of Minnesota Statutes 103F.48 when a county or watershed district elects to not have jurisdiction, or fails to affirm jurisdiction, therefore, It is the policy of the BWSR that when electing jurisdiction for enforcement of the Buffer law:

1. If a county elects jurisdiction by March 31, 2017, it must include all public waters within its boundary AND all public drainage ditches for which it is the drainage authority.
  - a. It may also elect jurisdiction on all public drainage ditches within its boundary which it is not the drainage authority IF the drainage authority has chosen not to.
2. If a watershed district elects jurisdiction by March 31, 2017, it must include all public drainage ditches within its boundary for which it is the drainage authority.
  - a. It may also elect jurisdiction on all public waters within its boundary IF the county has chosen not to.
  - b. It may elect jurisdiction on all public drainage ditches within its boundary for which it is not the drainage authority IF the drainage authority has chosen not to.
3. A county or watershed district that elects jurisdiction may delegate the enforcement authorities to another eligible local government so long as the following conditions are met.
  - a. All waters for which a county or watershed district has elected jurisdiction must lie within the delegated local government's boundary.
  - b. The local government accepting jurisdiction through the delegation agreement must accept via formal action.
  - c. Notice must be provided to BWSR 60 days prior to the effective date of any such agreement.
4. A county or watershed district that elects jurisdiction must:
  - a. Provide notice to BWSR and all counties or watershed districts within its boundary; and
  - b. Submit for a BWSR staff determination that the rule, ordinance or official control has procedures for the issuance of administrative penalty orders, enforcement, and appeals consistent with the definition of "with Jurisdiction" in 103F.48.

### Background

The water resources riparian protection requirements of the Buffer Law are related to the buffer provisions of the Public Drainage Law 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 that are

directly connected to a specific jurisdiction warrant establishing a policy acknowledging these other pre-existing responsibilities of counties and watershed districts to enhance the efficiency and effectiveness of local enforcement of the Buffer Law.

### Policy Need

- 1) Provide a consistent basis for determining which LGU has first rights to elect jurisdiction for public waters and public drainage ditches identified on the Buffer Protection Map.
- 2) To provide consistent and comprehensive enforcement of the buffer law.
- 3) To ensure a simple means for SWCDs and the public to understand what LGU has enforcement authority in the instances when corrective actions may be needed.

## Statutory Basis

Minnesota Statutes §103F.48, the Buffer Law, includes the following purposes:

*(j) "With jurisdiction" means a board determination that the county or watershed district has adopted a rule, ordinance, or official controls providing procedures for the issuance of administrative penalty orders, enforcement, and appeals for purposes of this section and section [103B.101, subdivision 12a](#).*

The law allows a county or watershed district to elect jurisdiction as follows:

*(b) A county or watershed district exercising jurisdiction under this subdivision and the enforcement authority granted in section [103B.101, subdivision 12a](#), shall affirm their jurisdiction and identify the ordinance, rule, or other official controls to carry out the compliance provisions of this section and section [103B.101, subdivision 12a](#), by notice to the board prior to March 31, 2017. A county or watershed district must provide notice to the board at least 60 days prior to the effective date of a subsequent decision on their jurisdiction.*

### For further reference:

- Section 103F.48 Subd. 3(b). Water resource protection requirements on public waters and public drainage systems
- Section 103F.48, Subd. 6. Local implementation and assistance
- Section 103F.48, Subd. 7. Corrective actions
- Section 103F.48, Subd. 8. Funding subject to withholding
- Section 103B.101, Subd. 12(a). Authority to issue administrative penalty orders
- Section 471.59. Joint exercise of powers