

**Technical Advisory Committee – Stream Protection Subcommittee**

DCR Staunton Office

Staunton, Virginia

**Stream Protection Subcommittee Members Present**

Mark Hollberg, Dept. of Conservation & Recreation – Div. of Soil & Water Conservation (DCR-DSWC)

(Chair)

Charlie Wootton, Piedmont Soil & Water Conservation District

Stefanie Kitchen, VA Farm Bureau

Gary Boring, Virginia Assn. of Soil & Water Conservation Districts (VASWCD) Area IV Representative

Tom Turner, Chesapeake Bay Districts Representative

Luke Longanecker, Thomas Jefferson Soil & Water Conservation District

Robert Bradford, VASWCD Area II Representative

Elizabeth Dellinger, Shenandoah Valley Soil & Water Conservation District

Tim Higgs, Virginia Department of Agriculture and Consumer Services

Matt Kowalski, Chesapeake Bay Foundation

Aaron Lucas, Headwaters Soil & Water Conservation District

Chris Barbour, Outside of the Chesapeake Bay (OCB) Districts Representative

Nick Livesay, Lord Fairfax Soil & Water Conservation District

Anna Killius, James River Association

Tracy Fitzsimmons, VA Cattleman's Association

Stacy Horton\*, DCR-DSWC

Raleigh Coleman\*, DCR-DSWC

**Stream Protection Subcommittee Members Absent**

David Massie, Culpepper Soil & Water Conservation District

Chad Wentz, United States Dept. of Agriculture – Natural Resources Conservation Service (USDA-NRCS)

Emily Horsley, United States Dept. of Agriculture – Farm Service Agency (USDA-FSA)

Ashley Wendt, Department of Environmental Quality

**Public Participants Present**

None

(\*Non-voting member)

**WELCOME**

The subcommittee meeting began at 9:30 am with an introduction from Mr. Hollberg. A quorum was established with 15 voting members present.

## **DRAFT MINUTES**

The minutes of the July 30, 2019, meeting of the Stream Protection Subcommittee were presented for approval. Mr. Higgs requested that “re-establishing” be struck from the minutes because that was not the intent of his request. Mr. Kowalski made a motion to approve the minutes as amended. Mr. Higgs seconded the motion. The motion passed unanimously (15Y, 0N).

## **REVIEW OF AGENDA**

Mr. Hollberg reviewed the agenda. The group had nothing to add to the agenda.

## **MATRIX ITEMS**

Mr. Hollberg suggested starting by looking at the new items that were added to the “Matrix of Stream Protection Recommendations for Program Year 2021” after the August 14 TAC meeting. These items are 8S, 9S, 10S, 11S, and 1E:

*10S – Include 642-Water Well in the SL-7 practice.*

Mr. Wootton suggested that this item be tabled. The subcommittee discussed this in detail last year and decided not to include “Water Well” as an applicable practice standard under the SL-7, since the SL-7 is intended to extend an existing watering system. Therefore, the existing well should be sufficient for current livestock numbers, and adding an additional well could increase the capacity of the system and allow more livestock to be served, which is not the intent of the practice. The intent of the practice is to extend the watering system to upland fields where livestock currently have to walk back through gates to fields that already have watering facilities. Mr. Wootton made a motion to table item 10S. Mr. Turner seconded the motion. The motion passed unanimously (15Y, 0N).

*9S – Expand the SL-7 practice to allow for the extension of a watering system associated with a narrow buffer. ...*

Mr. Wootton explained that last year the subcommittee decided to only allow the SL-7 in conjunction with wide buffers because the subcommittee was told that we receive no upland credit in the Bay model for grazing practices in conjunction with a narrow buffer. Mr. Hollberg added that this also allows the SL-7 to be a “carrot” to incentivize producers to install a wide buffer practice from the start. Ms. Dellinger suggested that land management becomes even *more* important with a narrow buffer because the buffer provides less runoff treatment. Mr. Coleman suggested that providing a lower incentive payment for the SL-7 in conjunction with a narrow buffer would still incentivize wider buffers while also not excluding people who may have already installed stream exclusion fencing at less than 35ft. Mr. Bradford made a motion to allow the SL-7 practice to apply to narrow buffers at a cost-share rate of 50%. Mr. Boring seconded the motion. The motion passed unanimously (15Y, 0N.)

*8S – Create a CCI-type practice that pays to maintain grass or other lined drainage channels in crop fields. ...*

Ms. Dellinger stated that there are other high value practices that should be made eligible for CCI before waterways. The group agreed that this is not a high priority. Mr. Boring made a motion to table Matrix Item 8S. Mr. Turner seconded the motion. The motion passed unanimously (15Y, 0N).

*11S – Include 362-Diversion, 620-Underground Outlet, and 606-Subsurface Drain in the SL-11-Permanent Vegetative Cover on Critical Areas specification. ...*

Mr. Wootton stated a concern that this may be an “end-run” around the engineering that would be required for a waterway, but that nothing in the NRCS standard would prohibit them from being done in conjunction with a Critical Area Seeding. This would change the nature of the SL-11, which currently does not require any engineering. Ms. Dellinger stated that if an area is eroding (versus just denuded), then the flow of water needs to be dealt with. Mr. Kowalski asked about what practices are currently available, such as the WP-3 (grassed waterway) and WP-1 (grade stabilization structure/lined waterway). There is also a separate VACS practice for diversion (SL-5). Mr. Kowalski suggested that existing VACS practices could be used for this situation instead of modifying the SL-11 to fit. Ms. Dellinger suggested that a pasture field with a ditch with subsurface flow that needs to be regraded and seeded should not be a WP-1 - it should be an SL-11. Mr. Coleman suggested that that might be beyond the scope of an SL-11 because often there would also be surface flow that needs to be dealt with when there is a ditch. Ms. Dellinger stated that to NRCS, this is a simple critical area. Mr. Turner stated that these are often old drain tiles that the livestock have pawed around in. Mr. Coleman suggested that just putting in a subsurface drain does not trigger the engineering work that may be needed for the surface runoff issue. Mr. Turner felt suggested that there is a difference between pasture vs. cropland situations, because livestock will create the problem in a pasture, whereas surface flow would be causing the erosion in a cropland situation. Mr. Turner pointed out that technicians would still need EJAA for the three components if they are needed (362, 620, 606). Mr. Wootton stated that it needs to be very clear that these components would still need EJAA, since the SL-11 has traditionally been a non-engineered practice. Mr. Coleman expressed concerns about this being a potential end-run around the 10-year lifespan requirement for the other VACS erosion practices such as WP-1 and WP-3, and that other practices may be more appropriate for dealing with surface runoff. Ms. Dellinger will work on the SL-11 specification to present to the subcommittee at the next subcommittee meeting. Mr. Coleman will discuss the potential engineering issues with engineering staff and report back.

*1E – Consider making SL-6A Small Acreage Grazing System a cost-share practice in addition to being a tax credit practice.*

Mr. Wootton stated that he would be okay with making this a cost-share practice (at 75%) because of all of the requirements that must be satisfied in the practice specification. Some discussion followed, but Mr. Wootton suggested that the subcommittee review the specification and discuss again at the next subcommittee meeting.

#### **MODIFY/DELETE BUFFER MEASUREMENT CAP FOR BUFFER BONUS**

The subcommittee discussed what to do regarding the language in the SL-6W and WP-2W practice specifications which states that, “For the purposes of calculating buffer acres, measurements are capped at 100 feet from the top of streambank or 1/3 of the floodplain up to 300 feet.” Mr. Turner suggested that this overly complicates things, and there is an existing acreage cap already in place and EPA gives credit for all of the acreage that is excluded inside the fence. Mr. Turner made a motion to delete this language from the practice specifications. Mr. Wootton seconded the motion. The motion passed unanimously (15Y, 0N).

The group took a break at 10:57am, and reconvened at 11:07am.

#### **DISCUSSION OF 6S – DEFINE “LIVE STREAM” AND “SURFACE WATERS” FOR THE GLOSSARY...**

The definition of “live stream/water” from the “Guidelines for Determining Buffer Area for Stream Exclusion BMPs” was put up on the screen for discussion. Mr. Turner provided a historical perspective that was addressed at the TAC several years ago where there is a “wet area” next to live water, where the technician could run the fence around the wet area (not necessarily 35 ft. off of the wet area) and

include this in the buffer acreage. The subcommittee agreed that sensitive areas (e.g., wet areas, gullies, etc.) should be included in the area that is fenced out, but that they would not necessarily require the “minimum fence setback” and that the entire acreage should be included in the buffer payment.

Ms. Kitchen asked if the sentences beginning with “This includes...” are necessary in the definition, and if not, if they should be struck from the definitions. The subcommittee agreed that it would be a more concise definition to leave off the “this includes” sentences and let the technician make the determination.

Discussion ensued about the last sentence regarding “sensitive karst features.” Several subcommittee members would worried that this is too broad and may result in fencing of features that do not need to be fenced. The concern was raised about if removing that sentence would not allow legitimate sinkhole ponds to qualify as an SL-6. The committee felt that this is certainly something that would still qualify as an SL-6. Mr. Higgs pointed out that we are just trying to define a live stream, and it does not seem appropriate to say that a sensitive karst feature is a live stream. The subcommittee agreed and determined that the practice specs already specifically include sinkholes as an eligible stand-alone “trigger” for SL-6 in B.1.

Mr. Hollberg pointed out that there is a difference between the SL-6 and WP-2 specifications, in that the SL-6 specification does not explicitly state that “all water bodies” must be addressed. Mr. Kowalski volunteered to work on making these specifications consistent/synchronized.

The question was asked as to whether or not it would even be useful to have a definition of “live stream/water” in the glossary. Several committee members felt that it would be useful for the technicians to have something to “hang their hat on” and to help new technicians who have not had any training.

Mr. Higgs made a motion include the first sentence of the definition from the guidelines in the manual (Live Stream/Water: A creek, stream, river or other water feature which has surface flow, or creates a surface flow, for a substantial portion of the year.) Ms. Kitchen seconded the motion. The motion passed unanimously (15Y, 0N).

#### **SUGGESTION TO DELETE FEEDING PAD IN SL-6**

The subcommittee discussed whether or not the winter feeding pad option should be removed from the SL-6. The subcommittee felt that more information is needed, but that the winter feeding pad could be kept in the SL-6 until it is included in an option in the WP-4L.

**LUNCH:** The group broke for lunch at 11:55am. The group reconvened at 12:35pm. Ms. Fitzsimmons left the meeting for another obligation.

#### **DISCUSSION OF MATRIX ITEM 7S**

Mr. Coleman explained that there are inconsistencies statewide in terms of what SWCDs are willing to pay for in terms of power establishment, which makes it difficult to be consistent in determining what is “least-cost, technically feasible.”

The subcommittee discussed generators and whether or not they are eligible for cost share. Mr. Bradford pointed out that liquid propane generators are a good option for very remote sites. The subcommittee discussed that the generator prohibition in the SL-6 specification is only when the

generator is used as a back-up for the primary power source (e.g., a portable generator as a back-up for the grid power). To clarify this, the subcommittee felt that it would be worthwhile to add the underlined language to the statement: “Generators for emergency use may not receive cost-share.”

The group proposed the following language change (added language is underlined): “Pumps and equipment associated with portable and permanent watering systems. ~~Pumps may operate on purchased electrical current or alternative energy sources such as solar, battery, mechanical or hydraulic energy.~~ The payment for the selected pump, provision of power, and associated equipment should be the most cost effective for the specific site and application. The replacement costs of pumps and pumping equipment components which fail to function properly during the lifespan of the practice are considered maintenance expenses and are the responsibility of the participant.”

Some subcommittee members expressed concerns over the potential for exorbitant amounts of money to be spent on establishing power for the project. It was mentioned that local SWCD boards would still be establishing estimated costs and caps for each component, and every project would still be capped at the “least cost, technically feasible” option.

Mr. Turner left the meeting at 1:06pm.

Mr. Barbour and Mr. Wootton recommended that, if the changes make it through the TAC and Soil & Water Board, a memo go out to SWCD boards in the spring so that they can be planning accordingly for revisions to their local cost lists.

Mr. Wootton made a motion to send the revised language to the TAC regarding power and generators. Mr. Kowalski seconded the motion. The motion passed unanimously (13Y, 0N).

## **NEW BUSINESS**

### **100% STREAM EXCLUSION COST SHARE**

Mr. Higgs asked if it would be worthwhile to offer 100% cost-share again for stream exclusion projects but have it not be “guaranteed” (as it was before to everyone who qualified who signed up). He suggested that it might simplify things (as opposed to the current matrix of rates) and get more conservation on the ground. Some members of the group stated that they felt it was important for the participant to have “buy-in” so that they have some vested interest in the project, and that the money can go farther if the cost-share rates are lower, and there are currently options for participants to get 100% or more. Mr. Higgs said he was fine with that; he was just concerned about the potential burden on staff with the current matrix system after the last meeting.

### **MAKING HAY IN THE BUFFER**

Mr. Higgs expressed concerns over the new stipulation in the SL-6 and WP-2 practices that hay cannot be made in the buffer. He suggested making it an option that they could make hay in the buffer if they elect not to receive the buffer payment. There are many situations along river bottoms where the producer is willing to put the stream exclusion fence up on the bluff, but is not willing to give up acres of bottomland (but they would be willing if they were able to make hay on it). Mr. Wootton stated that one reason that the subcommittee added this stipulation last year was because allowing hay production in the buffer would encourage fertilization next to the water body. Mr. Higgs asked if it could be brought to the TAC just to see if there would be any interest. The group decided that it could be discussed at the

next meeting. Mr. Bradford suggested that there could possibly be a variance process where large acreages could receive a variance to allow haymaking without the buffer payment.

**RECAP**

Mr. Hollberg gave a short recap of the meeting and discussed the items that need to be addressed before the next subcommittee meeting.

**NEXT MEETINGS**

Mr. Hollberg reminded the group that the next meeting is Tuesday, September 24. The group scheduled the next meeting for Monday, October 28. Both meetings will be held in the Staunton DCR office building, beginning at 9:30 am.

**ADJOURN**

The meeting adjourned at 3:40 pm.

DRAFT