



Title: Surety Return Project Update

Resolution number: 23-080: Authorization to Send Cash Sureties to the State of Minnesota Unclaimed Property Fund;
23-081: Authorization to True-up the Bremer Bank Surety Money Market Account with the District's Liability Account

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Reviewed by: Name/Title: Tessa Vacek, Administrative Services Manager and Maria Friedges, Permitting Technician

Recommended action: **Approval of resolutions**

Purpose:

This will serve as an update to the Board of Managers on the financial surety return progress made to-date by the Operations and Permitting staff, and request board action on two resolutions. The last update was provided at the December 15, 2022 board meeting.

Background:

Beginning in 2000, the District began accepting cash sureties from homeowners, developers and other permittees for certain types of construction projects triggering specific District rules – most notably, Erosion Control, Wetland Protection, Shoreline & Streambank Stabilization, Dredging, and Stormwater Management. Funds are held in a commingled District escrow bank account.

Under the District financial assurances rule, an applicant is required to submit a notice of completion to the District when work is completed. From receipt, the District has 45 days to inspect the project and determine whether the work has been completed in conformance with the permit and District rules. If a project meets all parameters of the close-out field inspection, the permit is subject to closure and outstanding escrow funds are returned to the permittee.

During the District's 2020 fiscal year annual financial audit the auditors identified 57 open sureties as being held for a decade or more. In June 2021 Operations and Permitting staff began the process of returning these sureties. These surety owners were mailed a notice and by October 2021 staff had returned 31 sureties.

Staff continued to contact surety owners in an ongoing effort to return these older sureties, however based on overall results, during the District's 2021 fiscal year audit, the auditors once again identified those sureties still being held for a decade or more. Staff continued the return process for those sureties received between 2000-2010, and in June 2022 mailed letters to those outstanding surety owners from 2011 through 2018. The outstanding sureties from 2011 through 2018 totaled 123.

Update:

Throughout 2023 staff continued their work returning the outstanding sureties received from 2000 through 2018. In

total, through December 2023, staff has returned 91 sureties in full and provided one partial return. Additionally, three surety owners forfeited their surety rather than complete the close-out requirements. (These sites passed inspection and were allowed the forfeiture.) Of the 82 remaining open sureties received from 2000-2018, five have been identified as still active projects, four failed inspections (the property owners are aware), 39 are in process and the remaining did not respond to staff's initial letter or any follow ups.

Apart from the still active projects, the remaining open sureties received from 2000-2018 continue to be addressed by staff with ongoing communications to the surety owner, or continued research into finding the owner.

Because of this progress staff is pleased to report that during the 2022 fiscal year audit the audit team agreed that sufficient progress had been made on the surety return project that it was no longer considered an outstanding issue.

Next Steps:

Over the past three years extensive searches on cash sureties have been conducted by staff utilizing the permit files and database, bank deposits and general ledgers. The results leave staff unable to match a portion of the funds in the surety bank account to permits/permit holders. This discrepancy may be permit fees and reimbursables inadvertently deposited into the surety account and never transferred out, interest earned and not transferred out or sureties not recorded properly. (Those sureties that cannot be identified are from 2000-2017 as surety tracking processes were updated in 2018 thus making this a non-issue today.) This discrepancy information has been provided to the audit team each audit cycle and during the last annual audit the audit team recommended a true-up process. A true-up is a two-step process:

1. Step one is a paper adjustment whereby the District's liability account total (what the District would have to pay should all sureties be returned) and the actual bank funds match; and
2. Step two moves the overage in unaccounted for funds from the Bremer Bank surety account to the general funds account.

Staff proposes following the audit team recommendation, with a resolution attached for board consideration to complete this true-up process. This would involve moving \$97,984.75 from the Bremer Bank surety account to the general funds account. At any point, should a surety not previously recognized as such be found, funds can easily be transferred back to the surety account from the general funds account and paid accordingly.

Additionally, it was anticipated from the onset of this project, given the age of a number of these sureties, that staff would be unable to locate owners and/or an entity would no longer be in business. After numerous mailings, on-line searches including the Minnesota Secretary of State business finder, Google, LinkedIn and various others, staff has to-date identified five sureties that the District will be unable to return. These five permit sites have been successfully inspected and would otherwise have had their funds returned to the rightful owner. Staff has included a resolution for board consideration to send these five sureties (totaling \$7,275) to the state's unclaimed property fund. Further, going forward and on an annual basis, staff will bring to the Board for consideration the surety permits identified each year that cannot be returned to the permit holder, and recommendation to forward the funds to the Minnesota Unclaimed Property Fund.

Until such time as all permit sites have been inspected and sureties returned to their rightful owner, or funds sent to the state's unclaimed property fund, staff will continue their work on this project.

Lastly, staff guidelines for an annual review process of all open sureties are being established which will help ensure all cash sureties are accounted for in a timely manner moving forward.



RESOLUTION

Resolution number: 23-080

Title: Authorization to Send Cash Sureties to the State of Minnesota Unclaimed Property Fund

- WHEREAS, Since 2000 the MCWD has accepted cash sureties for certain permit types, including erosion control wetland protection, shoreline and streambank stabilization, dredging and stormwater management; and
- WHEREAS, Cash sureties are held in a separate Bremer Bank account outside of the District’s general funds; and
- WHEREAS, Upon completion of a project the permit holder is to contact the District for an inspection of the project and begin the process of funds return; and
- WHEREAS, During the 2020 annual financial audit the auditing firm identified a number of sureties remaining with the District for a decade or more; and
- WHEREAS, Staff began the process of contacting, inspecting and returning surety funds to permit holders; and
- WHEREAS, After several mailing attempts and numerous online researches staff has identified five sureties with passing inspections that the District is unable to return to their rightful owner; and
- WHEREAS, Staff recommends sending surety funds being held for these five permits in the amount of \$7,275 to the State of Minnesota Unclaimed Property Fund.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorize staff to initiate a wire transfer from the District’s Bremer Bank surety funds account in the amount of \$7,275 to the State of Minnesota Unclaimed Property Fund.

Resolution Number 23- 080 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. 12/14/2023

Secretary Date: _____



RESOLUTION

Resolution number: 23-081

Title: Authorization to True Up the Bremer Bank Surety Money Market Account with District Liability Account

WHEREAS, Since 2000 the MCWD has accepted cash sureties for certain permit types, including erosion control wetland protection, shoreline and streambank stabilization, dredging and stormwater management; and

WHEREAS, Cash sureties are held in a separate bank fund outside of the District’s general funds; and

WHEREAS, Upon completion of a project the permit holder is to contact the District for an inspection of the project and begin the process of funds return; and

WHEREAS, During the 2020 annual financial audit the auditing firm identified numerous sureties remaining with the District for more than a decade or more; and

WHEREAS, Staff began the process of contacting, inspecting and returning surety funds to permit holders to the extent possible; and

WHEREAS, Staff has extensively searched the permitting database and files, bank deposit records and general ledgers in an attempt to identify funds that could not be tied to a permit/permit holder; and

WHEREAS, During the fiscal year 2022 annual audit the auditing firm was satisfied with the research conducted and recommended that a true-up of the surety liability and bank accounts be completed; and

WHEREAS, Step one of the true-up is a paper adjustment whereby the District’s liability total (what the District would have to pay should all sureties be returned) and the actual bank funds match, and step two moves the overage in unaccounted for funds from the Bremer Bank surety account to the general funds account; and

WHEREAS, Staff recommends moving \$97,984.75 from the Bremer Bank surety account to the general funds account with the understanding that funds can be transferred back to the surety account should a previously unidentified surety holder make a return request.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorize staff to initiate a funds transfer in the amount of \$97,984.75 from the Bremer Bank surety account to the general funds account to complete the true-up process between the District’s recorded liability and the funds held in the surety accounts at Bremer Bank.

Resolution Number 23- 081 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. 12/14/2023

Secretary Date: _____