



**Title:** Approval of Transition to Internal Management of Noncash Financial Assurances

**Prepared by:** Maggie Menden, Permitting Technician  
mmenden@minnehahacreek.org

**Reviewed by:** Deb Johnson, Office Manager  
Chuck Holtman, MCWD Legal Counsel

**Recommended action:** Approval at March 26, 2026, Board meeting

**Background:**

The Minnehaha Creek Watershed District Rules require in certain circumstances that a permittee submit a financial assurance (e.g. performance bond, letter of credit, cash or check escrow deposit) to assure the satisfactory completion of a project. Additionally, District contractors hired for capital project work provide performance and payment bonds pursuant to statute and, on occasion, warranty bonds.

Currently, and as affirmed by the Board most recently at the January 8, 2026 board meeting, noncash financial assurances are to be transmitted to the District's legal counsel (Smith Partners) at its office in Minneapolis and held there for safekeeping. Smith Partners provides the District with a monthly record of the financial assurances held at its office.

Cash and check escrow deposits are reviewed and processed internally by the Permitting Department, and deposited into a separate escrow account held at Old National Bank, the District's approved financial institution.

While the non-cash process has provided secure document storage, it requires applicants to submit financial assurance documents to multiple parties and results in District staff relying on external tracking and reporting to monitor active assurances.

**Proposal:**

The Permitting Department, in consultation with Operations and Legal Counsel, proposes that the review and management of noncash financial assurances be moved in-house.

Under this approach, District staff would review the documents for compliance with District requirements and maintain custody of the original financial assurance documents. Legal counsel would remain available for consultation on complex or nonstandard instruments, in the same way as at present.

Centralizing management of all financial assurances within the District will allow staff to maintain a single internal tracking system for cash, check, and noncash assurances. This will provide more direct oversight of active assurances and simplify administration for staff.

This change will also streamline the process for permit applicants and contractors by allowing all financial assurance documents to be submitted directly to the District rather than requiring separate coordination with outside counsel.

**Management and Internal Controls:**

District staff would follow internal protocols for receiving, safekeeping, and tracking noncash financial assurance documents. Upon receipt, original documents would be promptly placed in the District safe for secure storage. Staff would maintain an internal tracking log of all active financial assurances and follow established procedures for document release, return, or destruction when assurances are no longer required. Access to the safe and the documents would be limited to designated staff.

Legal counsel indicates that management of these documents is straightforward provided the District maintains diligent procedures for secure storage, tracking, and document handling, in much the same way as is currently being done for cash assurances currently being managed by staff in-house. Staff will consult with counsel in setting management protocol.

Based on this consultation, staff recommend Board approval of the proposed change.



**RESOLUTION**

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Resolution number: 26-034

Title: Approval of Transition to Internal Management of Noncash Financial Assurances

WHEREAS, The Minnehaha Creek Watershed District Rules require in certain circumstances that permittees submit financial assurances (e.g., performance bonds, letters of credit, or other noncash instruments) to assure the satisfactory completion of permitted projects; and

WHEREAS, Contractors hired to perform work on MCWD capital projects may also be required to provide performance, payment and warranty bonds to the District; and

WHEREAS, Noncash financial assurance documents have historically been reviewed and held by the District’s legal counsel, Smith Partners, which has provided secure storage and a monthly record of such documents; and

WHEREAS, District staff, in consultation with legal counsel, have evaluated the management of noncash financial assurances and recommend transitioning the review and custody of these documents to the District to allow for centralized administration and oversight of all financial assurances; and

WHEREAS, The District will maintain procedures for the secure storage, tracking, and handling of noncash financial assurance documents.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers approves the transition to internal management of noncash financial assurances received by the District.

Resolution Number 26-034 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 3/26/2026

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Secretary Date: \_\_\_\_\_