Rice Creek Watershed District

POLICY FOR MANAGEMENT OF PERMIT BONDS, LETTERS OF CREDIT, CASH ESCROWS AND ABANDONED PROPERTY

Board approved February 24, 2010

As provided by state law, the Rice Creek Watershed District (District) receives fees from applicants to reimburse the District for the costs of processing and administration of permits required by the District rules. The District also receives bonds, letters of credit and cash deposits as financial assurances to secure the performance of permittees in compliance with terms and conditions. To ensure that such assets are managed in accordance with sound financial practices and state law governing local government financial practices and management of abandoned property, the District establishes policy and protocols for the management of financial instruments, cash escrows and permit fees.

1. **Permit fee payments.** The District will accept, process and maintain permit fees in accordance with District rules and the following protocols.
   a. The District will not accept cash in payment of permit fees.
   b. Checks received by the District in payment of permit fees will be deposited within 10 business days.

2. **Financial assurance deposits.** The District will catalogue and maintain financial assurances and cash escrows in accordance with the following protocols.
   a. Financial assurance instruments (bonds, letters of credit and checks) received by the District to secure performance of permit conditions will be logged in the Surety Document Log created for such purposes, then copied and the copy filed at the District offices. The Surety Document Log will include, at a minimum, the following information:
      i. Permit number for which the financial assurance instrument is provided;
      ii. Name of the permittee/escrow provider;
      iii. Name, for bonds and letters of credit, of the surety;
      iv. Amount(s) of the financial assurances provided;
      v. Expiration date, if any, of the financial assurance;
      vi. Location of the financial assurance instrument or deposit.
   b. Original bonds and letters of credit will be deposited for safekeeping at a location to be designated annually by the District Board of Managers at the meeting at which the official depository is designated.
   c. When a cash escrow is to be provided in fulfillment of District performance assurance requirements, the permittee/escrow provider will be required as a condition of permit issuance, transfer or renewal to enter into a cash escrow agreement with the District.
      i. The District, with the advice of counsel, will maintain a cash escrow agreement template for use by permittees/escrow providers.
      ii. The District will not accept cash in payment of cash escrows (i.e., only checks or other bank drafts will be accepted).
      iii. Permit approval may be revoked for failure to comply with this requirement.
   d. No check will be accepted by the District to serve as a financial assurance to secure performance of permit conditions until District staff has verified receipt of an associated executed escrow agreement, specifying the required deposit amount and permit to be secured by the deposit. The check must be in the amount specified in the agreement and must bear the number of the District permit to be secured.
3. **Maintenance of valid financial assurances.** To ensure that the District has the capacity to assure compliance with its rules and protect the District’s water resources in the event of noncompliance with permit conditions and/or rules, District staff will follow the protocols below to ensure that financial assurances of permit performance remain valid and enforceable:
   a. District compliance with the protocols in this section will be the responsibility of the District Surety Officer, designated by the Administrator.
   b. The Surety Officer will maintain the Surety Document Log.
   c. The Surety Officer will review the Surety Document Log monthly to ensure the continuing validity of financial assurances provided for active permits by identifying bonds and letters of credit that will expire within the ensuring 90 days.
   d. The Surety Officer will determine – in the course of his or her monthly review of the Surety Document Log – whether replacement of the financial assurance is needed for a particular project, and, if so, alert the permittee to the need to provide a replacement instrument 60 days prior to the expiration of the existing instrument.
   e. If deemed necessary in response to a permittee’s unwillingness or inability to provide a replacement surety, the District Surety Officer will contact counsel at least 30 days prior to the expiration of the surety to initiate procedures to draw on the existing surety.
      i. The Surety Officer will ensure that proper authorization for a surety draw is secured in a timely manner, with a priority on the protection of District water resources.

4. **Return of financial permit assurances.** Financial assurance instruments will be returned in accordance with applicable District rules, including Rule B, section 9(d).
   a. The District Surety Officer will monthly designate financial assurances that may be returned to the provider and ensure return of such instruments and/or funds.
   b. District staff will maintain record of returned financial assurances in the Surety Document Log and retain a copy of original financial assurance documents in compliance with the District records retention schedule.

5. **Abandoned property procedures.** State law imposes requirements applicable to any intangible asset in the District’s possession that remains unclaimed for three years or more after the asset is no longer needed for District purposes (e.g., three years after a permitted project is completed and the associated financial assurance becomes eligible for release in accordance with District rules). To ensure compliance with abandoned property requirements, the District establishes the following protocols:
   a. The District will annually assess whether cash escrows remain on deposit after completion of the applicable permitted work and attempt to return them. For cash escrows that have been in the District’s possession for three years or more, unclaimed by the owner, staff will commence unclaimed property return procedures as follows.
      i. By July 1 of each year, staff will notify owners by mail of unclaimed property. A letter should be sent to all known addresses on file for the owner, notifying owner of the amount still held by the District and describing steps necessary to claim the property. Staff need not send such a letter if documentation in the District’s possession indicates that the address(es) it has for the owner are inaccurate.
      ii. If the owner cannot be found, the assets are deemed legally abandoned and the District will remit them to the state Commissioner of Commerce, along with the
report required by Minnesota Statutes section 345.41, as may be amended, containing information on the identity of the owner of the unclaimed assets in the District’s possession, a description of the assets, the date the assets became payable or returnable to the owner and other information that may be required by the commissioner. Formatting and filing of the report will be in compliance with the current edition of the Department of Commerce publication “Holder Report Guide.”

iii. By October 31 each year, staff should file the required report, verified by the Administrator, with the commissioner and remit all assets unclaimed as of the preceding June 30 to the commissioner.

iv. The District may deduct a service charge from the unclaimed assets remitted to cover costs of attempting to locate an owner and, if necessary, reporting and paying the unclaimed funds to the commissioner only if the escrow provider has agreed to deduction of such charges.