

ANALYSIS OF THE WATER DEVELOPMENT TRUST FUND FOR THE 2011-13 AND 2013-15 BIENNIUMS

	2011-13 Biennium		2013-15 Biennium	
	Beginning balance		\$25,209,356	
Add estimated revenues				
Transfers to date from tobacco settlement trust fund	\$18,108,052 ¹		\$0	
Projected remaining transfers from tobacco settlement trust fund			18,000,000 ²	
Total estimated revenues		18,108,052 ³		18,000,000 ³
Total available		\$43,317,408		\$44,377,674
Less estimated expenditures and transfers				
State Water Commission (2011 SB 2020; 2013 HB 1020)				
Water projects	\$0 ⁴		\$27,368,500 ⁵	
Bond payments	16,939,734 ⁴		16,881,500 ⁵	
Total estimated expenditures and transfers		16,939,734		44,250,000
Estimated ending balance		\$26,377,674		\$127,674

¹As of April 2013, \$18,108,052 has been transferred from the tobacco settlement trust fund for the 2011-13 biennium. Total transfers of \$152,533,688 have been made from the tobacco settlement trust fund to the water development trust fund.

²Revenues - Interest earned on the water development trust fund is deposited in the state general fund. Water development trust fund revenues have been estimated based on actual revenues received through April 2013 and the average of actual revenues received into the water development trust fund in fiscal years 2011 and 2012.

³Initiated measure No. 3 (2008) resulted in the following estimated allocation of the revised estimated collections for tobacco settlement payments through 2025:

	Actual and Estimated Total Tobacco Settlement Proceeds	Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(2) Deposited in the Tobacco Prevention and Control Trust Fund	Allocation of Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(1)		
			Common Schools Trust Fund	Water Development Trust Fund	Community Health Trust Fund
Actual payment April 2008	\$36.4 million	N/A	\$16.4 million	\$16.4 million	\$3.6 million
Actual payment April 2009	39.2 million	\$14.1 million	11.3 million	11.3 million	2.5 million
Actual payments 2009-11 biennium	64.0 million	23.5 million	18.2 million	18.2 million	4.1 million
Estimated 2011-13 biennium	62.8 million	22.6 million	18.1 million	18.1 million	4.0 million
Estimated 2013-15 biennium	62.6 million	22.6 million	18.0 million	18.0 million	4.0 million
Estimated 2015-17 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2017-19 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2019-21 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2021-23 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2023-25 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Total	\$548.7 million	\$110.4 million	\$197.2 million	\$197.2 million	\$43.9 million

In 2006 certain tobacco companies began reducing their tobacco settlement payments to North Dakota contending that the Master Settlement Agreement allows for the payments to be reduced if they lose sales to small cigarette makers that did not participate in the agreement and if states do not enforce laws intended to make smaller tobacco companies set aside money for legal claims. The Attorney General's office has filed a lawsuit against the tobacco companies to collect full payment.

⁴The Legislative Assembly in 2011 provided a total of \$37,189,734, or any additional funding that becomes available, from the water development trust fund for the purpose of defraying the expenses of the State Water Commission for the 2011-13 biennium. However, the expenditure of any funds in excess of the funding appropriated in the water and atmospheric resources line item in Section 1 of Senate Bill No. 2020 requires Budget Section approval. Bond payments for the 2011-13 biennium are estimated to total \$16,939,734. The remaining balance is available for State Water Commission projects; however, the State Water Commission does not anticipate expenditures for water projects from the water development trust fund during the 2011-13 biennium.

⁵Sections 1 and 4 of 2013 House Bill No. 1020 appropriate \$44,250,000, or any additional funding that becomes available subject to Budget Section approval, from the water development trust fund for the purpose of defraying the expenses of the State Water Commission for the 2013-15 biennium, including bond payments. Bond payments for the 2013-15 biennium are estimated to total \$16,881,500. The remainder of the funds appropriated totaling \$27.4 million is available for water projects. However, if funding available from the resources trust fund for water projects for the 2013-15 biennium exceeds \$287 million, Section 13 of House Bill No. 1020 provides legislative intent that, of the funds appropriated to the State Water Commission in the water and atmospheric resources line item, \$60 million from the resources trust fund is provided to the State Water Commission for the purpose of paying off or defeasing the commission's outstanding bond issues. Funding from the water development trust fund provided for bond payments (\$16.9 million) and contingent funding from the resources trust fund (\$60 million) totaling \$76.9 million would be available to defease State Water Commission outstanding bond issues of \$75,250,000 and pay related fees.

FUND HISTORY

North Dakota Century Code Section 54-27-25, created by 1999 House Bill No. 1475, establishes a water development trust fund to be used for the long-term water development and management needs of the state. This section creates a tobacco settlement trust fund for the deposit of all tobacco settlement money obtained by the state. Money in the fund must be transferred within 30 days of its deposit in the fund:

- 10 percent to the community health trust fund.
- 45 percent to the common schools trust fund.
- 45 percent to the water development trust fund.

In the November 2008 general election, voters approved initiated measure No. 3 that amended Section 54-27-25 to establish a tobacco prevention and control trust fund. The measure provides for a portion of tobacco settlement funds received by the state to be deposited in this new fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continue in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement relating to strategic contribution payments, which began in 2008 and continue through 2017, will beginning in 2009 be deposited into the newly created tobacco prevention and control trust fund. The measure also provides that if in any biennium the tobacco prevention and control trust fund does not have adequate funding for the comprehensive plan, money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the Tobacco Prevention and Control Executive Committee to adequately provide for the comprehensive plan. The Legislative Assembly in Section 39 of 2009 House Bill No. 1015 provided any money deposited in the water development trust fund under Section 54-27-25 may only be spent pursuant to legislative appropriation.

The tobacco settlement payment received by the state in April 2008 was the first payment that included funds relating to subsection IX(c)(2) of the agreement. This payment was received prior to the approval of the measure and was deposited in the tobacco settlement trust fund and disbursed as provided for in Section 54-27-25 prior to amendment by the measure. In 2009 tobacco settlement payments began to be deposited in the tobacco settlement trust fund and the tobacco prevention and control trust fund pursuant to Section 54-27-25 as amended by the measure.

Section 61-02.1-04, created by 1999 Senate Bill No. 2188, provides the principal and interest on bonds issued for flood control projects, the Southwest Pipeline Project, and an outlet to Devils Lake must be repaid with money appropriated from the water development trust fund.