

ANALYSIS OF THE WATER DEVELOPMENT TRUST FUND FOR THE 2013-15 AND 2015-17 BIENNIUMS

	2013-15 Biennium		2015-17 Biennium	
Beginning balance		\$26,550,736		\$26,764,452
Add estimated revenues				
Transfers to date from tobacco settlement trust fund	\$19,003,716 ¹			
Projected remaining transfers from tobacco settlement trust fund			\$17,910,000 ²	
Total estimated revenues		19,003,716 ²		17,910,000 ²
Total available		\$45,554,452		\$44,674,452
Less estimated expenditures and transfers				
Water projects	\$1,908,500 ³		\$27,500,000 ⁴	
State Water Commission (2013 HB 1020; 2015 SB 2020)	16,881,500 ³		7,000,000 ⁴	
Total estimated expenditures and transfers		18,790,000		34,500,000
Estimated ending balance		\$26,764,452		\$10,174,452

¹As of May 2015, \$19,003,716 has been transferred from the tobacco settlement trust fund for the 2013-15 biennium. Total transfers of \$171,537,405 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 general fund. Water development trust fund revenues have been estimated based on actual revenues received through May 2015 and estimated revenues per the March 2015 legislative revenue forecast, net of funds appropriated from the tobacco settlement trust fund to the Attorney General's office for the enforcement of the Master Settlement Agreement and related disputes.

Initiated 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, Net of Attorney General Costs	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
Actual payments 2011-13 biennium	63.0 million	22.8 million	18.1 million	18.1 million	4.0 million
Estimated 2013-15 biennium	64.6 million	22.4 million	19.0 million	19.0 million	4.2 million
Estimated 2015-17 biennium	62.4 million	22.6 million	17.9 million	17.9 million	4.0 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	\$539.6 million	\$105.4 million	\$195.3 million	\$195.3 million	\$43.6 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.

³Sections 1 and 4 of 2013 House Bill No. 1020 appropriated \$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 were estimated to total \$16,881,500. The remainder of the funds appropriated totaling \$27.4 million were 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 provided legislative intent that, of the funds appropriated to the commission in the water and atmospheric resources line item, \$60 million from the resources trust fund was provided to the 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 the commission's outstanding bond issues of \$75,250,000 and pay related fees. Through October 2014, \$403.8 million was credited to the resources trust fund. The State Water Commission has retired five Southwest Pipeline Project series bonds and defeased another. In addition, the State Water Commission anticipated using funds available in the water development trust fund and the resources trust fund to pay off two remaining water development series bonds before the end of the 2013-15 biennium. The Legislative Assembly, in Senate Bill No. 2020 (2015), directed the State Water Commission to refinance the bonds referenced in this footnote with the Bank of North Dakota and to continue annual loan payments on the bonds, instead of paying them off, reducing 2013-15 biennium expenditures by \$17.5 million.

⁴Sections 1 and 5 of 2015 Senate Bill No. 2020 appropriate \$34.5 million, 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 2015-17 biennium, of which \$27.5 million is for water projects and \$7 million is for payment on refinanced bonds.

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 continues 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, began to be deposited in 2009 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.

The Legislative Assembly, in Senate Bill No. 2003 (2015), amended Section 54-27-25 relating to the tobacco settlement trust fund to provide the principal and interest of the fund may be appropriated to the Attorney General for the enforcement of the Master Settlement Agreement and any disputes with the agreement. Appropriations made to the Attorney General for enforcement of the Master Settlement Agreement reduce the amount available for transfer from the tobacco settlement trust fund to the water development trust fund.