

ANALYSIS OF THE WATER DEVELOPMENT TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS

| | 2007-09 Biennium | | 2009-11 Biennium | |
|--|---------------------------|-------------------------|---------------------------|-------------------------|
| Beginning balance | | \$8,989,953 | | \$21,602,258 |
| Add estimated revenues | | | | |
| Transfers to date from tobacco settlement trust fund | \$27,672,929 ¹ | | \$0 | |
| Projected remaining transfers from tobacco settlement trust fund | | | 19,746,536 | |
| Total estimated revenues | | 27,672,929 ² | | 19,746,536 ² |
| Total available | | \$36,662,882 | | \$41,348,794 |
| Less estimated expenditures and transfers | | | | |
| State Water Commission (2007 SB 2020, 2009 HB 1020) | | | | |
| Water projects | \$0 ³ | | \$13,866,925 ⁴ | |
| Bond payments | 13,992,714 ³ | | 16,976,076 ⁴ | |
| Administrative expenses | 1,067,910 ³ | | 0 ⁴ | |
| Total estimated expenditures and transfers | | 15,060,624 | | 30,843,001 |
| Estimated ending balance | | \$21,602,258 | | \$10,505,793 |

¹For the 2007-09 biennium five transfers totaling \$27,672,929 have been made from the tobacco settlement trust fund as of May 2009. Total transfers of \$116,176,803 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.

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. Due to the uncertainty of the lawsuit, the Office of Management and Budget has reduced the estimated tobacco settlement revenues for the 2009-11 biennium by 3 percent. The water development trust fund share of the 3 percent reduction is \$994,778 for the 2009-11 biennium.

Approved by voters in the November 2008 general election, initiated measure No. 3 amends North Dakota Century Code (NDCC) Section 54-27-25 to provide that a portion of tobacco settlement funds received by the state be deposited in the newly created tobacco prevention and control trust 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, which began in 2008 and continues through 2017, beginning in 2009 will be deposited in the tobacco prevention and control trust fund. The amount received under subsection IX(c)(2) of the Master Settlement Agreement for 2008 was \$13,797,729. Remaining water development trust fund revenues have been estimated based on the Office of Management and Budget revised estimated collections less actual and anticipated strategic contribution payments. 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 2009 Legislative Assembly, in Section 39 of House Bill No. 1015, provided that any money deposited in the water development trust fund under Section 54-27-25 may only be spent pursuant to legislative appropriation.

Initiated measure No. 3 will result in the following estimated allocation of the revised estimated collections of the tobacco settlement payments through 2025:

| | Actual and Estimated Total Tobacco Settlement Proceeds | 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 | \$36.5 million | N/A | \$16.4 million | \$16.4 million | \$3.7 million |
| Actual payment April 2009 | 39.2 million | \$14.1 million | 11.3 million | 11.3 million | 2.5 million |
| Estimated 2009-11 biennium | 71.5 million | 27.6 million | 19.8 million | 19.8 million | 4.3 million |
| Estimated 2011-13 biennium | 73.7 million | 27.6 million | 20.8 million | 20.8 million | 4.5 million |
| Estimated 2013-15 biennium | 73.7 million | 27.6 million | 20.8 million | 20.8 million | 4.5 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 | \$578.3 million | \$124.5 million | \$204.3 million | \$204.3 million | \$45.2 million |

³Section 5 of Senate Bill No. 2020 (2007) appropriated \$40,055,999, or any additional amount that becomes available, from the water development trust fund for the purpose of defraying the expenses of the State Water Commission. The agency anticipates expenditures will total \$15,060,624 for the 2007-09 biennium, including bond payments of \$13,992,714 and administrative expenses of \$1,067,910.

⁴The 2009-11 executive recommendation provided \$32,376,076, or any additional amount that becomes available, from the water development trust fund for the purpose of defraying the expenses of the State Water Commission for the 2009-11 biennium. The 2009 Legislative Assembly decreased funding from the water development trust fund and increased funding from the general fund by \$1,533,075 for administrative and support services to provide a total of \$30,843,001, or any additional amount that becomes available, from the water development trust fund for bond payments and water projects. Total 2009-11 biennium bond payments will be \$16,976,076. The remaining balance of approximately \$13.9 million will be available for State Water Commission projects.

FUND HISTORY

North Dakota Century Code Section 54-27-25, created by 1999 House Bill No. 1475, established 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:

- Ten percent to the community health trust fund.
- Forty-five percent to the common schools trust fund.
- Forty-five percent to the water development trust fund.

In the November 2008 general election voters approved initiated measure No. 3 that amended NDCC 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 continues 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 2009 Legislative Assembly, in Section 39 of House Bill No. 1015, provided that 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 NDCC Section 54-27-25 prior to amendment by the measure. Future tobacco settlement payments will 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.

North Dakota Century Code Section 61-02.1-04, created by 1999 Senate Bill No. 2188, provides that 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.