

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

	2007-09 Biennium Actual		2009-11 Biennium Estimated	
Beginning balance		\$8,989,953		\$21,010,583
Add revenues				
Transfers to date from tobacco settlement trust fund	\$27,672,929		\$9,367,589 ¹	
Projected remaining transfers from tobacco settlement trust fund			9,873,268	
Total revenues		27,672,929 ²		19,240,857 ²
Total available		\$36,662,882		\$40,251,440
Less expenditures and transfers				
State Water Commission (2007 SB 2020, 2009 HB 1020)				
Water projects	\$0		\$13,866,925 ³	
Bond payments	12,506,168		16,976,076 ³	
Administrative expenses	3,146,131		0 ³	
Total expenditures and transfers		15,652,299		30,843,001
Ending balance		\$21,010,583		\$9,408,439

¹For the 2009-11 biennium, two transfers totaling \$9,367,589 have been made from the tobacco settlement trust fund as of May 2010. Total transfers of \$125,544,392 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 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	\$36.4 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
Estimated 2009-11 biennium	68.8 million	26.1 million	19.2 million	19.2 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	\$575.5 million	\$123.0 million	\$203.7 million	\$203.7 million	\$45.1 million

³The 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.

NOTE: The estimated June 30, 2011, balance made at the end of the 2009 legislative session was \$10,505,793. The decrease in the estimated balance of \$1,097,354 is due to a decrease in the June 30, 2009, ending balance of \$591,675 and a decrease in the estimated transfers from tobacco settlement trust fund during the 2009-11 biennium of \$505,679.

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 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 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 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.