

TREASURE STATE REGIONAL WATER PROGRAM

Program Description

The 1999 Legislature created the treasure state endowment regional water system fund as a new sub-trust within the coal tax permanent trust. The program is administered by the Department of Natural Resources and Conservation (DNRC). The Treasure State Endowment Program Regional Water System (TSEPRW), established in 90-6-715, MCA, was created to:

“...finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stock water for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stock water for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.”

Two projects that have received federal authorization and now qualify for a match of federal funding are the Fort Peck Indian Reservation/Dry Prairie Regional Water System (Fort Peck/Dry Prairie) and the Rocky Boy’s Indian Reservation/North Central Montana Regional Water System (Rocky Boy’s/NC Montana). The state’s share of the financial obligation for these projects was met in full with the appropriations of the 2013 Legislature.

A third project, the Dry-Redwater Regional Water System, would bring water to portions of Garfield, McCone, Richland, Prairie, and Dawson counties. The Dry-Redwater Regional Water Authority was established in FY 2006, and a project feasibility study was completed in FY 2007. A fourth project, the Musselshell-Judith Regional Water System (Central Montana Regional Water Authority), has not qualified for federal funding, but has received program approval from the state. Both of these projects are progressing through planning phases specified by the Department of Interior and are seeking federal authorization.

The Regional Water Authorities prioritize the construction projects. Each system prioritizes projects based on several criteria but the top three are:

- Need (is there a boil order in the town or an urgent need for the construction)
- Feasibility (can the project move forward this biennium given the Regional Water System infrastructure already in place?)
- Cost & Funding (Is the project affordable based on available funds? This is dependent on Federal and State funds and if the local community is prepared to pay their share)

LFD COMMENT

The following statutory language (90-6-715, MCA) restricts the use of TSEPRW funds.

“(1)(a) The treasure state endowment regional water system special revenue account may be used to: (i) provide matching funds to plan and construct regional drinking water systems in Montana...”

Through time, legislative staff has strictly interpreted this language to mean a match to federal funding. The two projects approved for federal funding by Congress included full match rates for the participating entities (federal government, state government, and local governments). However, the language is vague and does not specify from whom the match is intended. Indeed the language could be interpreted more liberally to mean a match provided by the impacted local governments and/or the regional water authorities. Furthermore, the language is permissive (may) and ultimately does not require that the program funds be used as a match.

Regional water projects are large and costly systems; as an example the two federally authorized projects had cost estimates of \$303 and \$375 million. The Dry Redwater project is expected to cost

TREASURE STATE REGIONAL WATER PROGRAM

**LFD
COMMENT
(continued)**

\$300 million and the Musselshell-Judith project \$85 million. With program funding as provided in the TSEPRW alone and given a rate of return of 5%, it would take in excess of 70 years to fully fund the costs of the Dry Redwater regional water system (or 20 years for the Musselshell-Judith regional water project). That said, the assistance of the federal government in the planning and construction of these projects is very important.

Should the legislature wish to continue the TSEPRW program (see issue below), the legislature may want to consider changes to statutes. Options available to the Legislature include:

- Amend statute to require the match be from either local or federal funds
- Amend statute to require the match be made from federal funds only
- Amend statute to remove the permissive language, may, and replace with strict language, shall or must
- Make both changes
- Draft a new section to the code that more explicitly lays out the program funding conditions
- Do nothing

Program Budget Comparison

The following table summarizes the proposed executive budget for the program by biennium, type of expenditure, and source of funding.

Program Comparison - Treasure State Endowment Regional Water Program				
Budget Item	Budget 2015 Biennium	Budget 2017 Biennium	Biennium Change	Biennium % Change
Trust Balance (End of Biennium)	\$79,470,000	\$0	(\$79,470,000)	-100.00%
Trust Earnings	7,664,540	3,270,000	(4,394,540)	-57.34%
	<u>Appropriated</u>	<u>Proposed</u>		
Projects Funding	\$17,000,000	\$3,259,761	(\$13,740,239)	-80.82%
Total Costs	\$17,000,000	\$3,259,761	(\$13,740,239)	-80.82%
State Special	\$17,000,000 *	\$3,259,761	(\$13,740,239)	-80.82%
Total Funds	\$17,000,000	\$3,259,761	(\$13,740,239)	-80.82%
* Includes \$8.4 million transferred from the general fund				

Program Discussion

The executive budget proposal TSEPRW for the 2017 biennium will be presented in HB 5, Sec. 25. As seen in the figure above, the executive proposes project funding of \$3.3 million in the 2017 biennium. The proposal is an reduction of 80.8% from the 2015 biennium, but it is useful to remember that in the prior biennium, the legislature provided a transfer of \$8.4 million from the general fund to the TSEPRW fund for projects in the 2015 biennium. Were it not for the general fund transfer, the change in appropriation level would be a reduction of 31.4%.

The \$17.0 million of appropriation provided by the 2013 Legislature fully funded the state's match of the cost of the Fort Peck/Dry Prairie and the Rocky Boy's/NC Montana water projects. The two newer projects have not been authorized by the federal government and are not expected to receive funding for the projects until that occurs. As a result, it is not known whose dollars the state's funding would match.

Funding

The TSEPRW trust is a "sub-trust" of the permanent coal severance tax trust. The corpus of the sub-trust has grown since its formation in 1999 with distributions of 25% of the coal severance tax deposited

TREASURE STATE REGIONAL WATER PROGRAM

into the coal tax trust (12.5% of the total coal severance tax). The trust balance is expected to be \$79.5 million by the end of the 2015 biennium, but the trust is sunset from law as of July 1, 2016 with the sub-trust balance expected to be reverted to the permanent trust of the coal severance tax trust. Through FY 2016, the interest earned from the trust is transferred into the state special revenue fund authorized in Title 90, Section 6, part 7, MCA, to provide a match for the development of large water systems.

The figure to the right shows the fund balance calculation for the TSEPRW account for the 2017 biennium. The beginning fund balance is expected to be a negative \$1.5 million at the beginning of the 2017 biennium. The negative balance results from lower than anticipated interest earnings from the trust experienced in recent years. Because under current law the TSEPRW will expire mid-biennium, the trust earnings are only expected to be \$3.3 million in

TSEP Regional Water System Fund (02015)				
Fund Balance Projection 2017 Biennium				
Estimated Beginning Fund Balance (7/1/2015)				(\$1,505,026)
Revenue Projections¹				
Interest Earnings	FY 2016	FY 2017	Bien	
	\$3,268,620	\$0	\$3,268,620	3,268,620
2017 Biennium Revenues				
Proposed Expenditures				
Administration - DNRC ²	(116,698)	(116,698)	(233,396)	
Regional Water Authority Admin. Grants ²	(921,500)	(921,500)	(1,843,000)	
Grant Appropriation	(3,259,761)		(3,259,761)	
Total 2017 Proposed Expenditures				(5,336,157)
Estimated Ending Fund Balance - (6/30/2017)				(\$3,572,563)

¹Based on HJ2 estimates

²Based on executive budget proposal HB 2

the biennium, as estimated in HJ 2. Statutorily, the interest earnings of the trust may be used to fund the administrative expenses for the program, and the executive recommendation proposes a DNRC administrative appropriation of \$0.2 million and a \$1.8 million grants appropriation for the administrative costs of the four regional water authorities, recommended in the general appropriation act. The appropriation of \$3.3 million is proposed for regional water project matching funds. Without action on the part of the Sixty-fourth Legislature to continue the TSEPRW program, the \$1.0 million administrative appropriations in FY 2017 will not occur, which will then leave the fund with a negative balance of \$2.5 million. Ultimately, the fund cannot support the amount of appropriations recommended by the executive without legislative action to continue the program or provide additional funding.

**LFD
ISSUE**

Negative Ending Balance

As shown in the fund balance figure above, under current law the TSEPRW program and funding source is set to expire mid-biennium and the fund is expected to finish the biennium with a negative ending fund balance. According to the Montana Constitution, Article VIII., Section 9, "Appropriations by the legislature shall not exceed anticipated revenue." There are a number of options available to the legislature related to the status of this fund, which include:

- Reducing the appropriation for TSEPRW in HB 5
- Recommending a reduction of HB 2 appropriations to the Sec. C subcommittee, either administrative assistance to the regional water authorities or program administrative costs
- Continuing the TSEPRW trust, thereby increasing revenues for the 2017 biennium
- Transfer additional revenues into the program to cover the costs of the appropriations

**LFD
COMMENT**

Agency Statutory Amendment Request

At the request of DNRC, LC 718 is expected to be introduced to continue the TSEPRW. When the legislation implementing the TSEPRW was passed by the 1999 Legislature, it contained a termination date for the statutory amendments, which at that time was 2013. Since, the termination date was revised to 6/30/2016. The legislation would eliminate the termination date from the original legislation.

TREASURE STATE REGIONAL WATER PROGRAM

LFD ISSUE

The End of TSEPRW Funding

In 17-5-703, MCA, which provides for the distributions of the coal severance tax to the named trusts, all reference to the TSEPRW trust will disappear as of July 1, 2016 (mid-way in the 2017 biennium). Furthermore, the state special fund used for the purpose of appropriation as provided in 90-6-715, MCA (provided as temporary) will likewise disappear. When the trust disappears from statute, there will no longer be any mention of the TSEPRW program in statute, which could be inferred as the end of the program altogether. Yet, if the program continues, and without statutory changes, another source of program funding will be required to support program costs and water authority administration costs, not to mention regional water construction.

TSEPRW started when the Ft. Peck/Dry Prairie and Rocky Boy/North Central regional water authorities were formed. Since, the state funding for the construction projects has been met and some federal project funding has been received. However, two additional regional water authorities have been formed, the Dry Redwater nor the Musselshell Judith, which has extended the need for the program and program funding. Neither of these systems have received federal recognition as regional water systems, although both have sought authorization. Without federal authorization, it is unlikely that federal funds will be directed to the projects. Consequently, even if the TSEPRW trust continued to exist, system construction may be delayed.

The statute is not specific about the handling of the TSEPRW funds as they disappear from the law. As such, legislative staff believe that the balance of the TSEPRW trust will revert to the permanent trust, increasing the flow of investment earnings to the general fund.

On June 30, 2016, 90-6-715 (the program statutory guidelines and state special revenue fund) will terminate. Legislative legal staff has suggested that 17-1-503 would guide the actions related to the fund. The statute states, "The balance remaining in each special revenue account terminated pursuant to legislative review must be deposited in the general fund." Without legislative action to change the law, it is likely that any uncommitted or encumbered balance would likely be transferred to the general fund.

The Legislature has options for addressing this issue before the funding for the TSEPRW program funding is eliminated. Ultimately, the Legislature must decide if the program as currently managed should continue. If not, then the termination of the trust and the TSEPRW statute will eliminate, if nothing else, the current funding. If, however, the legislature wants to continue the program the following options may help to frame a discussion:

- Insert the TSEPRW trust back into 17-5-703
- Eliminate the temporary status of 90-6-715
- Provide statute to better substantiate the program