

THE COST OF SAFE DRINKING WATER

Fiscal Impacts of the EPA review of Montana's Public Water Supply
Program

A Report Prepared for the
Legislative Finance Committee

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PURPOSE

The State of Montana, through the Department of Environmental Quality (DEQ), operates a Public Water Supply program to assure the safe delivery of drinking water. The program is funded with state special revenue and federal funding from the U.S. Environmental Protection Agency (EPA). This federal funding is available as Montana's drinking water regulations are just as strict as the federal regulations. The state has primacy over the drinking water program, meaning that the state takes the lead in implementing the federal Safe Water Drinking Act (SWDA). With primacy comes a routine review of the state's program to ensure that the state has the capacity to adequately enforce the SWDA. The adequacy of this program was raised as a performance challenge as a result of the performance measurement process at the June 2008 meeting of the Legislative Finance Committee.

The purpose of this report is to provide information and fiscal implications of the recent review of the Public Water Supply (PWS) by the EPA, and with the methods and source of funding for the response by DEQ, which will result in deliberations regarding policies and resources in the upcoming legislative session.

PROGRAM RESPONSIBILITIES

The PWS program at DEQ has the following responsibilities:

- Monitor and oversee required public drinking water system sampling to assure the delivery of safe water to the users of the system
- Provide technical review and approval of public drinking water
- Conduct sanitary surveys of public drinking water systems and provide technical assistance to help systems maintain compliance
- Maintain a comprehensive record system for public drinking water sampling and results, and design and maintenance activities, and
- Provide training and certification for operators of drinking water systems

REPORT CONCERNS

The EPA has provided primacy to the DEQ for the implementation and regulation of the Safe Water Drinking Act. In order to maintain primacy status, the Public Water Supply (PWS) program in Montana must have state regulations as stringent as federal regulations and have adequate procedures for enforcement of such regulations. The recent review by the EPA determined that DEQ lacked resources to adequately enforce PWS regulations. The lack of adequate resources to operate the oversight program could put the safety of Montana drinking water in question.

The EPA's review recognized the DEQ for three improvements: 1) updated data systems and recordkeeping methods; 2) upgraded sanitary survey quality; and 3) the creation of a position to oversee the adoption of new regulations.

However, the report details a number of deficiencies in the PWS program, the most critical being the lack of staff and resources to operate the PWS program. Specifically, those deficiencies are staff workload, high turnover of staff and the inadequacy of the state funding source.

DEPARTMENT RESPONSE

In order to attempt to address the many technical issues raised in the EPA report, DEQ requested and received approval from the Office of Budget and Program Planning (OBPP) to hire 9.0 modified FTE. The FY 2009 cost of the FTE and corresponding support costs total \$992,037. The department utilized a portion of its available carry forward authority and cash from the natural resources operating fund to establish the budget. Carry forward is the 30 percent of unexpended appropriation authority that is approved for use within the next two

years. Statute governing carry forward expenditures (17-7-304, MCA) requires that the funds be used for a purpose consistent with the agency's goals and be approved by OBPP.

ISSUES

The EPA's report is clear in stating that there are a number of issues that need to be addressed to improve Montana's public drinking water. This includes the inability to enforce violations, slow or missing sanitary surveys, failure to apply regulations from 1995, and insufficient staffing. Most issues result in the need for additional resources to complete the work. There are challenges for the department and the legislature alike in obtaining dedicated resources.

Staffing

The department took steps to augment the current PWS staff by obtaining an additional 9.0 FTE by utilizing carry forward budget authority. The positions were advertised in September and are scheduled to be filled in mid-to-late October. Historically the department has had difficulty recruiting similar types of positions, and the actual success in filling these positions has yet to be seen. How quickly an individual can function effectively in these positions is largely dependent on who is hired and the adequacy of post-employment training.

Secondly, at this point the 9.0 FTE are approved only through FY2009. For the positions to continue into the next biennium requires legislative passage and executive approval of the FTE and corresponding budget authority. As of the time of this writing, the decision package for the FTE and operations support is included in the agency requested budget for \$2.2 million of general fund for the biennium. The package does not continue the request for natural resources operations funding.

Funding

Funding for the PWS program comes from a variety of sources as described in the figure below. The funding challenges stem from the limit of federal funding, and the availability of state special revenue. The state has exhausted the available funding for the PWS program through the federal Performance Partnership Grant and the Drinking Water Revolving Fund, leaving state derived revenues to cover additional program costs.

The primary source of state special revenue is the public drinking water fund, which contains the service connection fees and plat review fees for public water systems. The service connections fees as described in 75-6-108 are capped at \$2.00 per connection with a minimum fee of \$100.00, with a transient non community system at \$50.00. Statute clearly directs the Board of Environmental Review to set fees to cover the costs of providing public water supply regulatory activities, but the fee is capped in statute. The board is unable to raise the fees to increase revenue to cover costs, and as a result the revenue stream remains flat.

Public Water Supply Program Budget (does not include subdivision review activities)			
Fund #	Fund Name	FY 2008	FY 2009
2070	Hazardous Waste - CERCLA - Resource indemnity taxes and trust interest for implementation of the MT Hazardous Waste Act.	\$146,165	\$149,436
2204	Public Drinking Water - A \$2.00 per service connection fee paid by PWS systems.	774,627	785,587
2420	Board of Certification for Water and Waste Water Operators - Application, Test and Renewal fees.	104,358	110,103
2576	Natural Resources Operations - Resource indemnity trust interest and various mining taxes to support natural resource functions of state government.	0	992,037
	State Special Revenue Sub Total	1,025,150	2,037,163
3040	Operator Training Reimbursement - Federal funding to reimburse water system operators for expenses incurred between 7/1/2002 and 5/31/2010.	285,937	288,950
3262	EPA Performance Partnership Grant-federal funding for a variety of environmental programs, allows states greater flexibility to direct resources to their most pressing environmental problems.	1,095,839	1,221,770
3672	Counter Terrorism STAG-for coordination activities for critical water infrastructure protection efforts that include work with water systems as well as with State, local and Federal agencies.	0	53,637
3798	Homeland Water System Security - for coordination activities for critical water infrastructure protection efforts that include work with water systems	52,834	0
Various	Drinking Water - State Revolving Fund - federal funds for infrastructure development, and operator certification.	867,623	889,427
	Federal Special Revenue Sub-Total	\$2,302,233	\$2,453,784
	Total Appropriation	\$3,327,383	\$4,490,947

Because fee revenue is flat, the Hazardous Waste/CERCLA fund is utilized to provide funding to assist with increasing costs. This fund is available for hazardous waste activities as per 75-10-621 (3). However, the PWS program is not one of those activities. The appropriation of these funds to the PWS program is not in compliance with state law.

The recent decision by OBPP to fund 9.0 modified FTE with natural resource operations brings a new fund into the mix. This fund was established per HB 116 of the 2007 regular session to streamline the distribution of Resource Indemnity Trust interest and associated taxes. The department indicated that this fund was selected due to the current balance given increased oil and gas tax revenues. However, the natural resource operations fund cannot sustain the additional \$992,000 in expenditures beyond a year. The executive is proposing the use of general fund in the 2011 biennium.

OPPORTUNITIES

The release of the EPA's primacy reports provides the legislature with the opportunity to restructure a regulatory program to assure safer drinking water in many Montana communities. Discussions regarding resource allocation, enforcement of violations, and funding adequacy will more than likely occur.

Performance Measurement

The department is required to file a corrective action plan with the EPA in mid-December. This plan is required to address the training of new FTE, a process to correct regulatory errors, re-application for primacy of the interim enhanced surface water treatment rule, and reduction in the current backlog of unaddressed violations under the Safe Water Drinking Act. The legislature may wish to work with the department to translate the plan into goals and measureable objectives that could be reviewed during the interim to determine if the investment in the program is yielding safer drinking water.

When the decisions are made, the department will be left with implementation. The legislature may want to employ the tools of performance measurement to assure that implementation of the resources yield safer water for Montana.