

**HJR 36**  
**RESOURCE INDEMNITY TRUST STUDY**  
**RECOMMENDATIONS TO THE LEGISLATIVE**  
**FINANCE COMMITTEE**

A Report Prepared for the  
**Legislative Finance Committee**

By  
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**Legislative Fiscal Division**



**[www.leg.mt.gov/css/flscal](http://www.leg.mt.gov/css/flscal)**

## PURPOSE

The purpose of this report is to: 1) describe the process utilized to fulfill the requirements of HJR 36; 2) provide the recommendations of the Resource Indemnity Trust (RIT) subcommittee to the full Legislative Finance Committee (LFC); and 3) provide options regarding the adoption of the recommendations.

## HJR 36 BACKGROUND

HJR 36 was proposed as a means to address the multiple issues associated with the trust and related funds that were identified through the budget analysis and appropriations process during the 2005 Legislature. This included such issues as: fund utilization in conflict with statutes, confusion regarding the flow of interest income and taxes, and coordination among multiple agencies.

The resolution outlines the framework of and potential outcomes of the interim study. Specifically:

- “(1) propose revisions to laws related to the resource indemnity trust;
- (2) include input from the director of the Office of Budget and Program Planning and the directors of state agencies that would be affected by changes to the resource indemnity trust;
- (3) examine funding priorities; and
- (4) examine possible uses of funds related to the resource indemnity trust.”

## STUDY PROCESS

To meet the terms of the resolution, the LFC established an RIT subcommittee to complete the tasks. Members of the committee are:

- o Representative Rick Ripley, Chair
- o Representative Rose Buzzas
- o Senator Rick Laible
- o Senator Don Ryan

Staffing to the committee was provided by:

- o Diane McDuffie, Administrative Support, Legislative Fiscal Division
- o Todd Everts, Legal, Legislative Environmental Policy Office
- o Barbara Smith, Fiscal, Legislative Fiscal Division.

The sub-committee met three times during the study process. The following activities were completed as part of the process:

- o Obtained information from all thirty-four programs funded with RIT
- o Requested and obtained a legal opinion regarding the allowed use of RIT interest and RIGWA taxes
- o Developed funding priorities based upon program presentations, staff issues and relationship to the funding sources
- o Held a panel discussion with representatives of oil, gas, coal and hard rock mining industries regarding the use of RIT interest and RIGWA taxes
- o Utilized completed research and committee activities to develop recommendations to the full LFC
- o Heard public testimony on the issues at each subcommittee meeting

## DOCUMENTS

A number of documents were produced as part of this process. All documents are available for review at [http://www.leg.state.mt.us/css/fiscal/RIT\\_Subcommittee.asp](http://www.leg.state.mt.us/css/fiscal/RIT_Subcommittee.asp). As part of the recommendation process, a working draft of legislation has been produced and is provided in the appendix of this report.

## **IDENTIFICATION OF POLICY ISSUES**

In conjunction with the Office of Budget and Program Planning (OBPP), a RIT utilization survey was developed. This survey gathered program level data regarding RIT appropriations, federal match dollars, FTE, other funding sources, historical utilization, program accomplishments and program goals. Each agency with RIT funding completed this survey at the program level. This provided the detailed information regarding day-to-day activities being funded with RIT resources and became the basis for the process.

After completion of the survey, LFD staff analyzed the information and provided commentary in three different areas. First, an assessment of the information was completed utilizing the following questions:

- Is the function consistent with the purpose of the RIT or RIGWA taxes as outlined in statute?
- Are measurable performance goals and objectives in place?
- Is there a program-monitoring plan in place?
- Is the sole source of funding RIT interest or RIGWA taxes?

If the information was not provided in the survey document, department personnel or public documents were utilized to answer the question.

The second area included a discussion regarding the program's purpose and identification of any potential policy issues associated with program funds. The last area provided discussed options to alleviate all or some of the issues raised in the discussion portion. All information was summarized into a spreadsheet format. The subcommittee used this document as their primary source of information throughout the process.

General policy issues that were identified in the assessment process included:

- Fund utilization not matching statutory fund purpose
- Ability to transfer cash among funds
- Ability to access some funds outside of the appropriations process
- Statutory appropriations not consistent with statutory guidelines
- RIT funds potentially subsidizing fee revenues

## **DETERMINING FUNDING PRIORITIES**

The subcommittee utilized the program information and standardized program presentations, and the legal opinion issued by Mr. Everts, to establish a priority ranking for each program. This would allow the subcommittee to identify programs that may or may not be consistent with the statutory use of RIT funds and may or may not be a benefit to the state. The subcommittee utilized this information to score on a 1 to 4 scale, based equally on two factors:

- Correlation to the funding source
  - 1) Does not meet fund statute (statute defining the use of funds) or RIT/RIGWA statutes
  - 2) Meets fund statute but not RIT/RIGWA statutes
  - 3) Meets RIT/RIGWA statutes but not fund statute
  - 4) Meets both RIT/RIGWA and fund statute
- Benefit to the state as a whole
  - 1) Insignificant to the state
  - 2) Marginal to the state
  - 3) Important to the state
  - 4) Priority to the state

After the process was completed, the scores were tallied to identify the subcommittee's priorities. The results were as follows:

Rank	Program	Score
1	Renewable Resources Grant & Loans	31
	Reclamation and Development Grants	31
	Mt. Bureau of Mines / Groundwater Assessment	31
	Oil & Gas Damage Mitigation	31
	St Mary's Reauthorization Staff	31
2	Orphan Share Program	29
	Conservation Districts	29
3	Environmental Quality Protection Fund	28
	State Water Projects	28
4	Hazardous Waste Mgmt	27
5	Hazardous Waste/CERCLA	26
	Local Water Quality Districts	26
6	Coal/Uranium Mining	25
	Hardrock Mining	25
	Wellhead Planning	25
7	Flathead Basin Commission	23
	Public Water Supply	23
	Zortman Landusky Trust	23
8	Underground Tanks	22
9	Permitting & Compliance (DEQ) Admin	21
10	Irrigation Development	20
	DEQ Enforcement Division	20
	Environmental Contingency Account	20
	Water Court	20
	Natural Resource Information System	20
11	DEQ Attorney Pool	19
	Open Cut Mining	19
	Clark Fork Task Force	19
	Attorney General Services	19
12	Water Pollution - 106	18
13	Watershed Fiscal (DEQ)	15
14	Future Fisheries	13
15	MSU - Northern	11
16	Natural Resources Scholarship	1 <sup>1</sup>

In this process, an entity could rank low if one of the criteria was scored consistently low. For example, the subcommittee recognized the importance of the water quality programs at Montana State University – Northern, but questioned the alignment with RIT funding since the funds were utilized for infrastructure purposes.

## HEARING FROM INDUSTRY

The subcommittee took testimony from the Montana Coal Council, Montana Petroleum Association and the Montana Mining Association regarding the payment and use of RIGWA taxes. Industry was provided the opportunity to discuss issues regarding the use and intended utilization of the funds. Additionally, the

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<sup>1</sup> The ranking of the scholarship program was not completed by all members of the subcommittee as the statute providing for the program sunsets in June of 2007. The Department of Labor and Industries supports the sun setting of this program because the state has receive federal funding for displaced natural resource workers, the scholarship fund has not been widely used.

representatives were given the opportunity to provide written suggestions to the committee for programmatic changes. *To date this has not been received.*

Industry representatives agreed that funds should be utilized for the purpose of remediation of land disturbed by the taking of natural resources with priority given to those industries that have paid into the trust and continue to pay RIGWA taxes. All industry representatives shared the opinion that the utilization may not match the original intent. However, all agreed that it was not an issue that the industries were interested in pursuing.

## **RECOMMENDATIONS**

After the consideration of research, testimony and information, the subcommittee developed recommendations in three areas; recommendations requiring legislation, other recommendations, and red flags.

### **RECOMMENDATIONS REQUIRING LEGISLATION**

In consideration of these recommendations, a working draft of potential legislation was developed and is included in the appendix of this report for review.

#### **Statutory Clean up**

The RIT subcommittee recommends all fund statutes be clear in regard to fund purpose and fund utilization. This would enable the legislature to tie an activity to a fund source and potentially an appropriation, and could eliminate the issues of paying for programs not related to the fund source. This activity includes removing requirements in statute (i.e. water storage grant and loan program) that have never been developed or are no longer appropriate.

#### ***Revise allocation of RIGWA taxes***

The cash balance in the hazardous waste fund (HW) and the environmental quality protection fund (EQPF) is dependent upon the ability to transfer funds from the orphan share Fund. Each fund needs a stable income source in order to meet basic statutory requirements for the hazardous waste program and the state Superfund program. The subcommittee recommends re-allocating approximately \$630,000 of RIGWA taxes each biennium equally to the HW and EQPF funds rather than depositing the funds to the orphan share. This change would remove the orphan share fund from the RIT matrix, as it would no longer receive revenue from RIGWA taxes. The orphan share currently receives ten percent of total revenues from RIGWA taxes.

#### ***Eliminate Statutory Appropriations of RIT Interest***

Two programs currently receive statutory appropriations for RIT interest. First, the oil and gas damage mitigation fund receives \$50,000 per biennium to provide funding for the administrative oversight of priority reclamation and development grants to plug abandoned wells. This appropriation could be handled through HB2 as the expenditure is predictable and the funding is from a stable source. The subcommittee recommends that this statutory appropriation be eliminated and the Board of Oil and Gas seek the appropriation through HB 2.

The second statutory appropriation of RIT interest is for \$240,000 per year to Montana State University – Northern for the purpose of providing funding for 2.76 FTE for science and water programs with the remaining funds budgeted for debt service on laboratory renovations. The subcommittee recommends that this statutory appropriation be eliminated since it is providing for infrastructure and staffing in the university system, and consequently should be requested through the Commissioner of Higher Education.

#### ***Remove Cap on Groundwater Assessment Fund***

The Montana Bureau of Mines has been operating on a \$666,000 appropriation for the last three biennia. Because of this fixed funding level, during the 2005 session they received one-time-only funding of RIT corpus in excess of the constitutionally required \$100 million, to cover the increased costs of personal services and

travel. Statute describing the fund limits the fund balance to \$666,000 and directs all other grants and donations to the program to be deposited to the fund. The cap prevents the program from actively seeking additional funding. The subcommittee recommends eliminating the cap in statute, which would allow the program to supplement their resources through other entities.

### ***Re-design the Renewable Resource and Reclamation and Development Funds***

The renewable resource and reclamation and development funds were established to provide funding for grant and loan programs. Over time the funds have been utilized for other programs and activities, as appropriations were made based on the availability of funds, rather than the statutory purpose of the fund. The subcommittee recommends that these two funds be redesigned to meet two goals:

- Provide a fund for the renewable resource and reclamation and development grant and loan programs
- Provide a fund for other natural resource related activities

This action would eliminate the cross competition for funds between the Joint Appropriations Subcommittee for Natural Resources and Commerce and the Long Range Building Program.

The renewable resource fund would be renamed the natural resources projects fund. This fund would receive the revenues currently directed to the grant and loan program in statute. Appropriations for the grant and loan program and the corresponding administrative costs would be made from this fund. The subcommittee also recommends rolling the irrigation development program into this new fund program.

The former reclamation and development fund would be renamed the natural resources operations fund. This fund would receive revenues directed to the reclamation and development fund and the renewable resource funds that are not specifically allocated to the grant and loan programs. Appropriations would be made from this fund for the following activities:

- Operation of the Water Court
- Department of Environmental Quality Programs
  - Attorney Pool
  - Enforcement
  - Coal and Uranium Mining
  - Hard Rock Mining
  - Open Cut Mining
  - Permitting and Compliance Administrative functions
- Department of Natural Resources and Conservation Programs
  - Conservation Districts
  - Clark Fork Task Force
  - St. Mary's Rehabilitation Project Staff
  - Flathead Basin Commission

The subcommittee directed the staff to assure adequate funding for both funds by analyzing historical need for revenues, current allocation process, and structural balance issues. The subcommittee agreed the starting point would be to allocate to the natural resource project fund the interest and taxes explicitly directed for grants and loans, and to the natural resources operating fund, all other amounts previously directed to the renewable resources and reclamation and development funds.

### ***Transfer balance of Natural Resources Scholarship Fund***

Early on in the process, the Department of Labor and Industries (DOLI) notified the subcommittee of their desire to see the Natural Resources Scholarship program sunset in June 2007 as statute currently reads. DOLI has been receiving federal funds for this purpose and therefore the fund has not been widely used. The subcommittee recommends that the statute sunset and the remaining fund balance be re-directed to the water storage fund to assist with the backlog of rehabilitation projects on state owned water projects.

### ***Increase reporting requirements***

The subcommittee recommends changes to the Future Fisheries statute to clarify the type and scope of information to be provided to a specific body of the legislature regarding the investment in the future fisheries program. Current statute directs the report to the legislature as a whole and does not provide adequate planning information.

## **RECOMMENDATIONS – NOT REQUIRING LEGISLATION**

### **Request Performance Audits**

The subcommittee is recommending two programs receive performance audits. During the course of the HJR 36 study, issues with each program were identified. However the subcommittee did not have the resources to complete further activities in these areas. The Environmental Quality Council was contacted regarding this request and voted to support auditing both programs.

### **Orphan Share Program**

The subcommittee recommends the Orphan Share program within the Remediation Division of the Department of Environmental Quality be referred to the Legislative Auditor for a performance audit. The program was designed to cover the cost of defending the orphan share (portion of the clean up attributable to an economically defunct party) and paying for the orphaned portion of the cleanup. Over the past three biennia, the legislature has appropriated the same amount of funding for the same two sites. The subcommittee would like the process reviewed in order to determine if there are particular policies or statutes that are inhibiting the ability to achieve remediation at these sites.

### **Future Fisheries**

The Future Fisheries program receives \$1.0 million in funding each biennium to restore habitat of the bull and cutthroat trout with priority in areas damaged by mineral extraction. The program was designed to provide on the ground support to landowners to improve habitats. This program also receives funding from the river restoration fund and the general license account. The subcommittee would like the granting process reviewed to determine if mineral reclamation projects are a priority, how the management of multiple funding sources within the program occurs, and if monitoring of projects occurs and what the measurable outcomes are to determine success of this program.

### **Analyze Adequacy of Fees**

The subcommittee is requesting that staff analyze in greater depth the adequacy of fees where programs receive RIT revenues and fee revenues for program operations. Two current fees, the public water supply fee and the point source discharge permit, areas of concern. Staff should complete this process during the remainder of the interim and provide follow up as part of the budget analysis.

Second, staff should examine the need for fees associated with open cut (gravel pits) mining activities as previously proposed in the 2005 session to determine the appropriateness of this fee. Staff should work with DEQ on this issue and notify the subcommittee of their findings.

## **RED FLAGS**

During the process, the subcommittee found issues related to RIT programs that were not within the parameters of the study. The subcommittee determined that these issues should be presented to the full LFC as red flags for identification purposes.

- State Water Projects Bureau (DNRC). There are thirteen state owned water projects on the anticipated future rehabilitation cost estimate worksheet requiring \$24.75 million in repairs. This does not include

potential work on state owned canals. The appropriation of \$500,000 of RIT interest per biennium may not allow effective rehabilitation of state owned projects.

- The funding formula for the Natural Resource Information System (NRIS) in the Montana State Library is complex. RIT related funds are directly appropriated to the program and additional RIT funds are appropriated to agencies and then transferred to the Library in support of NRIS. A simpler funding mechanism may be available to assure continual access to the NRIS system.

## **SUMMARY**

### **PRIOR VS. PROPOSED**

The recommendations of the subcommittee provide some relief to the issues identified prior to and during the study. This includes reallocation of RIGWA taxes to eliminate inter fund transfers, consolidation of grant and loan programs, elimination of two funds from the RIT matrix and clarify utilization of related funds. The subcommittee also identified areas that required a further look or deeper analysis. In the appendix, tables 1, 2 and 3 summarize RIT funding prior to this exercise, as proposed and a proposed simplified table for the budget analysis.

As a reference, two flow charts are included in the appendix. One describes the flow of funds prior to this exercise and the second shows the proposed flow of funds. These charts provide another visual tool of the proposed changes.

### **OPTIONS**

The Legislative Finance Committee has the following options regarding the RIT subcommittee recommendations:

- Adopt the recommendations of the subcommittee and request corresponding legislation

Adopt a portion of the recommendations of the subcommittee and request corresponding legislation

Make no changes

**Table 1**  
**Resource Indemnity Funding**  
**2007 Biennium Appropriations**

Related Funds	Ren Res	Rec De	HazWas	EQPF	GRW	Wa Sto	OS	FF	O&G	Scholar	ECA
Projected Fund Balance FY 2006	\$1,429,797	\$1,644,115	\$53,585	\$920,864	\$0	\$478,987	\$6,077,681	\$316,179	\$207,684	\$93,507	\$542,884
RIT Interest - Direct	4,480,000	3,000,000			600,000	500,000		1,000,000	50,000		175,000
RIT interst - Addtl Percentage	1,034,400	1,206,800	896,480	310,320							
RIGWA		630,000			732,000		630,000			56,493	
Other Taxes	516,009	7,682,650					6,371,650				
Agency Generated Revenues	34,000		4,000	1,029,800		277,500	70,000		150,000		
Transfers	600,000		390,405	209,595			(600,000)				
<b>Ref Available Revenue</b>	<b>\$8,094,206</b>	<b>\$14,163,565</b>	<b>\$1,344,470</b>	<b>\$2,470,579</b>	<b>\$1,332,000</b>	<b>\$1,256,487</b>	<b>\$12,549,331</b>	<b>\$1,316,179</b>	<b>\$407,684</b>	<b>\$150,000</b>	<b>\$717,884</b>
24 RRGL	5,369,777										
25 RDGP		5,504,728									
3 Mt. Bureau of Mines					1,332,000						
26 O/G Damage									200,000		
28 St Marys		246,000									
14 Orphan Share							3,350,019				
29 CDs	207,640	865,087									
12 EQPF				2,254,299							
27 State Water Projects						544,600					
15 Haz Waste Mgmt			422,081								
13 HazWaste/CERCLA			50,228								
9 LWQD			193,320								
19 Coal/Uranium Mining		539,926									
20 Hardrock Mining		1,770,383									
8 Wellhead Planning			67,194								
30 FBC	16,002	101,946									
18 Public Water Supply			270,173								
35 Z/L Trust							2,400,000				
16 Underground Tanks			134,936								
23 PC Admin		106,698									
31 Irrigation Development		300,000									
11 DEQ Enforcement		9,991									
34 ECA											175,000
1 Water Court	1,617,071										
6 NRIS		782,872									
7 DEQ Atty Pool		91,684	30,046								
21 Open Cut Mining		923,071									
32 CFTF	25,000										
2 AG Services											
17 Water Pollution - 106			31,039								
10 Watershed Fiscal			9,659								
5 Future Fisheries								1,000,000			
4 MSU - Northern	480,000										
33 Scholarship										27,016	
<b>Appropriations</b>	<b>7,715,490</b>	<b>11,242,386</b>	<b>1,208,676</b>	<b>2,254,299</b>	<b>1,332,000</b>	<b>544,600</b>	<b>5,750,019</b>	<b>1,000,000</b>	<b>200,000</b>	<b>27,016</b>	<b>175,000</b>
<b>Ending Balances</b>	<b>\$378,716</b>	<b>\$2,921,179</b>	<b>\$135,794</b>	<b>\$216,280</b>	<b>\$0</b>	<b>\$711,887</b>	<b>\$6,799,312</b>	<b>\$316,179</b>	<b>\$207,684</b>	<b>\$122,984</b>	<b>\$542,884</b>

Table 2

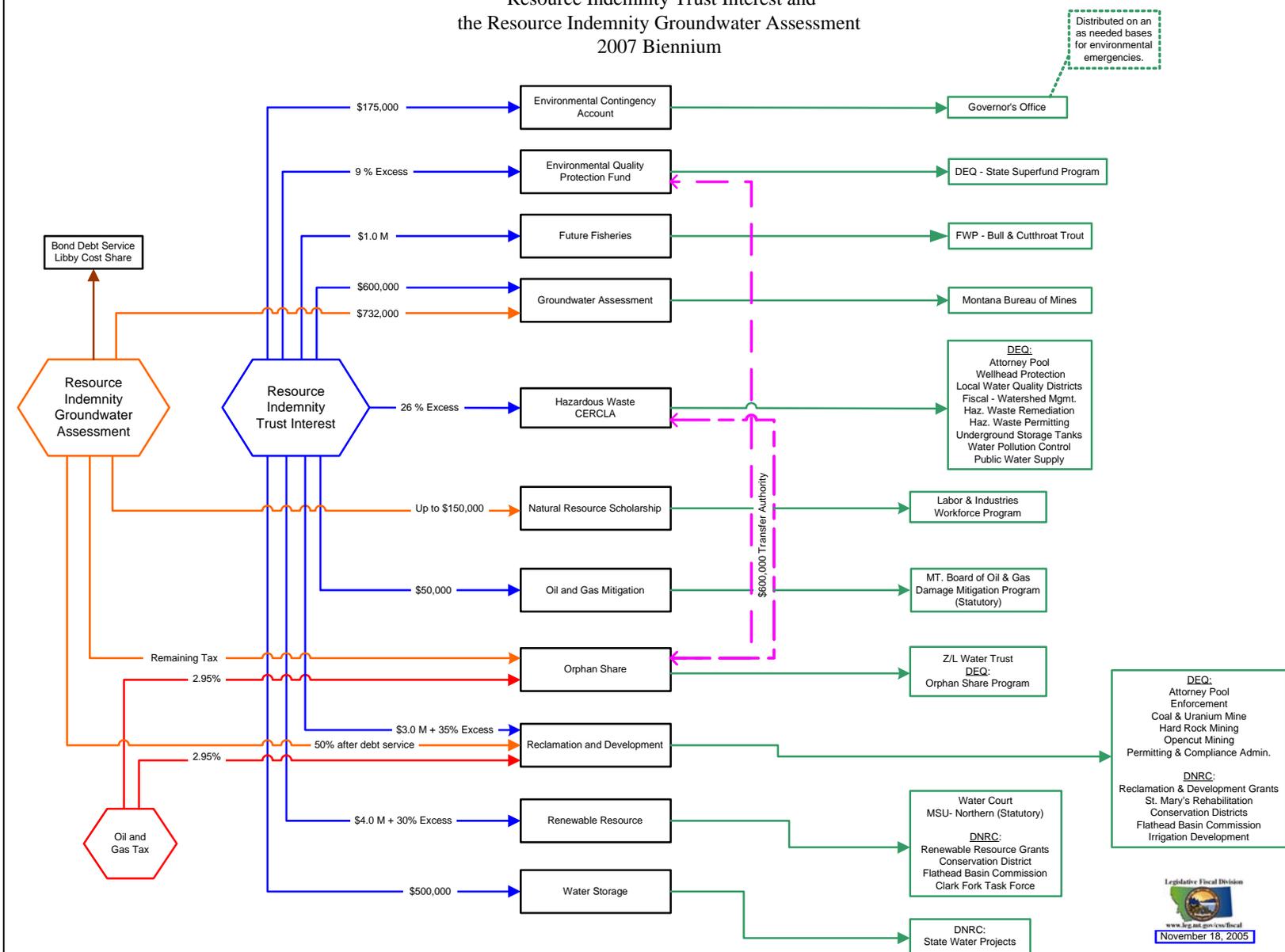
Resource Indemnity Funding  
Subcommittee Proposed Changes

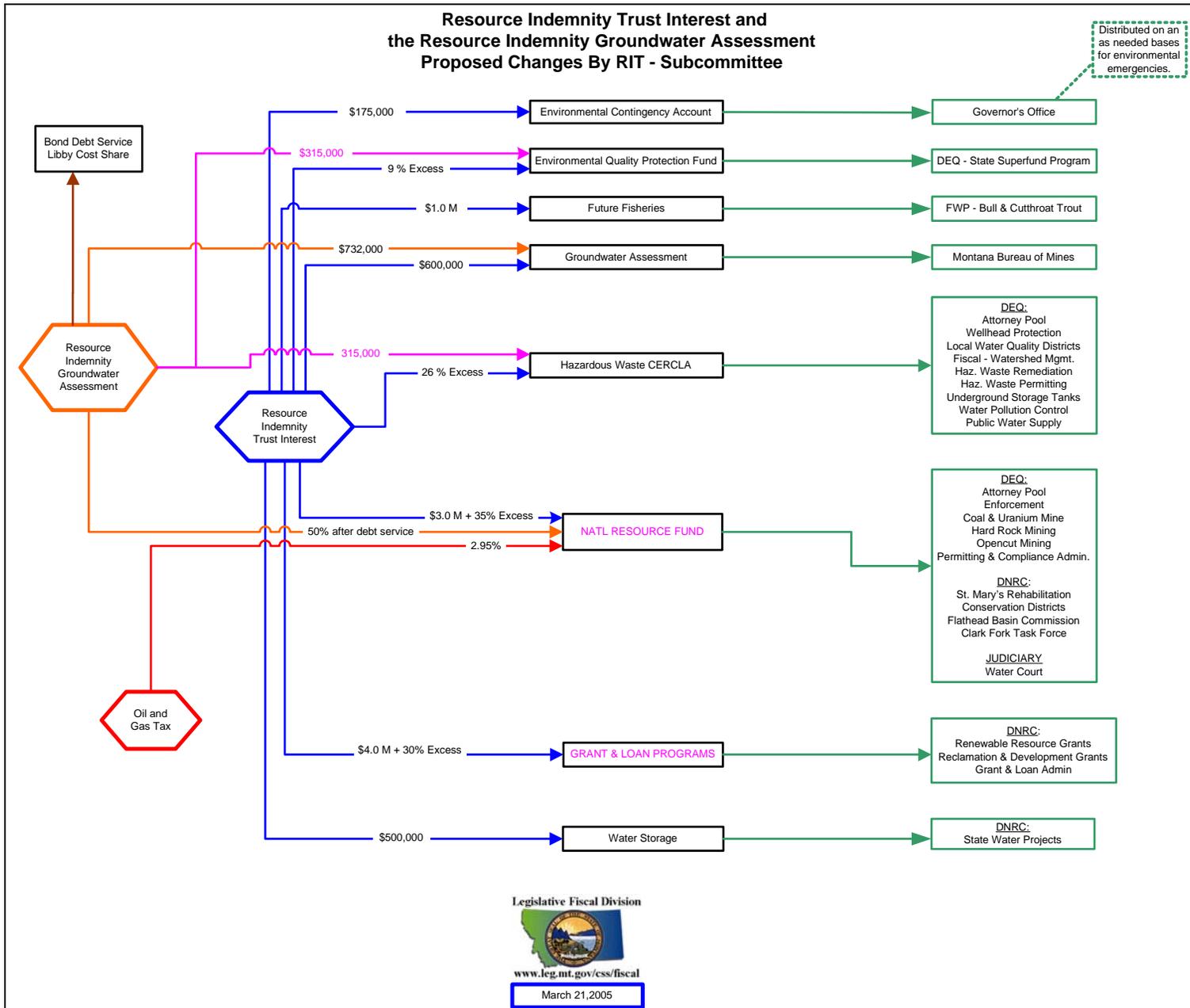
Related Funds	Natural Resource Project Fund	Natural Resource Management Fund	Hazardous Waste	Environmental Quality Protection Fund	Groundwater Assessment	Water Storage	Orphan Share	Future Fisheries	Oil and Gas Damage Mitigation	Natural Resource Scholarship	Environmental Contingency Account
Projected Fund Balance FY 2006	\$1,429,797	\$1,644,115	\$53,585	\$920,864	\$0	\$478,987	\$6,077,681	\$316,179	\$207,684	\$93,507	542,884
RIT Interest - Direct	7,530,000				600,000	500,000		#####			175,000
RIT interest - Addtl Percentage	1,034,400	1,206,800	896,480	310,320							
RIGWA		630,000	315,000	315,000	732,000					56,493	
Other Taxes	516,009	7,682,650					6,371,650				
Agency Generated Revenues Transfers	34,000		4,000	1,029,800		277,500	70,000		150,000		(122,984)
						122,984					
<b>Ref Available Revenue</b>	<b>\$10,544,206</b>	<b>\$11,163,565</b>	<b>\$1,269,065</b>	<b>\$2,575,984</b>	<b>\$1,332,000</b>	<b>#####</b>	<b>#####</b>	<b>#####</b>	<b>\$357,684</b>	<b>\$27,016</b>	<b>717,884</b>
24 RRGL	5,369,777										
25 RDGP	5,504,728										
3 Mt. Bureau of Mines					1,332,000						
26 O/G Damage									200,000		
28 St Marys		246,000									
14 Orphan Share							3,350,019				
29 CDs		1,072,727									
12 EQPF				2,254,299							
27 State Water Projects						544,600					
15 Haz Waste Mgmt			422,081								
13 HazWaste/CERCLA			50,228								
9 LWQD			193,320								
19 Coal/Uranium Mining		539,926									
20 Hardrock Mining		1,770,383									
8 Wellhead Planning			67,194								
30 FBC		117,948									
18 Public Water Supply			270,173								
35 Z/L Trust							2,400,000				
16 Underground Tanks			134,936								
23 PC Admin		106,698									
31 Irrigation Development	300,000										
11 DEQ Enforcement		9,991									
34 ECA											175,000
1 Water Court		1,617,071									
6 NRIS		782,872									
7 DEQ Atty Pool		91,684	30,046								
21 Open Cut Mining		923,071									
32 CFTF		25,000									
2 AG Services											
17 Water Pollution - 106			31,039								
10 Watershed Fiscal			9,659								
5 Future Fisheries								#####			
33 Scholarship										27,016	
<b>Appropriations</b>	<b>11,174,505</b>	<b>7,303,371</b>	<b>1,208,676</b>	<b>2,254,299</b>	<b>1,332,000</b>	<b>544,600</b>	<b>5,750,019</b>	<b>#####</b>	<b>200,000</b>	<b>27,016</b>	<b>175,000</b>
<b>Ending Balances</b>	<b>\$ (630,299)</b>	<b>\$ 3,860,194</b>	<b>\$ 60,389</b>	<b>\$ 321,685</b>	<b>\$ -</b>	<b>\$ 834,871</b>	<b>#####</b>	<b>\$316,179</b>	<b>\$ 157,684</b>	<b>\$ -</b>	<b>\$ 542,884</b>

Table 3  
Resource Indemnity Funding  
Proposed Table for Budget Analysis

Related Funds	Ren Res	Rec De	HazWas	EQPF	GRW	Wa Sto	FF	ECA
Projected Fund Balance FY 2006	\$1,429,797	\$1,644,115	\$53,585	\$920,864	\$0	\$478,987	\$316,179	\$542,884
RIT Interest - Direct	7,530,000				600,000	500,000	1,000,000	175,000
RIT interst - Addtl Percentage	1,034,400	1,206,800	896,480	310,320				
RIGWA		630,000	315,000	315,000	732,000			
Other Taxes	516,009	7,682,650						
Agency Generated Revenues	34,000		4,000	1,029,800		277,500		
Transfers						122,984		
Available Revenue	\$10,544,206	\$11,163,565	\$1,269,065	\$2,575,984	\$1,332,000	\$1,379,471	\$1,316,179	\$717,884
Legislative Appropriations								
House Bill 5 - LRB							1,000,000	
House Bill 6 & 7	10,200,000							
Administration of HB 6 & 7	974,505							
MT Bureau of Mines					1,332,000			
DNRC - Conservation & Development		1,195,727						
DNRC - Water Resources		148,000				544,600		
DNRC - Flathead Basin Commission		117,948						
DEQ - Central Management		91,684	30,046					
DEQ - Planning, Prevention & Asst			270,173					
DEQ - Enforcement		9,991						
DEQ - Remediation			50,228	2,254,299				
DEQ - Permitting & Compliance		3,340,078	858,229					
JUDICIARY - Water Court		1,617,071						
NRIS		782,872						
Appropriations	11,174,505	7,303,371	1,208,676	2,254,299	1,332,000	544,600	1,000,000	-
Ending Balances	(\$630,299)	\$3,860,194	\$60,389	\$321,685	\$0	\$834,871	\$316,179	\$717,884

### Resource Indemnity Trust Interest and the Resource Indemnity Groundwater Assessment 2007 Biennium





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