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## FISCAL IMPACT REPORT

SPONSOR: Park DATE TYPED: 03/11/01 HB 761/aHFI #1  
 SHORT TITLE: Petroglyph Litigation Costs SB \_\_\_\_\_  
 ANALYST: Moran

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
\$ 1,000.0				Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 828

### SOURCES OF INFORMATION

LFC Files  
 Energy, Minerals and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of HFI #1 Amendment

House Floor Amendment # 1 simply restates the name of the case regarding the current Petroglyph litigation, changing it to applicable “Falls et al. V. Salisbury”.

#### Synopsis of Original Bill

HB 761 appropriates \$1 million from the general fund to the Department of Finance and Administration (DFA) for the purpose of paying the settlement costs from a lawsuit related to the acquisition of private property within the boundaries of the Petroglyph National Monument and the costs related to the acquisition of the remaining private property taken by the state within the boundaries of the monument. The bill declares an emergency.

#### Significant Issues

In 1988 and 1989, the Legislature appropriated a total of \$6 million to the Energy, Minerals and Natural Resources Department (EMNRD) to acquire real property within the boundaries of the Petroglyph Monument. In 1990, Congress enacted the Petroglyph National Monument Establishment Act to protect the West Mesa Escarpment near Albuquerque. In 1991, EMNRD, the City of Albuquerque (City) and the National Park Service entered into a joint powers agreement that required

the City to acquire and manage the property for the monument and required EMNRD to reimburse the City in an amount not to exceed \$6 million for property acquisition within the Boca Negra Unit.

There have been three lawsuits against EMNRD and the City, in which property owners claim the governments have taken their properties by inverse condemnation in relation to the Petroglyph National Monument. Two of the three lawsuits have been settled. However, *Falls et al. v. Salisbury et al.*, is currently pending before the New Mexico Court of Appeals. On June 14, 2000, District Court Judge Wendy York issued an order finding that the state's failure to purchase D.W. Falls Investments and Volcano Cliffs, Inc.'s property within the Petroglyph National Monument resulted in inverse condemnation. The state appealed this decision. It is being handled by the Attorney General's Office.

In her decision, Judge York awarded the plaintiffs \$715,000 for the value of the property along with interest at a rate of 10% from October 11, 1995 until paid in full, and costs of \$11,000. The appropriation in this bill would be sufficient to pay the \$715,000 settlement and the \$11,000 in costs awarded to the plaintiffs in the *Falls* lawsuit. However, it is sufficient to pay all of the accrued interest or to purchase the remaining private property in the monument.

EMNRD believes it is difficult estimating the amount needed to purchase the remaining properties. An estimate of \$6 million reflects appraisals done nearly 10 years ago coupled with percentage increases suggested by city personnel, plus closing costs, and costs from the *Falls* lawsuit.

### **FISCAL IMPLICATIONS**

The appropriation of \$ 1,000.0 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY02 shall revert to the general fund.

Based upon the information provided under Significant Issues, additional appropriations will likely be needed.

### **ADMINISTRATIVE IMPLICATIONS**

The DFA will need to enter into a Joint Powers Agreement with the City of Albuquerque and the National Park Service to continue the purchases.

### **OTHER SUBSTANTIVE ISSUES**

The bill says private property was "taken by the state". This is the ultimate question in the appeal of Judge York's decision that is pending before New Mexico Court of Appeals. The state's position on appeal is that no "taking" occurred.

### **AMENDMENTS**

EMNRD suggests that the bill be amended to reflect the state's position described under "other substantive issues" delete the phrase "taken by the state" from page 1, lines 22 and 23 of the bill.

### **RELATIONSHIP**

HB 761 appropriates \$1 million to satisfy the needs of the lawsuit and the acquisition of the remaining private properties.

RJM/ar