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## FISCAL IMPACT REPORT

SPONSOR: Aragon DATE TYPED: 02/26/03 HB \_\_\_\_\_

SHORT TITLE: Land for Pecos River Compact Compliance SB 728

ANALYST: Chabot

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$.01 (See Narrative)	\$.01 (See Narrative)	Recurring	Permanent Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AG)  
 Commission on Higher Education (CHE)  
 Commissioner of Public Lands (SLO)  
 Interstate Stream Commission (ISC)  
 New Mexico Environment Department (NMED)  
 Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of Bill

Senate Bill 728 provides that the State Land Office (SLO) may take into trust land purchased by ISC to protect and retire water rights along the Pecos River. Any funds earned by the Land Office from these lands will be held in trust to benefit Carrie Tingley Children's Hospital.

#### Significant Issues

The Legislature appropriated \$42,000.0 in the 2002 session to the State Engineer/Interstate Stream Commission to purchase land along the Pecos River in increments as described in Section 72-1-2.4 NMSA. The purpose of the purchases are to reduce water use in order to restore balance to the river system to meet the needs of New Mexico users and ensure compact delivery

requirements to Texas. To date, no plan has been developed on to how to use the lands purchased; the only restriction is that any use cannot increase depletions of water.

AG states there are no legal issues with this bill.

ISC points out SLO has experience and resources to provide management over lands purchased under the Pecos River settlement; ISC does not. It gives SLO authority to manage lands other than those given to the State in trust by the federal government.

The State Land Office states that if it takes the land into trust that any sale of the land would require the proceeds to be deposited in the permanent fund by the Enabling Act. This would conflict with the requirements in Section 72-1-2.4(h) which requires any proceeds will be deposited in the Irrigation Works Construction Fund.

CHE states Carrie Tingley Hospital received \$412.3 in revenue from the permanent fund and would expect this distribution to increase with the added lands included in the trust.

### **FISCAL IMPLICATIONS**

It can be anticipated that the land will accrue some revenue; however, since nothing has been purchased to date, it is difficult to estimate what revenue will be earned. In addition, there will be up-keep costs on the land until a use is found that will reduce any revenue earned by SLO ownership.

ISC states that there is no provision in the bill to pay assessment costs due to the Carlsbad Irrigation District. The amount required will be determined after purchases are made.

### **TECHNICAL ISSUES**

Section 72-1-2.4H NMSA 1978 provides that if land purchases and appurtenant water rights are no longer needed to meet Pecos River compact delivery requirements, the land can be sold with preference given to the original owner at the original point of diversion and purpose of use. Proceeds from this sale will be deposited in the Irrigation Works Construction Fund. This bill provides that those lands shall be held in trust for Carrie Tingley Children's Hospital. This could cause future conflict. As a result ISC recommends the following amendment to the end of the bill:

“Provided, however, that in the event the interstate stream commission determines that the total Pecos river rights it has purchased with appropriations made by the legislature for that purpose are in excess of those rights permanently needed for compliance with New Mexico's obligations under the Pecos River Compact, then the commissioner of public lands shall return the lands to the interstate stream commission for sale in accordance with the provisions of Section 72-1-2.4H NMSA 1978. The revenue from such sales shall be deposited into the New Mexico irrigation works construction fund. No revenue from such sales, or other compensation, shall be due to the commissioner of public lands for the benefits of Carrie Tingley children's hospital, it being intended that Carrie Tingley children's hospital should receive only the income derived from such lands prior to their return to the interstate stream commission.”

**OTHER SUBSTANTIVE ISSUES**

SLO provides these additional issues: “If the bill did not include the lands in the Enabling Act trust, the bill would have to specify, among other things: a) whether and how the Commissioner can dispose of such property through sale, lease or exchange; b) where the rents, profits, royalties and other proceeds from the use and enjoyment of the land would be deposited; c) from what monies could the Commissioner spend to maintain and protect the land for the sake of the designated beneficiary. Such specificity would unnecessary complicate the legislation and lead to additional administrative burdens on the State Land Office, as opposed to managing the land in the same manner as the over 9 million surface and 13 million subsurface acres overseen by the Commissioner pursuant to existing law.”

**POSSIBLE QUESTIONS**

1. Is the proposed ISC amendment consistent with exiting SLO provisions? If not, is there a resolution?
2. What are ISC plans for the purchased land if it is not given to SLO?

**GAC/njw**