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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/06

SPONSOR Cisneros LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE El Prado Water District Legal Services SB 524

ANALYST Hoffmann

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$1,750.0	Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Capital Outlay Request 723, House Capital Outlay Request 825, and duplicate bills Senate Bill 637 and House Bill 683.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of Bill

Senate Bill 524 appropriates \$1,750,000 from the general fund to the Interstate Stream Commission for the El Prado Water and Sanitation District to acquire water rights and pay for legal, technical and administrative costs associated with its water rights acquisition.

### FISCAL IMPLICATIONS

The proposed appropriation is not included in the Executive recommendation. The LFC budget recommendations include \$6,594,500 for litigation and adjudication of water rights.

The appropriation of \$1,750,000 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund.

## **SIGNIFICANT ISSUES**

According to the State Engineer, the El Prado Water and Sanitation District (“El Prado”) has in recent years diverted groundwater in amounts that exceed the amounts allowed under the permits issued to it by the State Engineer. El Prado has been attempting to reconcile the disparity between its permitted diversion and its annual demand through the acquisition and transfer of water rights. The State Engineer has worked with El Prado to remedy this problem with respect to acceptable methods for El Prado to repay its cumulative past over-diversions. Although the appropriation in this bill will assist El Prado in its efforts to acquire water rights, there is no guarantee that El Prado will be able to locate and transfer the water rights it needs.

The Office of the State Engineer states that the \$1.75 million appropriation contained in this bill is consistent with appropriations for water rights acquisition that are anticipated to be necessary if a settlement is reached with Taos Pueblo regarding the Pueblo’s water rights claims. The State of New Mexico, Taos Pueblo, the Town of Taos, the Taos Valley Acequia Association on behalf of the Taos area acequias, twelve Taos area mutual domestic water consumer associations, and El Prado have been actively negotiating the terms of a proposed settlement of the water right claims of Taos Pueblo since late 2003. These negotiations are subject to a confidentiality order issued by the federal district court, and no proposed settlement agreement or agreed-upon settlement cost projections have yet been released to the public. In the absence of any costs projections provided by the negotiating parties, the OSE estimates that if a settlement is reached the state’s share of the costs to implement the settlement could reach \$20 million.

## **PERFORMANCE IMPLICATIONS**

According to the Office of the State Engineer, the appropriation would have a positive impact on the administration of water rights in the Taos Valley if El Prado is successful in the acquisition and transfer of water rights to address its problems with diversions of water in excess of the diversion amounts allowed under its State Engineer permits.

## **DUPLICATION AND RELATIONSHIP**

House Capital Outlay Request 825 includes \$100,000 to purchase land around El Prado well number three.

Senate Capital Outlay Request 723 includes \$100,000 to purchase land around El Prado well number three, and \$2,000,000 to purchase water rights for the El Prado Water and Sanitation District.

Duplicate bill Senate Bill 637 and House Bill 683 both authorize the New Mexico Finance Authority to lend money to the El Prado Water and Sanitation District.

## **TECHNICAL ISSUES**

The Office of the State Engineer states that it is unclear to what extent the ISC would be involved in any transactions to acquire water rights with these funds. If the ISC itself were the entity acquiring water rights, then there would be an impact on the ISC in terms of staff time necessary for such transactions.

## ALTERNATIVES

Even if a proposed settlement with Taos Pueblo is announced soon, it still would need to be approved by congress and the legislature. The state therefore is unlikely to be obligated to provide any funds to implement a settlement before the end of FY 2007, when the funding in this bill would revert to the general fund. The bill therefore would better serve the state's interests in promoting a settlement if it were amended to appropriate the monies to a Taos settlement sub-account in the Indian water rights settlement fund (IWRS fund), which was created by the 2005 legislature (Laws 2005, Ch. 172) to provide a mechanism for the state to fund its portion of the costs of implementing Indian water rights settlements. The 2005 legislature created the IWRS fund because such settlements typically take years to develop and implement. The 2005 legislation therefore provides that money appropriated to the IWRS fund does not revert to the general fund. The ISC administers the IWRS fund, and upon a joint resolution by the legislature the ISC may expend money in that fund to pay the state's share of the costs of implementing a settlement. Amending this bill to make the appropriation to a sub-account in the IWRS fund for the Taos Pueblo water rights settlement would ensure that the appropriated funds would be available when needed to fund any water rights acquisitions that may be necessary to implement the state's share of a settlement with Taos Pueblo.

If the legislature desires to make this appropriation independent of any Taos, Pueblo water rights settlement, then the bill should be amended to make the appropriation to the Local Government Division of the Department of Finance and Administration instead of to the ISC. Both alternatives are addressed in the amendments proposed below.

CH/nt