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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, which 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 with retroactive 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 insufficient 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 \$ 5,000.0 contained in this bill is a 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 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.

RELATIONSHIP

HB 828 appropriates \$5 million to satisfy the needs of the lawsuit and the acquisition of the remaining private properties.

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.

RJM/sb