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FISCAL IMPACT REPORT

ORIGINAL DATE 2-5-07

SPONSOR Rodella LAST UPDATED _____ HB 753

SHORT TITLE Return of Lands to Certain Land Grants SB _____

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)¹
Department of Game and Fish (DGF)

SUMMARY

Synopsis of Bill

House Bill 579 seeks to require the State Game Commission to transfer ownership of unoccupied lands under the Commission's control that have been identified as being located within the historic boundaries of the Tierra Amarilla land grant to that land grant, if the land grant is recognized and is operating as a political subdivision of the state pursuant to the provisions of Chapter 49, Article 1 NMSA 1978; the land grant identifies its historic boundaries by a survey adequate to ascertain that the land is within the historic boundaries of that land grant; the transfer is conditioned upon the land becoming part of the common lands of the land grant; and the land remains part of the common lands of the land grant. The bill states that if the land does not remain part of the common lands, the land shall revert to the state.

¹ The AGO response bears the caveat: "This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request."

FISCAL IMPLICATIONS

DGF indicates that the State Game Commission (SGC) owns three large land-tracts of wildlife habitat and a property on which one cold-water hatchery & fishing pond each of which may exist within the historic boundaries of the Tierra Amarilla Land Grant-Merced. Specifically, the SGC holds title to the Edward Sargent Wildlife Management Area, Rio Chama Wildlife Management Area, the William A. Humphries Wildlife Management Area and the Los Ojos Fish Hatchery & Laguna de Los Compos. The properties comprise in excess of 44,000 acres of land dedicated to public use. All four of these properties were purchased with the aid of Federal Assistance monies allocated to the DGF from the United States Fish and Wildlife Service – Federal Assistance Division, via the Sport Fish and Wildlife Restoration Act apportionments. Because the DGF, on behalf of the SGC, utilized these Federal Assistance dollars to both purchase and currently maintain all four of these properties, DGF is committed to following State assent legislation and Federal regulations that allows DGF to participate in funding programs administered by the USFWS-FA Division (per 50 CFR 80.3 and NMSA 1978, 17-1-28).

DGF adds that, under the federal regulations, if the ownership of the four State Game Commission-owned properties is transferred to the Tierra Amarilla Land Grant-Merced community without current fair market value being paid to the SGC, DGF will be found to be in a loss of control of the four properties and therefore in “diversion” as defined under 50 CFR Part 80.4 and ineligible to participate in all USFWS-FA Federal Assistance, Sport Fish and Wildlife Restoration programs. The inability to be eligible to participate in the USFWS-FA programs would result in the immediate loss of approximately \$11 million per year in operating revenue. In addition, DGF would be liable for re-paying the USFWS-FA Division 75 percent of the current fair market value of the properties which were transferred to the Tierra Amarilla Land Grant-Merced community. The SGC/DGF holds title to approximately 44,488 acres and current market value is unknown at this time. DGF indicates that one-third of the department’s current operating budget is derived from Federal Grant revenues. If the department were to be found in diversion by the USFWS-FA Division, DGF indicates it would be greatly hampered in its ability to conduct operations and numerous budget reductions of approximately one-third would be necessary across the entire scope of department programs, although it provides no specific numbers or program reductions.

SIGNIFICANT ISSUES

AGO notes that the Tierra Amarilla Land Grant was confirmed by Congress in 1860 and patented by the United States Government to Francisco Martinez in 1881. Portions of the original land grant have, over time, been distributed to other owners. See *Jicarilla Apache Tribe v. Board of County Com'rs, County of Rio Arriba*; 118 N.M. 550 (1994); *Martinez v. Mundy*; 61 N.M. 87 (1956). Further, that, presumably, this bill is an attempt to return former Tierra Amarilla Land Grant property to control of that land grant. It is uncertain as to how or when the State Game Commission acquired the land referred to in this bill, or whether that land is now being managed in trust for the benefit of the public as a wildlife conservation and management area. Transfer to the land grant will remove the land from state management, and place that responsibility with the land grant board of trustees.

OAG adds that the bill does not state whether the transfer referred to will be accomplished by sale, trade, lease or donation. If the bill is interpreted to require the transfer of state property to the Tierra Amarilla Land Grant by donation, it raises issues as to the status of that land grant and

whether the state may lawfully transfer the subject real property in that manner. The bill contemplates an interpretation that the land grant is a “political subdivision”, presumably to avoid constitutional anti-donation clause issues. See NMSA Section 13-6-2B(2) allowing a state agency to dispose of its real property by negotiated sale or donation to its political subdivisions. If the property is transferred by sale, other state laws governing the disposition of real property would apply. See, for example, NMSA Section 13-6-2.1, requiring State Board of Finance approval for certain sales of state owned real property. Further, NMSA Section 13-6-5 gives land grants the “right of first refusal” to purchase real property within their boundaries from a state agency.

ADMINISTRATIVE IMPLICATIONS

DGF suggests that it would have to restructure department operations to accommodate the anticipated one-third reduction in annual operating revenues, although it provides no specific numbers or program reductions.

BFW/nt