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FISCAL IMPACT REPORT

ORIGINAL DATE 1-30-09

SPONSOR Ortiz y Pino **LAST UPDATED** _____ **HB** _____

SHORT TITLE Address Land Grant Historical Inequities **SB** SJM5

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Joint Memorial 5 calls on New Mexico's federal representatives and senators to introduce legislation to address concerns raised by the report released by New Mexico Attorney General Gary K. King in August 2008 entitled, "Report to the New Mexico Attorney General – A Response to the GAO's 2004 Report – 'Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico' ". The memorial asks these representatives and senators to enter the report into the congressional record and to take a leadership role in addressing the concerns raised by the report. Finally, the memorial asks that copies of the memorial be transmitted to New Mexico's congressional delegation.

SIGNIFICANT ISSUES

As stated in the memorial, in 2001, U.S. Senators Pete V. Domenici and Jeff Bingaman and Representative Tom Udall asked the United States General Accounting Office ("GAO"), to study the issue of community land grant losses that occurred in New Mexico after the signing of the Treaty of Guadalupe Hidalgo. The GAO issued two reports. In 2001 it released, "Treaty of Guadalupe Hidalgo: Definition and List of Community Land Grants in New Mexico." In 2004 it released, "Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico."

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The 2004 GAO Report concluded the federal government fulfilled any duties it may have had to grantees and heirs under the Treaty and Constitution, and that potential remedies for the land losses were up to Congress as a matter of public policy, rather than as a matter of legal obligation. Nevertheless, the GAO listed options Congress might consider in resolving the issue.

In addition to the options listed, the GAO report relied on a New Mexico District Court case as evidence that land grants confirmations could be collaterally attacked in state court. This decision was reversed by the New Mexico Court of Appeals in Montoya v. Tecolote Land Grant, 2008-NMCA-014, 143 N.M. 413, 176 P.3d 1145 cert. quashed (Oct. 17, 2008) (No. 30,808). The Court of Appeals, citing Tameling v. U.S. Freehold & Emigration Co., 93 U.S. 644 (1876), affirmed the long standing doctrine that land grants confirmed by Congress are final and not subject to judicial review. The New Mexico Supreme Court originally accepted certiorari in the case, but recently quashed certiorari, leaving the Court of Appeals decision intact.

In August of 2008, the New Mexico Attorney General's office released a report addressing the GAO's conclusions and the analysis it used in reaching those conclusions. The report raised serious questions and concerns about the GAO's legal conclusions, the basis for their reasoning and inequities affecting the historical treatment of Land Grants in New Mexico. The report also recognized that the ability of the Judicial Branch of government to address land grant claims has been severely limited and the most effective remedy regarding the confirmation of land grants lies in the U.S. Congress.

Senate Joint Memorial 5 recognizes the legal limitations involved in addressing historical inequities which have negatively affected land grant heirs and calls for federal legislation and a leadership role from New Mexico's congressional delegation.

TECHNICAL ISSUES

The Attorney General's Office suggests that on page 2, line 7, the word "would" might be changed to "proposed to" for the sake of clarity. The Constitutional clause cited on page 1, line 25 is clause 2. The law creating the Guadalupe Hidalgo treaty division in the state attorney general's office is NMSA 1978, § 8-15-18.

EO/mc