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F I S C A L I M P A C T R E P O R T

SPONSOR: Altamirano DATE TYPED: 03/04/03 HB

SHORT TITLE: Establish Mining Districts SB 473

ANALYST: Valenzuela

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI		Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

- *Report of the Legislative Finance Committee to the Forty-fifth Legislature*, Second Session, January 2002 for Fiscal Year 2002 – 2003, pp. 573 - 575.

Responses Received From
Energy, Minerals and Natural Resources Department (EMNRD)
Department of Environment (NMED)
Department of Game and Fish (DGF)

SUMMARY

Synopsis of Bill

Senate Bill 473 makes several amendments to both the New Mexico Mining Act and the Water Quality Act, which would impact regulation of hard rock mining. The bill’s several provisions include the following: 1) establish the use of “mining districts” for geographic areas owned or leased by a mining operation; 2) remove the requirement that waste and storage units, leach piles, impoundments and pits be stabilized before a mine operation would be permitted to go on standby status; 3) amends the Water Quality Act to provide an exemption for mining operations from groundwater protection and closure requirements; 4) remove the requirement for a mining operation to be reclaimed to a self-sustaining ecosystem if contained within a mining district; 5) reduce NMED’s regulation over hard rock mining operations; and 6) allow for self-guarantee and self-insurance by the mining company as part of financial assurance requirements of permitting.

Significant Issues

Extensions of Mining Act Deadlines. The New Mexico Mining Act required the state to have in place mine permits and closeout plans by December 1997 to include financial assurance to protect the state in the event the mining company is unable to complete reclamation. The December 1997 deadline was not met for eight mines, including the copper mines in Silver City and the Molycorp mine near Questa. The mine owners argued the missed deadline was a result of insufficient staffing levels at the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department and at the Ground Water Bureau of the New Mexico Environment Department. Both agencies argued these mines were technically complex, requiring additional time to evaluate. The regulations allowed for a one-time nonrenewable two-year extension. The New Mexico Mining Commission extended the deadline first to December 1999, then to December 2001, and then to October 2002.

Attempts were made by EMNRD and the industry to further extend the deadline: however, the Mining Commission did not approve these requests. Consequently, the Mining and Minerals Division of EMNRD issued the non-permitted mines (all three of Phelps Dodge mines in Grant county) a notice of violation.

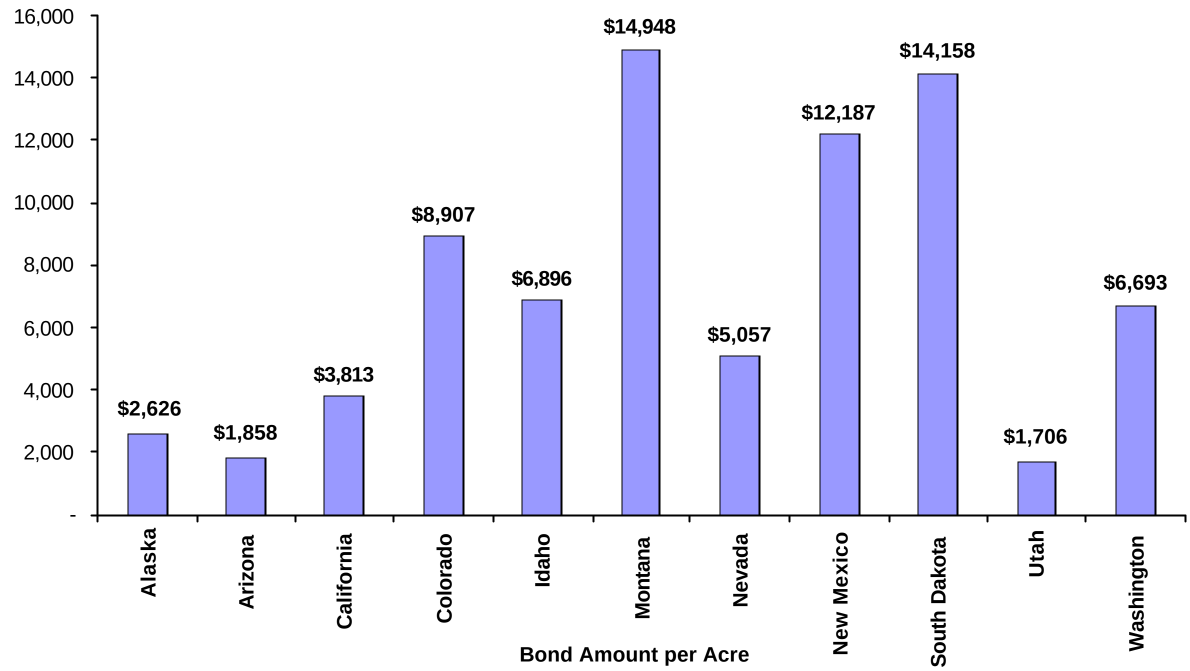
Mining companies, like Phelps Dodge, are faced with complying with difficult circumstances. The *Wall Street Journal* reported last year the companies who underwrite financial assurance bonds no longer will offer these financial instruments, which has limited the company's options in the financial markets. A key provision of Senate Bill 473 is to allow the company to put up its assets as financial assurance. Opponents to this plan suggest that if the company were to file for bankruptcy, the state would be required to cover reclamation costs.

Some perspective on the amount of financial assurance bonds is provided below, as presented by the LFC in last year's report on the NMED budget.

Financial Assurance Bonds for Hard Rock Mines. A number of N.M. hard rock mining companies have announced shutdowns because weak worldwide demand for hard rock minerals has depressed commodity prices. Layoffs are expected to exceed 1,000 employees. The communities directly impacted include Lordsburg, Silver City and Questa.

The impact is similar in other western states with significant hard rock mining operations, and regulators and others increasingly are concerned about the amount of financial assurance bonds. Nevada, Montana and Colorado have had to confront this issue after a number of companies filed for bankruptcy and state regulators subsequently learned bonding was insufficient to cover the cost of reclamation. In Montana, a state with comparable reclamation regulations to New Mexico, Pegasus Gold Corporation held a $29 million bond for its Zortman and Landusky mines when it went bankrupt in 1998. At that time, the state estimated the minimum reclamation cost at $53 million. After that experience, Montana began revising its regulations to require larger financial assurance bonds for its mines.

Though not an exact measure of proportionality, the graph below compares among western states the financial assurance bonds in place per disturbed acre. Montana, South Dakota and New Mexico have the highest bond amount per disturbed acre, which equates to the strength of the reclamation regulations.



Source: *Hardrock Reclamation Bonding Practices in the Western United States*.

In New Mexico, the bond amount per disturbed acre ranges from as low as $3 to as high as $60,000. The table below provides a summary of the number of New Mexico mines that fall within various ranges.

Number of Mines	Bond Amount/Disturbed acre
5	Less than $1,000
10	$1,000 to 1,999
11	$2,000 to 2,999
6	$3,000 to 3,999
5	$4,000 to 4,999
9	$5,000 to 10,000
5	Over $10,000

FISCAL IMPLICATIONS

Senate Bill 473 does not contain an appropriation.

The clearest fiscal impact would occur if mining companies were unable to meet the reclamation requirements defined under the Mining Act.

MFV/yr