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**MINE** Update  
MINING INDUSTRY NEWS E-COMM UPDATE

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Brought to you by the National Mining Association

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## **This Week in The News**

We all remain shaken over the violence that struck at the heart of our nation yesterday at the U.S. Capitol. As shocking as the actions of those rioters were, the actions of the Capitol Police and law enforcement who worked to restore order, and the Members of Congress who returned to work last night, show that our democracy is stronger. And so our work continues.

The 117<sup>th</sup> Congress convened this week following an eventful December that saw passage of a massive end of the session omnibus funding bill and another round of COVID-19 stimulus measures. Congress voted early this morning to confirm president-elect Biden's victory and the U.S. Senate runoff elections in Georgia have placed the new Senate in a 50-50 split, with Vice President-elect Kamala Harris breaking the tie and flipping control of the Senate on January 20.

With the new Congress and the administration's transition in full swing, the NMA remains actively engaged with efforts to advance mining's interests at both ends of Pennsylvania Avenue. Plus we have updates on how energy and mining markets are faring.

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## Safety Share

Check out these [workplace safety resolutions](#) for the New Year.

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## Georgia Senate Races

As of late Wednesday afternoon, multiple new outlets had called both U.S. Senate races in Georgia for Democratic challenger Raphael Warnock unseating Senator Kelly Loeffler with an approximately 60,000 vote lead and Democratic challenger Jon Ossoff unseating Senator David Perdue maintaining a growing lead in that race. Vote totals will apparently be less than total votes cast in November as approximately 4.4 million votes have been cast for the Senate candidates this election compared to over 4.9 million votes cast in November. Prior to the general election runoff elections in Georgia, Democrats held 48 seats and Republicans held 52 in the U.S. Senate. With the results of the Georgia elections electing two new Democratic senators, control of the U.S. Senate will change to a Democratic majority split evenly at 50-50 with Vice-President Elect Kamala Harris deciding control of the Senate. See [the NMA memorandum from yesterday morning here](#) for the last time the Senate was evenly split and how it was organized.

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## Congress Passes Massive Year-End Legislation

Congress ended session enacting a \$2.4 trillion COVID-19 response, fiscal year 2021 federal appropriations and multiple other pieces of legislation in a [massive nearly 6,000-page bill](#), along with overriding the President's veto on the [National Defense](#)

[Authorization Act for Fiscal Year 2021 \(NDAA\)](#). Both pieces of legislation included several policy provisions important to the mining industry.

- **Mineral Security.** The legislation included many provisions of the bipartisan and NMA-supported American Mineral Security Act. Please see the NMA's detailed memo [here](#) for specifics on NMA-backed language that was included throughout.
- **Infrastructure and Exports:** The legislation includes this year's Water Resources Development Act reducing users' share of the cost of capital projects to 35% and authorizing an additional \$10 billion through the Harbor Maintenance Trust Fund (HMTF) and preserving priority funding under the HMTF for energy transfer seaports. The NMA [led a stakeholder coalition](#) to enact these two provisions.
- **Carbon Capture:** The legislation contains the bipartisan and [NMA-supported](#) carbon capture utilization and direct air capture legislation, the Utilizing Significant Emissions with Innovative Technologies Act and extension of the 45Q tax credit through 2025.
- **Healthcare Benefits:** The legislation includes the American Miner Benefits Improvement Act of 2020 to ensure that union miners at risk due to 2020 coal company bankruptcies will not lose their healthcare.
- **Mining Workforce:** The bill requires the Department of Labor (DOL) and Department of the Interior (DOI) to work with the National Science Foundation and universities with mining programs to assess domestic availability of personnel for mineral exploration, production, processing, short and long term expertise threats, and effectiveness of domestic training, among other goals. The bill also requires the DOL and DOI to work with the National Academies of Science or National Academies of Engineering to develop programs to increase development of critical mineral production, manufacturing, research, and recycling and to initiate a competitive grant program among universities to develop critical mineral education, research, innovation, training, and workforce development programs.
- **Rare Earth Elements:** The legislation includes bipartisan and NMA-backed language that supports research and development at the Department of Energy

(DOE) for separation technologies to extract rare earth elements and other critical materials from coal and coal byproducts.

- **Uranium Reserve:** \$75 million will be made available for the Uranium Reserve Program under Atomic Energy Defense Activities at the National Nuclear Security Administration. The bill also directs DOE to submit a plan to Congress for the proposed establishment of a uranium reserve. NMA led a coalition of state mining associations and the Nuclear Energy Institute in supporting full appropriations for the uranium reserve throughout this year, which you may find [here](#), [here](#), and [here](#).
  
- **General Tax Provisions:** The legislation includes a number of tax provisions of interest and concern to NMA members including:
  - An increase of the black lung excise tax for one year.
  - Extension of mine rescue team training credit.
  - Extension of production credit for Indian coal facilities.
  - Extensions of various renewable energy tax credits.
  - Employee retention payroll tax credit modifications.
  - Deduction for business expenses from Paycheck Protection Program loans.
  - Extension of work opportunity tax credit through 2025.
  - Extension of employer tax credit for paid family and medical leave through 2025.

Finally, the NDAA contained provisions requiring the Department of Defense (DOD) to acquire strategic and critical minerals first from within the U.S., eliminate U.S. dependence on rare earth materials from China by 2035, and review DOD sourcing of minerals. The bill also contained the bipartisan and NMA-written section requiring the DOD to report on annual uses of strategic and critical materials and identify supply chain vulnerabilities. The bill requires the DOD to consider the development of an alternative domestic supply chain to ensure domestic capacity and recommend policies and procedures to provide for a secure supply of strategic and critical minerals and metals. The language also requires DOD to evaluate domestic processing and manufacturing capacity, coordinate with the U.S. Geological Survey to identify domestic mineral and metal reserves and facilitate partnerships between the DOD and academic institutions that receive grants for the

purpose of enhancing the security and stability of supply chains for domestic rare earth materials.

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## DOI, EPA, DOJ and CEQ Nominees Announced

Since our last newsletter, President-Elect Biden announced his picks to head the DOI, Environmental Protection Agency (EPA), Department of Justice (DOJ) and Council on Environmental Quality (CEQ). Please find the [status of Cabinet nominees](#) and prospects here along with [key White House staff announcements](#).

**DOI:** New Mexico Rep. Deb Haaland (D) has been nominated to serve as Interior secretary. If confirmed by the Senate, Haaland, will be the first Native American to head DOI. The one-term Congresswoman has prioritized climate issues. As chairwoman of the Subcommittee on National Parks, Forests and Public Lands, Haaland served on Biden's climate engagement advisory council and served on the House Select Committee on the Climate Crisis sponsoring the Green New Deal legislation in the House. She is an original co-sponsor of the "American Public Lands and Waters Climate Solution Act," which would direct DOI and the Forest Service to achieve net-zero greenhouse gas emissions from public lands and waters by 2040. She's been a critic of DOI's decisions to reduce the size of Bears Ears National Monument and the Grand Staircase-Escalante National Monument.

**EPA:** Michael Regan, secretary of the North Carolina Department of Environmental Quality, has been selected EPA administrator, having served in the Clinton and George W. Bush EPAs. As head of North Carolina's state environmental agency, he has focused on coal ash and chemical discharge settlements and helping spearhead North Carolina's plan to be carbon neutral by 2050. He's expected to prioritize climate change and environmental justice.

**AG:** Judge Merrick Garland is reportedly the pick to serve as the next attorney general, according to two people with knowledge of the decision. In 2016, President Obama nominated Garland to serve on the Supreme Court, but his nomination did not proceed to a vote in the GOP-controlled Senate. In recent weeks, Garland has recused himself from

cases involving the federal government. Garland has served on the D.C. Circuit Court of Appeals for more than two decades; he was appointed by President Bill Clinton in 1997.

**CEQ:** Brenda Mallory is the President-elect's pick to lead the Council on Environmental Quality. Mallory has 30 years of environmental policy experience previously serving as general counsel of the CEQ in the Obama administration and career roles at the EPA including deputy general counsel for EPA during the George W. Bush administration. Mallory is expected to lead efforts to address the Trump administration's changes to regulations implementing the National Environmental Policy Act.

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## Corps Finalizes Nationwide Permits (NWP)

Last night, the U.S. Army Corps of Engineers (Corps) released a prepublication [version](#) of its final rule reissuing and modifying the Nationwide Permits (NWP). The final rule reissued 12 existing NWP and four new NWP, but the Corps declined to reissue the remaining 40 existing NWP which will remain in effect through their scheduled expiration date in 2022. Importantly, the mining-specific NWP (21, 44, and 50) were all finalized as proposed, the definition of "loss of waters" was finalized as proposed, and the Corps removed the 300 linear foot limit for losses of stream bed from 10 NWP including the mining-specific permits. These changes will help reduce administrative burdens and make the NWP more usable for the mining industry. NMA will continue to analyze the final rule and its impact on the mining industry, but we are generally pleased that the Corps considered the recommendations made in our [comments](#) and [coalition comments](#).

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## FPISC Advances Rule to Add Mining as Fast-41 Covered Sector

The Federal Permitting Improvement Steering Council (FPISC) continues to advance its proposed rule to include mining as a covered sector eligible for the expedited permitting process available under section 41 of the Fixing America's Surface Transportation Act

(FAST-41). The FPISC has expedited its review process and reportedly sent a final rule to the Federal Register to be published in the near future. The NMA has long advocated for mining's inclusion and recently submitted [comments](#) in strong support of the proposal and urging quick finalization.

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## Surface Transportation Board Addresses CWA NPDES Permits

Last week the Surface Transportation Board issued a favorable decision in an important Clean Water Act (CWA) proceeding. Recall that the Association of American Railroads asked the Board to issue a declaratory order that the Interstate Commerce Commission Termination Act (ICCTA) preempts the application of the CWA's discharge prohibition and the National Pollutant Discharge Elimination System (NPDES) permitting program to incidental discharges from rail cars in transit. Without clarity from the Board on this issue, rail cars carrying coal, or any other commodity, could be required to obtain NPDES permits for incidental discharges that occur while in transit.

The Board declined to issue a declaratory order on procedural grounds, but provided helpful guidance, explaining that if individual states were to apply the NPDES permitting program to discharges from incidental operation of rail cars in transit, it would likely result in a patchwork of differing regulations that cannot be harmonized with ICCTA and therefore would likely be preempted. While the regulated community may have preferred a broader preemption finding, this procedural approach makes an appeal by the environmental organizations more difficult.

The NMA filed [comments](#) highlighting numerous issues that an adverse ruling would cause, including increased CWA litigation, increased regulatory uncertainty, and the impossibility of having to operate across a patchwork of potentially conflicting regulatory requirements.

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## NMA and Third-Party Voices

[Inside Sources](#) (NAT), [The Roanoke Times](#) (VA), [The Fredericksburg Free-Lance Star](#) (VA), [The Boston Herald](#) (MA), [The Sentinel & Enterprise](#) (MA) and [The Lowell Sun](#) (MA) all ran NMA third-party Forest Remick's piece on the role that met coal can play in rebuilding infrastructure.

The NMA is quoted in a [CIM Magazine](#) roundup on the impact of mining legislation in various jurisdictions around the world in 2020. The story notes that the U.S. saw increasing efforts to reduce foreign dependence on minerals.

The NMA is mentioned in a brief [Reuters](#) piece on the minerals language that was included in the omnibus.

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## Mining and Energy News

Kitco.com reported that its outlook for [gold](#) and [copper](#) mining in 2021 are both positive.

[The Silver Institute](#) expects that silver investment will surge 27% in 2020.

[Mining.com reported](#) that global copper mine production may increase by an average annual rate of 3.7% over 2021-2029, with total output rising from 21.5mnt to 27.8mnt over the same period.

The International Energy Agency forecasted global coal demand to [rise 2.6 percent next year](#).

The U.S. Energy Information Administration forecasted 2021 coal production to [increase 20 percent](#) to 624 million tons.

S&P Global reported U.S. coal-fueled electricity generation is likely to make a ["modest recovery" in 2021](#).

S&P Global reported U.S. coal train loadings [jumped to a 10-month high](#) in the week ended December 4.

Colorado regulators backed away from a plan that would have [forced earlier closures](#) of three coal-fueled power plants.

An independent regulatory council backed a decision by environmental regulators to grant Wyoming's [first new coal mine permit](#) in decades.

U.S. Geological Survey reported portland and blended cement shipments for the year through September totaled 76.7 million tons, [a slight increase](#) from the same period in 2019.

*The Wall Street Journal* published: "Infrastructure-investment binge is set to continue – [with or without Washington](#)."



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