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

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## **This Week in The News**

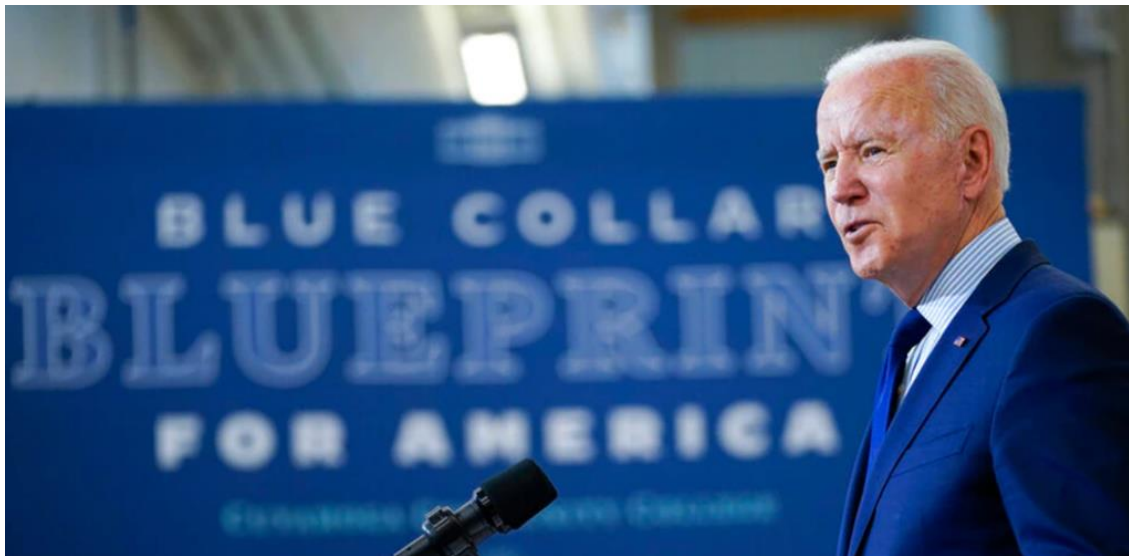
Following an unexpected Senate meltdown last week over a U.S.-China competitiveness bill, Biden-Harris administration officials signaled they would give bipartisan infrastructure talks another week to negotiate an agreement. Meanwhile, President Biden released a \$6 trillion budget proposal setting the stage for further negotiations over his policy and spending priorities. The National Mining Association (NMA) remains focused on advancing mining's interests at both ends of Pennsylvania Avenue. Plus we have updates on the mining and energy markets.

## **Safety Share**

In a reversal of previous policy, the U.S. Occupational Safety and Health Administration said employers [do not need to record](#) adverse reactions from COVID-19 vaccines.

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## NMA Reviews President Biden's First Budget Proposal



On Friday, President Biden released a \$6 trillion [fiscal year 2022 budget](#) to boost discretionary spending to \$1.52 trillion for fiscal 2022, an increase of \$118 billion or 8.8 percent over current funding. The budget outlines the White House's plan to begin to cover the President's \$2.2 trillion [American Jobs Plan](#), released in March, which proposes major infrastructure investments; the [American Families Plan](#), which includes nearly \$1.8 trillion in social infrastructure spending for child care, families and workers; and the [Made in America](#) tax plan.

### Key Tax Provisions:

- The budget outlines changes in the tax code that would raise revenue by repealing tax provisions targeting fossil fuel companies, including repealing the percentage

depletion allowance for coal mining.

- The administration proposes increasing the corporate income tax rate from 21 percent to 28 percent, raising \$858 billion over 10 years.
- The administration proposes a new 15 percent minimum tax on corporations with worldwide book income greater than \$2 billion. The provision would raise \$148 billion over 10 years.

### **Key Departmental Budgets**

**Department of Interior (DOI):** The Department's fiscal year 2022 budget totals \$17.4 billion—an increase of \$2.5 billion, or 17 percent, from the 2021 enacted level.

- **AML funding.** The 2022 budget proposes \$169.2 million to establish a new Energy Community Revitalization Program, which will fund the reclamation of abandoned mine lands (AML) and orphaned oil and gas wells on both federal and non-federal lands.
- **Hardrock Royalties and Taxes.** One item that is noticeably absent from the DOI's budget is the inclusion of a hardrock royalty or dirt tax, which was included in Obama-era budgets, and even included in the first-year Trump administration budget.
- **Bureau of Land Management (BLM).** The budget requests a 21 percent increase for the BLM to \$1.48 billion in fiscal 2022 from \$1.2 billion currently but provides little details on the "America the Beautiful" 30-by-30 initiative and the \$15 million requested for targeted conservation investments.
- **U.S. Geological Survey (USGS).** The budget requests \$1.6 billion, an increase of \$326.9 million above the 2021 enacted level. This includes \$140.0 million for energy and mineral resources programs – \$49.9 million above the 2021 enacted level – to conduct research and assessments on the location, quantity and quality of the domestic energy and mineral resources and support science to support the

safe and environmentally responsible development of these resources.

- Office of Surface Mining Reclamation and Enforcement (OSMRE). The budget requests \$312 million, \$89.4 million above the 2021 enacted level. As part of the Reclamation Jobs initiative, the 2022 budget provides \$165.0 million for Abandoned Mine Land Economic Revitalization grants, an increase of \$50.0 million above the 2021 enacted level. These grants support abandoned coal mine reclamation projects that have a nexus to local economic development.
- U.S. Fish and Wildlife Service (FWS). The budget requests \$332.1 million for the FWS, an increase of \$62.4 million over the 2021 enacted level.

**Department of Energy (DOE):** The President's Budget for fiscal year 2022 requests \$46.2 billion for the Energy Department, an increase of \$4.3 billion or 10 percent.

- Uranium Reserve. The President's budget did not request new funding for the national uranium reserve but does call for carrying over the \$75 million provided by Congress for the program in this fiscal year. The NMA will continue to prioritize establishment and funding of a uranium reserve and will work with congressional allies through the appropriations process to ensure that it is fully funded.
- Office of Fossil Energy and Carbon Management (FECM). The budget request provides \$890 million for the newly renamed FECM, an increase of \$140 million or 18.7 percent. Showing support for carbon capture utilization and storage (CCUS), funding for CCUS and Power Systems would increase by \$84.7 million or 19 percent for a total of \$531.5 million.
- Minerals Sustainability Division. Funding for FECM also supports DOE's Minerals Sustainability Division, used to support domestic critical minerals supply chains. A FECM priority is the development of technologies that enable the sustainable recovery of critical minerals from multiple feedstocks, including coal and other ores, byproducts, and AML cleanup activities. The FECM is also focused on the development of technologies that improve rare earth element separation/recovery technologies to manufacture products from coal and utilize existing partnerships

developed through Carbon Ore Rare Earth-Critical Mineral Initiative.

- POWER+ Initiative. The budget request also supports the newly established Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization as well as the POWER+ Initiative. These complement other targeted investments from other federal agencies to help communities targeted by the administration for energy transitions.

**Environmental Protection Agency (EPA):** The proposed fiscal year 2022 budget for the EPA provides \$11.2 billion, or an increase of \$2 billion or 21 percent above fiscal year 2021. This includes more than 1,000 new employees at the EPA.

- The budget requests \$882 million for the Superfund program to clean up contaminated lands, reduce emissions of toxic substances and greenhouse gases from existing and abandoned infrastructure, and respond to environmental emergencies. Further, the discretionary request also provides increased funding for EPA's Brownfields program.
- \$27.8 billion for U.S. Department of Agriculture, a \$3.8 billion or 16 percent increase from the 2021 enacted level. Part of this funding includes prioritization of the Biden administration's 30x30 proposal, also identified under DOI, which would conserve 30 percent of U.S. land and water by 2030.

**Department of Commerce (DOC):** The President's 2020 budget request included \$11.4 billion for Commerce, a \$2.5 billion or 28 percent increase from the 2021 enacted level. Of these funds, \$84 million, an increase of \$50 million over the 2021 enacted level, has been requested for the Economic Development Administration's Assistance to Coal Communities program, in addition to \$300 million to support locally-driven economic development projects.

**Department of Labor (DOL):** The Mine Safety and Health Administration (MSHA) requested \$447.2 million and 2,031 full-time equivalent employees (FTE), an increase of \$61 million and 324 FTE. The budget justification states: "[B]ased on the President's American Jobs Plan infrastructure investments, MSHA expects an expansion in mining activities that will require an increase in Enforcement and support staff." MSHA will

continue to monitor the "One MSHA" initiative to consolidate budget activities in coal and metal/nonmetal mine safety and health. Of these funds, \$100 million has been requested to support DOL's role in the new multi-agency POWER+ Initiative, aimed at reskilling and reemploying displaced workers in Appalachian communities.

**Army Corps of Engineers (Corps):** The budget requests \$6.8 billion for the Corps, a \$1 billion or 12.9 percent decrease from the 2021 enacted level. This funding will continue the Corps mission of facilitating safe, reliable and environmentally sustainable commercial navigation at the nation's coastal ports and support the timeliness and delivery of domestic water resources projects.

Congress will now take up work on the 2022 appropriation bill and tax bills, and with the President's new budget proposal, could begin crafting new budget reconciliation bills to move legislative priorities through the Senate with a simple majority vote.

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## **NMA Follow-Up with Biden-Harris Administration on Minerals Sourcing**

As previously reported, last week the NMA responded quickly to news stories that the Biden-Harris administration was primarily looking to ally countries to supply the bulk of the metals needed to build electric vehicles. The White House quickly reached out to the NMA and the media to clarify the story. Ali Zaidi, White House Deputy National Climate Advisor and Sameera Fazili, deputy director of the National Economic Council reached out directly to NMA's Rich Nolan with reassurances regarding the importance of domestic mining to the President's goals. As follow-up from that conversation, the NMA this week met with Monica Gorman, DOC Deputy Assistant Secretary for Manufacturing Industry & Analysis, several members of her team as well as representatives of DOC's Office of Materials Industries. The discussion focused on partnering with DOC on its efforts to develop a secure minerals supply chain that includes the vast domestic minerals resources available here at home.

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## EPA Seeks Stakeholder Input on Revision of CWA Section 401 Rule

Today the EPA published in the [Federal Register](#) a notice of intent to revise its 2020 Clean Water Act (CWA) section 401 certification rule. President Biden's Executive Order 13990 on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis directed EPA to review and, as appropriate and consistent with applicable law, take action to revise or replace the 2020 section 401 certification rule. EPA specifically intends to reconsider whether the rule appropriately considers cooperative federalism principles central to CWA section 401; and whether certain procedural components of the rule improve or impede the certification and permitting process.

Recall that under section 401 of the CWA, a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States, such as a CWA section 404 permit, unless a section 401 water quality certification is issued, or certification is waived. While many states implement section 401 faithfully, several states over the last few years have weaponized this authority to either delay permits or use non-germane reasons for declining to certify certain discharges. The NMA strongly supported the 2020 rule because it clarified the scope of review and the timelines for review and action that states and tribes have during the section 401 certification process. These clarifications provided much-needed regulatory certainty for the mining industry.

EPA will hold several stakeholder sessions this month to [solicit feedback](#) on how it should reconsider the 2020 rule. EPA also will accept written comments from interested stakeholders. Comments are due August 2, 2021. The 2020 rule will remain in effect during this review and reconsideration process.

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## Biden Administration Files Brief on Montana and Wyoming v. Washington



Last week, the Biden administration filed an [amicus brief](#) with the U.S. Supreme Court urging the justices to not intervene in the coal export case, *Montana and Wyoming v. Washington*. Recall that Washington State denied a Clean Water Act Section 401 water quality certification for the Millennium Bulk Terminal coal export facility, not based on water quality, but because state officials politically objected to the use of coal. Montana and Wyoming last year challenged the denial asserting that Washington's action improperly restrains their ability to engage in legitimate economic activity. In October 2020, the Court asked for the views of the Department of Justice on whether to hear the case, but the department did not weigh in until after the change of administration.

The administration's brief contends that Montana and Wyoming's appeal is no longer a live controversy due to the recent bankruptcy filing by Millennium Bulk Terminal and its abandonment of the relevant permits. The NMA previously filed a [brief](#) in support of Montana and Wyoming to ensure the Court considered the broader constitutional implications of coastal states imposing *de facto* trade and foreign policy edicts that under the constitution are left to the federal government.

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# NMA Reinforces States' ACE Supreme Court Petition

The NMA last week filed a [brief](#) to the U.S. Supreme Court in support of the appeal by West Virginia and other states of the decision by the U.S. Court of Appeals for the District of Columbia Circuit on the Affordable Clean Energy (ACE) rule. The brief focused on two critical points regarding why the Court should address the appeal now, even as the administration works to craft new regulations in response to the D.C. Circuit's decision. First, the NMA argued a years-long delay will impose unnecessary harms since uncertainty as to whether the EPA has authority to mandate generation-shifting under Clean Air Act section 111(d) from coal-fired generation to natural gas and renewable sources, and whether it will actually do so, is a critically important input that will drive significant economic decisions *now* that will be costly, if not impossible, to reverse. Second, the NMA noted that legality of the D.C. Circuit's mandate is precisely what is in dispute in this case and absent the Court's intervention, the EPA will replace the ACE rule in accordance with the D.C. Circuit's erroneous opinion, sending the agency on another misguided, multi-year Section 111(d) rulemaking.

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## NMA and Third-Party Voices

Following the controversy that stemmed from Reuters' initial story claiming that the Biden administration would be looking to foreign sources for mined materials necessary for electric vehicle and battery technologies, Rich Nolan and the NMA were quoted by stories from [E&E Greenwire](#), the [Washington Examiner](#), [The New York Post](#), [Report Door](#) and [Breitbart](#) in which the administration expressed a commitment to domestic mining. Editorializing on the news, Nolan and the NMA are also quoted in columns published in the [Daily Herald](#), [MagicValley.com](#), [Creators Syndicate](#) and [Everett Herald Net](#).

From the NMA's third parties, the [Casper Star Tribune](#) (Wyo.), [Fort Myers News Press](#)

(Fla.), [Naples Daily News](#) (Fla.), [St. Joseph News Press](#) (Mo.) and [Greeley Tribune](#) (Colo.) ran an op-ed by Matthew Kandrach, president of Consumer Action for a Strong Economy, a free-market advocacy organization, in which he argues we need a grid we can rely on, supported by baseload capacity such as coal, nuclear and natural gas, in order to support an electric vehicle revolution.

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## Mining and Energy News

[S&P Global reported](#) recently on analysis showing that its 2021 mining capital spending forecast of \$176 billion is up 18 percent from 2020 and 2019, and that COVID-19 pushed capex down 8 percent in 2020, but that recovery is expected in 2021.

[The Wall Street Journal](#) reported that despite a commodity boom that is boosting profits, miners aren't throwing cash at new projects, raising concerns about future shortages of some metals.

[Fitch Ratings reported](#) it has increased most of its short-term metals and mining price assumptions, noting that many commodity prices have been benefitting from pent-up demand so far in 2021.

[The International Copper Study Group's recent data release](#) for February shows copper mine production increased by 3.5 percent in the first two months of 2021.

*Deseret News* explored the potential for [cobalt mining in Utah](#).

[Argus Media reported](#) on EIA Electric Power Monthly April [data](#) indicating coal-based power generation rose 23 percent in March amid higher natural gas prices and an uptick in power demand.

[Argus Media reported](#) on Association of American Railroads carloading data indicating that U.S. railroads are hauling more coal as utilities build stockpiles in preparation for

higher coal-based power demand this summer.

*Grist* published: “The plan to turn coal country into a [rare earth powerhouse](#).”

*POWER* magazine profiled a UK-based company’s plans for selling [biomass-based pellets](#) for co-firing in coal-fueled power plants.

[Power Magazine reported](#) on NERC’s [Summer Reliability Assessment](#) warning that parts of North America are at elevated or high risk of energy shortfalls this summer during above normal peak temperatures.

[S&P Global](#) reported on MSHA 1st quarter data showing that U.S. coal jobs were continuing to dwindle despite coal production’s rebound.

[Argus Media reported](#) that U.S. coking coal producers say spot prices have yet to hit a ceiling and that they are expecting more upside given stronger demand since the second half of last year.

More than a dozen Republican state treasurers [threatened to pull assets](#) from large financial institutions if they agree to decarbonize their lending and investment portfolios.

*Bloomberg* profiled the [battles between western states](#) over coal policy.

*Bloomberg* reported Russia is investing more than \$10 billion on a railroad to increase [coal exports to Asia](#).



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