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# MINE Update

MINING INDUSTRY NEWS E-COMM UPDATE

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## This Week in The News

U.S. senators passed the bipartisan \$1.2 trillion infrastructure package and started the partisan congressional budget reconciliation process by passing their \$3.5 trillion budget resolution. The House is planning to return to Washington the week of August 23 to consider the Senate's resolution, but House leadership remained steadfast that they will not take up the bill unless the Senate also moves a larger \$3.5 trillion "social infrastructure" bill through reconciliation rules first. Even over summer recess, deliberations on the \$3.5 trillion reconciliation package are now underway with over a dozen congressional committees set to unveil the next round of bills in a little over a month. The National Mining Association (NMA) remains focused on actively engaging to advance mining's interests at both ends of Pennsylvania Avenue. Plus we have updates on how the mining and energy markets are faring.

## Safety Share

*Construction Dive* published: “Seven dos and don'ts when an employee is [at risk for self-harm](#).”

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### Senate Passes Infrastructure Bill with New Mine Permitting Provisions



Yesterday the U.S. Senate passed the bipartisan Infrastructure Investment and Jobs Act by a vote of 69-30. The legislation was the culmination of negotiations that began this summer with a bipartisan group of 22 senators who worked closely with the administration to develop a \$579 billion framework. The final legislation amounts to about \$1.2 trillion in funding, about half being new expenses, that will go toward physical infrastructure projects.

The NMA secured a number of priorities in the infrastructure legislation through the process and will continue to defend those priorities until the legislation is sent to the President for signature. See the [NMA's memo](#) following yesterday's passage for a list of

NMA priorities.

The final Senate-passed bill contains two new sections addressing permitting reform that the NMA worked to secure with a coalition of organizations and with the bill sponsors, Sens. Kyrsten Sinema (D-Ariz.) and Rob Portman (R-Ohio):

- Section 11301 codifies the One Federal Decision initiated in the previous administration. A principal part of this section is setting a timeline for and goal of completing environmental impact statements within two years.
- Section 70801 makes further efficiencies to the Federal Permitting Improvement Steering Council (FPISC) and reauthorizes it indefinitely. FPISC was created as a pilot permitting efficiency program in the immediate previous infrastructure bill, FAST-41, and was scheduled to sunset at the end of next year. Energy project permitting was already included in the FAST-41 enacted legislation and the [NMA worked throughout 2020](#) to expand the covered sectors that may participate in the program to the non-energy mining sector, which was accomplished by a vote of the FPISC in early 2020 and final federal regulations solidifying that vote early this year.

Senate passage of the bill is a significant step, but the bill goes back to the House of Representatives. The NMA will continue to pursue our priorities throughout the remainder of the legislative process.

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## Senate Begins Budget Reconciliation Process



Early this morning, the U.S. Senate concluded the first step in the budget reconciliation process. Senators filed 1,166 amendments to the Senate's budget resolution, on which there were 47 votes. None of the votes on amendments to the budget are binding making that part of the process inconsequential. However, Senators filed a number of amendments relating to mining and the mining industry. Please find a description of the [amendments](#) in [NMA's memo from today](#).

The budget resolution is simply a numerical framework. Passing it is the beginning of a process to develop legislation which may pass both congressional chambers by a simple majority vote – instead of the usual 60-vote threshold in the U.S. Senate. In addition to making the [budget resolution](#) available, Sen. Chuck Schumer (D-N.Y.) also circulated a [memorandum for Democratic Senators](#) providing more detail on the topics for legislation for each committee in the Senate to develop pursuant to the resolution. Some of the topics highlighted in the memo include: the Clean Electricity Payment Program, hard rock mining, Department of the Interior (DOI) programs, a Clean Energy Technology Accelerator, corporate and international tax changes, and a carbon polluter import fee.

The next step in the process is for the House to reconvene to pass the Senate's budget resolution which will happen the week of August 23. The House passage of the budget allows all the congressional committees to begin the process of writing reconciliation legislation which will include the priorities laid out in the President's Jobs Plan, Families

Plan and Made in America Tax Plan. This will likely set up a long legislative process requiring much of the fall. The most important part of this process is the reconciliation bill text. We will start to see the text of reconciliation legislation take shape as early as the middle of September.

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## Comment Period Extension Needed for WOTUS Pre-Proposal Comment Period

Last week, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) [published](#) a notice announcing their initial stakeholder engagement plans for repealing and replacing the 2020 Navigable Waters Protection Rule. 86 Fed. Reg. 41911 (Aug. 4, 2021). The notice affirmed that the agencies intend to undergo a two-step rulemaking process; set dates for five stakeholder sessions during August; and opened a 30-day pre-proposal comment period for stakeholders to share recommendations on a broad range of topics related to the rule. Comments are currently due September 3, 2021.

The NMA and our coalition, the Waters Advocacy Coalition, plan to file letters this week requesting that the agencies extend the pre-proposal comment period by 60 days. We believe an extension of the comment period is necessary given the fundamental importance of this rule to the mining sector, the agencies' public commitments to robust stakeholder engagement, and the agencies' recognition in previous changes to the definition of WOTUS that a longer comment period was appropriate. Click [here](#) to view the letter we plan to file.

We encourage your company or organization to file an extension request as well. Please feel free to use the NMA's letter as a template for your organization's request. Extension requests can be submitted to the [www.regulations.gov](http://www.regulations.gov) docket under Docket ID: EPA-HQ-OW-2021-0328-0001 or by clicking [here](#).

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## BLM Reviewing Sage Grouse Conservation Options Including Mineral Withdrawal



The Bureau of Land Management (BLM) yesterday issued a [press release](#) announcing that it will begin re-initiation consideration of whether a proposed 10 million acre mineral withdrawal of federal land from location and entry under the mining law to conserve priority greater sage-grouse habitat is necessary. The NMA received advance notice of the move from Laura Daniel Davis, Department of Interior, Principal Deputy Assistant Secretary - Land and Mineral Management, who reassured that the department has no predetermined outcome on whether to move forward with the withdrawal. Recall, this step is required by a U.S. District Court for the District of Idaho decision earlier this year that vacated BLM's 2017 cancellation of the proposed withdrawal of 10 million acres identified as "Sagebrush Focal Areas" in six western states from location and entry under the Mining Law. The court remanded the issue to BLM for consideration of whether the withdrawal is needed for sage grouse conservation. The court further directed BLM to reinitiate the National Environmental Policy Act process to evaluate the environmental impacts of a withdrawal.

A Federal Register notice is expected later this week formally announcing that BLM will be

preparing a new environmental impact statement and opening a comment period to receive input regarding the potential withdrawal. The NMA will continue to be an active participant in this rulemaking and making the case that sage grouse conservation and mining can occur simultaneously.

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## ACE Litigation Update

Last week, the [EPA](#) and three other parties filed briefs with the U.S. Supreme Court opposing the petitions for certiorari seeking review of the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision to vacate the Affordable Clean Energy (ACE) rule and the repeal of the Clean Power Plan. [A group of 19 states](#), led by West Virginia Attorney General Patrick Morrisey, petitioned the Supreme Court for review of the D.C. Circuit's decision, arguing that the Clean Air Act did not authorize EPA to issue a rule to force fossil fuel utilities to reduce operations and subsidize an expansion of renewable energy. The [NMA](#) supported the states seeking review, underscoring that a years-long delay would impose unnecessary harms on coal-based utilities since uncertainty as to whether the EPA has authority to mandate generation-shifting is critically important in driving significant economic decisions now. The parties in opposition, however, emphasize that the case is not ripe for review since the EPA has not yet announced what its future regulations will require and accuse petitioners of merely speculating that EPA will once again rely on "generation-shifting" to reduce emissions from the power sector. Therefore, they ask the Court to reject the petitioners' requests for a decision to "clarify" the legal bounds of EPA's authority. The Supreme Court will review and decide which cases it takes after it returns from its summer recess in late September. A decision is not likely to occur until October.

## NMA and Third-Party Voices

Building on President Biden's announcement last week on EVs , Rich Nolan has an op-ed [in Inside Sources](#) carrying the message that the U.S. can be a global leader in the EV revolution, but it won't happen if we supercharge domestic mineral demand while failing to ramp up U.S. mineral production.

The NMA is quoted in an [S&P Global](#) report noting that groups representing U.S. battery metals are calling the bipartisan infrastructure deal a win, and a press release from [Senator Susan Collins' office](#) lists the NMA as a supporter of the infrastructure bill.

The NMA is also quoted in a [Bloomberg story](#) on this week's UN climate report, noting that the association is committed to being part of the climate solution and highlighting the NMA's belief that carbon capture technology will be a necessary part of global efforts to control emissions.

From our third parties, [The Hill](#) (D.C.) carries an op-ed by Bernard Weinstein, an emeritus professor of applied economics at the University of North Texas, former associate director of the Maguire Energy Institute at Southern Methodist University, and a fellow of Goodenough College, London, in which he argues reducing or eliminating tax preferences for oil, natural gas and minerals would be a serious mistake.

[RealClear Energy](#) (D.C.) carries an op-ed from Tom Madison, a former administrator of the U.S. Federal Highway Administration, in which he argues failure to develop sufficient and secure material supply chains could derail efforts to deploy energy technologies essential to reducing emissions.

[Wichita Falls Times News Record](#) (Tex.), [Fort Myers News Press](#) (Fla.), [Naples Daily News](#) (Fla.), [MSN.com](#) (NAT), [Northwest Indiana Times](#) (Ind.), [Reno Gazette Journal](#) (Nev.), [Couer d'Alene Post Falls Press](#) (Idaho), [Las Vegas Sun](#) (Nev.), [Billings Gazette](#) (Mont.) [Alaska Journal of Commerce](#) (Alaska) and [Colorado Springs Gazette](#) (Colo.) all ran an op-ed by Michael Stumo, CEO of the Coalition for a Prosperous America, in which he argues in order to keep taxpayer dollars out of China's hands, it's time to bring supply chains home, including mining and critical materials.

[American Greatness](#) (NAT) carries an op-ed by Mackubin Owens, a retired Marine, professor, and editor, in which he argues support for certain essential industries is an overdue recognition of the limited ability of the market to address America's strategic vulnerabilities.

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## Mining and Energy News

[The Wall Street Journal](#) reported that coal is a “gold mine for producers” after a blistering rally while [Forbes](#) reports that the world has yet to even meet the peak of demand for coal.

The Wall Street Journal also published: “Renewables are fast replacing coal, [except in rural America](#).”

Public Service of New Mexico warned utility regulators that it [may not have enough generation capacity](#) after closing the coal-fueled San Juan station in June 2022.

[Argus reported](#) that coal-based power generation in the PJM power grid region climbed 13 percent in July, with coal's share of the energy mix increasing from 23 percent to 27 percent, and [Argus](#) also reported that the Midcontinent Independent System Operator coal generation climbed by 18 percent in July.

[Argus](#) also reported that Powder River basin coal production climbed by 27 percent last quarter from the multi-year low set in the same period of 2020 amid increased electricity demand and higher natural gas prices. In fact, [Bloomberg](#) reported that the era of cheap natural gas has ended with prices rising 1,000 percent.

Exports were also strong, with [Argus reporting](#) that U.S. coal exports hit a two-year high in June, helped by a surge in shipments to China, India and Japan.

[E&E News reported](#) that a Maryland offshore energy developer is promising to build a massive steel plant outside Baltimore, creating hundreds of union jobs as it assembles one of the largest offshore wind farms on the East Coast.

[Canary Media reported](#) that solar materials including aluminum and polysilicon have become harder to obtain, while shipping costs rocketed to unprecedented heights.

[Reuters](#) reported that mineral exploration company KoBold Metals, backed by billionaires including Jeff Bezos and Bill Gates, has signed an agreement with London-listed Bluejay Mining to search in Greenland for critical materials used in electric vehicles.

[Econotimes](#) reported that South Korea will stockpile more rare metals, such as nickel and cobalt, expanding a 57-day supply to cover 100 days for key industries such as electric vehicle batteries and renewable energy.



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