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MINE Update

MINING INDUSTRY NEWS E-COMM UPDATE

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Brought to you by the National Mining Association

This Week in the News

Our vocabulary word for this week is: “Frenetic.” Congress is back in full force and faces a dizzying array of self-imposed deadlines for finalizing the \$1 trillion bipartisan infrastructure package and advancing a \$3.5 trillion partisan package along increasingly fractured party lines with potentially significant impacts on the mining industry. Add to that a continuing resolution to keep the government open and a need to raise the debt limit waiting in the wings. In this flurry of activity, 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

Week Three of National Preparedness Month: [Low-cost, no-cost preparedness](#). Week Four of National Preparedness Month: [Teach youth about preparedness](#). Ready.gov has [lots more materials](#) to support your Preparedness Month activities if you want to learn more.

Upcoming Hardrock Mining Senate Hearing



For the first time since [June 2020](#), the U.S. Senate Energy and Natural Resources Committee is considering an oversight hearing on issues affecting the mining industry. The committee is presently aiming for the first week in October. The House Natural Resources Committee's Reconciliation Act contained new royalties on existing and new mining operations on federal land, a 7 cent per ton extraction tax on federal land, and other changes long sought by the committee's Chairman Raul Grijalva (D-Ariz.). The NMA is working with committee leadership on both sides of the aisle including full committee Chairman Joe Manchin (D-W.Va.) and Mining Subcommittee Chairwoman Catherine

Cortez Masto (D-Nev.) to prepare for this potential hearing with key witnesses and testimony from the mining industry. This hearing will contribute to legislative work whether in reconciliation legislation this year or legislation later this Congress addressing the Mining Law. The NMA will keep you informed about this important hearing and further work in Congress on the Mining Law.

House to Consider National Defense Authorization Act



This week, the U.S. House of Representatives will consider the FY2022 National Defense Authorization Act (NDAA) ([H.R. 4350](#)), which includes NMA-backed bipartisan provisions to support interagency coordination for the development of domestic supply chains for minerals while directing consultation with producers and processors of strategic and critical materials to prevent undue supply chain disruptions. The NMA has worked with Congressman Mike Waltz (R-Fla.) and other members of the House Armed Services Committee's [Defense Critical Supply Chain Task Force](#) on the inclusion of these provisions to prioritize the development of domestic mineral supply chains as it relates to U.S. national security.

Of the 860 amendments filed to the bill, more than 475 were made in order for consideration on the House floor. The NMA is tracking a number of these amendments, including several that prioritize supply chain security by assessing existing vulnerabilities and making recommendations to reduce risk, including domestic sourcing. Additional amendments to be considered would withdraw federal lands from mineral entry or create new and sweeping wilderness and conservation designations, including the Grand Canyon

Protection Act (H.R. 1052), the Colorado Outdoor Recreation and Economy Act (H.R. 577), and portions of the Protecting America's Wilderness and Public Lands Act (H.R. 803). The NMA has led coalition efforts opposing the Grand Canyon Protection Act.

Nearly identical amendments were offered and accepted to last year's NDAA, although the provisions were removed from the bill during conference negotiations. It is important to note that an amendment offered by Chairman Grijalva to repeal the Oak Flat land swap, effectively terminating the Resolution Copper Project, was not made in order. The NMA will continue to track these amendments and other priorities and provide updates as they become available.

Waters of the United States (WOTUS) Litigation and Request for Declarations

As discussed during the Environment Committee meeting at MINExpo INTERNATIONAL® last week, the NMA's industry coalition plans to appeal the Arizona District Court order vacating the Navigable Water Protection Rule (NWPR) and request a stay pending appeal. To succeed in obtaining a stay, the coalition will need to demonstrate that this order and the uncertainty it is causing is harming our members. If your company is interested in providing a declaration about the harm you are facing as a result of this order, please contact Katie Sweeney at ksweeney@nma.org or Caitlin McHale at cmchale@nma.org as soon as possible.

WOTUS Regulatory Updates



U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) recently announced they will no longer implement the NWPR. Instead, the agencies will interpret WOTUS under the pre-2015 regulatory regime until further notice. Not surprisingly, this announcement caused confusion and uncertainty, especially for project proponents that have recently completed approved jurisdictional determinations (AJDs) or have pending AJDs. Last Friday, the agencies provided additional information in a [notice](#) on their websites. This notice appears to set Aug. 30, 2021 – the date of the Arizona court ruling – as the “cutoff” date. If an AJD was completed before that date under the NWPR, then it is generally valid until its expiration date or unless new information warrants revision prior to the expiration date. If an AJD was pending on that date or submitted after that date, then it will be completed under the pre-2015 regulatory regime.

Before the federal agencies made their announcement, the state of Colorado posted on its website “guidance” regarding its view of the NWPR. Specifically, the guidance states:

“If a project has a permit from the Army Corps of Engineers for waters that were WOTUS using the pre-2015 regulatory regime, the department does not plan to initiate any enforcement activities. For entities that received a jurisdictional determination from the Corps between April 26 and Sept. 3 that identified waters as non-jurisdictional under the 2020 Navigable Waters Protection Rule, we recommend either re-submitting an application to the Corps for a new jurisdictional determination to establish whether the project will impact WOTUS using the pre-2015 regulatory regime or just obtaining 404 permit

coverage for dredge and fill activity in waters that are potentially WOTUS using the pre-2015 regulatory regime.”

The NMA continues to analyze both the federal agencies’ and Colorado’s guidance. Please inform us if any states in which you operate issue similar guidance.

EPA Rescinds Maui Groundwater Guidance

EPA recently rescinded its January 2021 guidance “Applying the Supreme Court’s *County of Maui v. Hawaii Wildlife Fund* decision in the Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System Permit Program.” In a [memorandum](#), EPA said it rescinded the guidance because (1) the eighth factor in the guidance (the design and performance of the system or facility from which the pollutant is released) is “not consistent with the CWA” or the Supreme Court’s decision in *Maui* because, “among other things, the additional factor introduces an element of intent that is not reflected in or consistent with the [Maui] decision;” and (2) the guidance “was issued without proper deliberation within EPA or with our federal partners.”

EPA is “evaluating appropriate next steps” but in the interim, points to the Supreme Court’s *Maui* decision for the “guiding principles” that permit writers can use to implement the decision. Additionally, the memo states that the agency “will continue to apply site-specific, science-based evaluations to determine whether a discharge from a point source through groundwater that reaches jurisdictional surface water requires a permit under the Clean Water Act.”

Opposition to Anti-Coal Provisions in House Natural Resources Reconciliation Bill



In recent weeks, Sen. Manchin has made it clear in public comments his opposition to House Democrats' proposed Clean Electricity Performance Program (CEPP). Two weeks ago, the Senator told NBC's Chuck Todd, the plan "makes no sense at all." He added, "We are going to leave ourselves in a situation by 2030 that we are not going to have reliability. That's what I'm concerned about."

Similarly, American Electric Power asserted in a [letter](#) to other utilities and congressional offices that the CEPP would "adversely impact the reliability and resilience of the electric grid." They raised concerns that the proposal would force utilities to develop clean energy "too rapidly." In recent years AEP has announced plans to pivot away from coal. Even so, the company is expected to run three of its largest coal plants until 2040. AEP operates two large coal plants in West Virginia.

As the Senator was making his comments, the NMA team offered support for that perspective [in a letter](#) to Chairman Manchin and Sen. John Barrasso (R-Wyo.) articulating the coal industry's opposition to the many anti-mining provisions included in the House Natural Resource Committee's reconciliation bill text. The provisions the NMA highlighted as detrimental included excessive royalties, increasing minimum rental rates, altering deferred coal bonus payments, creating uncertainty by halving lease terms, establishing minimum severance fees, and the elimination of royalty relief offered within the federal coal leasing program.

The Congressional Budget Office (CBO), who assists the budget committees by providing informal estimates of the budgetary impact of various proposals that the committees might want to allow for in the budget resolution, contacted the NMA to provide real world information on the impacts of these destructive provisions, including effects on investment attractiveness, employment opportunities and local communities. Results from the CBO can help determine if the proposal is germane to budget reconciliation procedures. The NMA previously [requested](#) member input should you still want to participate.

Petition for Rulemaking to Revise Hardrock Mining Regulations

Several tribes and conservation groups this week filed a [petition](#) for rulemaking with the Department of Interior (DOI) to “bring hardrock mining regulations and policy into the 21st century.” The petition stresses that as the Biden administration pushes to secure clean energy metals during a climate crisis, that Interior should update the regulations to avoid repeating mistakes associated with the 19th century rush for precious metals and the 20th century rush for uranium, including disproportionate impacts on Indigenous communities. The petition recites a “parade of horrors” including the age of the Mining Law, loopholes in the Clean Water Act and Resource Conservation and Recovery Act, tailing dam failures, misleading toxic release inventory data, and abandoned legacy mine sites to justify specific changes to BLM’s hardrock mining regulations. DOI’s regulations require that a petition for rulemaking “be given prompt consideration” and that petitioners be notified promptly of action taken.

Interior Announcements on Sage-Grouse Resource Management Plans



The DOI recently filed a [status report](#) confirming that the Bureau of Land Management (BLM) is evaluating the Greater Sage-Grouse Resource Management Plan Amendments issued in 2019, as well as the six supplemental Environmental Impact Statements (EIS) and Records of Decision (ROD). The BLM intends to publish a notice in the Federal Register within sixty days, announcing a scoping period for a new planning process. The process will address inclusion of any new information and revisit the deficiencies previously identified by the court. The U.S Forest Service continues to work on the planning process that was initiated in 2017.

The status report highlighted two other aspects of the sage-grouse policy that the BLM is evaluating, including the [notice](#) of re-initiation of the National Environmental Policy Act (NEPA) process as required by the court to re-assess a proposal to withdrawal approximately 10 million acres of land from location and entry under the Mining Law, and the BLM existing policy regarding compensatory mitigation.

Recently, the NMA requested information and examples from NMA members on conservation activities conducted during the last five years to promote sage-grouse conservation. As part of the NMA's comment strategy for the scoping period and the mineral withdrawal, we would like to highlight the wide-ranging protective measures that the mining industry implements to conserve sage-grouse and its habitat.

NMA and Third Party Voices

Outlets including [S&P Global](#), [Las Vegas Review-Journal](#), [Pit & Quarry](#), [Mining.com](#), [Mining Magazine](#) and [International Mining](#) all reported on the NMA's MINExpo INTERNATIONAL® 2021. And [World Coal](#), [MarketScreener](#) and [Pit & Quarry](#) ran articles on the NMA's Sentinels of Safety Awards, which were presented at a ceremony during MINExpo.

Rich Nolan is quoted in [Reuters](#) and [Politico Morning Energy](#) stories highlighting that the hardrock mining industry is fighting back against a proposal to implement royalties on production.

The NMA is quoted in stories from [S&P Global](#) and [Politico Pro](#) on Democrats' proposals to implement new royalties and fees on the hardrock mining industry could cripple the industry.

In coverage of Abandoned Mine Land (AML) proposals within the infrastructure package, the NMA is quoted by the [Associated Press](#), [Bloomberg](#), [Arkansas Democrat Gazette](#), [The Wichita Eagle](#) and [Mining.com](#) on industry's considerable contributions to clean up abandoned coal mines, and the importance of additional funds from Congress.

[Politico Pro](#) quotes the NMA on reports that insurance companies are putting the squeeze on coal and oil sands companies.

The NMA is quoted in an [S&P Global](#) report that the coal industry is increasingly exploring the potential of producing rare earth elements from coal and coal waste.

The NMA is also quoted in a [VICE](#) report on studies around rates of mental illness among coal miners.

From our third parties, the [Reno Gazette Journal](#) (Nev.), [Johnstown Tribune Democrat](#) (Pa.), [Yahoo!News](#) (NAT), [Clermont Sun](#) (Ohio), [Northwest Indiana Times](#) (Ind.),

[Towanda Daily Review](#) (Pa.), [Elko Daily Free Press](#) (Nev.), [MSN.com](#) (NAT), [Logan Daily News](#) (Ohio), [Memphis Commercial Appeal](#) (Tenn.), [Salem News](#), [Lisbon Morning Journal](#), [East Liverpool Review](#) (Ohio) and [The Arizona Capital Times](#) (Ariz.) carry an op-ed by Matthew Kandrach, president of Consumer Action for a Strong Economy, in which he argues we need a balanced electricity mix for reliability and affordability.

[The Eastern New Mexico News](#) (N.M.) carries an op-ed by Jim Constantopoulos, a geology professor at Eastern New Mexico University, in which he argues increasing domestic mining is a central pillar of effective climate action.

[The Washington Examiner](#) (D.C.) carries an op-ed by Mark Perry, a scholar at the American Enterprise Institute, that argues preserving grid reliability means preserving the nation's coal and nuclear fleets.

[Cleveland Plain Dealer](#) (Ohio) carries an op-ed by Robert Chase, who served as chair of the Petroleum Engineering and Geology Department at Marietta College, in which he argues if the United States wants to compete and not only hold onto our auto industry but see it thrive, we've got to get serious about mineral production and processing.

[Colorado Springs Gazette](#) (Colo.) carries an op-ed by Stan Dempsey, president of the Colorado Mining Association, in which he argues Congress should work together to find a bipartisan solution, if we are to seize this once-in-a-generation opportunity to secure our mineral supply chains and build an industrial base that supports the jobs and economy of tomorrow.

Mining and Energy News

[The U.S. Geological Survey \(USGS\) quarterly report on production of mineral commodities](#) shows that "Many mining industries have shown recovery in the first six months of 2021 compared with production levels in 2020, owing to measures imposed to limit the spread of coronavirus disease (COVID-19)." The USGS noted that the base

metals sector was hit especially hard in the second quarter of 2020 but production in 2021 has increased.

S&P Global published: “Energy transition could see mineral [demand run ahead of supply](#) by end of decade.”

[The International Copper Study Group \(ICSG\) reported](#) that “world copper mine production increased by 4.9 percent over the first half of 2021, with concentrate production increasing by around 6.4 percent and solvent extraction-electrowinning (SX-EW) declining by about 1.5 percent.”

[Bloomberg](#) reported EV battery prices, which have been steadily falling, could start rising again because of a surge in metal prices.

[Politico Pro](#) reported that Democrats are urging DOE to reconsider the uranium stockpile.

[Argus Media reported](#) that coal exports from Hampton Roads, Virginia, rose by 57 percent in August as tight international supply increased demand for U.S. coal.

[Bloomberg reported](#) that Goldman Sachs Group Inc. almost doubled its outlook for Asian coal prices as a global recovery in power demand and production issues in key mining countries combine to make supply scarce.

[Argus Media reported](#) that the Midcontinent Independent System Operator region’s coal burn was at a 3-year high amid rising overall power demand and higher natural gas prices.

[Argus also reported](#) that PJM region’s coal margins were on track to reach multi-year highs.

[Casper Star-Tribune](#) (Wyo.) reported that soaring natural gas prices have been a boost for the coal industry.

The Wall Street Journal reported natural-gas, coal, and electricity prices are “[all running abnormally high](#), far too early.” The Journal also explained the [dramatic surge](#) in natural gas prices.



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