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

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## **This Week in the News**

Congress departed for the Christmas holiday without passing major tax and social programs spending legislation. Despite the missed self-imposed deadline, Democratic leaders vowed to continue seeking ways to pass a package along party lines in the New Year. 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.

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## **Safety Share**

State Farm compiled an excellent and easy to use list of [holiday safety tips](#).

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## Build Back Better Derailed - For Now



Over the weekend, Sen. Joe Manchin (D-W.Va.) announced that he would be a “no” on the currently drafted Build Back Better Act moving through the partisan budget reconciliation process. The announcement elicited a [sharp response from the White House press secretary](#) and a [letter from Senate Majority Leader Chuck Schumer \(D-N.Y.\) to Democratic senators](#) assuring them a vote or votes on the legislation although the procedure and path forward for those votes remains unclear. In the meantime, Capitol Hill has left for the next couple of weeks, reconvening on Jan. 3. It may take until then for the smoke to clear and tempers to cool before any new pathways ahead emerge for a revised reconciliation bill to pass the Senate.

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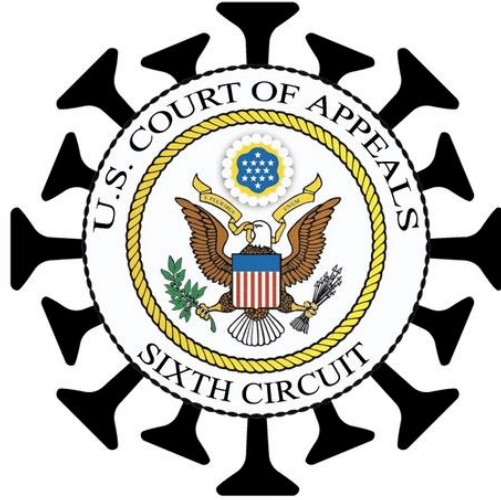
## Sage-Grouse Resource Management Plan and Mineral Withdrawal Proposal

Last week, the [House Western Caucus](#), led by Chairman Dan Newhouse (R-Wash.), again weighed into the ongoing proposed withdrawal of 10 million acres of federal lands in Idaho, Montana, Nevada, Oregon, Utah and Wyoming for sage-grouse land management plans. The [letter](#) to Secretary Haaland requests the agency use a science-based approach to implementing range wide measures to reduce risks to sage-grouse populations while maintaining the Department of the Interior's (DOI) core mission of multiple-use on federal lands, and argues that the Endangered Species Act listing is not an effective approach. The letter also states that the withdrawal of 10 million acres of federal lands is contrary to supporting the administration's efforts to increase renewable energy and secure mineral supply chains.

The NMA is actively participating in the process to make the case that sage-grouse conservation and mining can occur simultaneously. The Bureau of Land Management (BLM) is accepting comments during the scoping period ending on Feb. 7, 2022, and the NMA is both submitting [comments](#) and developing a strategy for upcoming public meetings.

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## **OSHA COVID Vaccine Mandate is Back - Sixth Circuit Paves Way for Implementation Next Year**



Last week, in a 2-1 [decision](#), the U.S. Court of Appeals for the Sixth Circuit (6th Circuit) lifted the stay on implementation of the Occupational Safety and Health Administration's (OSHA) [Interim Final Rule](#) on Mandatory Vaccines or Weekly Testing. Recall, in November, OSHA used its emergency temporary standard (ETS) authority to publish the rule requiring businesses with at least 100 employees to mandate workers get fully vaccinated or be tested weekly for Covid-19. The ETS was supposed to go into effect immediately, but its implementation was stayed by the U.S. Court of Appeals for the Fifth Circuit (5th Circuit) in response to legal challenges. Ultimately, the challenges filed in federal appeals courts across the nation were consolidated in the 6th Circuit. The first order of business for the 6th Circuit was to determine if the 5th Circuit's stay of the rule should be modified, revoked or extended.

The 6th Circuit reevaluated the challenges raised in the 5th Circuit and reached the opposite conclusion, that the challenges were unlikely to succeed on the merits, and therefore lifted the stay on the implementation of the rule. Specifically, the 6th Circuit rejected the 5th Circuit's reasoning on the limits of OSHA's authority, the constitutionality of the ETS, and evidence to support the standard. While the 6th Circuit will still have to issue a decision after fully evaluating the merits of the ETS, the lifting of the stay is a good predictor that the ETS will be upheld.

The 6th Circuit decision does not address questions of timing of the implementation of the ETS. Recall, the testing requirements under the ETS were not scheduled to go into effect

until Jan. 4, 2022, while the other ETS requirements (mandatory face masks for unvaccinated employees; providing paid time off for workers to get vaccinated and to recover from any side effects; and complying with reporting and recordkeeping provisions) were supposed to be in effect on Dec. 5, 2021. In response to the 6th Circuit decision, OSHA [announced](#) it is exercising enforcement discretion with respect to the compliance dates of the ETS.

To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before Jan. 10 and will not issue citations for noncompliance with the standard's testing requirements before Feb. 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard.

While multiple parties, including 27 states, have now filed emergency motions with the U.S. Supreme Court to block the ETS, absent action by that Court, companies subject to the ETS should prepare to meet the new OSHA timeframes.

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## U.S. Army Corps "Lifts" Permitting Pause, but Uncertainty Remains



**US Army Corps  
of Engineers®**

[Recall](#) that in response to the U.S. District Court for the Northern District of California vacating the 2020 Clean Water Act (CWA) section 401 rule, the U.S. Army Corps of Engineers (Corps) “paused” making final decisions for nationwide permits (NWPs) and individual permits that relied on that rule. This permitting pause also garnered the attention of Congress. NMA and the Waters Advocacy Coalition sounded the alarm with House Transportation and Infrastructure Committee Republicans, who echoed our concerns in a [letter](#) to EPA and Corps leadership.

After conversations with the Corps, we learned that Corps Headquarters had “lifted” the permitting pause for both nationwide and individual permits. However, for several weeks, Corps Headquarters did not post anything on its website or make any kind of national announcement about the current regulatory regime in place. The Corps only recently [posted](#) a vague statement on its website noting that “districts will coordinate with certifying authorities on water quality certifications that are potentially impacted by the vacatur order.” Last Friday, EPA quietly released a [Q&A document](#) affirming the agency’s view that the 1971 401 rule is now in effect nationwide. The document also states that the agency “generally does not expect to revisit certifications the Agency issued while the 2020 Rule was effective.” While this document is helpful, we remain concerned about the Corps’ and EPA’s lack of transparency.

The NMA will continue working with Corps Headquarters to obtain additional clarity and encourage you to work with your districts on any specific questions or projects that may be affected. Please also contact [cmchale@nma.org](mailto:cmchale@nma.org) if you are encountering any roadblocks with your districts. Any information about how the permitting pause and subsequent “lift” of the pause is being implemented on the ground will help inform our advocacy strategy.

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## **MSHA Reopens Comment Period on Proposed Safety Program for Surface Mobile Equipment**

The Mine Safety and Health Administration (MSHA) this week [reopened](#) the comment period on its proposed [Safety Program for Surface Mobile Equipment](#). Any

supplemental comments would be due by February 11, 2022. In addition, MSHA announced it will hold a public hearing on the proposed program on January 11, 2022, at 10:00 a.m. Eastern. Advanced [registration](#) is required to speak at the hearing.

Recall, the NMA previously submitted its [comments](#) in November in response to the original comment deadline. The NMA's comments welcomed MSHA's acknowledgement of the role of safety management systems in improving safety outcomes. The comments, however, urged MSHA to take steps to better recognize the need for flexibility for operators to tailor the program to their site-specific conditions. We ask NMA members to review the submitted comments and provide views to Katie Sweeney ([ksweeney@nma.org](mailto:ksweeney@nma.org)) by Jan. 7 whether the NMA should request to speak at the public hearing or prepare any supplemental association comments.

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## NMA and Third Party Voices

Rich Nolan was interviewed by [Fox Business](#) on the current coal shortage.

The NMA released a statement that was picked up by [Utility Dive](#), [MarketScreener](#) and others on the North American Electric Reliability Corporation's (NERC) 2021 Long-Term Reliability Assessment. The Assessment underscores that the rapid remaking of the nation's electricity mix presents the greatest challenge to reliability over the next decade, and that maintaining a fuel-assured, diverse generation mix is essential to ensuring reliability in the years ahead.

The NMA is mentioned in an [E&E Climatewire](#) report on carbon capture and reconciliation.

From our third parties, [RealClearEnergy](#) (D.C.) carries an op-ed by Thomas Madison, Jr., a transportation/infrastructure consultant who has served as administrator of the U.S. Federal Highway Administration, commissioner of the NYS Department of Transportation, and executive director/CEO of the NYS Thruway Authority & Canal Corporation, in which

he argues there is no pathway to meet global climate targets without aggressively ramping up the production of minerals and metals right here in America.

The [Colorado Springs Gazette](#) (Colo.), [Waco Tribune](#) (Texas), [Roanoke Times](#) (Texas), [Johnstown Tribune Democrat](#) (Pa.), [Casper Star Tribune](#) (Wyo.) and [Bakersfield Californian](#) (Calif.) carry an op-ed by Terry Jarrett, an energy attorney and consultant who has served on the board of the National Association of Regulatory Utility Commissioners and the Missouri Public Service Commission, in which he warns we need the existing coal and nuclear power capacity to safeguard against energy crises.

## Mining and Energy News

The [Washington Examiner](#) reported that power generators across the globe have turned to coal this fall and winter to fuel their plants as high natural gas prices, and the intermittency of renewable energy in some places, have driven demand for a commodity whose use many governments are committed to phasing out. [The Wall Street Journal](#) reported that global coal-fired power generation is expected to rise 9 percent and hit a record by the end of 2021 as electricity demand from the economic recovery outstrips a shift to cleaner energy sources, the International Energy Agency said Friday. [Politico Pro](#) reported that global coal generation is on the upswing, forecasted to have its largest ever annual surge this year after a muted decline in 2020 due to the pandemic. And [Axios](#) reported that the newly released IEA data on global coal demand starkly highlights the chasm between climate pledges and today's trends.

[Argus Media](#) (subscription) reported that several states in the West face dwindling resources for generation, an issue that could accelerate as soon as the 2022 summer according to the [latest long-term reliability assessment](#) by NERC.

[S&P Global](#) reported that about 20 percent of the coal-fueled fleet in Midcontinent Independent System Operator (MISO) is at high risk for fuel supply problems this winter, and MISO is going to collect weekly fuel data from generators to stay on top of the issue, MISO officials said recently at a Reliability Subcommittee meeting. [Politico Pro](#) reported

that New England has avoided a Texas-style power grid disaster despite frequent warnings of winter fuel shortages over nearly two decades. But the head of the region's grid operator is concerned that New England's luck could run out at any time.

[Argus](#) reported that coal-fueled generation in the Electric Reliability Council of Texas (ERCOT) fell from year-earlier levels in November for the first time in seven months amid tight supply and gains in renewable power.

[WVTF](#) reported that the demand for coal by the steel industry and in China drives a mining uptick in southwestern Virginia, where state officials have seen 17 applications for new mining permits and licenses.

[EIA's recent \*Today in Energy\* analysis](#) shows that coal-based power plant owners and operators have reported to EIA that they plan to retire 28 percent, or 59 gigawatts (GW), of the coal-fueled capacity currently operating in the United States by 2035.

Bloomberg reported electricity price inflation hit the [highest levels in a decade](#).

Wall Street Journal published: "Investors [balk at plan](#) to buy coal mines and close them."

[S&P Global](#) reported that mining and metals companies that have established tough carbon reduction goals hope to cash in on the burgeoning market for sustainably produced raw materials.

[The Associated Press](#) reported on the U.S. Department of Energy's (DoE) recent request to companies interested in participating in providing the agency ideas on plans to establish a program to ensure the availability of high-assay low-enriched uranium, or HALEU. DoE noted that a better supply of fuel will be needed to help combat global warming and to enhance national security.

[E&E News reported](#) on the recent Wood Mackenzie analysis indicating that lithium-ion battery recycling will not be enough to offset material supply chain shortages and meet growing demand for electric vehicle batteries before 2030.

[Mining.com](#) reported that the world wants more lithium but doesn't want more mines.

[The International Copper Study Group's \(ICSG\)](#) December data release shows that world copper mine production increased by 3.1 percent over the first nine months of 2021, with concentrate production increasing by around 4.8 percent and solvent extraction-electrowinning (SX-EW) declining by about 3.8 percent.



# THE HOLIDAYS HAPPEN WITH MINING

To prove that mining is essential to our lives, we conducted precise, scientific polling (asked people in our office) to determine if the most loved holiday traditions could be possible without mining.

## TRAVELING HOME

Without **molybdenum, beryllium** and **iron**, would the vehicles to transport your loved ones home be possible?



Possible with mining



Not possible



## FESTIVE MEALS



Could you make a holiday meal without appliances made of **nickel, chromium** and **zinc**?

Possible with mining



Not possible



## HOLIDAY LIGHTS

Could you hang up twinkling lights without the **copper, cobalt oxide, sulfur, cadmium sulfide, coal** and **uranium** that festive lights require?



Possible with mining



Not possible



## GIFTS



Would there be any electric vehicles or tech gifts to give without the **lithium, nickel** and **cobalt** used for batteries or **silver, platinum** and **gold** used in circuitry?

Possible with mining



Not possible



While it's really the time spent with loved ones and feelings of gratitude that give the holidays meaning, the products of mining sure make everything brighter!

HAPPY HOLIDAYS,  
MERRY CHRISTMAS  
AND HAPPY NEW YEAR  
FROM THE NATIONAL MINING ASSOCIATION





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