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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

Senate Democrats succeeded in passing a \$740 billion climate and health care package on partisan lines. With the House slated to return to session briefly this week to vote on the bill, 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

Summer storms have produced some terrifying flooding across the nation. The Centers for Disease Control and Prevention has tips for what to do [during and after a flood](#).

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## Partisan Reconciliation Legislation Continues to Move Through Congress This Week



After this weekend's all night U.S. Senate session and passage of the Inflation Reduction Act, the latest version of the partisan budget reconciliation legislation, the U.S. House Rules Committee is scheduled to meet later today to decide how the bill will be considered on the House floor for a vote on Friday. Consideration in the U.S. House will likely be much less eventful than in the U.S. Senate with the House likely allowing debate and no amendments to the fragile Senate bill before passage. You may find the final version of the Senate passed bill [here](#).

There are a number of provisions affecting the mining industry including a new corporate alternative minimum tax (AMT) affecting all industries with book income of \$1 billion over a three-year period and for foreign-based companies with group book income exceeding \$1 billion, the AMT will apply to U.S. subsidiary group members with average book income exceeding \$100 million. The bill extends a series of new tax credits for carbon capture, utilization and sequestration with direct pay options; creates new tax credits for energy generation based on narrow carbon emitting technology rather than based on a specific fuel like wind or solar; permanently extends supplemental taxes on segments of the mining

industry; and creates tax provisions for critical mineral production and new processing and domestic sourcing requirements for electric vehicles.

Part of the Manchin-Schumer agreement for bringing the reconciliation bill before the Senate includes a separate piece of legislation yet to be finalized concerning permitting reforms to natural resources production on federal lands and energy projects. However, leaked drafts of the legislative language are circulating around Washington.

During Senate consideration this past weekend, senators filed over 550 amendments to the bill. The Senate began debating the bill Saturday and started voting on amendments around midnight Saturday evening through Sunday afternoon. Thirty-seven of those amendments received votes. By the end of the Senate's 15 hour "vote-a-rama" on those 37 amendments, all but two amendments had failed, which further adjusted the bill's alternative minimum tax barring applicability to businesses receiving investments from private equity firms. Once the Manchin-Schumer agreed bill was announced at the very end of July, very little changes were made to it either by the Senate's parliamentarian in her review or in a point of order against the bill during Senate floor consideration. Senate Republicans were able to make small changes to the bill during Senate floor consideration through points of order such as striking \$45 million from the bill for the Environmental Protection Agency, seemingly to implement a coordinated greenhouse gas emissions rule among stationary, mobile and international sections of the Clean Air Act. Senator Capito (R-W.Va.) offered an amendment during floor consideration proposing to strike this section from the bill. Although that amendment failed in a partisan 50-50 vote, Senate Republicans offered a point of order against the section which the Parliamentarian ruled violated the Senate's budget rules or "Byrd rule." Senate Republicans also offered other points of order such as striking the title of the bill so it could not be referenced as the "Inflation Reduction Act" as the title has nothing to do with revenues. That point of order also succeeded. However, the bill changed very little from its surprise announcement, throughout the Parliamentarian process, throughout the Senate consideration and likely will be subject to only an up or down final vote in the House Friday.

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## Western Governors Support Mining



During the 25<sup>th</sup> annual Western Governors Meeting, the Western Governors Association (WGA) National Minerals [policy resolution](#) was updated and released to the public. The tenants of the resolution are being used by the WGA as it offers comments to the Interagency Working Group on mineral development at the White House. The Governors of the WGA are responsible for nearly 80 percent of the mineral production in the United States. Part of the resolution states, “Ensuring timely access to domestic minerals will strengthen our economy and keep us competitive globally as demand for minerals continues to grow, especially for manufacturing and construction.”

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## House Western Caucus Adds New Policy Staff

The House Western Caucus (WC) [announced](#) the addition of a new Policy Advisor, [Katie Devlin](#), focused on federal lands, forestry and agriculture. She comes from Rep. Doug LaMalfa’s (R-Calif.) office, a long-time WC member and mining advocate, and replaces Makenzie Shellnutt who left the caucus in May. The rest of the WC staff remains the same under Chairman Dan Newhouse (R-Wash.) with [Sean O’Brien](#) as the Executive Director; [Ashley Higgins](#) as Policy Advisor focused on minerals and mining, energy, renewables and science; and [Elizabeth Daniels](#) as Communications Director. After a tough primary contest with NMA support, Newhouse is expected to remain at the helm of the WC and is excited to continue working on mining industry priorities in the next congress. He has used the WC to hold field hearings on mining issues taking members of Congress and staff to see mines and mining issues firsthand. He’s a great ally for the mining industry in Congress in addition to key leadership of congressional natural resources committees.

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## NMA Files Amicus Brief in Support of Rehearing of Unfavorable Rosemont Decision



This week the NMA filed an [amicus brief](#) in support of Rosemont Copper Company's [petition for rehearing](#) asking the United States Court of Appeals for the Ninth Circuit (9th Circuit) to reconsider its [decision](#) to affirm a lower court decision that vacated its plan of operations. In its brief, the NMA explains how the 9th Circuit decision conflicts with more than a century of legal precedent, including numerous U.S. Supreme Court decisions, in misconstruing rights conveyed by the Mining Law to owners of unpatented claims and the use of surface resources to develop those claims. The brief supports Rosemont's argument that the court dodged the central question in this case: whether the Forest Service correctly applied its locatable minerals regulations (36 CFR Part 228A), rather than its special use regulations (36 CFR part 251). The NMA asserts that "the refusal to decide a straightforward question of the applicability of the Forest Service's Part 228A regulations only compounds the error by prolonging the resolution of this dispute. The upshot is significant uncertainty for the mining industry, with a very real possibility that mine plans currently under development will face increased costs, delay or worse." Whether to rehear the case is at the court's discretion. We will keep you apprised of any further developments.

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## NMA Submits EPA's CWA Section 401 Certification Rule

On Aug. 8, the NMA filed [association](#) and [coalition](#) comments on EPA's proposed CWA section 401 certification rule. Recall the NMA filed pre-proposal comments last year encouraging the agency to retain as much of the 2020 rule as possible, as it provided important clarifications on the scope of review and timelines for review that were helpful to the mining industry. Unfortunately, EPA moved forward with a proposed rule that removes those important clarifications and expands the role of states and Tribes in the Section 401 certification process, which could cause uncertainty or delays for project proponents.

The NMA's comments built on our pre-proposal comments and member input. Specifically, the NMA's comments (1) reiterated that the Section 401 certification process is just one part of the comprehensive legal and regulatory framework governing the mining industry; (2) generally opposed EPA's new requirement for project proponents to provide a copy of the draft permit or license with a request for certification and request additional clarity and flexibility; (3) generally supported the proposed approach to determining the reasonable period of time and (4) generally opposed EPA's proposed expanded scope that allows states and Tribes' review to include the "activity as a whole." The NMA's coalition comments focused on the numerous legal flaws in the proposed rule and laid the groundwork for potential litigation.

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## NMA Submits Comments on FWS Experimental Population Regulations

This week, the NMA submitted [final comments](#) in response to the U.S. Fish and Wildlife Service's (FWS) [proposed rule](#) to revise the regulations concerning experimental populations of species listed under the Endangered Species Act (ESA). The proposed rule would remove language that generally restricts the introduction of experimental populations to only the species' "historical range" and would allow for the introduction of species outside of historical ranges for conservation purposes. The FWS has determined that it may be increasingly necessary to establish experimental populations of species outside of their historic ranges due to the impacts of climate change and invasive species.

The NMA's comments emphasize the mining industry's broad support of the conservation and recovery goals of the ESA but pointed out concerns with the proposed rule. The NMA is concerned that the proposed rule would establish *carte blanche* authority to the FWS to introduce experimental populations in a way that Congress did not intend, runs afoul of U.S. Supreme Court rulings, and that the FWS would introduce experimental populations without appropriate scrutiny to determine if the population will be successful for the conservation of the species.

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## NMA and Third Party Voices

The NMA is quoted by [Argus](#) in a story noting that, while there is a growing recognition that coal plants may be necessary for power generation reliability in the US, the ability to retain them is increasingly challenged, market leaders and participants told an American Coal Council (ACC) conference.

## Mining and Energy News

[Mining.com](#) features IEA's latest report, which finds hundreds of new mines are needed to meet 2030 minerals demands.

Appearing on [FOX Business](#), Barrick Gold president and CEO Mark Bristow explains why the mining company is growing its copper footprint.

[E&E](#) and others report on the auto industry's lobbying efforts against provisions in the Inflation Reduction Act to encourage sourcing of minerals for EVs from North America and other ally countries.

[The Associated Press](#) conducted an investigation into the environmental impacts of rare earths mining in Myanmar.

[Deutsche Welle \(DW\)](#) reports on the efforts of three large mining projects based in California's "Lithium Valley" to recover lithium with minimal environmental impacts and simplify the global lithium supply chain.

EIA's [Domestic Uranium Production Report](#) for the second quarter of 2022 shows U.S. production of uranium concentrate ( $U_3O_8$ ) in the second quarter of 2022 totaled 6,042 pounds  $U_3O_8$ , down 39 percent from the first quarter of 2022. This quarter's production occurred at three facilities in Wyoming: the Nichols Ranch ISR Project, Ross CPP, and the Smith Ranch-Highland Operation.

[Wall Street Journal](#) reported that fossil fuel plants are closing faster than green alternatives can replace them.

[CNBC](#) reported that coal prices are soaring, and global coal consumption is expected to return to record levels reached almost 10 years ago as the global energy supply crunch continues.

[Argus reported](#) that coal power in the PJM Interconnect, the nation's largest electric grid fell by 23 percent from the year-earlier level for the second month in a row in July as gas generation increased.

[Delaware News Journal](#) reported that the scheduled June shutdown of Delaware's only remaining coal-fueled power plant, has been delayed at least four years while upgrades to the electrical grid are made.

[Argus](#) reported that while there is a growing recognition that coal plants may be necessary for power generation reliability in the U.S., the ability to retain them is increasingly challenged, market leaders and participants told an American Coal Council (ACC) conference recently.

[Argus](#) reported that U.S. coal receipts inched up in May as an increase in volumes from Appalachia, Indiana and Montana helped offset a decline in deliveries from other regions.

[Argus](#) reported that U.S. thermal coal exports fell from year-earlier levels for the second

straight month in June amid logistics constraints and flagging demand from some buyers in Asia, Mexico and Central America.

U.S. Energy Information Administration's [Short Term Energy Outlook](#) forecasted 2022 electricity sales to increase 2.5 percent and coal consumption to decline slightly because of “constraints on coal generation and mine shutdowns, as well as coal transportation limitations.”

EIA's recent [Today in Energy](#) analysis shows that In 2020, energy production in the U.S. fell by record amounts compared with 2019, mostly as a result of decreased economic activity during the COVID-19 pandemic. Wyoming had the largest drop in total energy production among the states, decreasing by 1,264 trillion British thermal units, mostly due to decreased coal production.

[Mining.com](#) reported on new data from Industrial Info Resources that shows that 4,790 metals and minerals capital projects (including mining, processing and refining) with a combined investment value of \$443 billion, are currently under construction around the world.

[S&P Global](#) reported U.S. thermal coal exports declined in June as prices continued to soar.

Wood Mackenzie recapped eight key themes from its recent [Global Coal Forum](#).

[POWER](#) published: “EPA's coordinated regulatory assault on coal power could push retirements beyond 86 GW by 2030.”

## Mining Action Strategy Team

Access the latest snapshot of the NMA's ongoing regulatory efforts. The MAST tracker is updated weekly to the extent new actions have occurred.

Current password: Mining

[Mining Action Strategy Team](#)

## CORESafety



The August edition of CORESafety TV:

- A discussion of the dangers of extreme heat.
- An interview with Stephen Gigliotti from MSHA.
- CORESafety's module eight on Communication and Collaboration.

**Bluefield Coal & Mining Show**



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