



Issue 21, 2019

● [Supreme Court Sides with Property Owners; Companies have No Right to Get Natural Gas Without Permission](#)

"The Supreme Court said, 'A mineral owner or lessee has an implicit right to use the overlying surface to access only the minerals directly below the surface. Using the surface to extract minerals elsewhere, without the permission of the surface owner, is a trespass.'"

Why this is important: In its recently issued *EQT Production Co. v. Crowder* opinion, the Supreme Court of Appeals of West Virginia delineated the scope of a mineral owner's implied right to use a surface estate. The *Crowder* plaintiffs owned separate surface tracts overlying a larger mineral estate leased by EQT. The prior owners of the tracts had severed the surface from the mineral estate and partitioned the surface into smaller tracts prior to any relevant production activity. In 2013, and against the *Crowder* plaintiffs' objections, EQT constructed a well pad on plaintiffs' surface tracts and drilled wells to develop both the mineral estate under the plaintiffs' surface tracts as well as adjoining mineral estates. While the *Crowder* plaintiffs conceded EQT had the implied right to use their surface estate to develop mineral underneath their tracts, they asserted the implied right did not permit EQT to use their surface estate to develop separate, but adjoining mineral estates. EQT asserted it was permitted to use plaintiffs' surface tracts to develop adjoining mineral estates based on subsequent unitization agreements by the mineral owners and because its surface use was reasonable and necessary to develop the mineral estate. The Court rejected EQT's arguments and held a mineral owner's implied right to use a surface estate permitted use of the surface to develop minerals underneath the surface, but not minerals underneath adjacent tracts. The Court, however, concluded the opinion by stating it was only affirming a "classical rule of property jurisprudence: ... trespassing ..." and was not challenging or constraining the drilling methods used by the oil and gas industry. --- [Matthew P. Heiskell](#)

● [Climate Change Takes Center Stage as Biden and Warren Release Plans](#)

"Now, as Mr. Biden runs for president, he has laid out an ambitious climate plan of his own that goes well beyond what Mr. Obama achieved, proposing \$1.7 trillion in spending and a tax or fee on planet-warming pollution with the aim of eliminating the nation's net carbon emissions by 2050."

Why this is important: The Democratic candidates for President have brought climate change front and center as they appeal to the Democratic base. This may appeal to progressives, but it may not play as well with other voting sectors, especially as the real-world implications of de-carbonization become clear. Already there are rumblings from construction unions, long a mainstay of the Democratic party, about the costs to blue collar workers of shutting down fossil fuel production and transportation projects like pipelines. They and other portions of the electorate may not be as sanguine about the sacrifices needed to move to an all-renewables future. --- [David L. Yaussy](#)

● [Can CO2 be a Greener Fracking Fluid?](#)

"We demonstrated that CO2 has higher mobility than water and, therefore, the injection pressure can be better delivered into the

natural porosity of the formation,' said Nannan Sun, one of the researchers on the project."

Why this is important: If the results of the application of carbon dioxide in fracturing can be confirmed by domestic sources, then it could represent an environmental win-win for both oil and gas production and environmental interests. The inclusion of carbon dioxide in fracturing fluids might help justify the economics of carbon capture technology at power generation facilities located close to shale reserves in the Appalachian Basin. As is true with renewable energy sources, this application of carbon capture could benefit from implementing future state and federal tax benefits that encourage such uses. --- [William M. Herlihy](#)

● [Natural Gas Industry Along with Local and Regional Leaders Oppose Severance Tax](#)

"The argument in the legislature right now is whether to keep the impact fee, where the money goes to local communities - or impose a severance tax with the money going to the state."

Why this is important: Cash strapped states are always looking for new sources of revenue to fund general operations or special projects, and Pennsylvania is no different. Even though the state has levied an impact fee on the natural gas industry since 2012, Governor Tom Wolf is now proposing a severance tax on top of that fee. Opponents of the measure argue the existing impact fee, which has returned more than \$1 billion to local communities, is the fairest way to tax the industry since those proceeds are used in the region bearing the burden of those operations. The severance tax, on the other hand, would be used by the state for other operations. Natural gas industry representatives argue further that the industry is already paying a tax in the form of the impact fee and a severance tax will further burden the industry and would likely drive companies to more favorable jurisdictions. The outlook for this severance tax proposal is cloudy at best, having failed in each of the last three legislative sessions. --- [Alexander Macia](#)

● [Near-Term North America Coal Outlook Stable](#)

"According to a research note, Moody's expects flat to slightly lower EBITDA for North American coal miners through mid-2020, but any negative outlook signals, such as a significant fall in met or thermal coal prices, could push EBITDA down over 3%."

Why this is important: Moody's is predicting a near-stable outlook for U.S. coal markets supported by strong metallurgical coal prices, but with coal plant closures continuing to affect thermal markets. The outlook for metallurgical coal is still strong with price fluctuations for the next 18 months. However, Moody's notes any declines could change its forecast to negative. The slower pace of coal-fired electric power plant closures has slowed declines in the steam markets, but areas such as the Powder River Basin have seen greater declines. Coal usage in the U.S. for electric generation has declined from 1 billion tons in 2008 to 636 million tons in 2018. It is forecast to drop further to 555 million tons in 2019. --- [Mark E. Heath](#)

● [Colorado Will Move Forward on Electric Vehicle Requirements](#)

"Colorado said it plans to move forward with plans to adopt California's zero emission vehicle mandate after talks with major automakers failed to reach a deal on voluntary efforts to boost electric vehicle sales."

Why this is important: State mandates for electric vehicles are evidence there is not strong consumer demand for such autos. States are placing the onus on car companies to sell more electric vehicles, but the companies aren't the problem--they would gladly sell them if they could. The problem is that consumers, concerned about range limitations and lack of re-charging infrastructure, are slow to adopt battery-only cars in a big way. Hybrids and plug-in hybrids, which can run on gas or electric, are the bridge vehicles that are most likely to move consumers to an all-electric vehicle future. --- [David L. Yaussy](#)

● [USDA Announces Loans to Improve Rural Electric Infrastructure and Upgrade Energy Efficiency](#)

"Acting Assistant to the Secretary for Rural Development Joel Baxley announced that USDA is providing \$858 million in loans to upgrade rural electric systems in 17 states."

Why this is important: For more than 30 years, USDA Rural Development has provided grant and low-interest loan funding for water and sewer projects in rural areas. This has led to tens of thousands of citizens receiving a direct health benefit of clean and safe water and/or sewage treatment. These projects have had an enormous positive impact on the improvement of the public health and safety of many rural communities. USDA's decision to provide \$858 million in loans to upgrade rural electric systems in 17 states is a demonstration of its commitment to invest in, and continue to improve, our country's rural areas. The loans will assist in keeping rural electric systems reliable and affordable for the many people who live and work in rural areas, and is an investment in our economy and prosperity. --- [Susan J. Riggs](#)

● [Pentagon Turns to Coal Ash to Escape Chinese Dominance of Rare Earth Elements](#)

"Coal ash could be the next source of elements the U.S. defense industry uses in everything from night vision goggles to gyroscopes for smart bombs."

Why this is important: In addition to the proposed study of extracting rare earth elements from coal ash, the Pentagon should investigate the ongoing research by West Virginia University Energy Institute's National Research Center for Coal and Energy. The WVU research center has been working on techniques for refining rare earth minerals from acid mine drainage for several years. In July 2018, the research center placed an experimental rare earth extraction facility into operation at its National High Bay Research Lab in Morgantown, West Virginia. The technology being tested at this extraction facility could lead to a badly needed domestic source of rare earths essential to our communications, defense, and technology industries, while cleaning up acid mine drainage from abandoned mine lands in the Appalachian Basin. --- [William M. Herlihy](#)

● [GM and Fiat Chrysler Unmasked as Tesla's Secret Source of Cash](#)

"General Motors Co. and Fiat Chrysler Automobiles NV disclosed to the state of Delaware earlier this year that they reached agreements to buy federal greenhouse gas credits from Tesla."

Why this is important: Tesla, which makes battery-only vehicles, more than meets its greenhouse gas limits, and can sell its "surplus" as credits to other carmakers. It's a significant source of income for Tesla, and a benefit to other carmakers who are banking them against the day when their own electric vehicle sales aren't sufficient to meet federal standards, and they need to cash in credits in order to comply with greenhouse gas restrictions. At some point, demands for emission reductions and electric vehicle sales increases may run up against a lack of consumer interest in electric vehicles, producing pressure on states and Congress to change the law. It's a problem that often occurs when one Congress or administration sets ambitious standards that some later legislators or President will have to implement. --- [David L. Yaussy](#)

● [EIA Energy Statistics](#)

Here is a round-up of the latest statistics concerning the energy industry.

[PETROLEUM](#)

[This Week in Petroleum](#)

[Weekly Petroleum Status Report](#)

[NATURAL GAS](#)

[Short-Term Energy Outlook - Natural Gas](#)

[Natural Gas Weekly Update](#)

[Natural Gas Futures Prices](#)

[COAL](#)

[Short-Term Energy Outlook - Coal](#)

Coal Markets

Weekly Coal Production

RENEWABLES

Short-Term Energy Outlook

Monthly Biodiesel Production Report

Monthly Densified Biomass Fuel Report

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