ADVANCE SHEET HEADNOTE
November 20, 2023

2023 CO 58

No. 21SC477, *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Crestone Peak Res. Operating LLC*—Construction of Oil and Gas Lease—Cessation of Production—Commercial Discovery Rule.

In this case, the supreme court addresses whether a temporary shut-in necessitated by a third party's pipeline maintenance triggered the termination of two oil and gas leases under their cessation-of-production clauses. In accordance with Colorado's well-established tradition of interpreting each oil and gas lease on its own terms, the court declines to adopt a universal definition for "production" in oil and gas leases. As such, the court vacates the court of appeals' opinion to the extent it broadly adopts the commercial discovery rule to define "production" in Colorado oil and gas leases as "capable of producing oil or gas in commercial quantities."

Looking at the terms of the two leases before it, the court determines that the cessation-of-production clauses are triggered only when there is a permanent cessation that could be resolved by reworking or drilling operations. Therefore, the court concludes that the temporary shut-in, which could not have been resolved by reworking or drilling operations, did not trigger termination under the cessation-of-production clauses. Accordingly, the supreme court now affirms the judgment of the court of appeals, but under different reasoning.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2023 CO 58

Supreme Court Case No. 21SC477
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 19CA2040

Petitioner:

Board of County Commissioners of Boulder County, Colorado,

v.

Respondent:

Crestone Peak Resources Operating LLC.

Judgment Affirmed
en banc
November 20, 2023

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JUSTICE MÁRQUEZ delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE HOOD, JUSTICE GABRIEL**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.
JUSTICE HART did not participate.

JUSTICE MÁRQUEZ delivered the Opinion of the Court.

¶1 This case concerns the interpretation of two oil and gas leases negotiated in Boulder County in the 1980s. Each lease conveyed an interest for a determinate primary term of two years and an indeterminate secondary term for "as long thereafter as oil or gas . . . is produced" from the leased land. In 2014, during the secondary terms of the leases, necessary repairs to a third party's sales pipeline forced the lessee to shut in[1] otherwise commercially viable wells on the leased properties for approximately four months. The question before us is whether this four-month shut-in caused the leases to terminate under their respective cessation-of-production clauses.

¶2 In answering this question, we first determine whether the court of appeals' broad adoption of the "commercial discovery" rule to define "production" in Colorado was appropriate. *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Crestone Peak Res. Operating LLC*, 2021 COA 67, 493 P.3d 917. We conclude that it was not, and instead reaffirm the well-established tradition in Colorado of interpreting each oil and gas lease on its own terms. Examining the specific leases at issue here, we conclude that the four-month shut-in did not trigger termination under their cessation-of-production clauses. Accordingly, we affirm the judgment of the court

[1] A shut-in is a routine process by which the operator of a well closes one or more flow valves at the well site.

of appeals, but vacate the division's opinion to the extent it adopted the commercial discovery rule to universally define the term "production" in Colorado oil and gas leases as "capable of production."

I. Facts and Procedural History

¶3 The oil and gas leases before us involve lessor Board of County Commissioners of Boulder County, Colorado ("Boulder") and lessee Crestone Peak Resources Operating LLC ("Crestone"). Both parties obtained rights under the leases via their predecessors-in-interest.

¶4 In 1980, the parties' predecessors-in-interest recorded a lease covering property owned by James S. Haley ("the Haley lease"). In 1982, the parties' predecessors-in-interest recorded a second lease covering property owned by G.B. Henderson ("the Henderson lease"). Through a series of transactions during the 1980s and 1990s, Boulder purchased the property and mineral rights in the Haley lease. In 1998, Boulder also purchased the property and mineral rights in the Henderson lease, making Boulder the successor-lessor for both leases. In 2015, Crestone purchased the lease rights under the Haley and Henderson leases, becoming the successor-lessee for both.

A. Key Lease Provisions

¶5 The Haley and Henderson leases each contain three provisions relevant to our analysis—a habendum clause, a cessation-of-production clause, and a shut-in royalty clause.

¶6 The habendum clause of an oil and gas lease divides the duration of an oil and gas lease into two terms: (1) the fixed primary term, during which the lessee has no obligation to develop the premises; and (2) the indeterminate secondary term, which continues for so long as oil or gas is produced. 2 Eugene Kuntz, *A Treatise on the Law of Oil and Gas* § 26.4, LexisNexis (database updated 2022); 2 Nancy Saint-Paul, *Summers Oil and Gas* § 14:2 (3d ed.), Westlaw (database updated Nov. 2022); *see also Habendum Clause*, Black's Law Dictionary (11th ed. 2019). The habendum clause in the Haley lease provides that the lease "shall remain in full force for a term of Two (2) years from May 14, 1980, and as long thereafter as oil or gas, or either of them, is produced from said land . . . or the premises are being developed or operated." The habendum clause in the Henderson lease states that the lease "shall remain in force for a term of Two (2) years from [August 26, 1982] and as long thereafter as oil or gas of whatsoever nature or kind is produced from said leased premises or on acreage pooled therewith, or drilling operations are continued as hereinafter provided." Both leases are now in their secondary terms.

¶7 The cessation-of-production clause in each lease is a savings clause that explains what the lessee may do to avoid termination of the lease if production ceases during the secondary term of the lease. The cessation-of-production clause in the Haley lease provides that the lease shall not terminate if the lessee "resumes operations for re-working or drilling a well" within sixty days:

> If, after the expiration of the primary term of this lease, production on the leased premises shall cease from any cause, *this lease shall not terminate provided lessee resumes operations for re-working or drilling a well within sixty (60) days* from such cessation and this lease shall remain in force during the prosecution of such operations and, if production results thereform [sic], then as long as production continues.

(Emphasis added.) The cessation-of-production clause in the Henderson lease similarly provides that the lessee may avoid termination of the lease if it "commences additional drilling or re-working operations" within ninety days:

> If after discovery of oil or gas on said land or on acreage pooled therewith, the production thereof should cease from any cause after the primary term, *this lease shall not terminate if Lessee commences additional drilling or re-working operations within ninety (90) days from date of cessation of production* or from date of completion of dry hole. If oil or gas shall be discovered and produced as a result of such operations at or after the expiration of the primary term of this lease, this lease shall continue in force so long as oil or gas is produced from the leased premises or on acreage pooled therewith.

(Emphasis added.)

¶8 Finally, the shut-in royalty clause in each lease is a savings clause that describes the lessee's ability to pay royalties to the lessor if gas wells must be shut in for some period. The shut-in royalty clause in the Haley lease requires the lessee to pay a royalty to the lessor if a gas well is shut in for one year, in which case the royalty payment constitutes production under the lease:

> Where gas from a well or wells, capable of producing gas only, is not sold or used for a period of one year, lessee shall pay or tender as royalty, an amount equal to the delay rental . . . payable annually on the anniversary date of this lease following the end of each such year during which such gas is not sold or used, and while said royalty is so paid or tendered this lease shall be held as producing property under [the habendum clause].

The shut-in royalty clause in the Henderson lease allows (but does not require) the lessee to pay a royalty to the lessor if a gas well is shut in for longer than ninety days. Such a royalty payment likewise constitutes production under the lease:

> Where gas from a well capable of producing gas is not sold or used, Lessee may pay or tender as royalty to the royalty owners One Dollar per year net royalty acre retained hereunder, such payment or tender to be made on or before the anniversary date of this lease next ensuing after the expiration of 90 days from the date such well is shut in and thereafter on or before the anniversary date of this lease during the period such well is shut in. If such payment or tender is made, it will be considered that gas is being produced within the meaning of this lease.

B. The 2014 Shut-In

¶9 Crestone's predecessor-in-interest was Encana Oil & Gas (USA), Inc. ("Encana"). Encana did not collect or store the gas produced by the Haley and Henderson wells on-site; rather, it delivered gas directly to Anadarko Petroleum ("Anadarko") through Anadarko's sales pipeline, which was connected to the wells. In March 2014, Anadarko informed Encana that Anadarko needed to temporarily close its sales pipeline for required repairs. The closure of the Anadarko sales pipeline required Encana to shut in the Haley and Henderson wells for approximately four months. Anadarko completed its pipeline maintenance in July 2014. By July 17, 2014, Encana resumed extracting, marketing, and selling gas from the Haley and Henderson wells.

¶10 Throughout the shut-in period, the wells remained commercially viable, and Encana continued to work the premises by making regular site visits, taking pressure measurements, keeping records, and conducting maintenance. Moreover, at no point during the shut-in did Boulder (who was the lessor at the time) acknowledge the shut-in or claim the leases had terminated. Rather, even after Crestone became the successor-lessee to both leases in 2015, Boulder continued to accept tens of thousands of dollars in royalty payments from Crestone, including while this suit was pending.

C. Boulder's Claims

¶11 In 2018, Boulder sued Crestone, raising various claims, including failure to surrender, surface trespass, mineral trespass, and unjust enrichment.[2] Relevant

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[2] Boulder's suit appears to have been prompted by Crestone's application with the Colorado Oil and Gas Conservation Commission to expand its operations under the Haley and Henderson leases.

here, Boulder alleged that production ceased for 122 days during the 2014 shut-in, triggering termination of the Haley and Henderson leases under their cessation-of-production clauses.

¶12 Crestone moved for summary judgment, arguing in part that under the cessation-of-production clauses, Crestone merely ceased marketing (rather than production) during the 2014 shut-in. Therefore, Crestone contended, the Haley and Henderson leases never terminated. The district court agreed and granted Crestone's motions.

¶13 Boulder appealed, and a division of the court of appeals affirmed. *Crestone Peak*, ¶¶ 2, 41, 493 P.3d at 919, 925. Relying on *Davis v. Cramer*, 837 P.2d 218 (Colo. App. 1992) ("*Davis II*"), the division adopted the "commercial discovery" rule and held that, under that rule, the term "production" in Colorado means "capable of producing oil or gas in commercial quantities," such that the production requirement in habendum and cessation-of-production clauses is always satisfied by the discovery of oil or gas in commercial quantities. *Crestone Peak*, ¶¶ 2, 19–22, 493 P.3d at 919, 921–22; *see also Davis II*, 837 P.2d at 222.

¶14 The division added that the terms of the Haley and Henderson leases supported its holding. *Crestone Peak*, ¶ 23, 493 P.3d at 922. In particular, the division highlighted that under both cessation-of-production clauses, termination of the leases is avoided if the lessee undertakes reworking or drilling. *Id.* at ¶ 25, 493 P.3d at 922. The division reasoned that "[w]hen drilling or reworking operations are stipulated as a remedy for cessation of production, the parties must have intended that production meant capable of production, such that a well that was no longer capable of production could be remedied by reworking or new drilling." *Id.* The division further observed that a contrary conclusion would render the shut-in royalty clauses inoperative, *id.* at ¶ 26, 493 P.3d at 922, because the cessation-of-production clauses would always mandate termination of the leases before the shut-in royalty clauses became applicable, *id.* at ¶¶ 27–28, 493 P.3d at 922–23.

¶15 Applying the commercial discovery rule, the division concluded that the Haley and Henderson leases had not terminated under the cessation-of-production clauses, *id.* at ¶ 39, 493 P.3d at 924, because "at all times relevant to the dispute, there remained a commercially viable discovery of oil and gas at the wells," *id.* at ¶ 38, 493 P.3d at 924. The division thus affirmed the judgment of the district court. *Id.* at ¶ 41, 493 P.3d at 925.

¶16 Boulder petitioned this court for certiorari review of the division's decision, and we granted review.[3]

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[3] We granted certiorari review of a single issue:

1. [REFRAMED] Whether the court of appeals erred in adopting and applying the "commercial discovery rule" in interpreting oil and gas leases.

II. Analysis

¶17 We begin by discussing the standard of review for interpreting oil and gas leases and the fundamentals of contract interpretation that guide our review. We then address the function of habendum and cessation-of-production clauses in oil and gas leases. Next, we turn to the commercial discovery rule and explain why the division erred by adopting it as a universal definition of "production" in oil and gas leases in Colorado. We further explain why Boulder's proposed "actual production" rule is likewise misguided. Finally, using well-established rules of contract interpretation, we examine the Haley and Henderson leases and conclude that the 2014 shut-in did not trigger termination under their cessation-of-production clauses.

A. Standard of Review

¶18 We review oil and gas leases as individual contracts, applying the fundamentals of contract law to the special context of an oil and gas, lessor-lessee agreement. *Davis v. Cramer*, 808 P.2d 358, 359 (Colo. 1991) ("*Davis I*") ("There is no standard oil and gas lease, and each lease must be construed to give effect to the particular wording that has been agreed to by the parties."); *see also* 17 Richard A. Lord, *Williston on Contracts* § 50:57 (4th ed.), Westlaw (database updated May 2023) ("[C]ourts will apply the basic fundamentals of contract law to determine the rights and liabilities of the parties, including the applicable rules of interpretation and construction." (footnote omitted)). Interpretation of contracts is a question of law that we review de novo. *French v. Centura Health Corp.*, 2022 CO 20, ¶ 24, 509 P.3d 443, 449 (citing *Fed. Deposit Ins. Corp. v. Fisher*, 2013 CO 5, ¶ 9, 292 P.3d 934, 937).

¶19 Our job when interpreting a contract is to determine and effectuate the parties' intent and reasonable expectations at the time the contract was made. *KN Energy, Inc. v. Great W. Sugar Co.*, 698 P.2d 769, 779 (Colo. 1985); *see also Hefley Ranch, Inc. v. Stewart*, 764 P.2d 415, 416 (Colo. App. 1988) (observing that contract interpretation requires a court "to ascertain the parties' intent at the time the document was executed"). Here, we do that by first looking to the plain language of the lease and, so long as it is unambiguous and would not result in an absurdity, we "give effect to the contract as written." *Lake Durango Water Co. v. Pub. Utils. Comm'n*, 67 P.3d 12, 20 (Colo. 2003). "The intention of the parties must appear expressly or by clear implication." *Id.* (citing *Charles Ilfeld Co. v. Taylor*, 397 P.2d 748, 750 (Colo. 1964)).

B. Habendum and Cessation-of-Production Clauses in Oil and Gas Leases

¶20 Oil and gas leases are distinctive because they are "both a conveyance and a contract." *McCullough Oil, Inc. v. Rezek*, 346 S.E.2d 788, 792 (W. Va. 1986); *cf. Davis I*, 808 P.2d at 359 ("[T]he law of oil and gas is unlike any other."). Notably, "the fundamental purpose of an oil and gas lease is to provide for the exploration, development, production, and operation of the property for the mutual benefit of the lessor and lessee." *Davis I*, 808 P.2d at 360.

¶21 The habendum clause of an oil and gas lease "sets forth the duration of the . . . lessee's interest in the premises." *Garman v. Conoco, Inc.*, 886 P.2d 652, 659 n.19 (Colo. 1994). Most modern habendum clauses provide for a primary term of a fixed period (usually a number of years) and an indeterminate secondary term that continues as long as oil or gas is produced. *See Habendum Clause*, Black's Law Dictionary (11th ed. 2019); 3 Patrick H. Martin & Bruce M. Kramer, *Williams & Meyers, Oil and Gas Law* § 604, LexisNexis (database updated 2022).[4]

¶22 The primary term is open for a set amount of time during which the lessee may, but has no duty to, operate the premises. Although there is typically no obligation to achieve production to maintain the lease *during* the primary term, in general, a lease will not extend into its secondary term unless production has been achieved. *See* 2 Kuntz, *supra* § 26.4. For this reason, disputes often arise over what

[4] The treatise explains in full:

> The clause seeks to assure the lessor that the leased premises will be put in production, from which the lessor will be paid a royalty, within the primary term or the lease will terminate, either at the end of the primary term, or if there is then production, thereafter upon the cessation of production. The lessee is assured of a fixed time in which to obtain production and of keeping the lease as long as production continues.

Williams & Meyers, *supra* § 604.

constitutes "production" sufficient to extend the lease from the primary term to the secondary term. *See, e.g.*, *Landry v. Flaitz*, 157 So. 2d 892 (La. 1963) (deciding whether discovery of a well capable of producing in paying quantities was sufficient to extend the lease beyond the primary term); *State ex rel. Comm'rs of Land Off. v. Carter Oil Co. of W. Va.*, 336 P.2d 1086 (Okla. 1958) (deciding whether completion of a well capable of producing in paying quantities within the primary term extended the lease beyond the primary term); *Davis II*, 837 P.2d at 222 (approving the trial court's assumption that marketing was not a necessary part of production to extend the lease beyond the primary term).

¶23 If production is achieved within the primary term and the lease is extended to the secondary term, the lease typically continues until production ceases permanently. *Williams & Meyers*, *supra* § 604.4. Importantly, given the practicalities of oil and gas operations, "[t]he production required to keep an oil and gas lease in effect . . . need not necessarily be continuous." *Id.* That is, courts generally "adhere to the principle that a temporary cessation of production . . . will not cause the termination of the lease." *Id.* Not surprisingly, disputes can arise regarding whether a cessation of production during a secondary term is temporary or permanent. *Id.* at § 604.2 ("The real problem, then, is not what will happen when there is clearly a permanent cessation of production in the secondary term, but in determining what facts short of permanent cessation will constitute nonproduction within the meaning of the habendum clause."). The common law temporary cessation of production doctrine developed to help courts navigate this determination by evaluating various factors, including: "the cause of the cessation, the time reasonably required to restore production, and the diligence exercised by the lessee in restoring production." 2 Kuntz, *supra* § 26.8.

¶24 Additionally, parties to an oil and gas lease may navigate this issue by including a cessation-of-production clause that modifies the habendum clause "to preserve the rights of the lessee and to continue the lease in effect where the primary term has expired and . . . a producing well ceases to produce." *Id.* at § 26.13. Such clauses are intended to address situations where "oil or gas should cease permanently to be produced after the expiration of the primary term" and the lease would otherwise "come to an end." 4 Kuntz, *supra* § 47.3.

C. What Constitutes "Production" is Context Specific

¶25 In reaching its decision that the Haley and Henderson leases did not terminate, the division focused exclusively on the word "production" and adopted the "commercial discovery" rule to interpret that term, holding that "production means capable of producing oil or gas in commercial quantities." *Crestone Peak*, ¶¶ 2, 22, 493 P.3d at 919, 922. Boulder argues that we should instead announce an "actual production" rule and find that "production" requires extraction. But "the term 'production' has no precise and invariable meaning and it cannot be assumed that such term refers to a simple and easily identifiable event." 2 Kuntz, *supra* § 26.6. Rather, it "must be given a meaning which is consistent with reality in the light of the circumstances which are commonly incident to oil and gas operations and which the parties must have contemplated." *Id.* Furthermore, both the division's and Boulder's analyses mistakenly narrow the focus to the word "production" at the expense of considering the lease provision to which it applies.

1. The "Commercial Discovery" Rule

¶26 The division cited *Davis II* to support its broad adoption of the commercial discovery rule to define "production" in Colorado, regardless of the context. *Crestone Peak*, ¶ 22, 493 P.3d at 922. In *Davis II*, a division of the court of appeals held that, in the *primary* term of a lease, "the habendum clause is satisfied by discovery in commercial quantities." 837 P.2d at 222. As reflected in that case, the commercial discovery rule is most applicable when courts must determine whether sufficient production has been achieved within the *primary* term to extend the lease to the secondary term. *See Williams & Meyers*, *supra* § 604.1. Here, however, we are not concerned with that issue; the parties agree that both the Haley and Henderson leases have long since entered their secondary terms.

¶27 We disagree with the division's sweeping statement that "[p]roduction is production, whether in the primary or secondary term." *Crestone Peak*, ¶ 21, 493 P.3d at 922. The nature of the primary term of a lease is different in many respects than that of the secondary term. Although "[l]ogically, cessation of production in the secondary term has the identical effect under the habendum clause as lack of production at the end of the primary term," as a practical matter, a cessation of production in the secondary term "[presents] a different problem" because "by obtaining production[,] the lessee has fulfilled his obligation and achieved the primary objective of the lease." *Williams & Meyers*, *supra* § 604.2. As a result, courts should exercise greater caution in terminating a lease "once there has been production in the secondary term" to avoid unduly "depriv[ing] the lessee of his investment." *Id.* Consequently, the context in which a word appears in a lease remains important to our interpretation.

¶28 We therefore vacate that aspect of the division's opinion broadly adopting the commercial discovery rule to mean that "production" in Colorado oil and gas leases means "capable of producing oil or gas in commercial quantities," regardless of the context of its use. *Crestone Peak*, ¶ 2, 493 P.3d at 919. Although the commercial discovery rule may aptly reflect the intentions of the parties to some leases, it is unnecessary and unwise for us to universally impose its definition of "production" in every oil and gas lease, regardless of the context.

2. The "Actual Production" Rule

¶29 Boulder likewise seeks to establish a universal definition of "production," asking us to apply the "actual production" rule to govern "*all* production obligations in oil and gas leases."[5] Relying on our decision in *Rogers v. Westerman Farm Co.*, 29 P.3d 887 (Colo. 2001), Boulder argues that in the absence of extraction, production ceases. We disagree. In *Rogers*, we defined "marketability" of gas as it applied to "the implied covenant to market found in every oil and gas lease" in order to resolve a gas royalty dispute. *Id.* at 902. Boulder argues that *Rogers* stated that "production can never be considered complete while the resource remains underground."

¶30 But *Rogers* did not decide whether production *ceases* in the absence of extraction, nor what constitutes production in all circumstances. In fact, even when discussing production within the context of the implied covenant to market, *Rogers* noted the importance of looking to the "factual scenario" to determine when production is complete. *Id.* at 904. To transpose the discussion in *Rogers* onto every occurrence of the word "production" in all oil and gas leases—regardless of its purpose and context—would be unwise.

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[5] Boulder never defines the "actual production" rule but implies that it requires extraction of minerals. By translating "production" to mean "extraction," Boulder succumbs to the same logical fallacy it purports to reject. That is, if the parties to the lease meant "extraction" by "production," they could have used the word "extraction." Furthermore, the actual-production definition of "production" (like the capable-of-production definition) ultimately fails to define "production." Rather, both simply add modifiers to the word they attempt to define: "production."

¶31 Therefore, we decline to adopt a universal rule defining "production" in Colorado oil and gas leases and instead continue our tradition of interpreting its meaning by looking to the context of its use in a particular lease.

D. The 2014 Shut-In Did Not Trigger Termination Under the Cessation-of-Production Clauses

¶32 The division below described its task as answering the question: "What constitutes 'production' under an oil and gas lease?" *Crestone Peak*, ¶ 1, 493 P.3d at 919. But the slightly broader issue before us is the meaning of the cessation-of-production clauses in the Haley and Henderson leases.

¶33 We examine those clauses to determine whether the 2014 shut-in triggered termination and conclude that it did not. *See* 4 Kuntz, *supra* § 47.3 (stating that to determine whether a cessation-of-production clause applies, "it is necessary to take into account the specific provisions of the [clause]").

¶34 The Haley lease's cessation-of-production clause provides that if, during the secondary term of the lease, "production on the leased premises shall cease from any cause, this lease shall not terminate provided lessee resumes operations for re-working or drilling a well within sixty (60) days." The Henderson lease similarly provides that if production ceases "from any cause" during the secondary term, "[the] lease shall not terminate if Lessee commences additional drilling or re-working operations within ninety (90) days from date of cessation of production."

¶35 Both clauses allow the lessee to avoid termination of the lease when production ceases in the secondary term by performing drilling or reworking operations.[6] This remedy indicates the scenarios the original parties intended the cessation-of-production clauses to govern. Describing this kind of clause, a leading treatise on oil and gas law says:

> The fact that the event which is designed to prevent termination is the commencement of drilling or reworking operations gives some indication of the purpose of the clause and the intention of the parties. It indicates that the parties are concerned with a situation where cessation of production is of the type that is remedied by drilling or reworking operations. Thus, the parties must have intended that the clause would become operative if a dry well is drilled or if a producing well ceases to be capable of producing in paying

[6] "Generally, 'reworking' a well requires some physical activity on the well reasonably conceived to restore production." *Summers Oil and Gas*, *supra* § 14:8 n.2. Other jurisdictions have defined reworking as:

- "[W]ork performed at any depth on a well after its initial completion in an effort to secure production where there has been none, or to restore production that has ceased or to increase production." Ariz. Rev. Stat. Ann. § 27-551(10).
- "[T]he good faith downhole work performed on a well after its completion in a good faith effort to secure production where there has been none, restore production that has ceased, or increased production." La. Stat. Ann. § 30:129(B)(1)(b)
- "The crucial test which must be met for an activity to constitute reworking is whether the operation is associated or connected with the physical site of the well or unit. Additionally, the operation must be intimately connected with the resolution of whatever physical difficulty caused the well to cease production." *Sheffield v. Exxon Corp.*, 424 So. 2d 1297, 1303 (Ala. 1982).

> quantities. A literal application of the clause to every temporary cessation of production could lead to absurd and unintended results.

2 Kuntz, *supra* § 26.13.

¶36 By providing drilling and reworking as the remedy for the lessee to avoid termination under the cessation-of-production clauses, Crestone's and Boulder's predecessors-in-interest indicated their intent for these clauses to address cessations of production that could be remedied by drilling or reworking. True, the cessation-of-production clauses refer to cessation "from any cause," but we must examine the clauses as a whole and consider the remedy the parties conceived. *Cf. Bachler v. Rosenthal*, 798 S.W.2d 646, 650 n.3 (Tex. App. 1990) (quoting 2 Kuntz, *supra* § 26.13, and cautioning the trial court "against an overly rigid application of the cessation-of-operation clause").

¶37 Here, no amount of reworking or drilling by Encana would have resolved Anadarko's maintenance issue. Indeed, to have required Encana to engage in reworking or drilling operations under the circumstances here would have caused economic and environmental waste. Imposing a reading of the cessation-of-production clauses on the Haley and Henderson leases that would require the lessee to conduct needless reworking and drilling would be absurd. An interpretation that harmonizes the phrase "from any cause" with the contemplated remedy of "drilling or reworking" most effectively enforces the intent of the original parties.

¶38 Boulder, citing *Sun Operating Partnership v. Holt*, 984 S.W.2d 277 (Tex. App. 1998), argues that the remedies conceived by the cessation-of-production clause should not be considered to limit the "from any cause" language. We decline to follow the reasoning of that court or adopt "illogical" interpretations of the leases. *Id.* at 282 (concluding that reworking or drilling operations were required to avoid termination of the lease where such operations would not resolve the cessation even though the decision "may seem 'illogical'"). Rather, we conclude—logically—that the parties intended for the cessation-of-production clauses to apply to a cessation that would be permanent unless corrected by reworking or drilling operations.

¶39 Furthermore, we decline to follow the reasoning at the core of *Sun Operating*'s discussion of the "from any cause" language—that a cessation-of-production clause precludes consideration of the temporary cessation of production doctrine. Instead, we adopt the "more reasonable" interpretation that the cessation-of-production clauses refer, "not to a temporary cessation of production, but to a cessation of production that would be permanent unless corrected by reworking or drilling operations." 2 Kuntz, *supra* § 26.13. "It is unreasonable to assume that the lessee will restrict [their] protection during a temporary cessation to a stipulated period by providing a clause, when [under common law doctrine] the courts have allowed a temporary cessation period as long as four years without a termination of the lease." Mohan Kelkar, Note, *The Effect of the Cessation of Production Clause during the Secondary Term of an Oil and Gas Lease*, 22 Tulsa L.J. 531, 539 (1987). Cessation-of-production clauses are savings clauses—their purpose is to "extend, and not to restrict, the lessee's rights during the secondary term." *Id.* at 541.

¶40 The Oklahoma Supreme Court recently came to the same conclusion in a similar case, saying "the cessation-of-production clause was never designed to eliminate or to avoid the operation of the temporary cessation doctrine." *Tres C, LLC v. Raker Res., LLC*, 532 P.3d 1, 18 (Okla. 2023). In that case, the lessee voluntarily paused production to assess the profitability of the well. The governing lease contained a cessation-of-production clause nearly identical to the ones in the Haley and Henderson leases, including the "from any cause" and drilling provisions.[7] The court found that "[s]uch a temporary interruption in profitable production should not trigger the 60-day time limit in the cessation-of-production clause—particularly insofar as that clause was really designed to provide a grace period for protecting [the lessees'] leasehold interests." *Id.* at 20.

[7] The cessation-of-production clause said: "If, after the expiration of the primary term of this lease, production on the leased premises shall cease from any cause, this lease shall not terminate provided lessee resumes operations for drilling a well within sixty (60) days from such cessation . . . ." *Tres C*, 532 P.3d at 3 (emphasis omitted).

Specifically, the *Tres C* court reasoned that the lease's directive that "the event which can prevent termination under the . . . cessation-of-production clause" is drilling a new well "indicates that the parties intended the clause to become operative only if the 'cessation' was permanent, as only a permanent cessation would require the remedy of drilling a new well." *Id.*

¶41 Here, we likewise find that the cessation-of-production clauses in the Haley and Henderson leases are triggered only when there is a *permanent* cessation of production that can be resolved by reworking or drilling operations.

¶42 Our interpretation reflects the general purpose of all oil and gas leases. Oil and gas leases are intended to promote productivity and development "for the mutual benefit of the lessor and lessee," *Davis I*, 808 P.2d at 360, and we construe leases in favor of the lessor, *Rogers*, 29 P.3d at 901. Typically, the lessor's interests align with an interpretation that favors production. *Cf. Mountain States Oil Corp. v. Sandoval*, 125 P.2d 964, 967 (Colo. 1942) ("[T]he real motive for the giving of such instruments is the development of the leased property. Therefore such a lease . . . is properly construed strongly against the lessee, so as to secure such speedy development." (quoting *Lanham v. Jones*, 268 P. 521, 522 (Colo. 1928))).

¶43 Consistent with this general purpose, the Haley and Henderson leases each make clear that the original lessors entered the leases to promote productivity and development. The Haley lease states that it is executed "for the purpose of carrying on geological, geophysical and other exploratory work, . . . [and] producing" oil and gas. Similarly, the Henderson lease states that it is executed "for the purpose of mining, exploring by geophysical and other methods, and operating for and producing therefrom oil and all gas of whatsoever feature or kind."

¶44 Despite this language in the leases, the current litigation indicates that Boulder's present interests diverge from those of its predecessors-in-interest. For example, in its amended complaint, Boulder stated that it "places a high priority on the preservation of open spaces for agricultural uses, passive recreation, ecological protection, viewsheds and similar values" and that "[a]s part of its preservation efforts," it has purchased mineral and surface rights. Our duty, however, is to give meaning to the intentions of the lessee and lessor at the time they entered the lease. *KN Energy, Inc*, 698 P.2d at 779. In any event, Boulder's reading of the cessation-of-production clauses itself presents conservation concerns. To hold that a lessee must conduct additional drilling on property where a productive well already exists to avoid termination of their lease would risk initiating a surge of new drilling operations any time there is a pause in the lessee's ability to extract hydrocarbons. As such, finding that the leases terminated here neither protects the current interests of the lessor nor reflects the purpose of the Haley and Henderson leases.

¶45 Our interpretation of the Haley and Henderson leases' cessation-of-production clauses not only harmonizes the purpose and language of the clauses themselves, but also gives effect to all parts of the leases. The shut-in royalty clause in each lease provides the lessee with the option (or, under the Haley lease, the requirement) to pay royalties when gas from a well "capable of producing" is not being sold or used. This provision remains in full effect under our interpretation of the cessation-of-production clauses.

¶46 In contrast, adopting the definition of "production" that Boulder proposes would render the shut-in royalty provision inoperative. If, following Boulder's proposed "actual production" rule, "production" under the cessation-of-production clause must include extraction of hydrocarbons, the rights and duties under the shut-in royalty provisions could never be exercised. The shut-in royalty clauses are triggered after a shut-in of one year under the Haley lease and ninety days under the Henderson lease, but payment is not due until the anniversary of the lease that next occurs after the well is shut in. Under Boulder's approach, the shut-in of a well "capable of producing" would constitute a cessation of production after sixty or ninety days and terminate the lease—never allowing the lessee to exercise their rights under the shut-in provision.

¶47 In an attempt to avoid this incongruity, Boulder argues that "the shut-in royalty clauses in the [Haley and Henderson leases] have no application because both apply to wells that produce gas only, while the wells at issue produced both oil and gas." Even if we accept Boulder's conclusion that the clauses refer to wells that produce only gas, the plain language of the clauses would still be frustrated, as discussed above, by the application of Boulder's proposed actual production rule.

¶48 Boulder also argues that regardless of a gas-only limitation, Crestone's predecessor-in-interest could have paid Boulder the shut-in royalties before the sixty and ninety days specified in the cessation-of-production clauses elapsed. We are not persuaded. Even if it is possible for a lessee to comply with both provisions as Boulder interprets them, the plain language does not support the conclusion that the parties intended such a meaning. At a minimum, Boulder's proposed interpretation renders the anniversary provision superfluous. As discussed above, the cessation-of-production and shut-in royalty clauses are *savings* clauses. Surely Boulder's and Crestone's predecessors-in-interest did not intend the cessation-of-production clause to limit rights under the habendum clause *and* alter the rights—and plain language—of the shut-in royalty clauses.

¶49 For all these reasons, we conclude that the 2014 shut-in did not trigger termination of the Haley and Henderson leases under their cessation-of-production clauses.

III. Conclusion

¶50 In Colorado, we interpret each oil and gas lease on its own terms. This leads us to conclude that the division erred in broadly adopting the "commercial discovery" rule to define "production" and we therefore vacate that portion of the division's opinion. We decline to adopt any universal definition for "production" in oil and gas leases in Colorado, but rather determine the parties' meaning within the context of the lease.

¶51 In this case, the ultimate question we must answer is whether the cessation-of-production clauses triggered termination. The Haley and Henderson leases make clear that their cessation-of-production clauses are triggered only when a cessation of production that would be permanent without reworking or drilling occurs. Therefore, we conclude that the 2014 shut-in necessitated by a third party's maintenance operations did not trigger termination under the cessation-of-production clauses.

¶52 Accordingly, we affirm the judgment of the court of appeals, but under different reasoning.