



January 17, 2024 | 11:30 AM - 1 PM

11:30-12:00: Networking and Buffet

12:00-12:50: Presentation

12:50-1:00: Q&A

Navigating and Negotiating Gray Areas of Concurrent Surface and Mineral Development: An Overview of Who Owns What and the Documents Needed to Avoid Liability for Operations



Bresee Carlson

Bresee attended law school at the Sturm College of Law in Denver, CO with aspirations of providing guardian ad litem services for Colorado children. After graduation from Sturm College of Law in 2009, Bresee was introduced to the energy industry by working title in the field and in house. Since then, her practice has focused on land and title related oil and gas issues across the Rocky Mountain producing states. Bresee is an adjunct professor of Oil & Gas Law at Western Colorado University in Gunnison, Colorado, sits on the board of Energy Strong, and is actively engaged in the DAPL, WAPL, and RMMLF. In her spare time Bresee volunteers with the Rocky Mountain Children's Law Center providing guardian ad litem services for protection order proceedings or works on her unfortunately high golf handicap.



\$45 for DAPL Members \$60 for
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Virtual & In Person Option

[Click Here to Register](#)

The University Club
1673 Sherman St. Denver, CO 80203

UPCOMING EVENTS

[2024
NAPE Summit
February 7th - 9th](#)

DAPL February
Luncheon
February 21st

[GeoLand Ski Day
February 23rd](#)

DAPL March
Luncheon
March 20th



The Denver Association of Professional Landmen

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The Denver Association of Professional Landmen is a non-profit organization operated by its membership for mutual benefit to further the knowledge and interests of Professional Landmen, and to better acquaint the public with the scope of the Landman's work.

The Rocky Mountain Landman is a publication of the Denver Association of Professional Landmen.

Tabatha Reed

DAPL Office Administrator

Phone: (303) 446-2253

Column Coordinators:

Education **Bresee Carlson
Crosby Garrison**

Minutes **Chad Sullivan**

Legal **Estee Sanchez**

Contributions from our readers are welcome. All suggestions and manuscripts should be emailed to the editor at the DAPL office. We reserve the right to edit all material according to standard practices.

Bylined and credited articles represent the view of the authors; publication neither implies approval of the opinions expressed nor accuracy of the facts stated.

Officer's Forum—Director

Happy 2024! First of all, please allow me to say thank you for your loyalty to our time-honored profession and to the DAPL. 2024 represents a tremendous opportunity for us to grow professionally and personally, especially if we make a conscious decision to look beyond the noise. Let's strive to embrace challenges as opportunities and assist each other wherever possible.

Second, let's talk about philanthropy. The DAPL has always attempted to give back to the communities in which we operate through donations of time and money, and, despite some roadblocks over the last couple years, this year we plan to continue our volunteering traditions and perhaps establish some new ones.

The DAPL's Community Service Committee has historically held two events per year in which we invite the DAPL membership to assist the local community, spread the message about our industry, and, as always, network with our fellow land professionals. Please keep an eye out for these forthcoming opportunities in 2024. These events are always a ton of fun, so please join us!

Two of the organizations with which we have served in the past include [Volunteers of America](#) and [Family HomeStead](#). Both of these organizations aim to support and empower people in need. This year, we might team up with a new organization like the [Denver Rescue Mission](#) or perhaps expand our impact to other counties like Weld, Adams, or Arapahoe, where hunger, support for schools, and homelessness present opportunities for the DAPL to serve.

That said, if you have any philanthropic ideas that you would like to share, please contact me or the chair of the DAPL's Community Service Committee – Matt Hoppe.

Thanks again, and let's make 2024 a legendary year!

David Connolly
Director, DAPL



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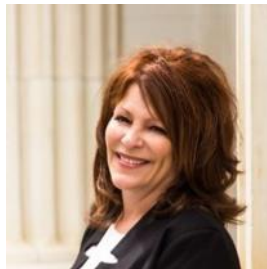
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Thank you for all that you do for the Industry!

Hall of Fame - Taber “Tab” McGinley



Landman of the Year - Pam Cortese



President’s Award - Doug Pearlman



Education Award - Doug Potter



CONGRATULATIONS 2023 AWARDS WINNERS

CONGRATULATIONS TO OUR 2023 AWARDS WINNERS

Thank you for all that you do for the Industry!

Community Service Award - Aaron Gray



Committee Member Award - Estee Sanchez



DADOA President's Council Lifetime Achievement Award Wendy Hopkins



DALTA Member of the Year Jessica Mulverhill



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From a Legal Perspective

OIL AND GAS LAW AT THE COLORADO SUPREME COURT

In its recent decision, *Bd. of Cnty Comm'rs v. Crestone Peak Res. Operating LLC*, 2023 CO 58, the Colorado Supreme Court, through the lens of two oil and gas leases, determined that a 122-day temporary stop in production did not result in their termination pursuant to their cessation of production clauses. Importantly, in reaching its decision, the Court failed to adopt a universal definition of “production” in the State of Colorado. Instead, the Court reviewed the terms of the individual oil and gas leases to determine if the included cessation of production clauses were intended to terminate the leases when a 122-day temporary cessation of production occurred. This now raises the question, does this decision provide productive guidance to lessors and lessees seeking to determine if a temporary stop in production has their leases?

Factual Background

The case concerns two oil and gas leases, the subject leases, executed in 1980 and 1982 by predecessors in interest to the Board of County Commissioners of Boulder County (“Boulder”) in favor of predecessors in interest to Crestone Peak Resources Operating LLC’s (“Crestone”). The subject leases contain habendum clauses which provide for primary terms of two (2) years and indefinite secondary terms that extend for so long as oil and gas are produced. Production was obtained prior to the expiration of the primary terms.

In March of 2014, Crestone’s predecessor in interest, after consultation with the operator of its gas sales pipeline, temporarily shut-in wells producing under the subject oil and gas leases to allow the third-party pipeline operator to conduct maintenance activities on the gas sale pipeline. In total, the subject wells were shut-in for 122 days. Following this shut-in period, Boulder continued to accept production royalties pursuant to the terms of the subject leases, and it was not until 2018 that Boulder claimed the termination of the subject leases as a result of the 122-day shut-in period.

Procedural Background

In 2018, Boulder sued Crestone claiming the subject leases terminated pursuant to their cessation of production clauses as a result of the 122-day shut-in period. The district court granted Crestone’s motion for summary judgment, finding that Crestone “merely ceased marketing” and not production during the shut-in period. *Id.* at ¶12. Boulder then appealed to the Court of Appeals, who affirmed the lower court, in part through the application of the “commercial discovery” doctrine, finding that “production” in Colorado is defined as “capable of producing oil or gas in commercial quantities.” Hence, as long as a well is capable of commercial production, the habendum clause would be satisfied, and the lease continued. *Id.* at ¶15. Boulder then appealed the application of the “commercial discovery” doctrine to the Colorado Supreme Court.

Court’s Holding

The Court affirmed the lower courts’ holding that the subject leases did not terminate as a result of the 122-day shut-in period, but in doing so, rejected both the Court of Appeals’ use of the “commercial discovery” doctrine to define “production” in Colorado. The Court reasoned that “production” has “no precise and invariable meaning, and it cannot be assumed that such term refers to a simple and easily identifiable event.” *Id.* at ¶25. Stating further that production as used in the subject leases should be determined by the “circumstances which are commonly incident to oil and gas operations and which the parties must have contemplated.” *Id.* Following this reasoning, the Court rejected the lower court’s application of the “commercial discovery” doctrine and Boulder’s claim that the “actual production” rule, defining “production” as extraction, should be applied, stating “the context in which a word appears in a lease remains important to our interpretation.” *Id.* at ¶27.

To determine how the original parties to the subject leases intended “production” to be used in the habendum, cessation of production, and shut-in clauses, the Court reviewed the context of its usage in each clause and then how those clauses interacted within the whole instrument to meet the parties’ intended goal to “promote productivity and development” of the leased substances. *Id.* at ¶42.

In looking at “production” as it relates to the habendum clause, the Court discussed the common law temporary cessation of production doctrine, which helps to evaluate if the length of a cessation in production was of sufficient duration to terminate a lease for lack of production under the habendum clause. Relying on this doctrine, the Court reasoned that the

From a Legal Perspective cont.'d

temporary 122-day cessation of production would not violate the production requirement within the secondary term of the habendum clause because 1) it was for a reasonable cause and extended for a reasonable length and 2) diligence was used to remedy the temporary cessation.

Next, the Court looked at the use of “production” within the cessation of production clause. Both the subject leases contained cessation of production clauses that stated that should production under the subject leases cease “for any cause,” the subject leases would not terminate so long as the lessee resumed “drilling or re-working” operations within a set timeframe, being either 60 or 90 days in the subject leases. *Id.* At ¶36.

Contrary to Boulder’s claim, the Court found that the inclusion of the “for any cause” language in the cessation of production clause did not remove the application of the temporary cessation doctrine. The Court found that because the cessation of production clauses provided for a remedy through drilling or reworking operations, which are understood to only be necessary when production from a well is no longer possible, the clause was not intended to operate in situations where production had merely temporarily ceased, and a well was still capable of production. Thus, the Court stated that the cessation of production clauses provided in the subject leases “are triggered only when there is a permanent cessation of production that can be resolved by reworking or drilling operations.” *Id.* At ¶41.

Finally, the Court found the parties’ inclusion of a shut-in royalty provision consistent with its interpretation of their intended operation of the cessation of production clause. Hence, if the cessation of production clause was to be treated as terminating the lease when production had been lost for either 60 or 90 days, and the required operations were not timely initiated, then the shut-in clauses, as drafted, would be precluded from working.

Key Take Aways:

There continues to be no universal definition of “production” in the State of Colorado. Instead, courts and other parties will need to review the terms of a lease as a whole to ascertain the parties’ intended meaning, possibly down to the individual clause level.

If a lessor or lessee does not desire the temporary cessation of production doctrine to apply to its lease, it should carefully draft its cessation of production provision so that such intent is clearly stated and when its lease will terminate for lack of production.

Unless a contrary intent is otherwise indicated per an oil and gas lease’s terms, when drilling and reworking operations will allow for the staying of the operation of a cessation of production clause, then the triggering cessation of production needs to be permanent.

Ryan McKee
Beatty & Wozniak, P.C.

2024 DAPL Calendar of Events

January 2024

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9 Education Committee Meeting	10 Board Meeting	11	12	13
14	15	16	17 Luncheon	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

January 2024

9th-Education Committee Meeting
10th-Board Meeting
17th-Luncheon - *see page 1 for more information*

February 2024

13th-Education Committee Meeting
14th-Board Meeting
21st-Luncheon
23rd-GeoLand Ski Day - *see page 3 for more information*

March 2024

13th-Education Committee Meeting
13th-Board Meeting
20th-Luncheon

February 2024

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13 Education Committee Meeting	14 Board Meeting	15	19	17
18	19	20	21 Luncheon	22	23 Ski Day	24
25	26	27	28	29		



Field Landman Question

Recent State Land Board Actions Impacting Energy Development

A DAPL member has asked: Are there recent state land board actions that impact energy development?

Yes – there are recent state land board orders or policies that impact energy development. In many Western states certain state-owned land is held in trust for the benefit of certain state bodies, typically public schools. This “trust land” is managed by a state land board, and the land can be leased, rented, burdened, or sold to generate income for the trust beneficiaries. This article briefly discusses some of the recent state land board policies and actions that impact energy development, whether the development is of renewable energy or oil and gas.

New Mexico

On June 1, 2023, the New Mexico Commissioner of Public Lands issued Executive Order 2023-001, which placed an indefinite moratorium on new oil and gas leasing of state trust lands within one mile of a school or other educational institution.

Pursuant to New Mexico statutes and administrative code, the Commissioner of Public Lands is authorized to withhold any state trust lands from leasing for oil and gas purposes if in its opinion the best interests of the state land trust will be served by the withholding.

Executive Order 2023-001 also ordered a review of (i) existing state trust land oil and gas leases and related rights-of-way within one mile of a school or other educational institution to check for compliance with applicable lease terms, such as the requirement to plug inactive wells, remediate spills, and adhere to air quality standards, and (ii) other protective measures that may help ensure oil and gas operations on state trust lands are conducted consistent with public health and safety and environmental protection.

Colorado

The Colorado state constitution and state statutes require the state land board to prudently manage state trust lands to produce reasonable and consistent income over time and to protect and enhance the long-term productivity and sound stewardship of the trust lands.

In April 2023, the state land board released Policy 300-011, “Geologic Carbon Sequestration Leasing Policy,” for the purpose of generating reasonable and consistent income by utilizing state land board assets to capture and sequester atmospheric carbon.

Interested parties may apply for sequestration projects, exploration leases, and injection leases. The policy does not clarify what legal arrangements constitute a “sequestration project.”

An exploration lease permits the lessee to conduct geologic, environmental, and other scientific testing to determine the viability of a geologic carbon sequestration project, and to begin the process of permitting a geologic carbon sequestration project. The state land board staff may issue exploration leases with a term of up to four years, while exploration leases with terms longer than four years require board approval. The minimum fee for an exploration lease is \$12 per acre, but state land board staff may increase the fee based on factors such as lease size, location, existing surface conditions, and carbon emissions sources.

In connection with geologic carbon sequestration, state land board staff are authorized to make filings, resolve conflicts, and participate in Colorado Energy & Carbon Management Commission or Environmental Protection Agency processes where the staff deem action is necessary to protect state trust land assets.

Field Landman Question cont.'d

Wyoming

In December 2023, the Wyoming Board of Land Commissioners adopted final rules concerning the leasing of state-owned lands for wind energy purposes.

The lands leased for wind energy purposes may also be subject to existing leases for other surface or subsurface purposes. A person interested in obtaining a wind energy lease shall submit an application. If more than one person applies for a wind energy lease on the same state lands, the board may issue a request for proposals of competitive wind energy lease offers.

Wind energy leases may have a term of up to 75 years; the board must set the lease term for a period not exceeding the anticipated useful economic life of the lessee's improvements for wind energy development.

The annual rental for wind energy leases shall be determined by the board on an individual lease basis, provided that at a minimum the annual rental shall be based on fair market value as determined by the Office of State Lands and Investments for the same or similar use of the land and any improvements owned by the state. In cases where a fair market value cannot be obtained, the minimum annual rental shall be the greater of \$1,000 or 5.5% of the appraised land value and any improvements owned by the state.

Wind energy leases may not be assigned without prior approval of the board, and they may not be subleased or made subject to an agreement of any kind without prior approval of the Director of the Office of State Lands and Investments.

The board must require financial assurance from the lessee as a condition of a wind energy lease, sufficient to assure compliance with the terms of the lease including decommissioning and site reclamation. Acceptable forms of financial assurance are surety bond or certificate of deposit, or other forms as may be acceptable to the Director of the Office of State Lands and Investments (such as corporate guarantee, letter of credit, insurance policy, or security interest in net salvage value).

John R. Chadd
Member, Steptoe & Johnson PLLC

Do you have a land issue you would like discussed? Do you need supporting documentation to win a bet with a colleague? Is there a question you are too embarrassed to ask your boss? If so, the DAPL would like to hear from you! Please submit your question to joe.martin@highwestresources.com. Each month, we will publish a question chosen from those submitted, along with a Steptoe & Johnson PLLC attorney's discussion of the issue. The foregoing article discusses general legal principles and laws applied to a generic fact situation, is not intended to constitute legal advice or create any attorney-client relationship, and no representation or warranty of accuracy or applicability regarding the same is made by the author or Steptoe & Johnson PLLC. The content of and views expressed in the foregoing article are those of the author, and are not the views of the DAPL.

DAPL 2024 ANNUAL GOLF TOURNAMENT

FRIDAY, JULY 19, 2024
KEYSTONE

SAVE THE DATE!!



SAVE THE DATES FOR THESE SUMMER EVENTS!



DAPL
DENVER ASSOCIATION OF PROFESSIONAL LANDMEN

DAPL 2024 40th ANNUAL CLAY SHOOT

FRIDAY, AUGUST 23, 2024
COLORADO CLAYS



SAVE THE DATE!!



DAPL November 2023 Board Meeting Minutes

11/08/2023

In Attendance:

In-person: Tabatha Reed, Laurie Wizeman, Jake Bakker, James Culbertson, Crosby Garrison, Gil Guethlein, Chad Sullivan

On Phone: David Connolly, Tyler Adams, Armando Trevino, Tyler Aylor, Estee Sanchez, James Hubert

Pres. Gil Guethlein called the meeting to order at 11:33 AM MST 11.08.2023

Approval of Minutes:

Chad motioned to approve the October minutes. Jake seconded. APPROVED

Membership - Reported by Tabatha Reed:

Motioned to approve by Gil – Armando second. APPROVED

November 2023 Board Meeting								
MEMBER NAME	COMPANY	ACTIVE	ASSOCIATE	STUDENT	AAPL	SPONSOR	OFFICE PHONE	E-MAIL
Christopher Dykes	Family Tree Corporation	X			Yes	Catherine Ezo	303-986-3536	icdykes@familytreecorp.com
Tyler Jenkins	Headwater Energy, LLC	X			N	Patrick Finley	303-808-1080	tyleri@headwater-energy.com
Steven Yeager	Yeager Land & Title	X			Yes	Janet Rost	817-991-9908	syeager@yeagerlandtitle.com
Daryl Woodall	INEOS USA Oil & Gas LLC	X			Yes	Frank Montalvo	720-764-7703	daryl_woodall@ineos.com
Nov-23	Oct-23							
Total Number of Current Members - 579	Total Number of Current Members - 572							
Total Number of Non-Members - 947	Total Number of Non-Members - 946							
Expiring 5/31/24 - 361	Expiring 5/31/24 - 353							
Expiring 5/31/25 - 62	Expiring 5/31/25 - 63							
Expiring 5/31/26 - 54	Expiring 5/31/26 - 54							
Honorary/Retired (never expire) - 102	Honorary/Retired (never expire) - 102							
Nov-22								
Total Number of Current Members - 626								
Total Number of Non-Members (Expired) - 761								
Expiring 5/31/23 - 375								
Expiring 5/31/24 - 83								
Expiring 5/31/25 - 57								
Expiring 5/31/26 - 1								
Honorary/Retired (never expire) - 100								

Continued on next page

Treasurers Report - Reported by James Culbertson:

Banking Accounts	November 2023	October 2023	1-Month Diff.	November 2022	1-Year Diff.
PNC Checking	\$126,555.97	\$164,863.34	-\$38,307.37	\$302,714.47	-\$176,158.50
Savings/Money Market	\$10,005.34	\$10,005.26	\$0.08	\$10,004.34	\$1.00
RBC Long-Term (Current 11.6.2023)	\$126,427.10	\$125,831.61	\$595.49	\$94,198.23	\$32,228.87
RBC CDs (Current 11.6.2023)	\$86,427.19	\$86,072.88	\$354.31	\$0.00	\$0.00
Total Checking/Savings/Investments	\$349,415.60	\$386,773.09	-\$37,357.49	\$406,917.04	-\$57,501.44
RBC Investment Account	Beginning Balance	Gain/Loss	Current Balance		
Long-Term Account (Current 11.6.2023)	\$125,831.61	\$595.49	\$126,427.10		
	Total Investment	Current Balance	Updated vs Current		
Investment Balance	\$128,000.00	\$126,427.10	-\$1,572.90		
Scholarship Accounts	November 2023	October 2023	1-Month Diff.	November 2022	1-Year Diff.
PNC Bill Goodin	\$17,322.31	\$17,322.16	\$0.15	\$10,179.10	\$7,143.21
PNC Cappy Ricks	\$2,500.68	\$2,500.66	\$0.02	\$15,482.25	-\$12,981.57
PNC DAPL Scholarship	\$8,306.99	\$8,306.99	\$0.00	\$8,306.99	\$0.00
PNC Raffle Acct	\$4,395.00	\$4,395.00	\$0.00	\$3,785.00	\$610.00
Total Savings	\$32,524.98	\$32,524.81	\$0.17	\$37,753.34	-\$5,228.36
DAPL Pending Checks	Amount				
#1082 - Trisha Curtis, DLI Speaker Fee	\$1,500.00				
Total Pending DAPL Checks	\$1,500.00				

Education Committee - Reported by Crosby Garrison:

207 people attended the event. 41 virtual, 166 in person.

DLI was a success and had great feedback on this year and also ideas on how to improve for next year.

Luncheon next Wednesday the 20th. Daniel Franklin Speaking.

U Club contract is approaching expiration. In the meantime, the board is evaluating the U club experience in hopes of improvement.

President's Report - Reported by Gil Guethlein:

DLI & Bash will likely be a break-even event. Should the event not profit, the AAPL education grant will subsidize losses to a certain amount. Should there be profit, those profits will be split between DAPL and AAPL. DLI considered a success this year. Sponsorship payments currently rolling in for the Bash.

Upcoming big event is holiday luncheon and awards. DAPL holiday party will be moved to an afternoon event after the awards. DALTA has requested to do a raffle.

Please start working towards solidifying corporate sponsorship to ensure the next year's financial success.

Gil working a January appreciation event to thank the corporate sponsors. Please reach out to her with questions.

DAPL ski day has historically been challenging. Goal is to increase participation to increase the events success. DAPL will continue to pursue organizing and sponsoring this event.

AAPL has request we have an education liaison. Please let the board know if you are interested in this position.

Pres. Gil Guethlein adjourned the meeting at 11:54 PM MST 11.08.23

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1/2 Page	7 1/2 x 4 1/2	\$195.00	\$175.50
Double Column	4 3/4 x 9 1/2	\$235.00	\$211.50
Full Page	7 1/2 x 9 1/2	\$390.00	\$351.00

Contact : DAPL Office (303) 446-2253

2022-2023 DAPL OFFICERS, DIRECTORS AND STANDING COMMITTEE CHAIRS

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