



## Striking “Oil,” a Case Alert

*Craig v. Anadarko* No. 19CA1441 (Colo. App. November 19, 2020).

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In a recent [unpublished decision](#), the Colorado Court of Appeals addressed the strikethrough or redaction of the term “oil” from a reservation clause in recorded form deeds. The recorded clause provided for the reservation of “all ~~oil~~, coal and other minerals” to the grantor. Using extrinsic evidence, under the precedent set in *Lazy Dog Ranch v. Telluray Ranch Corp.*<sup>1</sup>, the court found the clause as recorded to be ambiguous. Again, relying on extrinsic evidence, the court concluded that such evidence indicated the parties intended that the grantor, predecessor in interest to Anadarko, retain all mineral interests, including the stricken oil interest.

**Why it matters:** This case highlights and follows the recent trend of Colorado courts to look outside the four corners of the instrument in question to determine if a term, provision, or clause within the instrument is ambiguous. See also *Moeller v. Ferrari Energy, LLC*, No. 18CA1844 (Colo. App. July 23, 2020). Also, there is a high probability that a similar if not identical fact pattern will arise again. Specifically, this case concerns an early twentieth century conveyance and reservation from Union Pacific Railroad Company (“Union Pacific”), one of the largest private land and mineral interest owners in the western United States at the time of the conveyance.

### *Facts and Claims*

- At the time it executed the subject instruments, Union Pacific owned all surface and mineral interests in the subject lands.
- During the period of execution and recording of the subject instruments, the practice of the Lincoln County Clerk and Recorder, and numerous others throughout Colorado and the West, was to transcribe instruments executed by the parties onto form deeds which were then placed in the county records, generally in deed books.
- The original instruments from Union Pacific to numerous grantees in Lincoln County, and like elsewhere in Colorado and throughout the West, contained a mineral reservation clause reserving to Union Pacific “all coal and other minerals.” The form deeds used by the Lincoln County Clerk and Recorder contained a reservation clause which reserved to the grantor “all oil, coal and other minerals,” which was modified by the Clerk and Recorder to read as a reservation of “all ~~oil~~, coal and other minerals.”

<sup>1</sup> *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229 (Colo. 1998).

- Successors to the grantees claim the form deeds in the records of Lincoln County, Colorado are unambiguous within their four corners and that by striking or redacting “oil” from the Union Pacific reservation, the oil interest of Union Pacific was conveyed to them.
- Anadarko, successor to Union Pacific, claims that the strikethroughs are ambiguous and that the parties’ intent, gleaned from other evidence of the transactions, was to reserve the oil rights to Union Pacific.

### *Statements of Law*

- The court stated its primary purpose in construing a deed is to ascertain the parties’ intent. *Morales v. CAMB*, 160 P.3d 373, 375 (Colo. App. 2007).
- If a deed is found to be unambiguous by its terms then it must be enforced as written. *Owens v. Tergeson*, 2015 COA 164.
- In determining if a deed is unambiguous, the courts “examine the instrument’s language and construe it in harmony with the plain and generally accepted meaning of the words employed.” *Id.* at ¶ 16 (quoting *Allen v. Reed*, 155 P.3d 443, 445 (Colo. App. 2006)).
- Courts need not “apply a rigid ‘four corners’ rule” in interpreting a deed. *E. Ridge of Fort Collins, LLC v. Larimer & Weld Irrigation Co.*, 109 P.3d 969, 974 (Colo. 2005) (quoting *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1235 (Colo. 1998)). Instead, courts may conditionally admit and consider extrinsic evidence to determine whether the deed is ambiguous. *See id.*; *see also Moeller v. Ferrari Energy, LLC*, 2020 COA 113, ¶ 15
- Extrinsic evidence may be even more important in seeking to determine the intent of the parties in the context of ancient documents. *E. Ridge*, 109 P.3d at 974.

### *Secondary conclusions addressing the Recording Act and Merger Doctrine*

- The court also found that using extrinsic evidence did not violate the Colorado Recording Act, C.R.S. 38-35-101, *et seq.*, which protects persons holding rights under a recorded instrument from claims asserted based on unrecorded instruments because the extrinsic evidence was used to interpret the ambiguous strikethroughs in the recorded form deeds.
- Where deeds are ambiguous courts may consider extrinsic evidence to interpret them. *See Moeller*, ¶ 15.
- The successors to the grantees also argued that the use of extrinsic evidence violated the merger doctrine.
- Under the merger doctrine, a deed delivered and accepted merges all prior negotiations and agreements into the deed. *See Colo. Land & Res., Inc. v. Creditthrift of Am., Inc.*, 778 P.2d 320, 322 (Colo. App. 1989).
- Application of this doctrine assumes that the recorded form deeds were unambiguous, but the court found that the strikethroughs created ambiguity in the deeds necessitating the consideration of extrinsic evidence.

**Takeaways:** The Colorado courts’ willingness to look outside the four corners of a document to extrinsic evidence to determine if an instrument or some part thereof is ambiguous, appears to be an attempt to reach an equitable outcome. This approach runs counter to the general legal precedent of looking only within the four corners of an instrument to determine if the

instrument or some portions thereof are ambiguous. However, the more liberal use of extrinsic evidence by Colorado courts may have the unintended consequence of creating less certainty as to apparently clearly stated provisions within a recorded instrument which are relied upon by numerous third parties.<sup>2</sup> Finally, the fact pattern in this case will likely present again because it concerns the historical common practice of transcription of a conveyance instrument onto a form deed for recording purposes and because the subject instruments were executed by Union Pacific.

For more information about the article, please contact [Ryan McKee](#) and [Scott Petitmermet](#).

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<sup>2</sup> Note that despite determining the reservation clause containing stricken language was ambiguous by looking to extrinsic evidence of the parties' intent, it is likely the court could have reached a similar conclusion based upon another court's determination that stricken or redacted language can create an ambiguity even within the four corners of the instrument. See *Told v. Tig Premier Ins. Co.*, 149 Fed. Appx. 722 (Cir. 2005) holding that a strikethrough, without initialing, creates an ambiguity which may require extrinsic evidence to determine the intent of the parties.