



Construing Retained-Acreage and Related Clauses After *Endeavor v. Discovery Operating* and *XOG v. Chesapeake*

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MCGINNIS LOCHRIDGE

DERRICK PRICE

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What is a Retained-Acreage Clause?

- An Oil and Gas Lease Clause
- Sets out how much acreage an operator may retain on a per well basis
- Typically applies once the balance of the Lease automatically terminates
 - End of the Primary Term, or
 - End of Continuous Development

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What is a Retained-Acreage Clause?

Works in Conjunction with several other Lease Clauses:

- **Habendum Clause**
 - Defines the duration of the mineral estate
 - Typically for a fixed primary term (3 years) and “as long thereafter as oil and gas is produced in paying quantities.”
 - If unmodified, production anywhere on the Leased Premises will maintain the entire Leased Premises
 - Other clauses may extend or modify the Habendum clause’s term

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What is a Retained-Acreage Clause?

Works in Conjunction with several other Lease Clauses:

- **Continuous Development Clause**
 - “permits a lease to be preserved under certain circumstances even though there is no production after the expiration of the primary term during continuous drilling operations, whether on the same or different wells.”
 - Gives Lessee the option to extend the Lease’s Habendum clause after the Primary Term ends
 - Avoids automatic termination as to some or all of the Leased Premises
 - Requires Lessee to continue drilling wells at fixed intervals

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What is a Retained-Acreage Clause?

“[A] retained acreage clause typically divides the leased acreage such that production or development will preserve the lease only as to the specified portion of the leased acreage.”

Endeavor Energy Res., L.P. v. Discovery Operating, Inc., 554 S.W.3d 586, 598 (Tex. 2018)

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Purpose of Retained-Acreage Clause

Why have Retained Acreage Clauses?

- **Effect of Typical Habendum Clause**
 - A single commercial well may hold the entire lease indefinitely
 - Whether the lease covers 100 acres or 100,000 acres
- **Lessors have limited tools to encourage additional development**
 - Implied Covenant of Reasonable Development (or Express Provisions)
 - Implied Covenant to Protect Against Drainage (or Express Provisions)
- **Lessors have limited remedies**
 - Money Damages
 - Maybe conditional cancellation in extreme circumstances

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