

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION**

**APPLICATION OF VENDERA RESOURCES III, LP,  
VENDERA MANAGEMENT III, LLC AND HIGHMARK  
OPERATING, LLC TO APPROVE A FORM C-145  
NAMING HIGHMARK ENERGY OPERATING, LLC  
AS THE SUCCESSOR OPERATOR OF THE  
CENTRAL VACUUM UNIT, LEA COUNTY, NEW MEXICO**

**CASE NO. 21704  
ORDER NO. R-21828**

**ORDER**

This matter comes before the Director of the New Mexico Oil Conservation Division (“Division”) on a Motion to Dismiss (“Motion”) filed by Chevron U.S.A. Inc. (“Chevron”). The Director, having heard this matter through a Hearing Examiner on March 4 and April 8, 2021, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

**FINDINGS AND CONCLUSIONS**

1. This case involves a determination of the Division’s authority and responsibility under the Statutory Unitization Act, NMSA 1978, §§70-7-1 to -21 (1975, as amended) (“Act”). Vendera Resources III, LP and Vendera Management III, LLC (collectively "Vendera") and Highmark Energy Operating, LLC ("Highmark") applied for an order from the Division to approve a Form C-145 naming Highmark as successor unit operator of the Central Vacuum Unit ("Unit") and removing the current unit operator (“Application”).
2. Chevron U.S.A. Inc (“Chevron”) filed a Motion to Dismiss requesting that the Division dismiss the Application on the grounds that (1) the Division lacks jurisdiction to decide a contested operatorship that involves a dispute over contract interpretation and (2) the Division’s approval of a C-145 is a ministerial act that only occurs when the current operator agrees or is unavailable. Chevron claims that neither is true in this case. Vendera responded that the Division does have jurisdiction under the Act, and under agreements approved by the Division, to designate an operator for the Unit.
3. Statutory Unitization Act. The Unit was approved under the authority of the Statutory Unitization Act. The purpose of the Act, as defined by the Legislature, is “to authorize and provide for the unitized management, operation and further development of the oil and gas properties to which the Statutory Unitization Act

is applicable". NMSA 1978, §70-7-1. The Act applies to "any type of operation that will substantially increase the recovery of oil above the amount that would be recovered by primary recovery alone". *Id.*

4. The role of the Division under the Act is to review applications for the unit operation of a pool, §70-7-5, and determine if the application meets the conditions required by the Act. §70-7-6. The Division may then, after a hearing, enter an order "providing for unitization and unit operation of a pool". §70-7-7. The order must approve a unit agreement that includes a number of specific provisions including:
  - G. a provision designating the unit operator and providing for the supervision and conduct of the unit operations, including the selection, removal or substitution of an operator from among the working interest owners to conduct the unit operations;
  - H. a provision for a voting procedure for the decision of matters to be decided by the working interest owners in respect to which each working interest owner shall have a voting interest equal to its unit participation.§70-7-7(G), (H).
5. A Division order providing for unit operations will not be effective until it has been "approved in writing by those persons who, under the division's order, will be required initially to pay at least seventy-five percent of the costs of the unit operations, and also by the owners of at least seventy-five percent of the production or proceeds thereof that will be credited to interests which are free of cost such as royalties, overriding royalties and production payments". §70-7-9.
6. Central Vacuum Unit. Pursuant to the Act, the Unit was approved by the Oil Conservation Commission ("Commission") on August 9, 1977, in Order R-5496 ("Unit Order"). The Unit covers 3046.20 acres of State and fee lands in Lea County. The Unit Order incorporated by reference the Unit Agreement and the Unit Operating Agreement. (Unit Order ¶ 4, 5). The pressure maintenance project for the Unit was approved by the Commission on September 20, 1977. Order R-5530, as amended.
7. The Unit Order did not designate an operator of the Unit. The Unit Agreement and Unit Operating Agreement (the "Agreements") named Texaco Inc. as operator of the Unit.
8. Section 7 of the Unit Agreement provides that "the Unit Operator may be removed at any time by the affirmative vote of Working Interest Owners having ninety percent (90%) or more of the Voting Interest remaining after excluding the voting interest of the Unit Operator." The Unit Agreement provides that a removal shall be effective upon notice to the Commissioner of Public Lands.
9. Application of Vendera. On February 2, 2021, Vendera filed the Application requesting the Division approve a Form C-145 naming Highmark as successor

unit operator of the Unit and removing Chevron as the unit operator. A Form C-145 (“Change of Operator”) was prepared and signed by Highmark as the “New Operator”. On April 27, 2021, Vendera filed an Amended Application which provided additional reasoning for the efforts to change the unit operator.

10. Motion to Dismiss. On February 24, 2021, Chevron filed the Motion requesting that the Division dismiss the Application on the grounds that (1) the Division lacks jurisdiction to decide a contested operatorship that involves a dispute over contract interpretation and (2) the Division’s approval of a C-145 is a ministerial act that only occurs when the current operator agrees or is unavailable. Chevron claims that neither is true in this case. Vendera responded to the Motion and argued that the Division does have jurisdiction under the Act, and under agreements approved by the Division, to designate an operator for the Unit. On April 8, 2021, the Division heard oral argument on the Motion.
11. For the purposes of considering the Motion, we will accept certain basic allegations in the Application.
  - a) Chevron is the successor to Texaco Inc as the unit operator.
  - b) Vendera alleges that the process in the Unit Agreement for removing the operator was implemented and the threshold of the voting interests, to remove Chevron as the operator and to name Highmark as the successor operator, was reached.
  - c) Notice of the election results was provided by Ventura to Chevron and the Commissioner of Public Lands.
  - d) A Form C-145 has been prepared and signed by Highmark as the duly elected successor unit operator.
  - e) Chevron has refused to execute the Form C-145 and Chevron has refused to step down as unit operator.
12. Analysis C-145 Form. The C-145 Form was established under the Commission’s rules governing the Oil and Gas Act. The form is the application for approving a change in the entity responsible for a well or group of wells. 19.15.9.9 NMAC. In this matter, at issue is the alleged change in a unit operator under the Statutory Unitization Act, not the change in the operator of wells under the Oil and Gas Act. Therefore, the request to approve a C-145 form can not be considered under the Statutory Unitization Act. However, the larger issue remains: what is the Division’s authority, and responsibility, for approving, or rejecting, a change in unit operator under the Statutory Unitization Act?
13. The debate surrounding the role of the Division under the Statutory Unitization Act can be distilled into two perspectives. One is that the Unit is a creature of statute and therefore any significant changes with the Unit, such as a change in operator, must be subject to approval by the Division, or at a minimum, the Division must have the authority to decide a dispute over whether a change of operator has occurred under a Unit Agreement. The other perspective is that

deciding disputes over operatorship is not specifically delegated to the Division under the Act. Instead, the dispute is a purely contractual matter, governed by interpretation of the Unit Agreement, and therefore outside the limited regulatory authority of the Division under the Act.

14. Division Jurisdiction. While the Act provides the Division with broad authority “to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of the Statutory Unitization Act,” that authority is “[s]ubject to the limitations of the Statutory Unitization Act”. NMSA 1978, §70-7-3.
15. The Act provides the Division with specific, and significant, responsibilities in the creation of a unit and the drafting of a unit agreement. The Act requires that an application must contain certain specified information and documents. §70-7-5. The Act requires that the Division determine that certain conditions must be met before the Division can issue a unitization order. §70-7-6. The Division must then issue an order setting terms and conditions and approving or prescribing a unit agreement or plan. §70-7-7. The Act does not require the Division to approve a specific operator for the unit.
16. Once the unit is approved, the role of the Division is more limited. The Division must approve any amendments to the unit order. §70-7-9. The Act, however, does not provide any specific direction to the Division to oversee the operation of a unit, nor does it establish a process to appeal actions taken under the unit agreements to the Division.
17. The Commission approved the Central Vacuum Unit and the Agreements in the Unit Order. The Order did not specifically approve the Unit Operator. The Unit Agreement provided for the Unit Operator, and provided for a process to change the Unit Operator. Unlike the rules governing the change in well operator provisions under the Oil and Gas Act, no approval from the agency is necessary for a change in operator under the Statutory Unitization Act. Instead, the Unit Agreement provides that a removal of the Unit Operator becomes effective upon notice to the Commissioner of Public Lands, not the Division.
18. Vendera argues that the language in Section 70-7-3 authorizing the Division to “do such things as may be necessary or proper to carry out and effectuate the purposes” of the Act provides sufficient authority for the Division to referee a dispute over who is the proper unit operator. In *Marbob v. Oil Conservation Commission*, the Supreme Court interpreted a similar grant of authority in the Oil and Gas Act and found that the general grant was limited by more specific provisions in the statute. 2009-NMSC-013, ¶15. And unlike the Oil and Gas Act, that limitation is also expressly provided in the opening words of the statutory provision in the Act: “Subject to the limitations of the Statutory Unitization Act,”. Given that, once a unit is approved, the Act only provides the Division with the specific role of approving any changes to the unit order, the Division does not

find that the Act provides the Division with general oversight authority over the management of a unit.

19. The Division concludes that the authority of the Division under the Statutory Unitization Act does not include the determination of whether a change in unit operator properly followed the contractual provisions in the Unit Agreement.

**IT IS HEREBY ORDERED THAT:**

1. The Motion to Dismiss filed by Chevron is granted.
2. Case No. 21704 is dismissed for lack of jurisdiction.

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**



**ADRIENNE SANDOVAL  
DIRECTOR**

AES/wrb

Date: 8/31/2021