

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

CHEVRON U.S.A. INC.'S MOTION TO DISMISS

Chevron U.S.A. Inc. (“Chevron”) moves for dismissal of Case No. 21704 for failure to state a claim under 19.15.9.9 NMAC upon which relief can be granted. In support, Chevron states as follows:

INTRODUCTION

1. In Case No. 21704, Vendera Resources III, LP, Vendera Management III, LLC, (collectively, “Vendera”), and Highmark Operating, LLC (“Highmark”) seek Division approval of a change of operator Form C-145, filed pursuant to 19.15.9.9 NMAC, to unilaterally designate Highmark as operator of the Central Vacuum Unit (the “CVU”), Lea County, New Mexico.

2. Chevron opposes the application, which should be dismissed for at least the following two reasons. *First*, the Division lacks jurisdiction to decide a contested operatorship that involves a dispute over contract interpretation. Lacking jurisdiction, the Division must dismiss Vendera’s application and deny the requested relief. *Second*, the Division’s regulations governing change of operator are ministerial in nature and provide only for designation of a new operator when the prior operator *agrees* on the transfer of operatorship *or* when the prior operator is unavailable. Because neither condition is satisfied here—Chevron does not agree to transfer

operatorship *and* Chevron is not “unavailable”—the Division’s regulations governing designation of a successor operator are inapplicable and without effect in this circumstance.

ARGUMENT

3. The CVU was approved by Division Order No. R-5496 (the “Order”). The Unit Agreement and Unit Operating Agreement (the “Agreements”), approved by the Division, name Texaco Inc. as operator of the CVU. Chevron is the successor to Texaco under the Agreements.

4. Vendera’s application alleges that under the Agreements a sufficient percentage of the working interest owners voted to remove Chevron as operator of the CVU. Vendera further alleges that Chevron “has refused to step down as operator” and “has refused to execute the Form C-145.” Chevron disputes these allegations.

5. Vendera seeks to use the Form C-145 for the improper purpose of removing the existing operator without its consent in a dispute governed by contract.¹ *See* Vendera Application, Exhibit B (stating that the CVU Agreement and Operating Agreement includes a provision for the “selection, removal or substitution of an operator” and “a voting procedure for the decision of matters to be decided by the working interest owners[.]”). For this reason, Vendera has not alleged a valid claim nor has it met its burden under 19.15.9.9 NMAC. Accordingly, dismissal is appropriate.

6. First, the Division lacks jurisdiction to resolve contested operatorship. The New Mexico Oil and Gas Act provides that the Oil Conservation Division has “jurisdiction and authority over all matters relating to the conservation of oil and gas . . . in this state.” NMSA 1978, § 70-2-6(A). Applications filed with the Division must therefore implicate the special expertise of

¹ The hotly contested nature of the contract dispute between the parties is further evident from the correspondence between the parties that Vendera included with a letter submitted to the Oil Conservation Division on January 13, 2021.

the Division and stem from and be necessary to the legislative directive to prevent waste and to protect correlative rights. *See Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 18, 373 P.2d 809 (holding the Division lacked authority to issue a finding that did not stem from or was necessary to prevent waste or protect correlative rights).

7. As *Continental Oil* observed, because the Division serves in an administrative capacity in carrying out the limited, legislative directives in the Oil and Gas Act, “grave constitutional problems would arise” if the Division undertook efforts to determine property rights or arrogates to itself other similar judicial functions. *Id.* at ¶28. The Division itself has held, for example, that a case involving a dispute over wellbore ownership “raise[s] issues of property and contractual rights that the Division does not have jurisdiction to determine.” Order No. R-12790, ¶ (15); *see also* Order No. R-13789, at ¶ (16) (Division “does not have jurisdiction concerning the content of lease agreements ...”); Order No. R-14304, at ¶ 8 (“The Division does not have jurisdiction to determine who owns any interest in real property or whether or not their interest is marketable.”); Order No. R-11700-B, at ¶ 27 (recognizing Division’s lack of jurisdiction over title matters).

8. Resolution of the contested CVU operatorship is a purely contractual matter, governed by the Agreements, over which the Division has no authority or jurisdiction. The Division must, therefore, reject Vendera’s improper use of the Division’s change-of-operator process and dismiss Vendera’s application. *See* Order No. R-12790.

9. Second, Vendera’s effort to use the Division’s change-of-operator process and Form C-145 to improperly seize control of the CVU from Chevron contravenes the Division’s rules.

10. Rule 19.15.9.9.A NMAC provides that “[a] change of operator occurs when the entity responsible for a well or a group of wells changes[, which] may result from a sale, assignment by a court, a change in operating agreement or other transaction.” 19.15.9.9 NMAC.

11. Under this rule, the Division requires both the operator of record and the new operator to jointly apply for a change of operator by filing a form C-145 using the Division’s web-based online application. 19.15.9.9.B NMAC. Only if the operator of record with the Division is unavailable, is the new operator permitted to apply to the Division for approval of change of operator without a joint application.

12. Vendera’s application suggests that the Division is authorized under 19.15.9.9.B NMAC to approve its Form C-145 without the consent or signature of the current operator of record. However, this alternative method is inapplicable here, because the current operator of record, Chevron, is available. Contrary to the mandate of 19.15.9.9.B NMAC, Chevron is not unavailable. Chevron simply contests the validity of Vendera’s and Highmark’s claims and, therefore, will not agree to submit a joint change-of-operator application.

13. The Division’s change-of-operator procedure is ministerial in nature and is intended only as a means to update the Division’s records to reflect a change of operatorship due to a sale, assignment, change in operating agreement, or other transaction. By its plain language, Rule 19.15.9.9 NMAC is not intended to act as a vehicle by which an operator can seek a determination from the Division as to contested operatorship the outcome of which turns on legal questions of contract interpretation. Such a determination is outside the scope of the Division’s authority and jurisdiction.

14. For these reasons, the Division must dismiss Vendera’s application and deny the requested relief.

WHEREFORE, Chevron U.S.A. Inc. respectfully requests that the Division grant its Motion to Dismiss, deny Vendera or Highmark operatorship of the CVU, and reject any Form C-145 submitted by Vendera or Highmark without Chevron's consent and signature.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2021, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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