

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

**APPLICATION OF VENDERA RESOURCES III, LP,
VENDERA MANAGEMENT III, LLC AND HIGHMARK
ENERGY 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

**MOTION OF
VENDERA RESOURCES III, LP, VENDERA MANAGEMENT
III, LLC AND HIGHMARK ENERGY OPERATING, LLC
TO ALLOW A SUR-REPLY TO CHEVRON U.S.A. INC.'S MOTION TO DISMISS**

Vendera Resources III, LP and Vendera Management III, LLC (collectively “Vendera”) and Highmark Energy Operating, LLC (“Highmark”) submit this motion to allow a sur-reply in opposition to the Motion to Dismiss (the “Motion”) filed by Chevron U.S.A. Inc. (“Chevron”).

1. The Pre-hearing Order in this case allowed a Response by Vendera and Highmark to the Motion, and a Reply by Chevron to the Response. It did not mention a sur-reply.

2. Vendera has now located additional support for its position, as discussed briefly in its Sur-Reply, which is attached hereto as Exhibit 1. During a recent review of the documents which are involved in the Vendera-Chevron dispute, Vendera noticed that Article 35 of the Unit Agreement *specifically* provides the “Commission” (the Division) is a party to the agreement. That provision also states “all powers and authority vested in the Commission in and by any provisions of this contract are vested in the Commission and *shall* be exercised by it,” subject only to judicial review.

3. This provision strongly supports Vendera and Highmark’s position this case, and the Division should consider it in its decision on the Motion.

4. Vendera assumes that Chevron opposes this motion, and thus counsel for Chevron was not contacted before filing it.

WHEREFORE, Vendera and Highmark request the Division to accept this Sur-Reply.

Respectfully submitted,



James Bruce
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Attorney for Vendera Resources III, LP and
Vendera Management III, LLC and
Highmark Energy Operating, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 28th day of April, 2021 by e-mail:

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VENDERA MANAGEMENT III, LLC AND HIGHMARK
ENERGY OPERATING, LLC TO APPROVE A FORM C-145
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Case No. 21704

**SUR-REPLY
OF VENDERA RESOURCES III, LP, VENDERA MANAGEMENT
III, LLC AND HIGHMARK ENERGY OPERATING, LLC
IN OPPOSITION TO CHEVRON U.S.A. INC.'S MOTION TO DISMISS**

Vendera Resources III, LP and Vendera Management III, LLC (collectively “Vendera”) and Highmark Energy Operating, LLC (“Highmark”) submit this Sur-Reply in opposition to the Motion to Dismiss (the “Motion”) filed by Chevron U.S.A. Inc. (“Chevron”).

1. Chevron argued at the Motion hearing that the Division lacks jurisdiction to decide operatorship which involves interpretation of a private contract, *i.e.* the Unit Agreement and Unit Operating Agreement.
2. Vendera, both in its Response to the Motion and at oral argument, asserted that the Division is in essence a party to the Unit Agreement and Unit Operating Agreement, and that it has the authority to determine the operator of the Central Vacuum Unit (“CVU”). As noted in the Response, this is provided for in the Statutory Unitization Act and under the terms of the Division’s Order approving the CVU, which incorporated the Unit Agreement and Unit Operating Agreement.
3. Vendera has now located additional support for its position. Attached hereto as Exhibit A is a portion of the Unit Agreement for the CVU. Article 35 of the Unit Agreement *specifically* provides the “Commission” (the Division) is a party to the agreement. It also states

EXHIBIT

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“all powers and authority vested in the Commission in and by any provisions of this contract are vested in the Commission and *shall* be exercised by it,” subject only to judicial review.

4. In short, the Division is a party to the unit documents, this is not a private contractual dispute, and the Division has the express authority under the Unit Agreement to determine the unit operator.

5. Based on the above, the Division has jurisdiction and authority to remove Chevron as operator of the CVU and replace it with Highmark.

WHEREFORE, Vendera and Highmark request that the Division deny Chevron’s Motion to Dismiss.

Respectfully submitted,



James Bruce
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(505) 982-2043

Attorney for Vendera Resources III, LP and
Vendera Management III, LLC and
Highmark Energy Operating, LLC

CERTIFICATE OF SERVICE

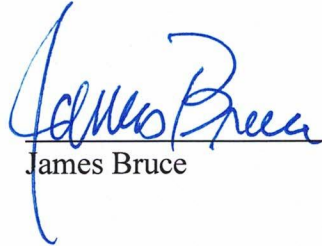
I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 18th day of April, 2021 by e-mail:

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UNIT AGREEMENT
FOR THE DEVELOPMENT AND OPERATION
OF THE
CENTRAL VACUUM UNIT
COUNTY OF LEA
STATE OF NEW MEXICO

EXHIBIT

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255100-C

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34. TAXES. The Working Interest Owners shall render and pay for their account and the account of the Royalty Owners all valid taxes on or measured by the Unitized Substances in and under or that may be produced, gathered and sold from the land subject to this agreement after the effective date of this agreement, or upon the proceeds or net proceeds derived therefrom. The Working Interest Owners in each Tract may charge the proper proportion of said taxes to the Royalty Owners having interests in said Tract, and may currently retain and deduct sufficient of the Unitized Substances or derivative products, or net proceeds thereof, from the allocated share of each Royalty Owner to secure reimbursement for the taxes so paid. No such taxes shall be charged to the State of New Mexico or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

In order to avoid title failures which might incidentally cause the title to a Working Interest or Royalty Interest to fail, the owners of (1) the surface rights to each committed Tract, (2) severed mineral or royalty interest in said Tracts and improvements located on said Tracts not utilized for Unit Operations shall individually be responsible for the rendition and assessment, for ad valorem tax purposes, of all such property, and for the payment of such taxes, except as otherwise provided in any contract or agreement between such owners and a Working Interest Owner or Owners. If any ad valorem taxes are not paid by such owner responsible therefor when due, Unit Operator may, at any time prior to tax sale, pay the same, redeem such property and discharge such tax liens as may arise through nonpayment. In the event Unit Operator makes any such payment or redeems any such property from tax sale, Unit Operator shall be reimbursed therefor by the Working Interest Owners in proportion to their respective Unit Participations then in effect, and Unit Operator shall withhold from any proceeds derived from the sale of Unitized Substances otherwise due to said delinquent taxpayer or taxpayers an amount sufficient to defray the costs of such payment or redemption, such withholding to be distributed among the Working Interest Owners in proportion to their respective contributions toward such payment or redemption. Such withholding shall be without prejudice to any other remedy, either at law or in equity, which may be available for exercise by the Unit Operator or by the Working Interest Owners.

35. CONFLICT OF SUPERVISION. Neither the Unit Operator nor the Working Interest Owners or any of them shall be subject to any forfeiture, termination, or expiration of any rights hereunder or under any leases or contracts subject hereto, or to any penalty or liability on account of delay or failure in whole or in part to comply with any applicable provisions thereof to the extent that the said Unit Operator, Working Interest Owners, or any of them are hindered, delayed or prevented from complying therewith by reason of the failure of the Unit Operator to obtain, in the exercise of due diligence, the concurrence of proper representatives of the State of New Mexico in and about any matters or things concerning which it is required herein that such concurrence be obtained. The parties hereto, including the Commission, agree that all powers and authority vested in the Commission in and by any provisions of this contract are vested in the Commission and shall be exercised by it pursuant to the provisions of the laws of the State of New Mexico and subject, in any case, to appeal or judicial review as may now or hereafter be provided by the laws of the State of New Mexico.

36. NO PARTNERSHIP. It is expressly agreed that the relation of the parties hereto is that of independent contractors and nothing in this agreement contained, express or implied, or any operations conducted hereunder, shall create or be deemed to have created a partnership or association between the parties hereto or any of them.

37. NO SHARING OF MARKET. This agreement is not intended to provide, and shall not be construed to provide, directly or indirectly, for any cooperative refining, joint sale, or marketing of Unitized Substances.