STATE OF LOUISIANA

DIVISION OF ADMINISTRATIVE LAW

DOCKET NO. 2020-9442-DNR

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IN THE MATTER OF: HERO LANDS COMPANY, L.L.C. V. CHEVRON U.S.A. INC., ET. AL.

DEPARTMENT OF NATURAL RESOURCES
CONSERVATION DOCKET NO.: ENV-2020-L01

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ON REFERRAL FROM THE 25TH JUDICIAL DISTRICT COURT FOR THE PARISH OF PLAQUEMINES

STATE OF LOUISIANA

DOCKET NO. 64-320 **DIVISION "A"**

HERO LANDS COMPANY, L.L.C.

VERSUS

CHEVRON U.S.A. INC., ET AL.

MOTION TO STRIKE AFFIDAVIT OF GEORGE ALFRED HERO, IV

Chevron U.S.A. Inc. ("Chevron") moves to strike the affidavit of George Alfred Hero, IV ("Hero Affidavit") attached in support of Plaintiff's *Motion in Limine to Exclude, in part, Chevron's Limited Admission Plan dated September 8, 2020* ("Motion").

1.

On December 14, 2020, the Louisiana Department of Natural Resources ("LDNR") will conduct a hearing pursuant to LAC Title 43, Part XIX, Subpart 1, Statewide Order 29-B relative to the above captioned matter pertaining to a plan for the evaluation of environmental damage to the at-issue Property.

2.

On December 4, 2020, Plaintiff filed the above-referenced Motion requesting LDNR to exclude evidence regarding any proposed feasible plan that includes an exception to Statewide Order 29-B at the hearing. In support of its Motion, Plaintiff attached the Hero Affidavit wherein Mr. Hero purportedly attests he does not consent to any feasible plan containing an exception to Statewide Order 29-B.

3.

In general, an affidavit is inadmissible as hearsay evidence. *Arkla, Inc. v. Maddox & May Bros. Casing Serv.*, 624 So. 2d 34, 36 (La. App. 2d Cir. 1993); *Frazier v. Green Steel Building, Inc.*, 409 So. 2d 1290 (La. App. 2d Cir. 1982). Because an affidavit is inadmissible hearsay evidence, it is not competent evidence unless its use is specifically authorized by statute. *Boneno v. Lasseigne,* 514 So. 2d 276, 279 (La. App. 5 Cir. 1987), *citing Board of Com'rs. v. Louisiana Com'n on Ethics,* 416 So. 2d 231 (La. App. 1 Cir. 1982); *Occidental Properties Ltd. v. Zufle*, 14-494 (La. App. 5 Cir. 11/25/14), 165 So. 3d 124, 130, *writ denied,* 2014-2685 (La. 4/10/15), 163 So. 3d 809.

4.

There is no statute authorizing Mr. Hero to testify by affidavit in lieu of live testimony at the upcoming hearing. In fact, the opposite is true. The LDNR regulations governing feasible plan hearings expressly provide that "[a]ny witness shall be subject to [cross-]examination…". 43 La. Admin. Code Pt XIX, 635(G).

5.

The Hero Affidavit contains inadmissible hearsay testimony regarding the purported future use of the property. This inadmissible hearsay testimony is directly contradicted by Mr. Hero's deposition testimony in this matter. Indeed, Plaintiff had notified Chevron that it intends to call Mr. Hero to testify at the upcoming December 14, 2020 hearing. Chevron, therefore, should have the opportunity to cross-examine Mr. Hero regarding his affidavit testimony, and the affidavit, itself, should be stricken from the record.

WHEREFORE, Chevron U.S.A. Inc. requests the affidavit of George Alfred Hero, IV be stricken from the record in the above captioned matter and excluded from consideration by the Louisiana Department of Natural Resources at the upcoming December 14 hearing pertaining to the plan for the evaluation of environmental damage to the at-issue Property.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all known counsel of record, the Louisiana Department of Natural Resources Commissioner of Conservation, Mr. John Adams, and panel members, and the Louisiana Division of Administrative LAW by electronic mail and via certified mail, postage prepaid and properly addressed.

New Orleans, Louisiana, this 10th day of December, 2020.

Claire Juneau