

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., <i>et al.</i> ,	§	Case No. 17-36709
	§	
Debtors.	§	
	§	
	§	
	§	

**ANADARKO PETROLEUM CORPORATION AND ANADARKO US OFFSHORE
LLC’S JOINDER TO CHEVRON U.S.A. INC.’S LIMITED OBJECTION TO
DEBTORS’ MOTION TO APPROVE BIDDING PROCEDURES, ET AL. AND
RESERVATION OF RIGHTS**

Anadarko Petroleum Corporation (“Anadarko”) and Anadarko US Offshore LLC (“AUSO”) hereby join in the Limited Objection filed by Chevron U.S.A. (“Chevron”)¹ to the Debtors’ Bid Procedures Motion (the “Motion”),² and respectfully request the Court to strike paragraph 19 from the Debtors’ proposed order approving the Motion and include Chevron’s proposed language expressly preserving parties’ preferential rights to purchase interests of the Debtors (“Preference Rights”).

Anadarko and AUSO are parties to an Operating Agreement with respect to the Heidelberg Field. The Operating Agreement grants parties to the Operating Agreement Preference Rights with respect to any proposed assignment of the Debtors’ working interests in the Heidelberg Field.

As set forth in Chevron’s limited objection, paragraph 19 of the Debtors’ proposed order appears to eliminate Preference Rights by “deeming” the Debtors’ purported prior compliance with such rights.

¹ Dkt. No. 157.

² Dkt. No. 15.

However, the Debtors' suggestion that Preference Rights would not be impaired because parties with such rights can submit a bid along with other parties is unavailing.³ Any party, with or without Preference Rights, can submit a bid. Preference Rights, however, are not triggered until the Debtors have a bona fide offer for sale—an event that will not occur until after bids are submitted and the Debtors choose the winning bid—and the Debtors' contractual obligation to sell to a party exercising Preference Rights is without qualification or subjugation to the Debtors' discretion. Requiring parties with Preference Rights to participate in the bidding procedures as their sole means for acquiring an interest of the Debtors deprives these parties of the unique attributes of their bargained-for Preference Rights.

The Debtors' Motion cites no authority for eliminating parties' contractual Preference Rights pursuant to a bidding procedures motion and Anadarko and AUSO are aware of no such authority.⁴ Nor have the Debtors sought rejection of the Operating Agreement or any other contract granting Preference Rights. Rather, the Operating Agreement would likely need to be assumed with any sale of the Debtors' interest in the Heidelberg Field.

Anadarko and AUSO reserve the right to supplement this Joinder and Reservation of Rights and assert any additional objection to the Debtors' Motion or proposed order prior to or at any final hearing on the Motion.

³ Dkt. No. 15, at ¶ 31.

⁴ Although some courts have found Preference Rights to be unenforceable in different contexts, other courts have enforced Preference Rights. *See, e.g., In re IT Group, Inc.*, 302 B.R. 483, 488 (Bankr. D. Del. 2003) (“Where, as here, the right of first refusal clause is not an *ipso facto* provision, courts have concluded that a right of first refusal is enforceable notwithstanding the fact that the debtor is in bankruptcy”); *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 52-53 (Bankr. M.D. N.C. 2003) (the concern of courts “when presented with a contractual right of first refusal is not whether to enforce such right, but how to incorporate a right of first refusal into the bidding and sale procedures of the bankruptcy auction in a fair and equitable manner that still allows for maximization of the value of the estate”). In any event, any attempt to excise a party's contractual rights or to seek a determination that such rights are unenforceable would need to be raised by and adjudicated through an adversary proceeding. Fed. R. Bankr. P. 7001.

Dated: January 24, 2018

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By: /s/ William R. Greendyke

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OFFSHORE LLC**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served by CM/ECF to all parties registered to receive notice through the CM/ECF system on January 24, 2018.

/s/ Bob B. Bruner

Bob B. Bruner