



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

In the matter of:

Docket No. S-20442A-06-0110

Mid America Energy, Inc.,
a Nevada Corporation
129 Haven Street, Unit A
Hendersonville, TN 37075

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF OPPORTUNITY
FOR HEARING**

Mid America Oil & Gas,
a Tennessee Limited Liability Company,
2023 Earl Pearce Cir.
Mount Juliet TN , 37122-1328

Gary M. Milby a/k/a
Gary Moss Milby a/k/a
Gary M. Milley
and Jane Doe Milby,
husband and wife
129 Haven Street, Unit A
Hendersonville, TN 37075

Jim and Jane Doe Whatcott,
husband and wife
129 Haven Street, Unit A
Hendersonville, TN 37075

John and Jane Doe Blitz
husband and wife
129 Haven Street, Unit A
Hendersonville, TN 37075

Respondents.

AZ CORP COMMISSION
DOCUMENT CONTROL

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1 6. GARY M. MILBY A/K/A GARY MOSS MILBY AND GARY M. MILLEY
2 (“MILBY”) is an individual whose last known address is 129 Haven Street, Unit A,
3 Hendersonville, TN 37075.

4 7. MILBY presents himself as the President of MAE and the president and owner of Mid
5 America Oil & Gas, LLC.

6 8. JANE DOE MILBY was at all relevant times the spouse of MILBY. JANE DOE
7 MILBY is a fictitious name used to describe any person married to MILBY, and said person is
8 joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of
9 the marital community.

10 9. At all relevant times, MILBY and JANE DOE MILBY were acting for their own
11 benefit, and for the benefit or in furtherance of the marital community.

12 10. JIM WHATCOTT (“WHATCOTT”) is an individual whose last known address is 222
13 Basin Creek Road, Durango, CO 81303-3647. WHATCOTT represents himself as a partner in
14 MAE.

15 11. JANE DOE WHATCOTT was at all relevant times the spouse of WHATCOTT. JANE
16 DOE WHATCOTT is a fictitious name used to describe any person married to WHATCOTT , and
17 said person is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the
18 liability of the marital community.

19 12. At all relevant times, WHATCOTT and JANE DOE WHATCOTT were acting for their
20 own benefit, and for the benefit or in furtherance of the marital community.

21 13. JOHN BLITZ is an individual whose only known address is 129 Haven Street, Unit A,
22 Hendersonville, TN 37075.

23 14. JANE DOE BLITZ was at all relevant times the spouse of BLITZ. JANE DOE BLITZ
24 is a fictitious name used to describe any person married to BLITZ , and said person is joined in this
25 action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital
26 community.

1 15. MAE, MAOG, MILBY, WHATCOTT, and BLITZ may be collectively referred to as
2 "RESPONDENTS." JANE DOE MILBY, JANE DOE WHATCOTT, JANE DOE BLITZ may
3 also be collectively referred to as "RESPONDENT SPOUSES."

4
5 **III.**

6 **FACTS**

7 16. From at least on or about November 23, 2005, RESPONDENTS have been and are
8 directly or indirectly offering securities in the form of investment contracts in oil and gas
9 opportunities.

10 17. RESPONDENTS are soliciting Arizona investors through newspaper ads. One
11 advertisement ran at least eight times, beginning 11/23/05 to 1/03/06 in the Arizona Republic
12 Newspaper or online version, and stated: "Investment Opportunity For a one time \$37,000
13 investment you can receive a \$1200-\$4800 monthly return for up to 30 years. Call 970-946-8893
14 for information."

15 18. Upon dialing the published number, a potential Arizona investor spoke with
16 WHATCOTT who explained that they were raising money for the Fort Knox #15 program. He
17 explained that this is an oil program for the drilling and completion of 3 oil wells in Adair
18 County, Kentucky. WHATCOTT also referred the potential investor to the Website and
19 arranged to mail him a brochure and other materials concerning FORT KNOX #15.

20 19. WHATCOTT explained that they "could guarantee everyone gets a good return"
21 because each investor in FORT KNOX #15 has an interest in all three wells that will be drilled.
22 He also said that a \$37,000 investment provides the investor with a 2% net revenue interest in the
23 3 oil wells.

24 20. WHATCOTT also informed the potential Arizona investor that they were seeing a
25 return of \$3,000.00 to \$6,000.00 a month on a single investment. WHATCOTT represented that
26

1 the investor would receive a return on his investment within 60-90 days of sending in his money
2 and agreement.

3 21. WHATCOTT explained that the investment is in developmental drilling, which he
4 explained is done on "*proven reserves*." He further explained that the wells are drilled next to
5 existing, producing wells. WHATCOTT said they already have 90 wells up and running and that
6 they intended to sell about 200 on this particular lease.

7 22. RESPONDENTS' brochure references MAOG, MAE and MILBY, and it was received
8 by at least one potential Arizona investor. The brochure contains a guarantee on the oil wells that
9 was also explained by WHATCOTT. RESPONDENTS promise that if any of the three wells
10 comes up dry a new one will be drilled at company expense.

11 23. Under the alleged "Private Placement Memorandum" for FORT KNOX #15 ("PPM"),
12 mailed to at least one potential Arizona investor, the plan is to raise \$925,000 from the sale of 25
13 units at \$37,000 each. The money is to be raised from a group of investors who pool their money
14 to obtain the required amount. According to the PPM, in the aggregate the 25 units will have a
15 total of 50% net revenue interest and a 61.5385% working interest in the three new wells.

16 24. In the PPM, MAE represents that FORT KNOX #15 is a Tennessee limited liability
17 partnership. However there is no record of the existence of such entity in Tennessee.

18 25. Once funded by MAE, FORT KNOX #15 is to drill, complete, and operate up to
19 three wells. Also, according to PPM, distributions are to be made to the partners from the
20 revenues of the wells minus expenses and reserves.

21 26. Terms of the FORT KNOX #15 investment are also set forth in RESPONDENTS'
22 brochure which identifies both MAOG and MAE in the materials.

23 27. Prospective investors are encouraged "to visit the field operations" by MILBY in the
24 FORT KNOX #15 brochure; however, it is clear from the PPM that investors must rely upon
25 management who has the sole discretion over everything including the drill sites and whether to
26 substitute them. In fact, RESPONDENTS acknowledge in the PPM that, "[t]he Managing

1 *Partner will have exclusive and complete discretion in and responsibility for the management of*
2 *the Partnership affairs, including certain decisions with respect to the drilling, completion,*
3 *development and operation of the properties in which the Partnership invest. The Managing*
4 *Partner will exercise complete control over all of the Partnership's activities. Accordingly, the*
5 *investors must rely entirely upon the Managing Partner and its management and personnel in the*
6 *conduct of the Partnership's business."* (Italics added). There is no avenue for investors to
7 participate in the management of the venture.

8 28. The PPM identifies MAE as its Managing Partner and Program Manager. The written
9 documents advanced by WHATCOTT also identify MILBY as the Managing Partner for FORT
10 KNOX.

11 29. RESPONDENTS also directly solicited Arizona investors in gas and oil investments
12 through the use of the Website which was known to be online on January 30, 2006.

13 30. For example, RESPONDENTS' website stated, "*We are currently drilling in several*
14 *locations in Kentucky, all of which are located in highly productive oil fields. For clarification*
15 *on the two most common types of drilling, exploratory drilling involves drilling on a site with the*
16 *hopes of finding oil, whereas, developmental drilling involves drilling in a field where there is*
17 *known to be oil. We are not engaging in exploratory drilling, **these wells will yield oil and***
18 ***natural gas!** Our wells are surrounded by oil fields that have been pumping oil for over 50 years,*
19 *and we have no reason to think ours will not do the same."* (Italics and bold added).

20 31. The top of the Website stated: "Request a free brochure and Prospectus.... E-mail us
21 your name and full mailing address and we'll send you our full color brochure and prospectus."

22 32. Under the "current opportunities" button on the Website a number of oil drilling
23 programs were listed. The current offers listed were: Big Creek Oil #1, LLP; Black Gold Oil #1,
24 LLP; Black Gold Oil #2, LLP; Black Gold Oil #3, LLP; Black Gold Oil #4, LLP; Black Gold Oil
25 #5, LLP, Black Gold Oil #6, LLP. The Website permitted visitors to view details on all the
26 programs and identifies whether an offering was available for any particular program. On

1 January 4, 2006 the Website indicated that the current opportunities are closed out with only the
2 Black Oil #6, LLP available.

3 33. MILBY's "Expanded Professional History," provided to at least one prospective
4 Arizona investor in January of 2006, represents that MILBY is the President/Owner of Mid-
5 America Oil & Gas, LLC, and that such entity is a registered Operator with the Railroad
6 Commission of Texas in good standing with all regulating bodies in the state. MILBY further
7 claims that this company has drilled and or participated in the drilling of 100+ states and "is
8 currently experiencing significant growth with current oil prices exceeding \$55 per barrel."
9 Notwithstanding MILBY's assertions, MID AMERICA OIL & GAS, LLC is inactive with the
10 Railroad Commission of Texas and has been inactive since August 31, 2005.

11 34. MILBY filed for Chapter 7 bankruptcy on November 5, 2003 and was discharged
12 from the same on March 17, 2004. MILBY did not disclose this information to at least one
13 potential Arizona investor in January of 2006.

14 35. Another ad was published in the Arizona Republic on Sunday February 5, 2006. This
15 ad stated, "Make up to \$4800/mo on a \$49K oil investment. 615-537-0261."

16 36. A call to the published number by at least one potential Arizona investor resulted in a
17 return phone call from "John" who represented himself as a representative of Mid America
18 Energy ("MAE") located in Hendersonville, Tennessee. On February 22, 2006, "John"
19 represented that MAE was operated by GARY MILBY and offered a 2% net revenue interest in
20 three oil wells for \$49,000 in an area called the "Knox Formation." "John" represented that
21 payments to investors would begin one year after the investment was made and continue for
22 approximately twenty plus years. Subsequent correspondence from "John" identifies him as
23 JOHN BLITZ ("BLITZ").

24 37. On January 22, 2006, "John" also represented that the opportunity with MAE is a
25 private placement "registered with the SEC."
26

1 38. A correspondence dated February 8, 2006 was received from the Securities and
2 Exchange Commission revealing that MAE has not filed any documents with said agency.

3 39. On or about February 27, 2006, a "Private Placement Memorandum" for a program
4 known as EAGLE OIL #6 was received by at least one potential Arizona investor from MAE and
5 BLITZ. The materials also identify MILBY as President of MAE and as the Managing Partner
6 for the EAGLE OIL #6 program. A review of the materials reveals that except for the offering
7 price, and amount of money sought to be raised, the EAGLE OIL #6 LLP "Private Placement
8 Memorandum" and Eagle Oil brochure is almost identical to the PPM and brochure referenced
9 above in connection with FORT KNOX #15 LLP. See ¶¶ 23 -28 supra.

10 40. The documents received by at least one potential Arizona investor on February 27,
11 2006 also contained a cover letter from JOHN BLITZ ("BLITZ"). The cover letter sets forth
12 highlights of the oil drilling investment including the following representations: "*3 Guaranteed*
13 *Producing Oil Wells,*" "*[m]onthly income checks for as much as \$3,600 + per unit,*" and
14 "*Monthly checks lasting for as long as 30--50 years.*" (Italics added).

15 41. On or prior to December 6, 2005, the Pennsylvania Securities Commission issued a
16 Summary Order to Cease and Desist against MAE, MILBY and Tom McKenna. Said order was
17 entered to halt the offer and sale of unregistered securities, namely units representing a working
18 interest in an operation to drill and operate oil wells in Kentucky – Black Gold Oil #4, LLP. The
19 summary order was not disclosed to at least two potential Arizona investors.

20
21 **IV.**

22 **VIOLATION OF A.R.S. § 44-1841**

23 **(Offer and Sale of Unregistered Securities)**

24 42. From at least on or about November 23, 2005, RESPONDENTS offered or sold
25 securities in the form of investment contracts, within or from Arizona.

1 43. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
2 Securities Act.

3 44. This conduct violates A.R.S. § 44-1841.
4

5 **V.**

6 **VIOLATION OF A.R.S. § 44-1842**

7 **(Transactions by Unregistered Dealers or Salesmen)**

8 45. RESPONDENTS offered or sold securities within or from Arizona while not
9 registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

10 46. This conduct violates A.R.S. § 44-1842.
11

12 **VI.**

13 **VIOLATION OF A.R.S. § 44-1991**

14 **(Fraud in Connection with the Offer or Sale of Securities)**

15 47. In connection with the offer or sale of securities within or from Arizona,
16 RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii)
17 made untrue statements of material fact or omitted to state material facts which were necessary in
18 order to make the statements made not misleading in light of the circumstances under which they
19 were made; or (iii) engaged in transactions, practices or courses of business which operated or
20 would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct
21 includes, but is not limited to, the following:

- 22 a) In January of 2006, representing that MID AMERICA OIL & GAS, LLC is active
23 and in good standing with the Railroad Commission of Texas when, in fact, it is
24 inactive and has been so since August 31, 2005.
- 25 b) Also, by failing to inform prospective investors that MILBY filed for Chapter 7
26 bankruptcy on November 5, 2003.

- 1 c) In February of 2006 falsely representing that Mid America Energy's oil drilling
2 program is registered with the Securities and Exchange Commission.
- 3 d) In January and February of 2006 failing to disclose to prospective investors that
4 Mid America Energy, Inc. and Gary Milby had a Summary Order to Cease and
5 Desist entered against them by the Pennsylvania Securities Commission.

6 48. This conduct violates A.R.S. § 44-1991.

7
8 **VII.**

9 **TEMPORARY ORDER**

10 **Cease and Desist from Violating the Securities Act**

11 THEREFORE, based on the above allegations, and because the Commission has determined
12 that the public welfare requires immediate action,

13 IT IS ORDERED, pursuant to A.R.S. §44-2032(1) and A.A.C. R14-4-307, that the
14 RESPONDENTS, their agents, servants, employees, successors, assigns, and those persons in active
15 concert or participation with them CEASE AND DESIST from any violations of the Securities Act.

16 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
17 effect for 180 days unless sooner vacated, modified or made permanent by the Commission.

18 IT IS FURTHER ORDERED that this Order shall be effective immediately.

19
20 **VIII.**

21 **REQUESTED RELIEF**

22 The Division will request that the Commission grant the following relief against
23 RESPONDENTS:

- 24 A. Order RESPONDENTS to permanently cease and desist from violating the Securities Act,
25 pursuant to A.R.S. §44-2032 ;

- 1 B. Order RESPONDENTS to take affirmative action to correct the conditions resulting from
2 their acts, practices or transactions, including a requirement to make restitution pursuant to
3 A.R.S. §44-2032;
- 4 C. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five
5 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-
6 2036;
- 7 D. Order that the marital communities of Gary M. Milby (a/k/a Gary Moss Milby and Gary
8 Milley) and Jane Doe Milby, Jim and Jane Doe Whatcott, and John and Jane Doe Blitz be
9 subject to any order of restitution, rescission, administrative penalties, or other appropriate
10 affirmative action pursuant to A.R.S. § 25-215; and
- 11 E. Order any other relief that the Commission deems appropriate.

12
13 IX.

14 HEARING OPPORTUNITY

15 RESPONDENTS may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-
16 4-307. **If any respondent or respondent spouse requests a hearing, the respondent must also**
17 **answer this Temporary Order and Notice.** A request for hearing must be in writing and received
18 by the Commission within 20 days after service of this Temporary Order to Cease and Desist. Each
19 RESPONDENT must deliver or mail the request for hearing to Docket Control, Arizona
20 Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. A Docket Control
21 cover sheet must also be filed with the request for hearing. A cover sheet form and instructions may
22 be obtained from Docket Control at (602) 542-3477 or on the Commission's Internet web site at
23 www.cc.state.az.us/utility/forms/index.htm.

24 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10
25 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,
26 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**

1 **Order shall remain effective from the date a hearing is requested until a decision is entered.**

2 After a hearing, the Commission may vacate, modify or make permanent this Temporary Order,
3 with written findings of fact and conclusions of law. A permanent Order may include ordering
4 restitution, assessing administrative penalties or other action.

5 If a request for hearing is not timely made, the Division will request that the Commission
6 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
7 may include ordering restitution, assessing administrative penalties or other relief.

8 Persons with a disability may request a reasonable accommodation such as a sign language
9 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,
10 Executive Assistant to the Executive Director, voice phone number 602/542-3931, e-mail
11 lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the
12 accommodation.

13
14 **X.**

15 **ANSWER REQUIREMENT**

16 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE
17 requests a hearing, the RESPONDENT or RESPONDENT SPOUSE must deliver or mail an
18 Answer to this Temporary Order and Notice to Docket Control, Arizona Corporation Commission,
19 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of
20 this Temporary Order to Cease and Desist and Notice of Opportunity for Hearing. A Docket
21 Control cover sheet must accompany the Answer. A cover sheet form and instructions may be
22 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
23 at www.cc.state.az.us/utility/forms/index.htm.

24 Additionally, the RESPONDENT OR RESPONDENT SPOUSE, must serve the Answer
25 upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by
26

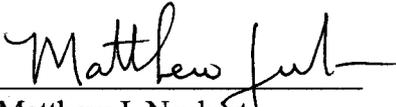
1 mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd
2 Floor, Phoenix, Arizona, addressed to Shoshana O. Epstein, Enforcement Counsel.

3 The Answer shall contain an admission or denial of each allegation in this Temporary
4 Order and Notice and the original signature of each RESPONDENT, RESPONDENT SPOUSE or
5 the RESPONDENT's attorney. A statement of a lack of sufficient knowledge or information shall
6 be considered a denial of an allegation. An allegation not denied shall be considered admitted.

7 When a RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a
8 part or a qualification of an allegation, the RESPONDENT or RESPONDENT SPOUSE shall
9 specify that part or qualification of the allegation and shall admit the remainder. The
10 RESPONDENT or RESPONDENT SPOUSE waives any affirmative defense not raised in the
11 answer.

12 The officer presiding over the hearing may grant relief from the requirement to file an
13 Answer for good cause shown.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 28 day of
15 February, 2006.

16
17 
18 Matthew J. Neubert
19 Director of Securities

20 (soe)