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**COMMISSIONERS**  
 KRISTIN K. MAYES, Chairman  
 GARY PIERCE  
 PAUL NEWMAN  
 SANDRA D. KENNEDY  
 BOB STUMP

ERNEST G. JOHNSON  
 EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

**TO:** Kristin K. Mayes, Chairman  
 Gary Pierce  
 Paul Newman  
 Sandra D. Kennedy  
 Bob Stump

Arizona Corporation Commission

**DOCKETED**

OCT 21 2009

**FROM:** Matthew J. Neubert *mfj*  
 Director of Securities

DOCKETED BY	<i>mfj</i>
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**DATE:** October 14, 2009

**RE:** In re Thomas Anthony Labry, doing business as Iron Horse Petroleum, Inc., a dissolved Oklahoma corporation, Docket No. S-20691A-09-0365

**CC:** Ernest G. Johnson, Executive Director

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 ARIZONA CORPORATION COMMISSION  
 DOCKET CONTROL

Attached for your consideration is a proposed Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties ("Order"). The Order finds that from October 10, 2000, to September 17, 2008, respondent Thomas Anthony Labry, doing business as Iron Horse Petroleum, Inc., a suspended Oklahoma corporation (collectively, "Respondents"), offered and sold investment contracts and/or fractional undivided interests in oil and gas securities to two Arizona residents.

Respondents promised to use the investors' money to develop oil and gas wells located in the "Walters Field Priddy Sand Unit" project Cotton County, Oklahoma (the "WFP Unit Investments"). Respondents represented that each WFP Unit Investment: (a) constituted a .75 percent working interest in the oil project; (b) cost \$25,000; and (c) would provide the investors with profits of approximately \$13,162 per WFP Unit Investment, per month.

The Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and for Other Affirmative Action ("Notice") against Respondents on July 22, 2009. On August 6, 2009, the Division filed an amended Notice reflecting the fact that an Arizona investor purchased four WFP Unit Investments totaling \$100,000 ("Amended Notice"). The Division served the Amended Notice on Respondents on August 27, 2009, and Respondents have failed to file a request for hearing or an answer within the required time limits.

The Order finds that Respondents violated A.R.S. §§ 44-1841 & 44-1842 of the Arizona Securities Act ("Act") by selling unregistered securities while not being registered as securities salesman or dealers, or exempt from registration. The Order also finds that Respondents committed violations of the anti-fraud provision of the Act, A.R.S. § 44-1991.

The Order requires Respondents to permanently cease and desist from violating the Act. The Order further requires Respondents to pay full restitution totaling \$99,481.54 and a \$50,000 administrative penalty.

The Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Mike Dailey



1 address at 1048 Irvine Ave., Suite 193, Newport Beach, California 92660 via Federal Express (the  
2 "Business Address").

3 4. LABRY has not filed a request for hearing, or an answer to the First Amended  
4 Notice within the required time limits.

5 5. At all times relevant, LABRY was a single man who resided in Newport Beach,  
6 California. At all times relevant, LABRY conducted business in his individual capacity, and as  
7 IRON HORSE PETROLEUM at and/or from the Business Address. LABRY has not been  
8 registered as a securities salesman or dealer by the Commission.

9 6. IRON HORSE PETROLEUM is a suspended Oklahoma corporation that at all times  
10 relevant maintained a principal place of business in Newport Beach, California at and/or from the  
11 Business Address. According to the records of the Oklahoma Secretary of State and Tax  
12 Commission, IRON HORSE PETROLEUM was formed as an Oklahoma corporation on May 17,  
13 1993. At all times relevant, LABRY conducted business through IRON HORSE PETROLEUM as  
14 its owner, president and statutory agent until its corporate status was suspended by the Oklahoma  
15 Tax Commission on August 4, 2006 for non-payment of its franchise tax under 68 Okl. St. Ann. §  
16 1212. IRON HORSE PETROLEUM has not been registered as a securities salesman or dealer by  
17 the Commission.

18 7. LABRY and IRON HORSE PETROLEUM may be referred to as  
19 "RESPONDENTS."

20 8. From on or about October 10, 2000, to September 17, 2008, RESPONDENTS  
21 offered and sold unregistered securities within Arizona in the form of investment contracts and/or  
22 fractional undivided interests in oil and gas.

23 9. On or about September 17, 2008, LABRY caused an unsolicited telephone message  
24 to be left on the voice mail of an Arizona resident regarding a, "great investment opportunity" (the  
25 "Solicitation"). Prior to the Solicitation, the potential Arizona investor was unaware of LABRY  
26 and IRON HORSE PETROLEUM, and their business operations.

1           10.    When the potential Arizona investor returned the Solicitation phone call as  
2 instructed, he spoke to a man who represented that the investment pertained to working interests in  
3 Oklahoma oil wells that provided "safe" returns of twenty to twenty-five percent per year. The  
4 man offered and, in fact, sent to the potential Arizona investor at his home in Arizona solicitation  
5 materials regarding oil investments.

6           11.    These investment solicitation materials include: (a) a twelve-page, spiral bound,  
7 glossy and color brochure titled, "IRON HORSE PETROLEUM" (the "Brochure"); (b) a seven-  
8 page IRON HORSE PETROLEUM "Subscription Agreement" regarding investments in the  
9 "Walters Field Priddy Sand Unit Development Program" (the "Subscription Agreement"); and (c) a  
10 single-page, color document titled "Iron Horse Petroleum Cotton County, Oklahoma Monthly  
11 Projections" (the "Monthly Unit Projections").

12           12.    The Brochure includes detailed photographs of working oil wells, maps and  
13 geographical diagrams, and states that IRON HORSE PETROLEUM, "is an independent energy  
14 company engaged in the acquisition, development, exploration, production and marketing of  
15 natural gas and crude oil."

16           13.    The Brochure states that IRON HORSE PETROLEUM is seeking investors to assist  
17 in the development of forty-one oil and support wells sited on the "Walters Field Priddy Sand  
18 Unit" ("WFP") project in Cotton County, Oklahoma. The Brochure states that the WFP contains  
19 1,800,000 barrels of proven oil reserves, and nine equipped oil wells producing 527 barrels of oil  
20 per day.

21           14.    The Brochure and Subscription Agreement state that IRON HORSE PETROLEUM  
22 is offering 100 WFP Unit Investments costing \$25,000 each, for a total offering of \$2,500,000 (the  
23 "WFP Unit Investment(s)").

24           15.    The Monthly Unit Projections state that each WFP Unit Investment represents a .75  
25 percent working interest in the entire WFP project. The Monthly Unit Projections further state that  
26

1 if IRON HORSE PETROLEUM produces, for instance, 1,000 barrels of oil per day via the WFP  
2 project, an investor would earn \$13,162 per WFP Unit Investment, per month.

3 16. The Brochure further states that the WFP Unit Investments provide investors with  
4 tax benefits, including the fact that: (a) fifty to seventy-five percent of an investment can be  
5 "written off" or deducted from a tax liability for "intangible" drilling costs during the first year of  
6 the investment; (b) lease, drilling equipment and development costs can be deducted from taxable  
7 income as cost depletion or depreciation over a period of five to seven years; and (c) a tax incentive  
8 known as the "Small Producer's Exemption" or "Percentage Depletion Allowance" allows  
9 approximately fifteen percent of an investor's net investment income to be "TAX FREE."

10 17. The WFP Unit Investment solicitation materials state that IRON HORSE  
11 PETROLEUM manages all aspects of the investments, and will use investor money for the: (a)  
12 procurement and management of land and oil equipment leases; (b) operation and maintenance of  
13 nine existing and producing oil wells, one water supply well and eight water injection wells; (c)  
14 repair and "rework" of eighteen existing oil wells for production; (d) construction of five new oil  
15 wells at future drilling sites on the WFP; and (e) the storing, transportation, marketing and selling  
16 of the WFP project oil to third parties. The Brochure emphasizes that the success of the WFP  
17 project and related WFP Unit Investments will primarily depend on IRON HORSE  
18 PETROLEUM's superior knowledge and understanding of oil exploration techniques and  
19 strategies. The Brochure further states that a WFP Unit Investment is "NOT a partnership," with  
20 IRON HORSE PETROLEUM.

21 18. The potential Arizona investor could have purchased WFP Unit Investments by  
22 completing and signing the Subscription Agreement, and mailing the Subscription Agreement and  
23 investment money to IRON HORSE PETROLEUM at the Business Address. The Business  
24 Address is a private post office box in Newport Beach, California rented and controlled by  
25 LABRY.  
26

1           19.     The Brochure and Subscription Agreement disclose that the WFP Unit Investments  
2 are not registered with or “approved” by the S.E.C.   However, the WFP Unit Investment  
3 solicitation materials discussed above fail to further disclose that both LABRY and IRON HORSE  
4 PETROLEUM were respondents in previous securities enforcement proceedings filed against them  
5 by four other state securities regulatory agencies for improperly offering and/or selling the  
6 unregistered WFP Unit Investments while not being registered as securities salesman or dealers, or  
7 exempt from registration.   For instance:

8           A.     On August 25, 2000, the Illinois Securities Department issued an “Order of  
9 Prohibition” to IRON HORSE PETROLEUM for its offer and sale to at least two  
10 Illinois residents WFP Unit Investments that were neither registered, nor exempt  
11 from registration, in violation of the Illinois Securities Law of 1953 (*See*, Ill.  
12 Administrative File No. 000059) (the “Illinois Enforcement Order”).   The Illinois  
13 Enforcement Order was entered after a hearing on the merits, and it: (1)  
14 “permanently” prohibits IRON HORSE PETROLEUM from offering and selling  
15 securities in Illinois; (2) notes that one investor purchased two separate, quarter  
16 interest WFP Unit Investments in the fall of 1999 totaling \$12,500; and (3) that  
17 these two investment purchases were acknowledged in a letter signed by LABRY as  
18 president of IRON HORSE PETROLEUM.

19           B.     On September 26, 2000, the Pennsylvania Securities Commission (“PSC”) issued a  
20 “Summary Order to Cease and Desist” against LABRY and IRON HORSE  
21 PETROLEUM for offering to at least one Pennsylvania resident securities in the  
22 form of “fractionalized working interests in the Walters Field Priddy Sand Unit  
23 Development Program (Units) to drill oil and gas wells in West Cotton County,  
24 Oklahoma,” that were neither registered, nor exempt from registration, and while  
25 not being registered as securities dealers or salesman in violation of the  
26 Pennsylvania Securities Act (*See, In re Iron Horse Petroleum, Thomas Labry, et al.*,

1 Administrative Docket No. 0009-11) (the "Pennsylvania Enforcement Order"). The  
2 Pennsylvania Enforcement Order further finds that LABRY and IRON HORSE  
3 PETROLEUM violated the Pennsylvania Securities Act by filing a statement with  
4 the PSC that falsely represented that they would employ only registered securities  
5 sales agents to offer and sell the WFP Unit Investments.

6 C. On January 9, 2001, the Division of Securities of the Wisconsin Department of  
7 Financial Institutions ("WSD") issued a "Petition for Order" against both LABRY  
8 and IRON HORSE PETROLEUM for offering a Wisconsin resident securities in  
9 the form of "certificates of interest or participation in oil, gas or mineral  
10 lease...units in 'The Walter Field-Priddy Sand Unit Development Program,'" that  
11 were neither registered, nor exempt from registration, and while not being registered  
12 as securities salesman or dealers in violation of the Wisconsin Uniform Securities  
13 Law. (See, *In re Iron Horse Petroleum, Inc., Thomas A. Labry, et al.*, File No. S-  
14 00073(EX)). On January 9, 2001, the WSD issued Summary Orders of Prohibition  
15 against both LABRY and IRON HORSE PETROLEUM preventing them from  
16 further offering or selling the unregistered WFP Unit Investments while not  
17 registered as securities salesman or dealers or exempt from registration (the  
18 "Wisconsin Enforcement Orders").

19 D. On April 17, 2003, the Alabama Securities Commission issued a "Cease and Desist  
20 Order" against LABRY and IRON HORSE PETROLEUM for their conduct in  
21 offering and/or selling to Alabama residents securities in the form of "investment  
22 contracts involving interests in the Walters Field Priddy Sand Unit Development  
23 Program [sic] a gas and oil drilling program of IRON HORSE," that were neither  
24 registered, nor exempt from registration, in violation of the Alabama Securities Act.  
25 (See, *In re Labry, Iron Horse Petroleum, Inc., et al.*, Administrative Docket No.  
26 CD-2003-0009) (the "Alabama Enforcement Order").

1           20.     The WFP Unit Investment Brochure discloses that the investments “may involve a  
2 high degree of risk.” However, the WFP Unit Investment solicitation materials discussed above do  
3 not further disclose that LABRY and IRON HORSE PETROLEUM were defendants in a federal  
4 civil fraud lawsuit filed by Colorado investors who purchased WFP Unit Investments from  
5 LABRY and IRON HORSE PETROLEUM. (*See, Burba v. Thomas A. Labry and Iron Horse*  
6 *Petroleum, Inc.*, 8:04-CV-01098-JVS-VBK (U.S. District Court, Central District of California).

7           21.     The Colorado WFP Unit Investment investors asserted claims against LABRY and  
8 IRON HORSE PETROLEUM for, among other things, intentional fraud, conversion and a claim  
9 under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961, et seq.) for: (a)  
10 misrepresenting that IRON HORSE PETROLEUM was an active Oklahoma corporation in good  
11 standing and actively engaged and conducting oil business in California and Oklahoma; (b) failing  
12 to disclose the existence of the securities enforcement orders discussed above; (c) misrepresenting  
13 that IRON HORSE PETROLEUM was financially sound and adequately capitalized and  
14 maintained adequate levels corporate control and due diligence; and (d) misrepresenting that IRON  
15 HORSE PETROLEUM would use investor money solely for oil exploration and production  
16 operations.

17           22.     Although both LABRY and IRON HORSE PETROLEUM defended the federal  
18 civil fraud lawsuit, on April 5, 2006, the Colorado investors obtained a final Order and Judgment  
19 against both LABRY and IRON HORSE PETROLEUM on all of their claims totaling \$647,776.30  
20 (the “Civil Fraud Judgment”). To date, no money has been collected by the Colorado WFP Unit  
21 Investment investors on their Civil Fraud Judgment.

22           23.     On October 4, 2000, LABRY and IRON HORSE PETROLEUM sold four WFP  
23 Unit Investments to an Arizona resident totaling \$100,000 (the “Arizona Investments”). The  
24 money to purchase the Arizona Investments derived from a personal injury settlement received by  
25 the Arizona investor after becoming permanently disabled in an auto accident caused by a drunk  
26 driver. The Arizona Investments were purchased by the Arizona investor after reviewing and

1 responding to the solicitation materials described above. The Arizona Investments are documented  
2 in numerous letters and documents signed by LABRY. LABRY also acknowledged the Arizona  
3 Investments during numerous telephone conversations with the Arizona investor's representative.  
4 To date, the Arizona investor has received a return of only \$518.46 from the Arizona Investments.

5 24. Prior to their sale of the Arizona Investments, LABRY and IRON HORSE  
6 PETROLEUM failed to disclose to the Arizona investor the existence of the Illinois and  
7 Pennsylvania Enforcement Orders discussed above.

## 8 II.

### 9 CONCLUSIONS OF LAW

10 1. The Commission has jurisdiction over this matter pursuant to Article XV of the  
11 Arizona Constitution and the Securities Act.

12 2. RESPONDENTS were served with the First Amended Notice pursuant to R14-4-  
13 303(D) and A.R.S. § 44-1972.

14 3. RESPONDENTS failed to request a hearing, or file an answer within the required  
15 time limits pursuant to A.R.S. § 44-1972, R14-4-306 R14-4-305.

16 4. RESPONDENTS offered or sold securities within or from Arizona, within the  
17 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

18 5. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that  
19 were neither registered nor exempt from registration.

20 6. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while  
21 neither registered as dealers or salesmen nor exempt from registration.

22 7. RESPONDENTS violated A.R.S. § 44-1991 by (a) employing a device, scheme, or  
23 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)  
24 engaging in transactions, practices, or courses of business that operate or would operate as a fraud  
25 or deceit. RESPONDENTS' conduct included:

1 A. Disclosing to the potential and actual Arizona investors that the WFP Unit  
2 Investments are not registered with, or approved by the S.E.C., but failing to further  
3 disclose the fact that both LABRY and IRON HORSE PETROLEUM are subject to  
4 the Illinois, Pennsylvania, Wisconsin and Alabama Enforcement Orders discussed  
5 above for their improper conduct in selling the unregistered WFP Unit Investments  
6 while not being registered as securities salesman or dealers or exempt from  
7 registration; and

8 B. Disclosing to the potential Arizona investor that the WFP Unit Investments involve  
9 risk, while further failing to disclose that both LABRY and IRON HORSE  
10 PETROLEUM were defendants in a federal civil fraud case filed against them for  
11 selling the WFP Unit Investments that resulted in an the unsatisfied Civil Fraud  
12 Judgment against them totaling \$647,776.30.

13 8. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to  
14 A.R.S. § 44-2032.

15 9. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S.  
16 § 44-2032.

17 10. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. §  
18 44-2036.

19 **III.**

20 **ORDER**

21 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the  
22 Commission finds that the following relief is appropriate, in the public interest, and necessary for  
23 the protection of investors:

24 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS and any of their  
25 agents, employees, successors and assigns, permanently cease and desist from violating the  
26 Securities Act.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall  
2 pay restitution to the Commission in the amount of \$99,481.54. Payment shall be made in full on  
3 the date of this Order. Any amount outstanding shall accrue interest at the rate of 10 percent per  
4 annum from the date of this Order until paid in full. Payment shall be made to the "State of  
5 Arizona" to be placed in an interest-bearing account controlled by the Commission.

6 The Commission shall disburse the funds on a pro-rata basis to investors shown on the  
7 records of the Commission. Any restitution funds that the Commission cannot disburse because an  
8 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an  
9 investor because the investor is deceased and the Commission cannot reasonably identify and  
10 locate the deceased investor's spouse or natural children surviving at the time of the distribution,  
11 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the  
12 Commission. Any funds that the Commission determines it is unable to or cannot feasibly  
13 disburse shall be transferred to the general fund of the state of Arizona.

14 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall  
15 pay an administrative penalty in the amount of \$50,000. Payment shall be made to the "State of  
16 Arizona." Any amount outstanding shall accrue interest at the rate of 10 percent per annum from  
17 the date of this Order until paid in full. The payment obligations for these administrative penalties  
18 shall be subordinate to any restitution obligations ordered herein and shall become immediately  
19 due and payable only after restitution payments have been paid in full or upon the default of  
20 RESPONDENTS with respect to the restitution obligations of RESPONDENTS.

21 For purposes of this Order, a bankruptcy filing by RESPONDENTS shall be an act of  
22 default. If RESPONDENTS do not comply with this Order, any outstanding balance may be  
23 deemed in default and shall be immediately due and payable.

24 IT IS FURTHER ORDERED that, if RESPONDENTS fail to comply with this order, the  
25 Commission may bring further legal proceedings against RESPONDENTS, including application  
26 to the superior court for an order of contempt.

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IT IS FURTHER ORDERED that, if RESPONDENTS fail to comply with this order, the Commission may bring further legal proceedings against RESPONDENTS, including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of November, 2009.

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ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

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DISSENT

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DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

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SERVICE LIST FOR: In re THOMAS ANTHONY LABRY, doing business as IRON HORSE  
PETROLEUM, INC., a suspended Oklahoma corporation,  
Docket No. S-20691A-09-0365

Thomas Anthony Labry  
1048 Irvine Ave., Suite 193  
Newport Beach, California 92660