

November 30, 2017

By email and registered mail

To: Richard J. Nixon
Dale Brand

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

www.aer.ca

Declaration naming Richard J. Nixon and Dale Brand under section 106 of the *Oil and Gas Conservation Act*

Dear Messrs. Nixon and Brand:

On October 30, 2017, the Alberta Energy Regulator (**AER**) sent a letter by registered mail to Richard J. Nixon and Dale Brand notifying them of the AER's intention to name them in a declaration pursuant to section 106 of the *Oil and Gas Conservation Act* (**OGCA**). The AER subsequently sent a copy of the same letter by email to Mr. Nixon on November 14, 2017. In accordance with section 106, time was provided to permit the individuals to show cause as to why a declaration should not be made.

The AER has had an opportunity to review submissions provided by the individuals and has determined that both individuals have failed to satisfy the AER that a declaration should not be made. The AER hereby issues a declaration under section 106(1) of the *OGCA* naming Richard J. Nixon and Dale Brand as persons in direct or indirect control of Midlake Oil & Gas Limited (**Midlake**), a company that contravened or failed to comply with orders of the AER and has a debt to the AER. The declaration, with its terms and conditions, is found in attachment.

Section 106 of the *OGCA* applies where the AER considers it in the public interest to make a declaration naming one or more directors, officers, agents, or other persons who, in the AER's opinion, were directly or indirectly in control of a licensee, approval holder, or working interest participant that has (i) contravened or failed to comply with an order of the AER; or (ii) has an outstanding debt to the AER, or to the AER to the account of the orphan fund, in respect of suspension, abandonment, or reclamation costs.

According to the AER's records, Mr. Nixon has acted as a director, president, chief executive officer and shareholder of Midlake, and Mr. Brand has acted as the company's executive vice-president. On

November 25, 2015, Mr. Nixon notified the AER on behalf of Midlake that the company had deemed all of its assets to be under the sole care and custody of the AER. In the opinion of the AER the company was effectively abdicating responsibility for its licensed properties. Midlake subsequently failed to, among other things, comply with a miscellaneous order requiring payment of a security deposit, comply with a closure and abandonment order, and ensure that calls to the company's 24-hour emergency telephone number posted at two well sites initiated immediate action. Midlake also failed to pay the AER its 2016 Administrative Fees Levy (totalling \$ 56, 220.49, including penalty for nonpayment), and money owing to (i) the Orphan Fund for rentals associated with its public lands dispositions; and (ii) the OWA for work completed by same in respect of its licensed properties, totalling \$ 89,000.

The AER received submissions from Mr. Nixon and Mr. Brand purporting to show cause as to why a declaration should not be made. Mr. Nixon's submission stated that more than two years had passed since he was either an officer or director of Midlake, and that he was neither an officer nor a director of the company at the time the noncompliances occurred. There is no time period stipulated in the *OGCA* within which the AER must initiate section 106 proceedings, and the two year limitation periods provided for in section 109 of the *OGCA* and section 3 of the *Alberta Limitations Act* do not apply to these proceedings. Additionally, Alberta Corporate Registry Searches performed by the AER on December 2, 2015 and April 26, 2016 listed Mr. Nixon as the sole director of Midlake. While Mr. Nixon provided the AER with a Record of Employment (**ROE**) in support of his submission, the ROE does not reference his status as the company's director. Further, the AER notes that Mr. Nixon corresponded with the AER on behalf of Midlake on several occasions after August 2015, the date Mr. Nixon last received compensation from Midlake according to the ROE. The AER also notes that according to the Alberta Corporate Registry, and as referenced above, Mr. Nixon was the sole director of Midlake as of December 12, 2015 and April 26, 2016. Section 101(2) of the *Alberta Business Corporations Act (ABCA)* requires corporations to have at least one director at all times, and the AER has no record of any other individual serving as a director of Midlake subsequent to Mr. Nixon. The AER is therefore of the opinion that Mr. Nixon was a director of Midlake at the time of the noncompliances.

Mr. Nixon's submission also asserted that he did not have control of Midlake while he was a director of the company. As previously found by the AER in *Decision 2015 ABAER 005*, the specific reference to directors, officers, and agents in section 106 indicates that the provincial legislature intended that individuals in those positions are presumed to be in direct or indirect control for the purposes of that section. Section 101(1) of the *ABCA* provides that, subject to any unanimous shareholder agreement, directors must manage or supervise the management of the business and affairs of a corporation. As

referenced above, Mr. Nixon also corresponded with the AER on behalf of Midlake via telephone and email on several occasions in November and December 2015. It is in the AER's opinion that this included an abdication of Midlake's licensed properties. Based on the foregoing, the AER concludes that Mr. Nixon was a director or person directly or indirectly in control of the company for the purposes of section 106 of the *OGCA*.

Mr. Brand's submission stated that his employment with Midlake was terminated on August 30, 2015, and that at all material times mentioned in the AER's October 30, 2017 letter he was not an employee of Midlake. While Mr. Brand also provided the AER with an ROE to support this argument, the ROE simply indicates that Mr. Brand stopped receiving compensation from Midlake in August 2015. Mr. Brand was listed as the company's contact on a licence transfer application Midlake submitted to the AER on October 15, 2015, and he consented to the license transfer on behalf of the company. Based on the foregoing, the AER concludes that Mr. Brand was a person in direct or indirect control of the company for the purposes of section 106 of the *OGCA*.

The AER has held in previous section 106 decisions that the purpose of a section 106 declaration is to prevent a licensee or person in control from continuing to breach requirements or incur new breaches or debts, thereby safeguarding the public interest. The AER has also previously held that continued confidence in the regulatory system is best assured when licensees comply with AER requirements.

The AER finds that Midlake's actions have undermined the regulatory system and posed an unacceptable risk to public safety and the environment. On the facts before it, the AER concludes that issuance of a declaration is necessary to deter future noncompliance and uphold the credibility of the regulatory system and AER enforcement processes. It is not in the public interest to allow licensees like Midlake to simply relinquish their AER licensed properties and, in doing so, avoid their ongoing regulatory responsibilities.

Note that submission of a sworn declaration in accordance with clause four of the attached declaration must be provided by each of the named individuals by **January 12, 2018**. Failure to respond appropriately may result in an additional regulatory response from the AER. Should the named individuals wish to discuss how Midlake will correct its noncompliances, please contact the undersigned.

Sincerely,

<original signed by>

Blair Reilly

Director, Business Process (Acting) – Operations Division

Attached: 1

APPENDIX I

Section 106 is a reverse onus provision. The burden is on the named individuals to show why the declaration and associated order should not be made. They are in the best position to respond to the notice as they are the ones with the best information regarding why they failed to comply with AER orders or pay outstanding amounts.

*Be advised that under the Responsible Energy Development Act (**REDA**), an eligible person may appeal decisions that meet certain criteria. Eligible persons and appealable decisions are defined in section 36 of REDA and section 3.1 of the Responsible Energy Development Act General Regulation. Requests for regulatory appeal must be submitted in accordance with the AER's requirements. Filing requirements and forms are available on the AER's website, www.aer.ca, under Applications & Notices > Appeals.*