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STATE OF WYOMING )  
 ) ss.  
COUNTY OF CAMPBELL )

IN THE DISTRICT COURT  
SIXTH JUDICIAL DISTRICT  
Civil Action No. 32753

Oedekoven Water & Hot Oil, Inc., a )  
Wyoming corporation; Fred L. and )  
Mary Ann Oedekoven Family Trust under )  
agreement dated September 12, 1995, )  
as amended; and Don and Betty Brown )  
Family Trust under agreement dated )  
September 12, 1995, as amended )

Plaintiffs,

vs.

BERRY PETROLEUM COMPANY,  
a Delaware corporation )

Defendant. )

FILED NO. \_\_\_\_\_  
CIVIL  PROBATE  CRIMINAL   
ADOPT  DEL   
OCT 24 2011  
Deputy Clerk of District Court

**AMENDED COMPLAINT FOR DAMAGES, DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

COME NOW PLAINTIFFS, by and through their undersigned attorneys, and for themselves and all other members of the class hereinafter described state and allege as follows:

**PLAINTIFFS**

1. The named Plaintiffs in this action are Oedekoven Water & Hot Oil, Inc., a Wyoming corporation; Fred L. and Mary Ann Oedekoven Family Trust under agreement dated September 12, 1995, as amended; and Don and Betty Brown Family Trust under agreement dated September 12, 1995, as amended.

2. The Plaintiffs are the lessors under oil and gas leases and/or the owners of related overriding royalty interests (derived or carved out of such leases) creating non-working interest royalties and overriding royalties (collectively "Royalties") with respect to shallow gas from coal bed seams ("Coal Bed Methane"), or the successor to such interest(s), under which the Defendant is the lessee and/or operator (or successor thereto) with the legal

obligation and duty to pay to the respective Plaintiffs Royalties on the Coal Bed Methane produced from wells on such leases.

3. The Plaintiffs are entitled to Royalties pursuant to the terms of the leases or other instruments creating or reserving their respective interests and, further, each of the Plaintiffs is a member of one or more of the following subclasses:

a. A mineral owner royalty plaintiff and/or overriding royalty plaintiff whose right to receive Royalties with respect to Coal Bed Methane is based on instrument(s) dated on or after July 1, 1989 with production occurring after July 1, 1989 ("Royalty Payment Act Plaintiffs"); and

b. A mineral owner royalty plaintiff and/or overriding royalty plaintiff whose right to receive Royalties with respect to Coal Bed Methane is based on instrument(s) dated prior to July 1, 1989 with production occurring from July 1999 through May 31, 2011 ("Pre-Royalty Payment Act Plaintiffs"). The class (including the two subclasses) is collectively referred to as "Royalty Plaintiffs" or "Interest Owners."

4. Each of the Royalty Plaintiffs has received payments from Defendant for production from Coal Bed Methane Wells ("Wells") that are described on Exhibit A-Wells attached hereto and by this reference made a part hereof. The leases on which the Wells are located are in Campbell County, Wyoming and are described on Exhibit B-Leases attached hereto and by this reference made a part hereof. Other Coal Bed Methane wells located on the Leases but not included in Exhibit A and other leases in Campbell County, Wyoming, for which Defendant has distributed Royalties but that are not included on Exhibit B are not included in this Amended Complaint.

#### **DEFENDANT**

5. Defendant Berry Petroleum Company ("Berry Petroleum") is a Delaware corporation authorized to conduct business in Wyoming with its principal place of business located at 1999 Broadway, Suite 3700, Denver, CO 80202.

6. The named Defendant has the obligation and duty to pay Royalties to the Royalty Plaintiffs pursuant to the terms of the leases and other instruments by which the right to receive Royalties was created or reserved and, with respect to the Royalty Payment Act Plaintiffs, the Wyoming Royalty Payment Act, W.S. 30-5-301 et seq.

**JURISDICTION AND VENUE**

7. WYO. CONST. art. V, § 10 and WYO. STAT. § 30-5-303(b) confers jurisdiction on this Court.

8. The amount of damages sought to be recovered by each plaintiff exceeds seven thousand dollars (\$7,000.00), exclusive of court costs; or, in the alternative, jurisdiction exists in this Court without regard to the amount of damages under WYO. STAT. § 30-5-303(b).

9. Venue for this matter is in Campbell County, Wyoming pursuant to WYO. STAT. §§ 1-5-107 and 1-5-108 and BP America Production Company v. Madsen, 53 P.3d 1088 (2002).

**CLASS ACTION ALLEGATIONS**

10. This action is brought by plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under the provisions of Rules 23(a) and 23(b)(1)(A), 23(b)(1)(B), 23(b)(2) and 23(b)(3) of the Wyoming Rules of Civil Procedure, for damages, injunctive and declaratory relief, and relief incident and subordinate thereto, including prejudgment/statutory interest, costs and attorney fees.

11. The class so represented by Plaintiffs in this action, and of which plaintiffs are themselves members, consists of owners of Royalties in the Leases for which the Defendant pays, has paid or will pay Royalties. The class consists of two sub-classes defined in paragraph 2, supra, and are further defined as follows:

a. The Royalty Payment Act Plaintiffs have interests in production that are under a form of lease generally identified as a "Producers 88-Paid Up" lease or variants or modifications thereof or under other instruments, all sharing the common characteristics

that they were entered into subsequent to the effective date of the Wyoming Royalty Payment Act and do not expressly contain specific language more restrictive than the definitions of "royalty," "overriding royalty" and "costs of production" provided in WYO. STAT. § 30-5-304;

b. The Pre-Royalty Payment Act Plaintiffs have interests under a form of lease generally identified as a "Producers 88-Paid Up" lease or variants or modifications thereof or under other instruments, all sharing the common characteristics that they were entered into prior to the effective date of the Wyoming Royalty Payment Act and do not contain language more restrictive than the definitions of "royalty," "overriding royalty" and "costs of production" provided in WYO. STAT. § 30-5-304; and

12. The exact number of members of the class (including the two subclasses), is not known, but it is estimated that there are not less than 65 members collectively. The class is so numerous that joinder of individual members herein is impracticable.

13. There are common questions of law and fact in the action that relate to and affect the rights of each member of the class and the relief sought is common to all of the members of the class, namely:

a. Whether the leases or other instruments under which the Royalties are owed on production from the Leases allow the Defendant to deduct costs of production/gathering in calculating Royalties payable to the Interest Owners;

b. Whether the leases or other instruments under which the Royalties are owed on production from the Leases allow the Defendant to reduce the volumes of gas on which Royalties are calculated by off-lease gas use;

c. What constitutes costs of production under the terms of the leases or other instruments under which the Royalties are owed on production from the Leases and/or the Wyoming Royalty Payment Act; and

d. The method and manner by which the price is established for purposes of calculating Royalties due and payable.

14. The claims of plaintiffs, who are representatives of the class herein are typical of the claims of the class, in that the claims of all members of the class, including plaintiffs, depend on a showing of the acts and omissions of Defendant giving rise to the right of plaintiffs to the relief sought herein. There is no conflict as between any individual named plaintiff and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

15. The named plaintiffs are the representative parties for the class, and are able to, and will, fairly and adequately protect the interests of the class.

16. This action is properly maintained as a class action under W.R.C.P. 23(b)(1)(A) in that the prosecution of separate actions by individual members of the class would create a risk of varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendant herein.

17. This action is properly maintained as a class action under W.R.C.P. 23(b)(1)(B) in that the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, specifically, but not limited to, royalty interest owners under the same lease and/or wells as the named Plaintiffs.

18. This action is properly maintained as a class action under W.R.C.P. 23(b)(2) inasmuch as the Defendant herein has acted or refused to act, as herein more specifically alleged, on grounds which are applicable to the class, and have by reason of such conduct made final injunctive relief or corresponding declaratory

relief appropriate with respect to the entire class, as sought in this action.

a. Defendant has improperly deducted costs of production in computing the royalties due and payable to Interest Owners for Coal Bed Methane production from the Wells, and refuses to cease and desist from such improper deductions.

b. Defendant, in calculating the volumes on which royalties are paid to the Interest Owners for Coal Bed Methane production from the Wells, has improperly reduced the volumes of gas at the well-head for off-lease consumption of gas, and refuses to cease and desist from such improper reductions.

c. Defendant, in calculating the price on which royalties are paid to the Interest Owners for Coal Bed Methane production from the Wells, has made improper adjustments to the price paid, and refuses to cease and desist from such improper deductions.

19. This action is properly maintained as a class action under W.R.C.P. 23(b)(3) inasmuch as the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

**COUNT ONE-UNDERPAID ROYALTIES**

20. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 19, supra.

21. The Defendant is legally responsible for payment of the royalty proceeds from the sale of production to the Plaintiffs.

22. Defendant has failed to pay the Plaintiffs the proceeds to which they are entitled as royalty owners, and has failed to pay the Plaintiffs Royalties on all gas produced from the Wells.

23. The Defendant has breached the leases or other agreements with the Plaintiffs and, with respect to one of the subclasses, has violated the Wyoming Royalty Payment Act.

24. The Defendant's actions have damaged the Plaintiffs. The Defendant is liable to the Plaintiffs for the amount of underpaid royalty.

**COUNT TWO-PREJUDGMENT/STATUTORY INTEREST**

25. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 24, supra.

26. Royalty Payment Act Plaintiffs are entitled to interest at the annual rate of eighteen percent (18%) per annum on all underpaid and late royalties.

27. Pre-Royalty Payment Act Plaintiffs are entitled to interest at the annual rate of eighteen percent (18%) per annum on all underpaid and late Royalties arising on or after July 1, 1989 or, in the alternative, to prejudgment interest at the annual rate of seven percent (7%).

**COUNT THREE-MONTHLY ASSESSMENT**

28. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 27, supra.

29. For all periods relevant hereto, Defendant is legally responsible to pay its share of all Royalties for production on the Leases to those persons and entities owning such interests.

30. Under the reporting provisions of the Wyoming Royalty Payment Act, WYO. STAT. § 30-5-301, et seq., whenever Defendant makes payments for Wyoming gas production from gas wells to an interest owner, all of the following information shall be included and labeled on the check stub or on an attachment to the form of payment, unless the information is otherwise provided on a regular monthly basis:

a. The lease, property or well name of any lease, property or well identification number used to identify the lease property or well;

b. The month and year during which the sales occurred for which payment is being made;

c. The total number of thousands of cubic feet of gas sold;

d. The price per thousand cubic feet of gas sold;

e. The total amount of state severance, ad valorem and other production taxes;

f. An itemized list of any other deductions or adjustments;

g. The net value of total sales after deductions;

h. The owner's interest in sales from the lease, property or well expressed as a decimal;

i. The owner's share of the total value of sales prior to any deductions;

j. The owner's share of the sales values less deductions; and

k. An address where additional information pertaining to the owner's interest in production may be obtained and questions answered.

31. For all relevant periods, the Defendant has failed to report one or more of the foregoing items of information, including but not limited to deductions for transportation charges, reductions in gas volumes for off-lease gas use, and other deductions either in-kind or in cash.

32. For all relevant periods, the Defendant has failed to report one or more of the statutorily required items with respect to each monthly statement.

33. Defendant is liable to each Plaintiff with respect to each defective statement in the amount of \$100.00 per month per Interest Owner that complete reporting as required by WYO. STAT. § 30-5-305(b) was not provided to an Interest Owner.

#### **COUNT FOUR-DECLARATORY JUDGMENT**

34. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 33, supra.

35. The Plaintiffs presently dispute with Defendant the terms of the Leases or other instruments creating interests in the Leases with respect to computing royalties relating to properly deductible costs, volume determination, and price paid for Coal Bed Methane production from the Wells.



36. Plaintiffs and each of them are entitled to declaratory judgment declaring their rights under the Leases or other instruments creating interests in the Leases, to-wit that the Defendant may not deduct any costs of production until the gas is delivered and sold into a market pipeline, that such royalties are to be paid on an arms-length fair market value price, and that the volume of gas on which royalties are to be paid shall not be reduced for other than gas actually used on the particular lease from which it originates.

**COUNT FIVE-INJUNCTIVE RELIEF**

37. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 36, supra.

38. Plaintiffs and each of them are entitled to permanent injunctive relief prohibiting Defendant in calculating royalties from deducting any costs of production until the gas is delivered and sold into a market pipeline, requiring that such royalties are to be paid on an arms-length fair market value price, and requiring that the volume of gas on which royalties are to be paid shall not be reduced for other than gas actually used on the particular lease from which it originates.

**COUNT SIX-COSTS AND ATTORNEY FEES**

39. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 38, supra.

40. Pursuant to Wyo. Stat. § 30-5-303(b), Plaintiffs are entitled to costs and attorneys fees.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray, for themselves and all other members of the class:

1. That the rights of the class members in the calculations of Royalties due and payable to them for Coal Bed Methane production from the Leases be adjudicated and declared: Plaintiffs be free of deductions for costs of production, Plaintiffs be free of any reduction for off-lease gas use, and the value of the gas be

established as the arms-length price paid by third-party buyers at the market pipeline;

2. That Defendant, in the calculations of Royalties due and payable to the class members for Coal Bed Methane production from the Leases, be permanently restrained and enjoined from deducting for costs of production, from reducing for off-lease gas use, and using any value other than the value of the gas as established as the arms-length price paid by third-party buyers at the market pipeline;

3. That Plaintiffs be awarded damages from Defendant in the amount of underpaid Royalties;

4. That pursuant to WYO. STAT. § 30-5-303(a), Plaintiffs be awarded interest from Defendant at the rate of eighteen percent per annum on the amount of underpaid and late paid royalties from the due date specified in WYO. STAT. § 30-5-301(a) until paid or, in the alternative for Pre-Royalty Payment Act Plaintiffs, prejudgment interest at the rate seven percent per annum;

5. That pursuant to WYO. STAT. § 30-5-303(c) Plaintiffs be awarded from Defendant the amount of \$100.00 per month per Interest Owner that complete reporting as required by WYO. STAT. § 30-5-305(b) was not provided to an Interest Owner;

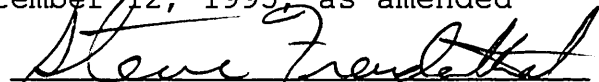
6. That Plaintiffs be awarded from Defendant court costs and reasonable attorney fees as provided in WYO. STAT. § 30-5-303(b); and

7. That Plaintiffs be granted such other and further relief as is just and equitable in the premises.

Dated this 24<sup>th</sup> day of October, 2011.

Plaintiffs Oedekoven Water & Hot Oil, Inc., a Wyoming corporation; Fred L. and Mary Ann Oedekoven Family Trust under agreement dated September 12, 1995, as amended; and Don and Betty Brown Family Trust under agreement dated September 12, 1995, as amended

By:

  
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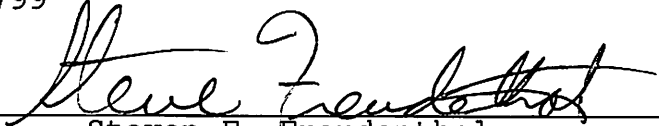
(307) 634-2240

Exhibit A - Wells  
Exhibit B - Leases

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of October, 2011 I served the foregoing by hand-delivering a true and correct copy thereof to the following:

Randall B. Reed  
Dray, Dyekman, Reed & Healey, P.C.  
204 East 22<sup>nd</sup> Street  
Cheyenne, WY 82001-3799

  
\_\_\_\_\_  
Steven F. Freudenthal