

STATE OF WYOMING )  
 ) ss.  
COUNTY OF CAMPBELL )

IN THE DISTRICT COURT  
SIXTH JUDICIAL DISTRICT  
Civil Action No. \_\_\_\_\_

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. )

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

TO: Payees of Berry Petroleum Company ("Berry Petroleum")

You are NOT being sued.  
You need NOT respond to this notice in any way.

Dear Berry Petroleum Payee,

This notice informs you of a proposed settlement of class action claims against Berry Petroleum Company. Berry Petroleum Company will be referred to for the remainder of this notice simply as "Berry Petroleum." This notice describes the proposed settlement and informs you of your rights as a settlement class member. You are being sent this notice because you have been identified as a person receiving royalty payments from Berry Petroleum under leases, instruments and related overriding interests (derived or carved out of such leases) creating non-working royalties with respect to shallow gas from coal bed seams ("Coal Bed Methane") located in Campbell County, Wyoming ("Wyoming Powder River Basin" or "PRB"), from December 1, 2002 through March 31, 2006. Berry Petroleum has agreed, under the terms of the settlement, to pay you additional royalties resulting from (1) revising the value on which royalties were paid, (2) refunding certain gathering charges for the purposes of calculating royalties; and (3) revising the volume of Coal Bed Methane on which royalties were calculated.

**READ THIS FIRST**

*Exhibit 2*

**WHY SHOULD I READ THIS?** This Notice describes a proposed settlement of a class action against Berry Petroleum, and you have been identified as a class member.

**WHY DID I RECEIVE THIS NOTICE?** You received this Notice because a search of Berry Petroleum's records shows that you were paid royalties by Berry Petroleum for Coal Bed Methane production in the Wyoming PRB for all or part of the period December 1, 2002 through March 31, 2006.

**DO I HAVE TO DO ANYTHING?** If the Court approves the settlement and it becomes effective, *you do not need to do anything*. If you received royalty payments from Berry Petroleum for production between December 1, 2002 and March 31, 2006, you are entitled to additional royalty payments under the settlement. If you received royalties for production between December 1, 2002 and March 31, 2006, an additional royalty payment will be provided to you as part of the settlement without the need for you to file a claim or do anything else. You may attend the court hearing described below if you wish, but your attendance or non-attendance will not affect your receiving the relief described. You do not need to appear in court; and you do not need to hire an attorney in this case. You may object to the proposed settlement if you so desire. You may also elect to be excluded or "opt out" of being included in the settlement.

**WHOM CAN I CALL WITH QUESTIONS?** If you have questions, you may call (307) 634-2240, weekdays, 9:00 a.m. to 5:00 p.m., MST; write to Freudenthal & Bonds, P.C., Attn: Steve Freudenthal, P.O. Box 387, 129 East Carlson Street, Cheyenne, WY 82003; or by e-mail addressed to firm@wyolaw.com.

**WHOM CAN I CALL ABOUT A CHANGE OF ADDRESS?** If your present address is different from the address on the envelope in which you received this Notice, or if you did not receive this Notice directly but believe you should have, you should call (307) 634-2240, or write to Freudenthal & Bonds, P.C., Attn: Steve Freudenthal, P.O. Box 387, 129 East Carlson Street, Cheyenne, WY 82003, and provide your new address.

#### **The Basis Of The Claims Against Berry Petroleum**

This case was filed on October 23, 2001, by certain Berry Petroleum payees and payees of other producers (the "Plaintiffs") in the Sixth Judicial District Court, County of Campbell, State of Wyoming in Gillette, Wyoming. The action against Berry Petroleum was severed from the primary proceeding by order dated October 24, 2011 and entered on October 24, 2011 (the "Action"). By bringing the Action, the Plaintiffs sought to obtain a determination that: (1) the calculations of royalties due and payable to them be free of deductions for costs of production, 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) Berry Petroleum, in the calculations of royalties due and payable to the class members, 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) Plaintiffs be awarded damages in the amount of underpaid royalties; (4) Plaintiffs be awarded interest on the amount of underpaid and late paid royalties; (5) Plaintiffs be awarded the amount of \$100.00 per month per interest owner that complete reporting under the Wyoming Royalty Payment Act was not provided; and (6) Plaintiffs be awarded court costs and reasonable attorney fees.

#### **The Proposed Settlement**

Since filing the Action, Plaintiffs, through class counsel, the Cheyenne, Wyoming law firm of Freudenthal & Bonds, P.C., have conducted an investigation of the facts, including reviews of Berry Petroleum's master meter billing statements and allocation procedures, reviews of the facts and circumstances of production, gathering, transportation, and marketing, and have analyzed the relevant legal and factual issues. Plaintiffs' counsel have conducted interviews of Berry Petroleum's employees and had discussions with Berry Petroleum's counsel and others concerning Berry Petroleum's policies and practices regarding royalty payment calculations and reporting. Plaintiffs' counsel obtained substantial information about the nature and extent of Berry Petroleum's challenged practices through this process as conducted under a Confidentiality Agreement. Plaintiffs' counsel continued to confirm and refine this information through additional due diligence inquiry from Berry Petroleum with respect to various aspects of the proposed settlement.

After an extensive exchange of information and months of vigorous arms-length negotiation, Plaintiffs and Berry Petroleum agreed to enter into a Settlement Agreement that, if approved by the court, will result in dismissal of this case and final resolution of all claims raised. Such dismissal will release Berry Petroleum and Additional Released Parties as defined in the Settlement Agreement from future liability for the acts and practices complained of. The Settlement terms are described in full in a document known as the Settlement Agreement effective October 15, 2011 (hereinafter "Settlement Agreement"). The Settlement Agreement is available for your inspection at the clerk's office of the court at the address given below.

The definition of "Market Point," for purposes of the Settlement Agreement, means the end of the first pipeline segment consisting of all activity in moving the gas from the well through a pipeline or to a point where single-stage screw compression, second stage reciprocating compression, and dehydration has been performed; provided, however, that if the gas is not at least 800 psig under normal operating conditions after the second stage reciprocating compression and dehydration has been performed, then the first pipeline segment shall extend until (i) the gas is at least 800 psig under normal operating conditions, or (ii) has been delivered into a regulated interstate pipeline, whichever first occurs. Based on this definition, the terms of the settlement, in summary form, are as follows:

- a. royalty calculations shall be based on the arm's-length sales price received by Berry Petroleum less actual costs paid or incurred to unaffiliated third-parties from the Market Point to the point of sale;
- b. royalties shall be calculated without deduction for charges from the well-head through the Market Point;
- c. royalties shall be calculated without deduction for gas volumes used after the first screw compressor through the Market Point;
- d. the Settlement provides for monetary and other benefits to you and other members of the Settlement Classes beyond those described above, including: (i) Berry Petroleum, in settling these claims, will not assert claimed defenses available to it, whether procedural or substantive; and (ii) attorneys fees and costs payable to class counsel will be paid by Berry Petroleum in an addition to the amount of past royalties to be paid under the settlement. Class counsel will further pay the costs of administering this settlement from such funds.

The amount of additional royalty to be distributed shall be allocated to class members based on each class members pro rata interest by field in the Disputed Deductions being refunded for such field and each class members pro rata interest in the additional value being paid based upon the quantity on which each class member was previously paid. The amount of additional royalty to be received by each individual class member will vary substantially based on their individual royalty interest, whether they only owned an interest for a short period of time and others have succeeded to their interests, whether production has occurred for only a short period of time, and what deduction were previously taken by Berry Petroleum in the calculation of each individual class member's royalties. Disputed Deductions incurred by Berry Petroleum vary by field depending upon the pipeline facilities through which the gas flows, and Disputed Deductions taken by Berry Petroleum in calculating royalties also varied by field. Each individual class member's additional royalty may vary from minimal to very substantial based on the foregoing factors, but all class members are receiving their proportionate share of the settlement amount based on the terms as described above. **WITH THIS NOTICE YOU SHOULD HAVE RECEIVED A SINGLE GREEN SHEET CONTAINING A STATEMENT OF ESTIMATED DISTRIBUTION FOR YOU PERSONALLY. IF YOU DID NOT RECEIVE THIS STATEMENT PLEASE CONTACT CLASS COUNSEL.** You may evaluate the economic impact of the settlement by comparing the estimated distribution to the amount of royalties paid to you by Berry Petroleum for December 1, 2002 through March 31, 2006.

Notwithstanding its agreement to settle this case, Berry Petroleum denies all allegations of wrongdoing, denies liability to Plaintiffs, and in settling the case admits no wrongdoing or liability of any kind. Berry Petroleum vigorously maintains that it has valid defenses to all claims raised in the case, and would prevail if the litigation were to proceed. The Court has not ruled on the merits of Plaintiffs' claims or Berry Petroleum's potential defenses, and this Notice is not to be considered as an expression of opinion by the Court. Berry Petroleum has also weighed the risks and possible costs of litigation of the Action against the benefits of the proposed Settlement, and considers it desirable that the claims be settled on a global basis to avoid the time, risk, and expense of defending protracted litigation and in order to achieve a final resolution of the claims being settled.

#### **Release of Claims**

If you remain in the Settlement Class and accept the benefits of the Settlement Agreement, you will also release Berry Petroleum and Additional Released Parties, which includes any other working interest owners on whose behalf Berry Petroleum paid Royalties, for all Settled Claims. The Settled Claims exclude those claims that could arise out of any future clerical errors in accounting for the volumes, price, value or decimal interest reported by Berry Petroleum. While the detailed terms of the release are contained in Settlement Agreement, in summary, Berry Petroleum, by paying the Settlement Amount, will be released for: (1) all past Gas Royalty Claims, including, but not limited to, Valuation and Disputed Deductions; (2) past Reporting Claims; and (3) Attorneys Fees and Administration Costs.

#### **The Settlement Classes**

The Court will be asked to confirm certification of a Settlement Class for the purposes of settlement consisting of persons who are lessors under leases, instruments and related overriding interests (derived or carved out of such leases) creating non-working interest royalties with respect to

Coal Bed Methane produced in Campbell County, Wyoming who were paid royalties by Berry Petroleum for production during the period December 1, 2002 through March 31, 2006. Your receipt of this notice means you are an identified class member.

#### **Attorneys' Fees, Costs and Expenses**

Plaintiffs' counsel will request that the Court award them attorneys' fees, costs and settlement administration expenses. Plaintiffs' counsel and/or the named plaintiffs have paid or incurred costs, accounting expenses and expert witness expenses of approximately \$5,000.00, and expect to pay approximately \$2,000.00 in settlement administration expenses. As part of achieving settlement, Plaintiffs' counsel have agreed that the attorneys' fees, costs and settlement administration expenses shall be limited to fifteen percent (15%) of the gross settlement amount, rather than the thirty percent (30%) provided in the retainer agreements with the named Plaintiffs. Based on an estimated amount of additional royalties due of \$175,986, Plaintiffs' counsel intends to request \$31,056 in attorney's fees, costs, expenses, and expenses of administration. The amount paid for attorney's fees, costs, expenses and expenses of administration of this settlement will be calculated as three/seventeenths of the additional royalties due and added to the additional royalties due, resulting in a gross settlement amount of approximately \$207,042. The amount paid for attorneys fees, costs, expenses and expenses of administration will not diminish or affect the substantially complete reimbursement of additional royalties due to class members. Under the settlement, there is not a separate award for interest or monthly assessments.

#### **The Settlement Hearing**

The Court will conduct a hearing (the "Settlement Hearing") at the Campbell County Courthouse, Gillette, Wyoming, at 4:00 p.m. on November 28, 2011 (or at the dates and times to which the Court may, without further notice, reschedule the hearing). The purpose of the Settlement Hearing will be to determine whether the proposed settlement is fair, adequate, and proper; and whether the Court should enter a judgment approving the settlement, awarding attorneys' fees and expenses, and dismissing the class action. You have the right but are not required to attend. Attendance or non-attendance will not affect any distribution to which you may be entitled under the settlement.

#### **Your Right To Appear And Object To The Proposed Settlement**

Any member of the class may appear at the Settlement Hearing in person or by a duly authorized attorney and show cause, if any, why the settlement should not be approved; provided that (except by special permission of the Court) no class member shall be heard unless, on or before November 23, 2011, the class member files with the Court a written "Notice of Intent To Appear," at the clerk's address set out below, setting forth all of that class member's objections to the settlement, and mails copies of all such papers to Plaintiffs' and Berry Petroleum's counsel at the addresses specified below.

#### **Your Right To Be Excluded Or Opt Out Of The Proposed Settlement**

You have the right to be excluded or opt out of the proposed settlement. If you elect to be excluded or opt out of the proposed settlement, you must elect to be excluded or opt out with respect to all of your interest in lease(s), instrument(s) and/or related overriding interest(s) having the same or substantially similar terms. No class member shall be excluded unless, on or before November 23, 2011, the class

member files with the court a written "Election to be Excluded," at the clerk's address set out below, specifically describing all of that class member's interests to be excluded by lease name, date of lease, and book, page and county where recorded (if not recorded, a copy of the document(s) creating the interest should be attached) or well number(s). Exhibit B to the Settlement Agreement contains additional information regarding lease(s), instrument(s) and well number(s) Copies of all such papers shall simultaneously be mailed to Plaintiffs' and Berry Petroleum's counsel at the addresses specified below. Failure to timely comply with this requirement will result in your remaining in the class and subject you to the terms of the Settlement Agreement.

Office of the Clerk

Nancy Ratcliff  
Clerk of the Campbell County District Court  
P.O. Box 817  
500 South Gillette Avenue, Suite 2600  
Gillette, WY 82717

Berry Petroleum's Counsel:

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

Plaintiffs' Counsel:

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Freudenthal & Bonds, P.C.  
129 East Carlson Street  
P.O. Box 387  
Cheyenne, WY 82003-0387

**Availability Of The Pleadings, The Settlement Agreement,  
And Other Papers In This Action**

The Settlement Agreement, with its exhibits and all other papers filed in the Action, are available for inspection in the offices of the clerk of the court identified above. The documents on file with the court may be examined by any member of the class in person or by counsel during normal court hours each day other than on Saturdays, Sundays, and legal holidays. You may also view the documents on the internet at <http://www.wyolaw.com/> under the heading "Class Action" and then "Berry Petroleum Settlement."

Do not call or write the courts, other than as provided for above.

**IF YOU HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT:**

(307) 634-2240, weekdays, 9:00 a.m. to 5:00 p.m.; write to Freudenthal & Bonds, P.C., Attn: Steve Freudenthal, P.O. Box 387, 129 East Carlson Street, Cheyenne, WY 82003; or by e-mail addressed to [firm@wyolaw.com](mailto:firm@wyolaw.com).

DATED: October 24, 2011.

/s/ Nancy Ratcliff

Clerk of the Sixth Judicial District Court,  
in and for Campbell County, State of Wyoming