

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made effective October 15, 2011, by and between Berry Petroleum Company ("Berry Petroleum") and the Designated Class Representatives defined in paragraph 1.5 below ("Plaintiffs") acting on behalf of themselves and the Potential Class Members defined in paragraph 1.18 below.

RECITALS

WHEREAS, Plaintiffs have filed suit against Berry Petroleum in Wyoming State District Court for Campbell County ("Court"), Civil Action No. 32753 as severed from *Rodney R. Addison, et al. v. Anchor Bay Corporation, et al.*, Civil Action No. 23706 (the "Addison Case") and from *William L. and Bernadette L. Barlow Trust, et al., v. Williams Production RMT Company, et al.*, Civil Action No. 25092 (the "Barlow Case"), alleging private claims and class action claims seeking, among other things, declaratory, injunctive, compensatory and other relief ("Class Suit");

WHEREAS, Berry Petroleum has leased lands and has produced natural gas and associated hydrocarbons from coal bed seams ("Shallow Gas") in wells within Campbell County, Wyoming;

WHEREAS, Berry Petroleum has paid royalties and/or overriding royalties and/or other burdens associated with non-cost bearing interests ("Royalties") to the specific payees set forth in Exhibit A ("Royalty Payees") for production of Shallow Gas from the Wells described on Exhibit B ("Existing Wells") operated by Berry Petroleum located on those oil and gas leases in Campbell, Wyoming described in Exhibit C ("Producing Leases" whether or not fully and accurately described on Exhibit C);

WHEREAS, Berry Petroleum paid Royalties to the Royalty Payees under the Producing Leases for production of Shallow Gas from the Existing Wells for the period of December 1, 2002 through March 31, 2006 ("Settlement Period");

WHEREAS, Plaintiffs have made claims in the Class Suit against Berry Petroleum for the insufficient payment of Royalties and alleged violations of the *Wyoming Royalty Payment Act*, Wyo. Stat. §§ 30-5-301 to 30-5-305 ("WRPA"), arising from alleged improper deductions from Royalties for costs of production as defined by that Act, including, without limitation, the cost, expense or value of fuel consumed or services performed by Berry Petroleum or various third parties for gas gathering and/or transportation, compression, pressuring, dehydration or separation upstream of the outlets of reciprocating compressors and dehydrators ("Disputed Deductions") and alleged improper

adjustments to the price paid ("Valuation" as more fully defined in the Definitions Section of this Agreement);

WHEREAS, Plaintiffs have made claims in the Class Suit against Berry Petroleum for alleged interest due to Plaintiffs for the Valuation and Disputed Deductions claims pursuant to Wyoming law, including without limitation Wyo. Stat. § 30-5-303(a) ("Interest");

WHEREAS, Plaintiffs have made claims in the Class Suit against Berry Petroleum for amounts due for improper reporting of information under Wyoming law, including without limitation Wyo. Stat. § 30-5-303(c) ("Reporting Assessments");

WHEREAS, Plaintiffs have made claims in the Class Suit against Berry Petroleum to recover all court costs and reasonable attorney's fees incurred in the Class Suit to prosecute individual and class claims, including those provided in Wyo. Stat. § 30-5-303(b) ("Attorney's Fees");

WHEREAS, Plaintiffs intend to seek certification of a class, including Plaintiffs, under Wyo. R. Civ. P. 23(b)(2) for declaratory and injunctive relief, and a class under Wyo. R. Civ. P. 23(b)(3) for money damages allegedly due to Royalty Payees arising from the Disputed Deductions, Valuation, Interest, Reporting Assessment, and Attorney's Fees claims alleged against Berry Petroleum;

WHEREAS, Plaintiffs made claims against Defendant in the *Addison Case* and the *Barlow Case* pertaining to the payment and reporting of Royalties by Defendant for production from other existing wells not included on Exhibit B, including wells located on the Producing Leases and on other leases operated by Defendant in Campbell County, Wyoming, but, as a result of Plaintiffs investigation into the facts and circumstances of such payments and reporting, Plaintiffs did not make those claims in the Amended Complaint filed in the Class Suit and, therefore, those claims are effectively dismissed without prejudice;

WHEREAS, Berry Petroleum has paid Royalties pursuant to various oil and gas leases or other written instruments that grant or reserve or create or define the royalty or overriding royalty interests or non-cost bearing interests owned by the Plaintiffs and the Royalty Payees (collectively "Instruments");

WHEREAS, the Class Suit raises disagreements between the Parties concerning the meaning of the royalty provisions of the

Instruments and concerning the meaning and/or application to those Instruments of definitions contained within the *Wyoming Royalty Payment Act*;

WHEREAS, Plaintiffs contend that Royalties have not been properly valued, paid or reported;

WHEREAS, Berry Petroleum contends that it has fairly and properly valued and paid Royalties to the Royalty Payees for Shallow Gas and believes that it has fully complied with its reporting obligations;

WHEREAS, Berry Petroleum denies all of the allegations in the Class Suit and denies that it has violated the *Wyoming Royalty Payment Act*, or violated any other law or breached any contract or other agreement with or obligation owed to the Royalty Payees, and denies any and all liability for the claims the Plaintiffs and Royalty Payees allege;

WHEREAS, all parties to this litigation recognize that they will expend substantial resources in continuing this litigation;

WHEREAS, the Parties desire to settle and resolve all past claims so that the Plaintiffs and the Settlement Class Members are bound by a release of past claims against Berry Petroleum and the Additional Released Parties defined below associated with the valuation, measurement, payment and reporting of Royalties to the Royalty Payees for Shallow Gas marketed by Berry Petroleum from the Wells located on the Producing Leases;

NOW, THEREFORE, for good and valuable consideration between Berry Petroleum and the Plaintiffs and Settlement Class Members as provided in this Agreement and in consideration of the foregoing Recitals which are substantive provisions hereof, the Parties agree as follows:

1.0 DEFINITIONS

The following definitions shall apply solely for purposes of this Agreement and any pleadings, motions or documents used to implement this Agreement:

- 1.1 "**Administration Costs**" shall mean all actual costs which Plaintiffs' counsel will incur in administering the settlement, including, among others, responses to inquiries, expenses for printing and mailing the Settlement Class Notice, for producing and mailing

Distribution Checks payable to Settlement Class Members, and for producing and mailing form 1099 tax information.

- 1.2 **"Additional Released Parties"** shall have the meaning set forth in Section 2.8.
- 1.3 **"Approval Event"** shall mean the earliest date on which all of the following conditions are met:
 - 1.3.1 Settlement Class Notice has been provided to Potential Settlement Class Members by mail or as the Court may otherwise determine is appropriate;
 - 1.3.2 The Settlement Order and Judgment approving the terms of this Agreement has been entered; and
 - 1.3.2.1 The time for appeal of any objections to the Settlement Order and Judgment has expired without appeal; or
 - 1.3.2.2 The Settlement Order and Judgment has been affirmed following any appeal by an objecting party. In the event such an appeal is filed but on grounds, which the Plaintiffs and Berry Petroleum agree should not preclude completion of the settlement, they may agree in writing to waive this Paragraph 1.3.2.2 and consider the Approval Event to have occurred.
- 1.4 **"Attorney's Fees Claims"** shall mean claims Attorney's Fees as defined in the Recitals with respect to matters for the period of December 1, 2002 through March 31, 2006.
- 1.5 **"Designated Class Representatives"** shall mean 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 and such persons from the named Plaintiffs in the Class Suit as they may designate to act on their behalf.
- 1.6 **"Disputed Deductions"** shall have the meaning set forth in the Recitals.

- 1.7 **"Distribution Check"** shall mean a check, with Endorsement Language, payable to a Settlement Class Member to accomplish distribution of the net amount that is payable to such Settlement Class Member pursuant to this Agreement.
- 1.8 **"Distribution Date"** shall mean the date of issuance of the Distribution Check payable to each Settlement Class Member.
- 1.9 **"Endorsement Language"** shall be the release language contained on each Distribution Check to a Settlement Class Member which states: "In full accord, satisfaction and payment in full for Payee's Settled Claims as Settled Claims are defined in the Settlement Agreement with Berry Petroleum Company. A copy of the Settlement Agreement and Notice of Proposed Class Action Settlement may be obtained from Class Counsel, Freudenthal & Bonds, P.C., 129 East Carlson Street, P.O. Box 387, Cheyenne, WY 82003-0387."
- 1.10 **"Gas Royalty Claims"** shall mean those claims for royalty payments for Shallow Gas production from the Existing Wells from the effective date of Berry Petroleum's interest in each Lease associated with the Existing Wells being the period of December 1, 2002 through March 31, 2006, inclusive, including, but not limited to, Valuation and Disputed Deductions.
- 1.11 **"Interest"** shall have the meaning found in the Recitals and includes all interest imposed under Wyoming law for the period of December 1, 2002 through March 31, 2006.
- 1.12 **"Opt-Out Claimant"** shall mean a Potential Class Member who submits a timely and valid request for exclusion of their particular interest in identified Lease(s) in accordance with the Order of Preliminary Approval and the Notice of Proposed Class Action Settlement, and who does not revoke that request for exclusion from the Settlement Class in writing prior to the Settlement Hearing. Such requests for exclusion must apply to all of that Opt-Out Claimant's interest in all Lease(s) containing the same or similar terms.
- 1.13 **"Opt-Out Claims"** shall mean those Settled Claims that belong to Opt-Out Claimants. Opt-Out Claims are not settled by this Agreement

- 1.14 "**Parties**" shall mean Berry Petroleum and Plaintiffs.
- 1.15 "**Potential Class Members**" shall mean those Royalty Payees identified in Exhibit A.
- 1.16 "**Preliminary Approval Hearing**" shall mean the hearing to be held before the Court to determine (a) whether this Agreement, including the Exhibits, should be provisionally approved as fair, adequate and reasonable; (b) whether the Settlement Class and any subclasses should be provisionally certified; (c) whether the form of the Notice of Proposed Class Action Settlement should be approved and sent to the Potential Class Members; and (d) any other matter necessary to effectuate the terms of this Agreement.
- 1.17 "**Preliminary Approval Order**" shall mean the order entered by the Court after the Preliminary Approval Hearing provisionally certifying the Settlement Class, approving the form of the Notice of Proposed Class Action Settlement and directing that notices be mailed to the Potential Class Members as soon as practicable.
- 1.18 "**Reporting Assessments**" shall have the meaning found in the Recitals.
- 1.19 "**Reporting Claims**" shall mean all claims, whether in tort or contract or under statutes, or regulations or other authority, and whether equitable or arising under common law, held by Settlement Class Members and associated with Berry Petroleum's reporting of Royalties for Shallow Gas produced from or attributable to the Producing Leases from Existing Wells for the period of December 1, 2002 through December 31, 2010, including without limitation such claims for Reporting Assessment for violations of the reporting requirements of the *Wyoming Royalty Payment Act*, including those specifically provided in Wyo. Stat. § 30-5-305(b).
- 1.20 "**Royalties**" or "**Royalty**" shall have the meaning found in the Recitals.
- 1.21 "**Royalty Payment Methodology**" shall mean the amount of Royalties computed on the arm's-length sales price(s) received by Berry Petroleum for the Shallow Gas, less the actual costs (i.e., monetary charges, fuel, etc.) incurred or paid to unaffiliated third parties

("Allowed Costs") in connection with all services provided from the exit of the "first pipeline segment" as defined below to the point of sale including, but not limited to, any further compression, gathering, transportation, separation, treating or dehydration. For purposes of this settlement, the "first pipeline segment" shall mean 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 a pressure of 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. The point where the first pipeline segment ends, as defined in the preceding sentence, is hereinafter referred to as the "Market Point." The pipeline and other facilities downstream of the Market Point may be owned by the same entity as the owner of the first pipeline segment or may be owned by different entities.

1.22 **"Settled Claims"** shall mean all claims, arising out of
(a) Gas Royalty Claims, whether known or unknown;
(b) Reporting Claims whether known or unknown;
(c) Interest; and (d) Attorney's Fees Claims, whether known or unknown.

1.23 **"Settlement Amount"** shall be Two Hundred Seven Thousand Forty-Two Dollars and Forty-Nine Cents (\$207,042.49) which shall be allocated as follows:

1.23.1 One Hundred Seventy-Five Thousand Nine Hundred Eighty-Six Dollars and Twelve Cents (\$175,986.12) for settlement of individual and Settlement Class Gas Royalty Claims, Reporting Claims and Interest to be distributed to Plaintiffs and Settlement Class Members as provided herein;

1.23.2 Thirty-One Thousand Fifty-Six Dollars and Thirty-Seven Cents (\$31,056.37) for Attorney's Fees and Administration Costs, provided that such amount shall not exceed

fifteen percent (15%) of the amount specified in 1.23.

- 1.24 "**Settlement Class**" shall mean Settlement Class Members including without limitation the Plaintiffs.
- 1.25 "**Settlement Class Claims**" shall mean Settled Claims allegedly due to Settlement Class Members.
- 1.26 "Settlement Class Members" shall mean Potential Class Members other than Opt-Out Claimants.
- 1.27 "**Settlement Class Notice**" shall mean that notice as approved by the Court at the Preliminary Approval Hearing pursuant to Wyo. R. Civ. P. 23(c)(2) and to be mailed to Potential Class Members.
- 1.28 "**Settlement Hearing**" shall mean that hearing held by the Court after the Preliminary Approval Hearing and the mailing of the Settlement Class Notice at which the Plaintiffs shall request the Court, pursuant to Wyo. R. Civ. P. 23(c)(1) to determine that: (i) the terms of this Agreement, including the Exhibits and distribution to Settlement Class Members, are fair, adequate, and reasonable; (ii) the Settlement Classes should be finally certified; (iii) the Settlement Order and Judgment should be entered; and (iv) the application of Class Counsel for Attorney's Fees should be approved.
- 1.29 "**Settlement Order and Judgment**" shall mean the order and judgment to be entered after the Settlement Hearing and pursuant to Wyo. R. Civ. P. 23(d), finding that the Settlement Class Members are bound by the settlement approved by the Court; finding that the Settlement Class should be finally certified; approving the terms of the settlement as set forth in this Agreement; entering judgment as to the composition of the Settlement Class; and approving Class Counsel's application for Attorney's Fees to be paid from the Settlement Amount. The Plaintiffs and Berry Petroleum agree that the: "Settlement Order and Judgment" entered pursuant to this Agreement shall be a Final Judgment as defined by Wyo. R. Civ. P. 54(b), and further agree that the form of order will so provide for entry of final judgment as to disposition of the Settled Claims and approved expenses in accordance with Rule 54(b).

- 1.30 **"Uncashed Settlement Class Members"** shall mean those Settlement Class Members, if any, whose Distribution Checks are not endorsed and presented to payor banks within 180 days after the Distribution Date.
- 1.31 **"Valuation Claims"** shall mean all claims of any nature, whether in tort or contract or arising under statutes, regulations, or other authority, and whether equitable, legal or arising under any other legal authority or common law, which Plaintiffs or the Settlement Class asserted or could have asserted in the Class Suit and associated with the royalty value and measurement of any and all Shallow Gas produced from or attributable to the Producing Leases from Existing Wells or New Wells for which Berry Petroleum paid or pays Royalties to Settlement Class Members.
- 1.32 **"Berry Petroleum Suit"** shall mean all individual claims and Settlement Class Claims as alleged in the Class Suit against Berry Petroleum.

Any defined terms contained in this Agreement are incorporated by reference in this Paragraph 1 ("Definitions") unless otherwise defined in the Definitions.

2.0 SETTLEMENT

The parties agree to the settlement and release of all Settled Claims, whether or not pled or alleged against Berry Petroleum, under the following terms and conditions:

2.1 Preliminary Approval Hearing; Determination of Portion of Total Settlement Amount Due to Settlement Class Members

The Parties agree (i) no other parties except Settlement Class Members and Berry Petroleum will be bound by holdings made in the Berry Petroleum Suit to effectuate this Agreement and Berry Petroleum shall be bound only as to those matters related to the Settled Claims for the Existing Wells on which Berry Petroleum paid Royalties; and (ii) the formation of a Settlement Class for the Settled Claims is not and shall not be construed or used as an admission regarding any fact or any substantive or procedural issue.

Berry Petroleum shall provide the last known addresses, tax identification numbers, to the extent available to Berry Petroleum, and internal owner numbers for Potential Class

Members maintained in its corporate records to Plaintiffs' Counsel as soon as reasonably practicable but no later than five business days after the date this Agreement is fully executed.

For each Potential Class Member, Berry Petroleum shall provide Class Counsel with ownership information, accounting information, sufficient data and supporting documentation (in both hard copy and usable electronic form) for Class Counsel to administer this settlement and calculate the allocation of settlement proceeds to Settlement Class Members. Allocation shall be based upon a reasonable estimate of the extent to which Royalties paid by Berry Petroleum through March 31, 2006 vary from the amount of Royalties which would have been paid had the applicable Royalty Payment Methodology for each Royalty Payee been in effect.

Class Counsel shall have the right to inspect, review and confirm all data and documentation provided by Berry Petroleum, subject to the Confidentiality Agreement executed by Class Counsel and counsel for Berry Petroleum in connection with settlement negotiations, except to the extent required by the Court to evaluate the Settlement Agreement.

Prior to the Settlement Hearing, the Parties shall consult upon the amounts to be paid to each of those Potential Class Members but the Plaintiffs and Class Counsel shall make the final determination of those amounts, subject to the approval of the Court.

Notwithstanding anything to the contrary, Plaintiffs and Berry Petroleum hereby agree and acknowledge that this Agreement and any of its terms shall not be admissible, estop or be used by either party in this proceeding or others for any purpose other than to carry out this settlement. Berry Petroleum shall not be estopped or precluded in any way from contesting the appropriateness or manageability of a class or certification of a class for any purpose other than to carry out this settlement.

2.2 Permissible Attorney's Fees; Payment

Plaintiffs represent to Berry Petroleum that the portion of the Settlement Amount identified in Paragraph 1.23.2 shall pay all Attorney's Fees, costs and expenses of administering

this settlement subject to approval of this Agreement by the Court as embodied in the Settlement Order and Judgment.

2.3 Berry Petroleum's Obligation to Pay Settlement Amount

Berry Petroleum shall deposit the Settlement Amount, less any portion of said amount attributable to Opt-Out Claimants, by wire transfer to a trust account designated by Class Counsel within two business days of the occurrence of (a) the Approval Event, and (b) receipt of written notice from Class Counsel that Distribution Checks are ready to be mailed to Settlement Class Members. Interest earned on the Settlement Amount, if any, shall be treated as interest earned on an IOLTA account and distributed accordingly. In no event shall Class Counsel receive or benefit from any interest earned on such account. Upon receipt of Berry Petroleum's wire transfer of the net Settlement Amount, Berry Petroleum shall have fully complied with its obligations as to past Settled Claims.

Plaintiffs' Counsel will provide Berry Petroleum, within five (5) days after entry of the Settlement Order and Judgment, an itemization of the portions of the Settlement Amount attributable to Opt-Out Claimants. Within 240 days after the Distribution Date, any amounts attributable to Uncashed Settlement Class Members shall be paid to the State of Wyoming pursuant to the Wyoming Uniform Unclaimed Property Act, Wyo. Stat. § 34-24-101, et seq. A list of Uncashed Settlement Class Members shall be provided to Berry Petroleum by Class Counsel within 260 days after the Approval Event.

2.4 Filing/Recording Settlement Order and Judgment

After the Approval Event, Berry Petroleum may, at its own option and expense, file a copy of the Settlement Order and Judgment, including this Agreement and all Exhibits, and may also file at its sole election and expense a short form of notice of the Settlement Order and Judgment with the appropriate County Clerks and Recorders, accompanied by the legal descriptions of the lands subject to the leases or overriding royalty interests under which Berry Petroleum paid Royalties to Settlement Class Members, and which includes a reference to the Settlement Order and Judgment in the Court's docket, in order to assure notice of this Agreement to successors and, assigns of the Parties.

2.5 Entry of Settlement Order and Judgment

Plaintiffs and Plaintiffs' Counsel acknowledge that they will take all steps necessary, individually and jointly, to obtain entry of (1) the Preliminary Approval Order with respect to the Settled Claims and (2) the Settlement Order and Judgment on the Settled Claims for the Class Suit. The parties further agree that upon the Approval Event and wire transfer of the net Settlement Amount they shall stipulate to and cooperate to obtain an Order of Dismissal with Prejudice of the Settled Claims.

2.6 Request for Exclusion by Potential Class Members

Any Potential Class Member may request not to participate as a Settlement Class Member by submitting a timely request for exclusion in accordance with the Preliminary Approval Order and the Notice of Proposed Class Action Settlement, provided however, a Potential Class Member who elects to opt-out must opt-out as to all of that Opt-Out Claimant's interest in all lease(s) containing the same or similar terms.

2.6.1 Any Potential Class Member who submits a timely request for exclusion, and who does not revoke that request for exclusion in writing prior to the Settlement Hearing, is an Opt-Out Claimant. An Opt-Out Claimant is deemed to have waived any and all claims to any part of Berry Petroleum's Payable Settlement Amount attributable to those opt-out claims.

2.6.2 A Potential Class Member who submits a timely request for exclusion, but who thereafter revokes that request for exclusion in writing prior to the Settlement Hearing, will be deemed to be a Settlement Class Member and not an Opt-Out Claimant.

2.6.3 The Plaintiffs agree to (i) participate as Settlement Class Members; (ii) not request exclusion; (iii) not object to the Court's approval of this Agreement; and (iv) affirmatively present their support for final judicial approval of this Agreement.

2.6.4 Neither Plaintiffs, Class Counsel, Berry Petroleum nor Berry Petroleum's Counsel shall in any way encourage or counsel any Potential Class Members

to opt out of the class, object to the class, appeal from an order approving the class or seek to reduce the size of the class except as to those persons identified in writing between Class Counsel and Berry Petroleum's counsel.

2.6.5 Plaintiffs and Berry Petroleum waive any right to appeal or collaterally attack the Settlement Order and Judgment.

2.6.6 No later than three business days prior to the final district court hearing on this Settlement Agreement, Class Counsel and Berry Petroleum shall exchange with one another by facsimile a list of all objections and requests to opt out of the Settlement Class which have been received from Potential Class Members.

2.7 Entry of Judgment

It is intended that the Settlement Order and Judgment shall provide with respect to all Settled Claims, that Berry Petroleum's liability for the Settled Claims shall be extinguished.

2.8 Release of Settled Claims

Following the Approval Event, and upon Berry Petroleum's payment of the net Settlement Amount as provided in Paragraph 2.3, Plaintiffs, and each member of the Settlement Class, and their respective heirs, assigns, trustees, executors, administrators and agents, agree that they and each of them hereby release, acquit, hold harmless and forever discharge Berry Petroleum and its parent, subsidiaries, affiliates, divisions, officers, directors, shareholders, employees, agents and attorneys and any other working interest owners on whose behalf Berry Petroleum paid Royalties (collectively, the "Additional Released Parties") to the fullest extent permitted by law, for and from any and all Settled Claims which they now hold, whether existing or contingent, known or unknown, asserted or unasserted and which were or could have been asserted in the Class Suit. Berry Petroleum has provided to Plaintiffs' counsel a written list of the Working interest owners on whose behalf Berry Petroleum has paid Royalties.

2.9 Court's Settlement Orders

The Plaintiffs and Berry Petroleum further agree, and the Court's order shall provide that:

- 2.9.1 As of the Approval Event, any Settlement Class Member who has not timely and properly opted out of the Class shall be deemed, by that fact, to have released Berry Petroleum whether or not the Settlement Class Member endorses and presents a Distribution Check.
- 2.9.2 The foregoing release of the Settlement Class Claims made by Plaintiffs and Settlement Class Members is effective to release any interests or claims of Plaintiffs' Counsel against Berry Petroleum with respect to the Settlement Class Claims and Settled Claims.
- 2.9.3 As of the Approval Event, Settlement Class Members shall be deemed, by that fact, to have agreed and accepted prospectively the provisions of Paragraph 2.8.
- 2.9.4 The issues and claims settled involve the computation and payment of royalties. Neither the pleadings in the Berry Petroleum Suit nor this Agreement raise or address (i) issues or claims with respect to surface damages, or (ii) issues or claims with respect to communitization, pooling or unitization. Such issues or claims are not part of this Agreement and are also excluded from the Court's Settlement Order and Judgment.
- 2.9.5 The release and agreements set forth herein shall constitute a full and complete defense to any action, claim or proceedings brought by any Settlement Class Members, and to the fullest extent permitted by law their heirs, trustees, executors, administrators, agents, successors and assigns for such claims, except for any action to enforce the terms of this Agreement.

3.0 EFFECT OF DISAPPROVAL

The Parties further agree as follows:

3.1 District Court Disapproval

If for any reason the Settlement Order and Judgment is not approved or entered by the District Court:

- 3.1.1 This Agreement shall terminate;

3.1.2 Any order(s) or judgment(s) entered pursuant to this Agreement shall be vacated;

3.1.3 The Class Suit against Berry Petroleum shall proceed as if this Agreement and its terms, had never been executed; and

3.1.4 This Settlement Agreement, its terms and all negotiations relating thereto may not be used in this Class Suit, any other proceedings or otherwise for any purpose except to the extent necessary to enforce this Agreement.

3.2 Appeal Following District Court Approval

In the event that the Settlement Order and Judgment entered by the District Court is appealed by any Potential Class Members based upon an objection duly made to the Proposed Class Settlement, then:

3.2.1 Either Plaintiffs or Berry Petroleum shall have the right in their respective discretion, to declare this Agreement terminated by written notice to the other Party within twenty (20) days of the filing of such appeal, and if either Party does so, the provisions of 3.1.2 through 3.1.4 shall apply.

3.2.2 The Parties may agree to waive any unsatisfied condition for release of the Payable Settlement Sum and otherwise agree to consummate this Agreement if no stay of the Settlement Order and Judgment has been entered.

3.2.3 If the parties do not take the actions described in 3.2.1 or 3.2.2, then this Settlement Agreement shall remain in effect pending such appeal.

4.0 MISCELLANEOUS

4.1 For the purposes of this Agreement, any notice required or permitted to be given pursuant to this Agreement shall only be deemed to have been given if provided in writing by (i) personal delivery, (ii) certified mail, return receipt requested or (iii) overnight delivery (with delivery confirmation) addressed to the respective party at the address below:

Berry Petroleum Company:

Randall B. Reed
Dray, Dyekeman, Reed &

Laura K. McAvoy
Musick, Peele & Garrett LLP

Healey, P.C.
204 East 22nd Street
Cheyenne, WY 82001
(307) 634-8891
(307) 634-8902 (fax)

2801 Townsgate Road, Suite 200
Westlake Village, CA 91361
(805) 418-3115
(805) 418-3101 (fax)

Plaintiffs/Class Counsel:

Steven F. Freudenthal
Freudenthal & Bonds, P.C.
129 East Carlson Street
P.O. Box 387
Cheyenne, WY 82003-0387
(307) 634-2240
(307) 634-0336 (fax)

In addition to the above, the Parties agree that all notices shall be sent by facsimile to the fax numbers noted above (with receipt confirmed) in addition to the other required notice. The address for any party may be changed by providing notice in the same manner as set forth above.

- 4.2 Nothing in this Agreement shall be construed to create a partnership or other association between the Parties with respect to the actions contemplated in this Agreement.
- 4.3 This Agreement and the attached Exhibits set forth the entire agreement among the Parties concerning the Berry Petroleum Settlement and the resolution of the claims asserted therein. This Agreement and the attached Exhibits are intended to be a fully integrated agreement of the Parties, and there are no covenants, promises, agreements, conditions or other understandings, stated or implied, oral or written, with respect to the subject matter except as set forth in the Agreement. All previous covenants, promises, agreements, conditions or other understandings, either oral or written, with respect to the subject matter are deemed superseded by this Agreement. No subsequent amendments or alterations of the terms of this Agreement shall be valid unless made in writing and signed by the authorized representatives of all the Parties. The following Exhibits referred to herein are incorporated by this reference and are made a part of the Agreement as though fully stated in the Agreement:

Exhibit A: List of Potential Class Members-Royalty Payees
Exhibit B: Existing Wells
Exhibit C: Producing Leases

- 4.4 The Parties agree to execute documents or instruments as may be required and take whatever action may be reasonably necessary to effectuate the purpose and intent of this Agreement.
- 4.5 This Agreement shall be binding upon and inure to the benefit of the Parties, the Settlement Class Members and their respective successors and assigns.
- 4.6 The waiver by any Party to this Agreement of the breach of any provision shall not constitute a waiver of any subsequent breach of the same or any other provision.
- 4.7 The Parties have entered into this Agreement after investigation of the facts, examination of the respective claims, controversies and disputes (whether asserted or unasserted) and defenses, due consultation with counsel and other experts, have read and fully understand the terms of this Agreement, and are fully advised and satisfied with the terms of the settlement and release and represent that the person signing on behalf of each such party has full authority to bind such party to the terms set forth herein.
- 4.8 The Parties agree that the settlement embodied in this Agreement, and all actions taken pursuant hereto, is made to compromise and settle the Settled Claims without further limitation. It is not and shall not be interpreted as an admission of any liability or wrongdoing by Berry Petroleum, nor shall it be construed as an admission of any strength or weakness in the Class Claims against Berry Petroleum. Berry Petroleum believes that it has properly paid and reported royalties in Wyoming, and Berry Petroleum denies any wrongdoing or liability. No statement appearing in this Agreement or in any Exhibit to this Agreement or any other document to carry out the terms of this Agreement is, or should be interpreted as, an admission or statement against interest by Berry Petroleum. This Settlement Agreement, its terms and all negotiations relating thereto, shall not be used by any person in this Class Suit, in any other proceedings

or otherwise for any purpose except to the extent necessary to enforce this Agreement.

- 4.9 Prior to any Party or Settlement Class Member filing any suit, motion or action to enforce the terms of this Agreement, the Party shall give notice of any alleged breach or default to the other Party as set forth in Paragraph 4.1 and give that Party thirty (30) days within which to cure or resolve any dispute.
- 4.10 In the event of a dispute over the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in enforcing the provisions of the Agreement.
- 4.11 Each of the Parties shall bear its own costs, expenses, and attorney's fees in connection with this settlement and performance of the obligations imposed hereunder, except as otherwise specifically provided in this Agreement.
- 4.12 In construing this Agreement and in determining the rights of the Parties and Settlement Class Members, no Party shall be deemed to have solely drafted or created the Agreement.
- 4.13 This Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming without regard to any conflict of laws principle that would cause this Agreement to be construed in accordance with the laws of any other State.
- 4.14 The Parties agree that the provisions of this Agreement are not severable.
- 4.15 This Agreement may be signed in original counterparts, and when so executed by each party shall for all purposes be considered an original.
- 4.16 The provisions of this Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

Executed effective the 15th day of October, 2011.

4.14 The Parties agree that the provisions of this Agreement are not severable.

4.15 This Agreement may be signed in original counterparts, and when so executed by each party shall for all purposes be considered an original.

4.16 The provisions of this Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

Executed effective the 15th day of October, 2011.

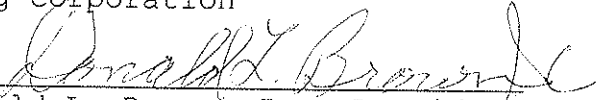
Berry Petroleum Company

By: *Naima O. O'Leary*

Title: *Vice President & General Counsel*

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Plaintiffs And Designated Class Representatives
Oedekoven Water & Hot Oil, Inc.,
a Wyoming corporation

By: 
Donald L. Brown, Jr., President

Fred L. and Mary Ann Oedekoven Family
Trust under agreement dated September 12,
1995, as amended

By: 
Fred L. Oedekoven, Trustee

Don and Betty Brown Family Trust under
agreement dated September 12, 1995, as amended

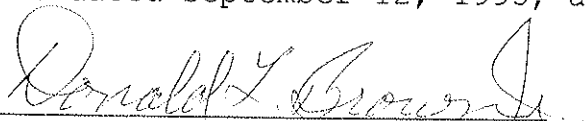
By: 
Donald L. Brown, Jr., Trustee

Exhibit A: Royalty Payees

Exhibit B: Existing Wells

Exhibit C: Producing Leases