

**OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

**MEMORANDUM OF UNDERSTANDING REGARDING PERFORMANCE OF
PUBLIC PROJECT IN LIEU OF FINE RELATED TO ORDER NO. 1V-372**

This Memorandum of Understanding Regarding Performance of Public Project in Lieu of Fine ("MOU") is entered into among the Colorado Oil and Gas Conservation Commission ("Commission" or "COGCC"), Berry Petroleum Company ("Berry") and the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise ("CRWCD"), as fiscal agent for the Middle Colorado River Watershed Partnership. The COGCC has the authority to enter into this MOU pursuant to C.R.S. §§ 34-60-101, *et seq.* and 29-1-203. The COGCC approved the performance of a public project in lieu of a fine in this matter pursuant to Order No. 1V-372. The COGCC, Berry and CRWCD are sometimes collectively referred to herein as "Parties".

I. BACKGROUND

A. The COGCC staff and Berry entered into an Administrative Order by Consent, under Commission Order No. 1V-372, ("Order") in this matter which was approved by the COGCC on June 30, 2011. The Order, among other things, provided that Berry should pay \$73,000 to a public project in Garfield County, Colorado in accordance with Rule 523a. A copy of the Order is attached as Exhibit "A" to this MOU.

B. The Parties have agreed that the project described below meets the requirements of the Order.

II. STATEMENT OF PURPOSE

A. The mutual objectives of the Parties entering this MOU are to agree on rights, obligations and responsibilities of the relevant public project.

B. Except as specifically stated herein, this MOU is not intended to, and does not, modify or rescind any obligation imposed on Berry by the terms of the Order or any other provisions of the Order.

III. PAYMENT STRUCTURE

A. The Parties agree that Berry shall make a one time payment to CRWCD of \$73,000 ("Funds"), on behalf of the Middle Colorado River Watershed Partnership, pursuant to this MOU as full compliance with public project portion of the Order. Such payment shall be made by Berry on or before sixty days after the effective date of this MOU.

B. Within 10 days of its receipt of payment of the Funds, CRWCD shall acknowledge such receipt by letter addressed to the COGCC and Berry.

IV. APPROVED PUBLIC PROJECT

The Parties have agreed to the following public project in accordance with the terms of the Order:

A. At the discretion of the Middle Colorado River Watershed Partnership, the Funds may be earmarked and used in the assessment of the Middle Colorado River watershed and to support the application to the Environmental Protection Agency for matching funds pursuant to Section 319 (h) of the Clean Water Act. A copy of the Middle Colorado River Watershed Partnership's Watershed Plan and Assessment Project Proposal for the Middle Colorado River Watershed Plan is attached as Exhibit "B" to this MOU.

B. In addition, or in the alternative and at the discretion of the Middle Colorado River Watershed Partnership, the Funds may be earmarked and used for some direct environmental improvement or remediation programs, such as tamarisk removal and re-vegetation. Any such programs shall be conducted only with the support of the watershed membership, including the energy industry.

C. CRWCD shall use the Funds in accordance with this Article IV on or before January 31, 2013. Upon expenditure of the Funds, CRWCD shall notify the other Parties.

D. The public project must be completed to the satisfaction of the Commission by January 31, 2013. Berry shall submit a Public Project Completion Report to the Commission by that date, describing the project and the associated benefits, itemizing and documenting the costs, and certifying that the project was completed in compliance with this MOU and Commission Rule 523.e.

V. MISCELLANEOUS

A. Berry agrees not to claim any funds expended in the performance of its obligations under this MOU as deductible business expenses for purposes of federal taxes.

B. The Parties agree not to challenge the terms and conditions of this MOU in any proceeding before any administrative body or judicial forum. Berry agrees not to challenge the authority of the other Parties to execute this MOU.

C. Nothing in this MOU shall be construed to create any rights in, or grant any cause of action to, any person not a party to this MOU. The preceding sentence shall not be construed to waive or nullify the claims any person not a signatory party to this MOU may have under applicable law.

D. Except as specifically stated herein, nothing in this MOU shall be construed to modify the Order or to relieve Berry from its obligations to comply with the terms of the Order and the Oil and Gas Conservation Act.

E. This MOU may be modified only upon mutual written agreement of the Parties. Consent to modification of this MOU for purposes of Berry's compliance with the Order shall not be unreasonably withheld by any Party.

F. This MOU applies to and is binding upon the Parties, their agents, employees, successors and assigns.

G. Termination of this MOU shall be effected by (1) receipt by the Parties of notice that the Funds have been received by CRWCD as provided under Article III B, and (2) receipt by the Parties of notice that the Funds have been expended by CRWCD in accordance with Article IV. Termination of this MOU may also be effected at any time by mutual consent of the Parties.

H. Counterparts; Facsimile. This MOU may be executed in counterparts each of which shall be deemed the original, all of which together shall constitute one and the same MOU. A faxed copy or other electronic copy shall be deemed as an original.

VI. NOTICES

Unless otherwise specified, any notice or other communication required under this MOU shall be to the following:

For the COGCC:

Debbie Baldwin
Environmental Supervisor
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street
Suite 801
Denver, Colorado 80203
Telephone: 303-894-2100; ext. 5111
Debbie.Baldwin@state.co.us

Chris Canfield
Environmental Protection Specialist
COGCC Rifle Office
707 Wapiti Court, Suite 204
Rifle, Colorado 81650
Telephone: 970-625-2497; ext. 3
Chris.Canfield@state.co.us

For Berry:

Chris Freeman
Regional Manager
Environmental & Regulatory Affairs
Berry Petroleum Company
1999 Broadway, Suite 3700
Denver, Colorado 80202
Telephone: 303-825-3344
cpf@bry.com

For CRWCD:

Chris Treese
External Affairs
Colorado River Water Conservation District, acting by and through its Colorado
River Water Projects Enterprise
201 Centennial
Suite 200
Glenwood Springs, Colorado 81601
Telephone: 970-945-8522
ctreese@crwcd.org

The signatories to this MOU represent that they have authority to consent to this MOU for their respective Parties.

WHEREFORE, the Parties hereby enter into this MOU, effective as of the last date set forth below:

(remainder of this page intentionally left blank)

COLORADO OIL AND GAS CONSERVATION COMMISSION

By: _____

Date: _____

BERRY PETROLEUM COMPANY

By: _____

Date: _____

COLORADO RIVER WATER CONSERVATION DISTRICT, acting by and through its
Colorado River Water Projects Enterprise

By: _____

Date: _____