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GD01-001

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GD01-001

DOCKET NO. GD01-001

In the Matter of — IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED & FERTILIZER

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
2/13/01	Filed and Docketed;
3/29/01	Order For and Notice of Hearing;
4/4/01	Proof of Claim; Home Federal;
4/11/01	Proof of Claim;
5/1/01	Affidavits of Publication;
5/18/01	Transcript of Hearing held 5/3/01;
5/24/01	Affidavits of Publication;
6/1/01	Order Accepting Bids;
6/8/01	Notice and Motion to Reopen for Further Evidence;
6/8/01	Brief in Support of Staff's Recommendations;
6/11/01	Brief of Alvin Scott, Jeff Scott and Lucille Helmbrecht;
6/13/01	Disbursement Sheets;
6/19/01	Motion to Reopen for Further Evidence;
6/21/01	Affidavit of Publication;
6/28/01	Affidavit of Dr. Richard C. Skene;
7/2/01	Weight and Scale Tickets;
7/2/01	Brief of Home Federal in Opposition to Staff's Recommendations;
7/3/01	Certificate of Service of Affidavit of Dr. Richard C. Skene;
7/9/01	Staff's Reply Brief;
7/11/01	Reply Brief of Alvin Scott, Jeff Scott and Lucille Helmbrecht;
7/12/01	Order Granting Motion to Reopen Record;
7/16/01	Order Denying Request for Contract Buy Out;
8/7/01	Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver;

STATE PUBLISHING CO., PIERRE, SOUTH DAKOTA—SMEAD 99 SP14130

2/16/01	Notice of Entry of Order Approving Proposed Findings of Fact, Conclusions of Law and Decision of Receiver
4/2/03	Docket Closed.

GD01-001

STIPULATION REGARDING GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA: MC COOK FEED & FERTILIZER

This agreement is effective upon the signing of this Stipulation, 2001, between Mc Cook Feed & Fertilizer (Company), PO Box 160, Freeman, South Dakota 57029-0160 and the South Dakota Public Utilities Commission (Commission), 500 East Capitol Avenue, Pierre, South Dakota 57501.

Whereas, the Company is duly licensed by the Commission as a grain dealer and a public grain warehouse. The grain dealer's license currently in effect is numbered 0210 and expires at midnight on June 30, 2001; the public grain warehouse license currently in effect is numbered 0210 and expires at midnight on June 30, 2001; and

Whereas, information furnished to Commission and its staff indicates that currently the Company's financial situation is as follows: (1) the Company's bank has suspended the Company's line of credit; (2) there are currently outstanding checks to producers in the approximate amount of $108,000 for which there are no apparent resources to satisfy payment; (3) there is approximately 13,300 bushels of corn and 800 bushels of soybeans that are priced and unpaid; and (4) there is approximately 38,800 bushels of corn and 16,900 bushels of soybeans in voluntary credit sales contracts with the Company which were unsettled; and

Whereas, Commission staff has questioned the ability of the Company to continue operating as a grain dealer and public grain warehouse without further financial resources and supervision.

NOW THEREFORE, based on the facts as recited in this Stipulation and in consideration of the mutual benefits to be derived therefrom, the parties to this Stipulation agree as follows:

1. The Company will and hereby does voluntarily relinquish its grain dealer's and public grain warehouse licenses to the Commission, including all rights and benefits bestowed by such licenses. The Commission hereby accepts this relinquishment of the Company's grain dealer's and public warehouse licenses.

2. The Commission under its supervisory powers provided by SDCL 49-45-6 shall dictate the term and scope of all grain bank related transactions.

3. The Company is insolvent as described by SDCL 49-45-18 and the Commission shall take immediate possession of the facilty.

4. No grain shall enter or leave the facility without written consent of the Commission as of the signing of this Stipulation.

5. The Company agrees to provide free and open access to all of its records to the Commission or any of its officers or employees while the provisional, limited license as described

in this Stipulation is in effect.

6. It is understood and agreed that the Company, as of the signing of the Stipulation, will no longer accept any grain for storage or issue warehouse receipts for grain.

7. The Commission by entering into this stipulation is only addressing the licensing and financial condition of the Company raised by the apparent facts as recited in this Stipulation and does not act as a guarantor, trustee, or in any other fiduciary capacity with regard to matters involving the quality of grain which may be stored or otherwise handled by the Company under either of the licenses which are the subject of this Stipulation. It is understood and agreed that as to the quality of any grain stored or received by the Company, the Company assumes all liability for claims which may arise as to grain quality.

8. By entering into this Stipulation, the signator on behalf of the Company represents that he is duly authorized by the Company to enter into it and act on behalf of the Company.

9. A hearing will be held within 15 days with respect to this Stipulation and the status of the Company's grain dealer and public warehouse lincenses.

Dated this 13 day of February, 2001.

J T Mulder president

Jeff Mulder, President
Mc Cook Feed & Fertilizer

William C. Bullard 2/12/01

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUTCHINSON)

On this 13th day of February, 2001, before me Loren D. Heckenlaible, a Notary Public within and for said County and State, personally appeared Jeff Mulder, who acknowledged himself to be the President of Mc Cook Feed & Fertilizer, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same on behalf of Mc Cook Feed & Fertilizer, as President.

Loren D. Heckenlaible
Notary Public

My Commission Expires:

LOREN D. HECKENLAIBLE
Notary Public, South Dakota
My Commission Expires June 7, 2006

0162994

(SEAL)

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

On this 12th day of February, 2001, before me Mary Giddings, a Notary Public within and for said County and State, personally appeared William Bullard, Jr., Executive Director of the South Dakota Public Utilities Commission, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same as Executive Director of the South Dakota Public Utilities Commission.

Mary R Giddings
Notary Public

My Commission Expires:
January 9, 2007
(SEAL)

0162.99.5

YD01-001

WOODS, FULLER, SHULTZ & SMITH P.C.
LAWYERS
300 SOUTH PHILLIPS AVENUE, SUITE 300
POST OFFICE BOX 5027
SIOUX FALLS, SOUTH DAKOTA 57117-5027
TELEPHONE (605) 336-3890
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TIMOTHY R. SHATTUCK
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SUSAN M. SABERS
WILLIAM G. BECK
DEBRA S. SITTIG
DANIEL J. HARMELINK
JENNIFER L. WOLLMAN
LISA MARSHIK PROSTROLLO

FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1899-1983)
HOWELL L. FULLER (1909-1981)
JOHN B. SHULTZ (1912-1975)

February 28, 2001

Kelly D. Frazier
SD Public Utilities Commission
Capitol Building - First Floor
500 East Capitol Avenue
Pierre, South Dakota 57501

RECEIVED
MAR 01 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Home Federal Savings Bank/Freeman Fertilizer

Dear Kelly:

Thank you for forwarding copies of the forms Delayed Pricing Contract and Deferred Payment Grain Purchase Agreement to me. Based upon the language of the contracts, and consistent with SDCL 57A-9-203, Home Federal is claiming a superior valid and perfected first security interest in any grain under these contracts by virtue of its prior and perfected security interest. Home Federal is not waiving its interest in any other grain stored in the elevator. I am enclosing a copy of our Security Agreement and filed UCC-1 for your review.

Please advise at your earliest opportunity the number of bushels and type of commodities held in inventory by Freeman Fertilizer, Inc.

Sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.

Roger W. Damgaard

Enclosures
cc: Home Federal

Date encrypted by Julian Code:
EXAMPLE: 87 182 09 00243
87: Year
182: Number of days counted from Jan. 1
09: Time of day filed (9:00 a.m.)
00243: Document number

Fee $ 14
Cash ☐
Check ☐
Account #

For Secretary of State Office Use Only
FILING STAMP 98002110148?
1/2/98

PLEASE TYPE THE INFORMATION ON THIS FORM ACCORDING TO ALL INSTRUCTIONS PRINTED ON THE LAST PAGE OF THE UCC 1 FORM

Debtor Name	Social Security # or Employer ID #	Secured Party and Address
1. FREEMAN FERTILIZER CO. INC	46-0372028	HOME FEDERAL SAVINGS BANK 225 S MAIN AVE SIOUX FALLS, SD 57104 903813
2.		
3.		
4.		Assignee of Secured Party and Address

Mailing Address

141 JUNIPER ST S, PO BOX 160
SIOUX FALLS, SD 57029

This Financing Statement covers the following types (or items) of property: SEE ATTACHED SHEET FOR COMPLETE DESCRIPTION.

Describe real estate: *If collateral is crops*, the above described crops are growing or are to be grown on, OR *if collateral is goods which are or are to become fixtures*, the above goods are affixed or to be affixed to:

30

Check (X) if covered: ☒ *PROCEEDS of collateral are also covered.* ☒ *PRODUCTS of collateral are also covered.*

Use the following spaces only for Farm Products requiring EFFECTIVE FINANCING STATEMENT (EFS) filing in accordance with the Food Security Act of 1985.

FARM PRODUCT	CODE	YEAR	QUANTITY	COUNTY CODE	LOCATION IN COUNTY OR FURTHER DESCRIPTION

Pay proceeds to Debtor and Secured Party unless otherwise checked: ☒ Secured Party only ☐ Debtor only

Number of Additional Sheets, if any: 1

Filed with the Secretary of State as ☒ UCC 1 ☐ EFS ☐ BOTH

FREEMAN FERTILIZER CO. INC
BY: [signature]
JEFFREY W MULDER, PRESIDENT
BY: [signature]
JANICE M MULDER, SECRETARY
Signature(s) of Debtor(s)

HOME FEDERAL SAVINGS BANK
BY: [signature] VP
Signature of Secured Party

FOR TERMINATION ONLY:
To use Acknowledgment Copy as a Termination Statement, Secured Party must date and sign below:

Termination Statement dated _____ Signed _____
Signature of Secured Party

UCC 1 Form
Revised 9/88
ORIGINAL—Central Filing System

STATE OF SOUTH DAKOTA FINANCING STATEMENT-APPROVED STANDARD FORM
Secretary of State
500 E. Capitol • Pierre, SD 57501-5089 • 605-773-4422

Bankers Systems, Inc., St. Cloud, MN Form UCC1EFLAZ-SD 1/7/94

0162.93.7

980021101487
1/2/98

INSTRUCTIONS
1. Remove Secured Party and Debtor copies and send other 3 copies to the filing officer.
2. At the time of original filing, filing officer will return the third (3rd) copy as an acknowledgment.
3. When filling out this form be sure to indicate state name in appropriate space.
4. Be sure to file this form with original financing statement.

ADDENDUM TO UNIFORM COMMERCIAL CODE FINANCING STATEMENTS

STATE OF SOUTH DAKOTA | TOTAL NUMBER OF SHEETS 2

☒ The Financing Statement to which this addendum is attached covers the types (or items) of property indicated below that I now own and that I may own in the future, together with all parts, accessories, repairs, improvements, and accessions to the property, wherever it is located, and all proceeds and products from the property:

☒ **Inventory:** All inventory which I hold for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

☒ **Equipment:** All equipment including, but not limited to, all machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and recordkeeping equipment, and parts and tools. Any equipment described in a list or schedule which I give to you will also be included in the secured property, but such a list is not necessary for a valid security interest in my equipment.

☐ **Farm Products:** All farm products including, but not limited to:
(a) all poultry and livestock and their young, along with their products, produce and replacements;
(b) all crops, annual or perennial, and all products of the crops; and
(c) all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☒ **Accounts, Instruments, Documents, Chattel Paper and Other Rights to Payment:** All rights I have now or may have in the future to the payment of money including, but not limited to:
(a) payment for goods sold or leased or for services rendered, whether or not I have earned such payment by performance; and
(b) rights to payment arising out of all present and future debt instruments, chattel paper and loans and obligations receivable.
The above include any rights and interests (including all liens and security interests) which I may have by law or agreement against any account debtor or obligor of mine.

☒ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, applications for patents, patents, copyrights, trademarks, trade secrets, good will, trade names, customer lists, permits and franchises, and the right to use my name.

☐ **Government Payments and Programs:** All payments, accounts, general intangibles, or other benefits (including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance payments, diversion payments and conservation reserve payments) in which I now have and in the future may have any rights or interest and which arise under or as a result of any pre-existing, current or future Federal or state governmental program (including but not limited to all programs administered by the Commodity Credit Corporation and the ASCS.)

FREEMAN FERTILIZER CO. INC	HOME FEDERAL SAVINGS BANK	2
DEBTOR	SECURED PARTY	SHEET No.

(1) FILING OFFICER COPY - ALPHABETICAL

©1988 Bankers Systems, Inc., St. Cloud, MN Form UCC-ADD-LAZ 11/29/93

0162.99.8

SOUTH DAKOTA UCC / EFS CONFIRMATION

PREVIOUS DOCUMENT ID:
CURRENT DOCUMENT ID.: 9800211 01487
UCC EXPIRATION DATE.: 01/02/03

FILING DATE: 01/02/98
FILING TIME: 11:AM
EFS EXPIRATION DATE:

SECURED PARTY

HOME FEDERAL SAVINGS BANK
225 S MAIN AVE
SIOUX FALLS, SD 57104

ASSIGNEE

DEBTORS

ID: 46-0372028
FREEMAN FERTILIZER CO INC
141 JUNIPER ST S PO BOX 160
SIOUX FALLS, SD 57029

UCC COLLATERAL

30-BLANKET BUSINESS

PROCEEDS OF COLLATERAL ARE ALSO COVERED: X PRODUCTS ARE ALSO COVERED: X

FILED WITH SECRETARY OF STATE AS: UCC 1 ** STDEWIT **

FREEMAN FERTILIZER CO. INC 141 JUNIPER ST S, PO BOX 160 SIOUX FALLS, SD 57029 TAXPAYER I.D. NUMBER : 46-0372028 DEBTOR'S NAME, ADDRESS AND SSN OR TIN ("I" means each Debtor who signs.)	HOME FEDERAL SAVINGS BANK 225 S MAIN AVE SIOUX FALLS, SD 57104 SECURED PARTY'S NAME AND ADDRESS ("You" means the Secured Party, its successors and assigns.)

I am entering into this security agreement with you on DECEMBER 29, 1997 (date).

SECURED DEBTS. I agree that this security agreement will secure the payment and performance of the debts, liabilities or obligations described below that (Check one) ☒ I ☐ (name) _____ owe(s) to you now or in the future:

(Check one below):

☐ Specific Debt(s). The debt(s), liability or obligations evidenced by (describe): _____ and all extensions, renewals, refinancings, modifications and replacements of the debt, liability or obligation.

☒ All Debt(s). Except in those cases listed in the "LIMITATIONS" paragraph on page 2, each and every debt, liability and obligation of every type and description (whether such debt, liability or obligation now exists or is incurred or created in the future and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and several).

Security Interest. To secure the payment and performance of the above described Secured Debts, liabilities and obligations, I give you a security interest in all of the property described below that I now own and that I may own in the future (including, but not limited to, all parts, accessories, repairs, improvements, and accessions to the property), wherever the property is or may be located, and all proceeds and products from the property.

☒ **Inventory:** All inventory which I hold for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

☒ **Equipment:** All equipment including, but not limited to, all machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and recordkeeping equipment, and parts and tools. All equipment described in a list or schedule which I give to you will also be included in the secured property, but such a list is not necessary for a valid security interest in my equipment.

☐ **Farm Products:** All farm products including, but not limited to:
(a) all poultry and livestock and their young, along with their products, produce and replacements;
(b) all crops, annual or perennial, and all products of the crops; and
(c) all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☒ **Accounts, Instruments, Documents, Chattel Paper and Other Rights to Payment:** All rights I have now and that I may have in the future to the payment of money including, but not limited to:
(a) payment for goods and other property sold or leased or for services rendered, whether or not I have earned such payment by performance; and
(b) rights to payment arising out of all present and future debt instruments, chattel paper and loans and obligations receivable.
The above include any rights and interests (including all liens and security interests) which I may have by law or agreement against any account debtor or obligor of mine.

☒ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, applications for patents, patents, copyrights, trademarks, trade secrets, good will, trade names, customer lists, permits and franchises, and the right to use my name.

☐ **Government Payments and Programs:** All payments, accounts, general intangibles, or other benefits (including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance payments, diversion payments, and conservation reserve payments) in which I now have and in the future may have any rights or interest and which arise under or as a result of any preexisting, current or future Federal or state governmental program (including, but not limited to, all programs administered by the Commodity Credit Corporation and the ASCS).

☐ **The secured property includes, but is not limited by, the following:**

If this agreement covers timber to be cut, minerals (including oil and gas), fixtures or crops growing or to be grown, the legal description is:

I am a(n) ☐ individual ☐ partnership ☒ corporation ☐ _____

☐ If checked, file this agreement in the real estate records.

Record Owner (if not me): _____

The property will be used for ☐ personal ☒ business ☐ agricultural ☐ _____ reasons.

I AGREE TO THE TERMS SET OUT ON BOTH PAGE 1 AND PAGE 2 OF THIS AGREEMENT. I have received a copy of this document on today's date.

FREEMAN FERTILIZER CO. INC
(Debtor's Name)

By: _____
JEFFREY W MULDER

Title: PRESIDENT

By: _____
JANICE M MULDER

Title: SECRETARY

HOME FEDERAL SAVINGS BANK
(Secured Party's Name)

By: _____
GARY SIEVERDING

Title: VP/COMMERCIAL LENDING

©1988, 1990 BANKERS SYSTEMS, INC., ST. CLOUD, MN (1-800-397-2341) SECURITY AGREEMENT FORM SA 8/5/91

GENERALLY - "You" means the Secured Party identified on page 1 of this agreement. "I," "me" and "my" means *each person who signs* this security agreement as Debtor and who agrees to give the property described in this agreement as security for the Secured Debts. All terms and duties under this agreement are joint and *individual. No* modification of this security agreement is effective unless made in *writing and signed* by you and me. This security agreement remains in effect, even if the note is paid and I owe no other debt to you, *until* discharged in writing. Time is of the essence in this agreement.

APPLICABLE LAW - I agree that this security agreement will be governed by the law of the state in which you are located. If property described in this agreement is located in another state, this agreement may also, in some *circumstances*, be governed by the law of the state in which the property is located.

To the extent permitted by law, the terms of this agreement may vary applicable law. *If any provision of* applicable law may not be varied by agreement, any provision of this agreement that does not comply with that law will not be effective. If any provision of this agreement cannot be enforced according to *its terms, this fact* will not affect the enforceability of the remainder of this agreement.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the property, or to the extent this is a purchase money security interest I will acquire ownership of the property with the proceeds of this loan. I will defend it against any other claim. Your claim to the property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the property ahead of the claims of other creditors. I will not do anything to harm your position.

I will keep books, records and accounts about the property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, *which deals with* the property.

I will keep the property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. *I will not change this* specified use without your express written permission. I represent that I am the original owner of the property and, if I am not, that I have provided you with a list of prior owners of the property.

I will keep the property at my address listed on page 1 of this *agreement*, unless we agree I may keep it at another location. If the property is to be used in another state, I *will give you a list of those* states. I will not try to sell the property unless it is inventory or I receive *your written permission* to do so. If I sell the property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and *without your prior written* consent (1) a beneficial interest in the debtor is sold or transferred or (2) there is a change in either the identity or number of members of a partnership or (3) there is a change in ownership of *more than 25 percent* of the voting stock of a corporation.

I *will* pay all taxes and charges on the property as they become due. You have the right of reasonable access in order to inspect the property. I will immediately inform you of any loss or damage to the property.

LIMITATIONS - This agreement will not secure a debt described in the section entitled "Secured Debts" on page 1:

1) If you fail to make *any disclosure* of the existence of this security interest required by law for such other debt;
2) If this security interest is in my principal dwelling and you fail to provide (to all persons entitled) any *notice of right of rescission* required by law for such other debt;
3) *to the extent* that this security interest is in "household goods" and the other debt to be secured is a "consumer" loan *(as those* terms are defined in applicable federal regulations governing *unfair and deceptive* credit practices);
4) If this security interest is in margin stock subject to the *requirements* of 12 C.F.R. Section 207 or 221 and you do not obtain a *statement of purpose* if required under these regulations with respect to that debt; or
5) If this security interest is unenforceable by law with respect to that *debt*.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security *agreement: (a) payments* on any non-purchase money loan also secured by this agreement will not be deemed to apply to the purchase money loan, and (b) payments on the purchase money loan will be deemed to apply *first to the non-purchase money* portion of the loan, if any, and then to the purchase money obligations *in the order* in which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase money loan" *means any loan the proceeds* of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancings of such loan.

AUTHORITY OF SECURED PARTY TO MAKE ADVANCES AND PERFORM FOR DEBTOR - I agree to pay you on demand any sums you *advanced* on my behalf including, but not limited to, expenses incurred in collecting, insuring, conserving, or protecting the property or in any inventories, audits, inspections or other examinations by you in respect to the *property. If I fail* to pay such sums, you may do so for me, adding the amount paid to the other amounts secured by this agreement. All such sums will be due on demand and will bear interest at the highest rate provided *in any agreement*, note or other instrument evidencing the Secured Debt(s) and permitted by law at the time of the advance.

If I fail to perform any of my duties *under this security agreement*, or any mortgage, deed of trust, lien or other security interest, you may *without* notice to me perform the duties or cause them to be performed. I understand that this authorization *includes, but is not* limited to, permission to: (1) prepare, file, and sign my name to any *necessary reports* or accountings; (2) notify any account debtor of your interest in this property and tell the account debtor to make the payments to you or someone else you name, rather than me; (3) place on any *chattel paper* a note indicating your interest in the property; (4) in my name, demand, collect, receive and give a receipt for, compromise, settle, and handle any suits or other proceedings involving *the collateral*; (5) take any action you feel is necessary in order to realize on the collateral, including performing any part of a contract or endorsing it in my name; and (6) make an entry on my books *and records* showing the existence of the security agreement. Your right to perform for me shall not create an obligation to perform and your failure to perform will not preclude you from exercising any of your other *rights under* the law or this security agreement.

INSURANCE - I agree to buy insurance on the property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell *me otherwise*. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them *to you at your request*. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so.

If this agreement covers inventory, I will not dispose of it except in my *ordinary course* of business at the fair market value for the property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, *commission merchants* or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any *additional parties regarding* your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the *terms farm* products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

DEFAULT - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I *fail to keep* the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, *am declared incompetent*, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written *statement or provide any* financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) I change my name or assume an additional name without first notifying *you before making* such a change; (9) failure to plant, cultivate and harvest crops in due season; (10) if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the *conversion* of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - *If I am in default* on this agreement, you have the following remedies:

1) You may demand immediate payment of all I owe you under any obligation secured by *this agreement*.
2) You may set off any obligation I have to you against any right I have to the payment of money from you.
3) You may demand more security or new *parties obligated to pay* any debt I owe you as a condition of giving up any other remedy.
4) You may make use of any remedy you have under state or federal law.
5) If I *default* by failing to pay taxes or other charges, you may pay them (but you are not required to do so). If you do, I will repay to you the amount you paid plus interest at the highest contract *rate*.
6) You may require me to gather the property and make it available to you in a reasonable fashion.
7) You *may repossess the property* and sell it as provided by law. You may repossess the property so long as the repossession does not involve a breach of the peace or an illegal entry onto *my property. You may sell* the property as provided by law. You may apply what you receive from the sale of the property to: your expenses; your reasonable attorneys' fees and legal expenses *(where not prohibited by law)*; any debt I owe you. If what you receive from the sale of the property does not satisfy the debts, you may take me to court to recover the difference (where permitted by law).

   I agree that 10 days written notice sent to my address listed on page 1 by first class mail will be reasonable notice to me under the Uniform Commercial Code.

   If any items not otherwise subject to this agreement are contained in the property when you take possession, you may hold these items for me at my risk and you will not be liable for taking possession of them.
8) *In some cases*, you may keep the property to satisfy the debt. You may enter upon and take possession of all or any part of my property, so long as you do not breach the peace or illegally enter onto the *property, including lands*, plants, buildings, machinery, and equipment as may be necessary to permit you to manufacture, produce, process, store or sell or complete the manufacture, production, *processing, storing or sale* of any of the property and to use and operate the property for the length of time you feel is necessary to protect your interest, all without payment or compensation to me.

By choosing any one or more of these remedies, you do not waive *your right* to later use any other remedy. You do not waive a default if you choose not to use any remedy, and, by electing not to use any remedy, you do not waive your right to later consider the event a *default and to immediately* use any remedies if it continues or occurs again.

FILING - A carbon, photographic or other reproduction of this security agreement or the *financing* statement covering the property described in this agreement may be used as a financing statement where allowed by law. Where permitted by law, you may file a financing statement *which does not contain my* signature, covering the property secured by this agreement.

CO-MAKERS - If more than one of us has signed this agreement, we are *all obligated equally under the agreement*. You may sue any one of us or any of us together if this agreement is violated. You do not have to tell me if any term of the agreement has not been carried out. You may release *any co-signer and* I will still be obligated under this agreement. You may release any of the security and I will still be obligated under this agreement. Waiver by you of any of your rights will not *affect my duties* under this agreement. Extending this agreement or new obligations under this agreement, will not affect my duty under the agreement.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED & FERTILIZER	))))	ORDER FOR AND NOTICE OF HEARING GD01-001 (Civ. 01-023)

On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook), entered into a stipulation with the Public Utilities Commission (Commission) surrendering his licenses as a grain dealer and grain warehouseman and permitted the Commission to take immediate possession of his facilities. On March 8, 2001, the Commission filed with the First Judicial Circuit a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 21-21, 49-42, 49-43, and 49-45, specifically 49-42-15.1, 49-43-5.6, 49-43-5.8, 49-45-13, 49-45-16, and 49-45-18. Pursuant to the order of the Court, the Commission shall determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory currently located at the Canistota facility. A hearing shall be held on the claims as described above on May 3, 2001, beginning at 10:00 a.m., at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, South Dakota.

The issue at the hearing will be to determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory currently located at the Canistota facility.

All potential claimants have the right to be present, to be represented by an attorney, and to present evidence of their claims. Evidence may include, but is not limited to, such documents as scale tickets, settlement sheets, bad checks, or other evidence of a sale or storage of grain to McCook which has not been paid or the grain not returned. These and other due process rights will be forfeited if they are not exercised at the hearing or by submitting a proof of claim with the Commission. After the hearing, the Commission, as receiver, will consider all evidence and testimony that was presented at the hearing. As a result of the hearing, the Commission shall determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds and all grain inventory currently located at the Canistota facility. The Commission will then enter

0162.93.12

proposed Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter which will be submitted to the First Circuit of the State of South Dakota. The Final Decision made by the Circuit Court may be appealed to the state Supreme Court as provided by law.

It is therefore

ORDERED, that the hearing shall be held on May 3, 2001, beginning at 10:00 a.m., at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, South Dakota.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 29th day of March, 2001.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 3/29/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

0162.99.13

Kolbo, Delaine

From: Cichos, Sue
Sent: Monday, April 02, 2001 9:36 AM
To: Frazier, Kelly; Knadle, Bob
Cc: Kolbo, Delaine
Subject: Grain Dealer Hrg

Pat Beck is the court reporter for the Canistota hearing. She has a copy of the order. phone 332-1272 or e-mail stenoPAT@aol.com if you need anything.

Sue Cichos
Public Utilities Commission
Deputy Executive Director
(605)773-3201 voice
(605)773-3809 fax
sue.cichos@state.sd.us

GD01-001

To = Public Utilities Commission

Reason= R+R Ag Inputs Inc Located at Canistota

Charges = Rent of Facility
$2,000.00 A Mo starting March 1, 2001

To Load out Grain Controlled By P.U.C.
From Location .05¢ per Bu

You Can Contact Us At
605-665-0589 Phone
605-665-0635 Fax

R+R Ag Inputs Inc
Box 6
Utica, S.D.
57067

By Raymond Marquardt

APR-30-01 MON 03:28 PM FAX: PAGE 1

0152.99.14

Affidavit of Publication

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF McCOOK:)

The undersigned, being first duly sworn, on his oath says: THE CANISTOTA CLIPPER is a weekly newspaper of general circulation, printed and published in the City of Canistota, McCook County, South Dakota, by MATTHEW ANDERSON, and has been such newspaper during the times hereinafter mentioned: that is has bona fide circulation of more than 200 copies weekly; that is has been published within said County of McCook in the English language and admitted to the United States mail under the second class mailing privilege for more than one year next prior to the publication of the notice hereinafter mentioned, and has been printed during such period and at the present time in part in an office maintained at the said place of publication: that I, the undersigned, am either "the publisher" or "an employee of the said publisher" of said newspaper and have personal knowledge of all the facts stated in the affidavit: that the advertisement headed

Public Notice

a printed copy of which is hereto attached, was printed and published in the said newspaper for Two (2) successive weeks; that said notice was published in the issues of said paper on the dates as follows, to-wit:

The first publication be made on 4-5

The second publication on 4-12

The third publication on _____

The fourth publication on _____

The fifth publication on _____

The sixth publication on _____

that 38.90 Being the full amount of the fee for publication of the annexed notice, insured solely to the benefit of the publisher of the said newspaper, that no agreement or understanding for the division thereof have been made with any other person whomsoever, and that said newspaper is a legal newspaper under the law of the State of South Dakota.

Matt D Anderson

Subscribed and sworn to before me this 25 day

of April 20 01.

Mary Ann Feterl

Notary Public, South Dakota

(Seal) MARY ANN FETERL NOTARY PUBLIC SEAL STATE OF SOUTH DAKOTA

My Commission Expires 7-30-2004

Public Notice

GD01-001 IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OR FREEMAN FERTILIZER CO., INC. D/B/A MCCOOK FEED & FERTILIZER. NOTICE TO CLAIMANTS OF HEARING.

NOTICE IS HEREBY GIVEN that the South Dakota Public Utilities Commission (Commission), 500 East Capitol Avenue, Pierre, SD 57501-5070, has been appointed a Receiver to take possession of the inventory and grain dealer and warehousemen's bond proceeds of JEFF MULDER OF FREEMAN FERTILIZER CO., INC D/B/A MCCOOK FEED & FERTILIZER (MCCOOK) Canistota, South Dakota, pursuant to SDCL 49-43-5.6 and 49-45-16 and SDCL Chapter 21-21. Mulder's grain dealer license and grain warehousemen's licenses have been surrendered. The bonding company is Employers Mutual Casualty Company, PO Box 712, Des Moines, Iowa 50303-9987.

NOTICE IS FURTHER GIVEN that claims for the inventory and the bond proceeds shall be given in writing. Contact the Commission at 1-800-332-1782 to receive a proof of claims form.

NOTICE IS FURTHER GIVEN that the Commission shall hold a public hearing for considering claims against the inventory and bond proceeds and all claimants are encouraged to appear at this hearing to present evidence of their claims which may include, but not limited to, such documents as scale tickets, settlement sheets, bad checks or other evidence of a sale or storage of grain to MCCOOK which has not been paid or the grain not returned.

THIS HEARING WILL BE HELD ON Thursday, May 3, 2001 at 10:00 a.m. The hearing will be held at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, SD 57012.

Anyone having questions can contact the Commission by calling 1-800-332-1782. This hearing is being held in a physically accessible location. Please contact the Commission if you have special needs so arrangements can be made to accommodate you.

The decision of the Commission as Receiver in this matter is subject to the final approval of he First Circuit Court of the State of South Dakota and which may be further appealed to the South Dakota Supreme Court. 4-5-2tc

Public Notice

GD01-001 - IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. D/B/A MCCOOK FEED & FERTILIZER. NOTICE TO CLAIMANTS OF HEARING

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The decision of the Commission as Receiver in this matter is subject to the final approval of the First Circuit Court of the State of South Dakota and which may be further appealed to the South Dakota Supreme Court.

4/5, 4/12

Printer's Affidavit of Publication

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF McCOOK)

TROY SCHWANS of said County and State, being first duly sworn on his oath, says THE SALEM SPECIAL is a weekly newspaper of general circulation, printed and published in Salem, McCook County and State of South Dakota, and has been such newspaper during the times hereinafter mentioned; that the said newspaper is a legal newspaper, that it has a bonafide circulation of more than 200 copies weekly, that it has been published within said County of McCook for more than fifty-two successive weeks prior to the publication of the notice hereinafter mentioned and has been printed during said period and at the present time, in whole in an office maintained at said place of publication; and that I, the undersigned, am publisher or employee of said newspaper, in charge of the advertising department thereof, and have personal knowledge of all facts in this affidavit;

that the advertisement headed GD01- In the Matter of the Grain Dealer and Public Warehouse Licenses of Freeman Fertilizer Co.

a printed copy of which is hereto attached, was printed and published in the newspaper for 2 weeks; that said notice was published in the issues of said paper on the dates as follows, to wit:

The first publication being made on

April 5 ,2001

the second publication on April 12 ,2001

the third publication on ,19...

the fourth publication on ,19...

the fifth publication on ,19...

the sixth publication on ,19...

and the last publication on ,19...

that $ 39.58 being the full amount of the fees for publication of the annexed notice, insures solely to the benefit of the publisher of the said newspaper; that no agreement or understanding for a division thereof has been made with any person; and that no part thereof has been agreed to be paid to any person whomsoever.

Troy Schwans

Subscribed and sworn to before me this 12th day of April ,2001

Phyllis Knudsen

Notary Public, McCook County

My commission expires 5-19-02

01-02-99-16

CUSTOMER NUMBER:	078394	**Argus Leader**	P.O. Box 5034, Sioux Falls, S.D. 57117-5034
INVOICE NUMBER:	8006		
RUN DATES:	4/8, 4/15	AMOUNT DUE	$85.28

Public Utilities
Attn: One Call Notification Board
To: Larry Englerth
1012 North Sycamore Ave
Sioux Falls SD 57110-5747

RECEIVED
APR 25 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DETACH THIS STUB AND RETURN WITH PAYMENT — PAYMENT DUE UPON RECEIPT

AFFIDAVIT OF PUBLICATION-

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA } ss

Beth Buchanan being duly sworn, says: That Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Sunday	, the	8	day of	April	2001,
Sunday	, the	15	day of	April	2001,
	, the		day of		2001,
	, the		day of		2001,
	, the		day of		2001,
	, the		day of		2001,
	, the		day of		2001,

and that $85.28 was charged for publishing the same including A $5.00 affidavit fee.

Beth Buchanan

Subscribed and sworn to before me April 17, 2001,

JOAN STAHL
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

Joan Stahl
Notary Public, South Dakota

My Commission expires June 30, 2005

State Notices

GDO1-001-IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. D/B/A MCCOOK FEED & FERTILIZER. NOTICE TO CLAIMANTS OF HEARING

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NOTICE IS FURTHER GIVEN that claims for the inventory and the bond proceeds must be given in writing. Contact the Commission at 1-800-332-1782 to receive a proof of claims forms.

NOTICE IS FURTHER GIVEN that the Commission will hold a public hearing for considering claims against the inventory and bond proceeds and all claimants are encouraged to appear at the hearing to present evidence of their claims which may include, but is not limited to, such documents as scale tickets, settlement sheets, bad checks or other evidence of a sale or storage of grain to MCCOOK which has not been paid or the grain not returned.

THIS HEARING WILL BE HELD ON Thursday, May 3, 2001, at 10:00 A.M. The hearing will be held at the American Legion Hall, Jerard O. Post, 162 Main Street, Canistota, SD 57012.

Anyone having questions can contact the Commission by calling 1-800-332-1782. The hearing is being held in a physically accessible location. Please contact the Commission if you have special needs so arrangements can be made to accommodate you.

The decision of the Commission as Receiver in this matter is subject to the final approval of the First Circuit Court of the State of South Dakota and which may be further appealed to the South Dakota Supreme Court.

8006 Apr 8, 15, 2001

Civ. 01-023

South Dakota

Civ. 01-023

South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

May 8, 2001

TO: MANAGERS OF LICENSED GRAIN DEALERS

FROM: BOB KNADLE
DIRECTOR, TRANSPORTATION/WAREHOUSE DIVISION

RE: SOLICITATION FOR GRAIN DEALERS INTERESTED IN PURCHASING GRAIN INVENTORY AT CANISTOTA, SOUTH DAKOTA

The Commission has been appointed receiver of the grain inventory at McCook Feed & Fertilizer at Canistota, South Dakota, and has been authorized to liquidate the grain inventory. The purpose of this letter is to solicit a list of bidders interested in purchasing the inventory located in the McCook facilities at Canistota, South Dakota.

The grain inventory is as follows:

1. Corn--approximately 48,000 bushels
2. Soybeans--approximately 21,000 bushels
3. Oats--approximately 750 bushels
4. Mixed corn and soybeans--approximately 750 bushels

The grain inventory will be put out for bids by interested parties(separate bids for each type of grain). Bids must be for the total inventory of each type of grain as referenced above. The grain will be sold on-site at Canistota and the successful bidder must provide for subsequent handling. Payment must be made with a cashier's check. The grain is expected to be available toward the latter part of May.

If you are interested in purchasing the grain inventory, please contact Marlette Fischbach at 605-773-5280. Please respond by May 15, 2001.

Thank you for your attention to this matter.

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
www.state.sd.us/puc/

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Harlan Best
Martin C. Bettmann
Sue Cichos
Karen E. Cremer
Christopher W. Downs
Terry Emerson
Michele M. Farris
Marlette Fischbach
Heather K. Forney
Kelly D. Frazier
Mary Giddings
Leni Healy
Mary Healy
Lisa Hull
Dave Jacobson
Amy Kayser
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

0152.99.19

SD01-001



South Dakota
Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

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Mariette Fischbach
Heather K. Forney
Kelly D. Frazier
Mary Giddings
Lexi Healy
Mary Healy
Lisa Hull
Dave Jacobson
Amy Kayser
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

May 16, 2001

TO: BIDDERS OF GRAIN INVENTORY AT CANISTOTA, SOUTH DAKOTA

FROM: BOB KNADLE
DIRECTOR TRANSPORTATION/WAREHOUSE DIVISION

RE: REQUIREMENTS FOR SUBMITTING BIDS ON THE GRAIN INVENTORY LOCATED IN THE MCCOOK FACILITIES AT CANISTOTA, SOUTH DAKOTA

1. Bids must be FAXED to the Commission between 1:45 p.m. and 2:15 p.m. on Tuesday, May 22, 2001, at the following numbers: (605)773-3809 and (605)773-3225.

2. Each load of grain will be weighed and a sample will be taken and tested on the premises at Canistota. These measurements will determine any adjustments to the bid price and/or bushels for test weight, moisture, foreign material, etc. Payment will be based on the above mentioned measurements. Successful bidders or their representatives are welcome to observe the testing during loadout.

3. The attached discount tables shall be utilized for any adjustments to the bid price. A Commission representative will determine any adjustments to the bid price and/or bushels from the sample taken during loadout.

4. There will not be any charge assessed to the successful bidder(s) for loading the grain out.

5. Provide a contact person and telephone number on the bid submittal.

6. Both the Commission and the Circuit Court must approve the successful bids. Once approval is granted, the Commission will contact the successful bidder(s) as soon as possible. We will make every attempt to do so before 5:00 p.m. on Tuesday, May 22, 2001; however, we can't guarantee we will be able to do so.

7. If you are the successful bidder(s), you will be required to do the following:
A. Submit a deposit in the form of a cashier's check payable to "SDPUC as Receiver of McCook Feed & Fertilizer" for 50% of the bid price per bushel times

0162.99.20

the estimated bushels before any grain is moved.

B. Provide for subsequent handling.

C. Submit a list of truckers that will haul the grain for you. The list should include company name, driver name and pickup or contract numbers.

D. Have the grain removed from the McCook facilities no later than June 8, 2001. The grain can be removed from the facility during the hours of 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding Memorial Day(May 28) unless other arrangements have been approved. A reasonable charge will be assessed if the grain is not removed by June 8th.

E. Final payment in the form of a cashier's check payable to "SDPUC as Receiver of McCook Feed & Fertilizer" must be made within five days after the grain is removed from the McCook facilities.

8. It appears that the corn will likely fall into the No. 2 grade, the soybeans into the No. 2 grade and the oats test weight is in the range of 36-38 pounds.

If you have any questions, please contact Marlette Fischbach at 605-773-5280.

Thank you for your attention to this matter.

Soybeans

FACTOR RANGE	HEAT DMG DISCOUNT	TOTAL DAMAGE	MOISTURE	DISCOUNT	CORN DISCOUNT
	% of contract price	includes green damage		% of contract price	
.0 to .2%			MT RANGE	DISCOUNT	
.3 to 1.0%	.5%		13.1 to 13.5%	1%	Soybeans with 3%
1.1 to 1.5%	1.0%		13.6 to 14.0%	2%	or more corn will
1.6 to 2.0%	1.5%		14.1 to 14.5%	3%	be discounted 5
2.1 to 2.5%	2.0%	$0.02	14.6 to 15.0%	4%	cents per bu. for
2.6 to 3.0%	2.5%	.03	15.1 to 15.5%	8%	each 1% or fraction
3.1 to 3.5%	3.0%	.04	15.6 to 16.0%	10%	thereof over 3%
3.6 to 4.0%	3.5%	.05	16.1 to 16.5%	12%	plus the weight will
4.1 to 4.5%	4.0%	.07	16.6 to 17.0%	15%	be deducted from
4.6 to 5.0%	4.5%	.09	17.1 to 17.5%	17%	the gross weight
5.1 to 5.5%	5.0%	.11	17.6 to 18.0%	19%	
5.6 to 6.0%	5.5%	.13	18.1 to 18.5%	21%	
6.1 to 6.5%	6.0%	.15	18.6 to 19.0%	23%	
6.6 to 7.0%	6.5%	.17	19.1 to 19.5%	25%	
7.1 to 7.5%	7.0%	.19	19.6 to 20.0%	27%	
7.6 to 8.0%	7.5%	.21	20.1 to 20.5%	29%	
8.1 to 8.5%	8.0%	.25	20.6 to 21.0%	31%	

TEST WEIGHT: 1/2 cent per bushel for each pound or fraction thereof under 54.0 to 52.0.
1 cent per bushel for each pound or fraction thereof under 52.0 to 49.0 minimum.

FOREIGN MATERIAL: All foreign material in excess of 1% shall be deducted from the gross weight and will not be paid for up to 5%. FM over 5% shall be deducted 1 1/2 times from gross weight. FM over 10% shall be deducted 2 times from gross weight.

OTHER DISCOUNTS: 10 cents per bushel for musty, sour, weevily or materially weathered.
15 cent per bushel discount on any unload of less than 400 bushels.

BUYER RESERVES THE RIGHT TO REJECT OR SEVERLY DISCOUNT ANY SHIPMENT OF BEANS WHICH GRADES OVER 16% MOISTURE; OVER 3% HEAT DAMAGE; OVER 8% TOTAL DAMAGE; OVER 10% FOREIGN MATERIAL, COFO, HEATING, DISTINCTLY LOW QUALITY (DLQ) OR UNKNOWN FOREIGN SUBSTANCE.

SHRINK		
	13.5	.75%
	14.0	1.50%
	14.5	2.25%
	15.0	3.00%

0162.99.22

CORN DISCOUNT SCHEDULE

T.W.	53.9 - 53.0	-0.02	T.W. -.02 EA. 1.0% 54.0 - 50.0
	52.9 - 52.0	-0.04	T.W. -.03 EA. 1.0% 50.0 - 48.0
	51.9 - 51.0	-0.06	
	50.9 - 50.0	-0.08	
	49.9 - 49.0	-0.11	
	48.9 - 48.0	-0.14	
M.T.	15.1 - 15.5	-0.025	M.T. -.025 EA. 1/2% 15.0 - 20.0
	15.6 - 16.0	-0.05	
	16.1 - 16.5	-0.075	
	16.6 - 17.0	-0.1	
	17.1 - 17.5	-0.125	
	17.6 - 18.0	-0.15	
	18.1 - 18.5	-0.175	
	18.6 - 19.0	-0.2	
	19.1 - 19.5	-0.225	
	19.6 - 20.0	-0.25	(IF ACCEPTABLE TO MERCHANT)
DMG.	5.1 - 6.0	-0.02	
	6.1 - 7.0	-0.04	
	7.1 - 8.0	-0.06	
	8.1 - 9.0	-0.08	
	9.1 - 10.0	-0.1	
F/M.	3.1 - 4.0	-0.03	F.M. -.03 EA. 1.0% 3.0 - 4.0
	4.1 - 5.0	-0.07	F.M. -.04 EA 1.0% 4.0 - 5.0
	5.1 - 6.0	-0.12	F.M. -.05 EA. 1.0% 5.0 - 6.0
	6.1 - 7.0	-0.18	
	7.1 - 8.0	-0.25	
HT. DMG.	.31 - .40	-0.01	HT. DMG. -.01 EA. 1/10% .3 - .5
	.41 - .50	-0.02	HT. DMG. -.02 EA. 1/10% .5 - 1.0%
	.51 - .60	-0.03	
	.61 - .70	-0.05	
	.71 - .80	-0.07	
	.81 - .90	-0.09	
	.91 - 1.0	-0.11	
MUSTY		-0.07	
SOUR		-0.1	
COFO		-0.15	

0162.99.23

U.S. Domestic Oats

EFFECTIVE May 15, 1996

U.S. #2 Heavy Oats, Milling Quality, 38 lb Test Wt, 96% SCO
13.0% Maximum Moisture, 3.0% Maximum FM
15% Thins thru 05/64 x 3/4 oblong cockage sieve
* 1.5% Barley count * 1.5% Wheat count * 1.0% Wild Oats
14% Min Crude Protein on Groats Dry Matter Basis

SCO Prem @ 38= min TW (SSC only)	
99.5 - 99.9	+.04
99.0 - 99.4	+.03
98.5 - 98.9	+.02
98.0 - 98.4	+.01
IF TAKEN BELOW 94, .02 PER 1/2	

Test Weight Prem @ 96 SCO (SSC only)	
40.0	+.04
39.5 - 39.9	+.03
39.0 - 39.4	+.02
38.5 - 38.9	+.01
IF TAKEN BELOW 38, .02 PER 1/2	
MIN 32 LB TEST WT ACCEPTED	

SCO discounts

95.9 - 95.5	-.01	93.4 - 93.0	-.10
95.4 - 95.0	-.02	92.9 - 92.5	-.12
94.9 - 94.5	-.04	92.4 - 92.0	-.14
94.4 - 94.0	-.06	91.9 - 91.5	-.16
93.9 - 93.5	-.08	91.4 - 91.0	-.18

Test Wt Discounts

37.9 - 37.5	-.01	34.9 - 34.5	-.10
37.4 - 37.0	-.02	34.4 - 34.0	-.12
36.9 - 36.5	-.03	33.9 - 33.5	-.14
36.4 - 36.0	-.04	33.4 - 33.0	-.16
35.9 - 35.5	-.06	32.9 - 32.5	-.18
35.4 - 35.0	-.08	32.4 - 32.0	-.20

Thins Discount (basis 15% or less)

15.1 to 20.0 -.01 each point
20.1 to 25.0 -.02 each point
IF TAKEN ABOVE 25%, SCALE CONTINUES AT .02 EACH POINT

Wheat and/or Barley Count

-.01 each 1/4% above 1.5%

Wild Oats

-.01 each 1/4% above 1.0%

Moisture Discount (basis 13.0% or less)

13.1 to 13.5	-.02
13.6	-.03
13.7	-.04
13.8	-.05
13.9	-.06
14.0	-.07

(maximum acceptable moisture)

FM Discount (basis 3.0%)

3.1 - 3.5	-.02
3.6 - 4.0	-.04
4.1 - 4.5	-.06
4.6 - 5.0	-.08

IF TAKEN ABOVE 3.0%

NOTE- No Premiums paid at SSC if ANY discount is taken on ANY factor

LIVE INFESTATION, WEATHERED, SOUR, SMUT, MUSTY, AND HEAT DAMAGE FACTORS ARE ALL SUBJECT TO REJECTION. IF TAKEN WITH ANY OF THE FOREMENTIONED (EXCEPT LIVE INFESTION), AN ADDITIONAL .10 PER BU DISCOUNT WILL BE TAKEN. IF LIVE INFESTATION ACCEPTED, SHIPPER PAYS ALL COSTS ASSOCIATED WITH FUMIGATION PLUS THE ADDITIONAL .10 PER BU DISCOUNT.

0162.99.24

BEFORE THE PUBLIC UTILITIES COMMISION

OF THE STATE OF SOUTH DAKOTA

In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., d/b/a McCook Feed & Fertilizer.	Docket GD01-001 HEARING

BEFORE: Chairman James A. Burg
Commissioner Pam Nelson

APPEARANCES: Ms. Molayne Aills Kiest
Attorney at Law
Pierre, South Dakota

Attorney for the Commission.

Mr. Kelly D. Frazier
Attorney at Law
Pierre, South Dakota

Attorney for the Commission Staff.

Mr. Mike C. Fink
Bjorkman & Fink
Bridgewater, South Dakota

Attorney for Alvis Scott, Jeff Scott and Lucille Helmbrecht.

Mr. Roger W. Domgaard
Woods, Fuller, Shultz & Smith
Sioux Falls, South Dakota

Attorney for Home Federal Savings Bank.

Mr. Michael D. Stevens
Blackburn, Stevens & Miller
Yankton, South Dakota

Attorney for Pat Kappenman.

PROCEEDINGS: The above-entitled matter came on for hearing on the 3rd day of May, 2001, commencing at the hour of 10:00 a.m. in the American Legion Hall, Canistota, South Dakota.

* * * * * * * * *

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3	Documentation re Staff changes to proof of claims	21	21
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HF4	Summary of Home Federal Note	90	90
HF5	12/29/97 Home Federal security agreement	90	90
HF6	12/29/97 SBA security agreement	90	90
HF7	Certified copy of financing statement	90	90

CHAIRMAN BURG: Okay. It is 10:00 o'clock. I think we will get started. Is this coming through all right? Can everybody hear? Okay.

I will begin the hearing for Docket GD01-001 in the matter of the grain dealer's and public warehouse license of Freeman Fertilizer Company, Incorporated, doing business as McCook Feed & Fertilizer. The time is 10:00 o'clock. The date is May 3, 2001. And the location of the hearing is at the American Legion, Jenard D. Post, 162 Main Street, Canistota, South Dakota.

I am Jim Burg, Commission Chairman. Commissioner Pam Nelson is also present. I am presiding over this hearing.

The hearing was noticed pursuant to the Commission's order for and notice of hearing issued on March 29, 2001. The issue at this hearing will be to determine claims against the cash proceeds -- cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S167010, commencing July 1, 2000 and ending July 30, 2001, and a second bond commencing July 1, 1999 and ending June 30, 2000, with Employer's Mutual Casualty Company being the surety, and all grain inventory currently located at the Canistota facility.

All parties have the right to be present and be represented by an attorney. All persons so testifying

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will be sworn in and subject to cross-examination by all the parties. The Commission's decision may be appealed by the parties to the state Circuit Court and the state Supreme Court.

Rolayne Wiest will act as Commission counsel. She may make recommended rulings on procedural and evidentiary matters. The Commission may overrule its counsel's preliminary rulings throughout the hearing, but if they are not overruled, the preliminary rulings will become the final rulings.

At this time I'm going to turn it over to Rolayne to actually conduct the hearing.

MS. WIEST: First I would like to take appearances of the parties. Commission Staff.

MR. FRAZIER: Kelly Frazier, Staff Attorney.

MR. FINK: Mike Fink, attorney for Jeff Scott, Al Scott and Lucille Helmbrecht.

MR. DAMGAARD: Roger Damgaard for Home Federal Savings Bank.

MS. WIEST: Are there any other attorneys representing any parties?

MR. STEVENS: Mike Stevens from Yankton, South Dakota for Pat Kappenman.

MS. WIEST: For who?

MR. STEVENS: Pat Kappenman.

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MS. WIEST: And we are circulating some paper, and all of the other people who are present will be writing down their names and should indicate whether they intend to testify or not.

What we anticipate doing is our Staff witness will go first. And I believe he has all of the claims that were submitted to the Commission. He will put those into evidence. And after he is done with his direct testimony, then we will give an opportunity for people to ask questions based on the testimony. Then I believe we will go to the bank and allow their witness to testify, and then we will go to any of the claimants and allow any testimony from the claimants.

So to start out, does anybody have any opening statements or can we just go right to the testimony?

MR. FRAZIER: We could go straight to the testimony.

MS. WIEST: Does anyone else have any opening? Okay. Mr. Frazier.

MR. FRAZIER: For the convenience of any potential claimant out here in the audience, I would like you all to know that there is something out there marked Staff Exhibit 2 which we will be entering which is a summary of all the potential claims. I've tried to distribute that so that any potential claimant out there can look their name up so they know where they are categorized which may affect whether they would like to address any issues before the Commission today.

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With that preliminary issue out of the way, I would like to call Bob Knadle as my first witness.

BOB KNADLE,

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRAZIER:

Q Good morning, Bob.

A Good morning.

Q For the record, could you state your name and spell it for the record.

A Bob Knadle, K-n-a-d-l-e.

Q And, Bob, could you give us your educational background, please.

A Yes. I have a bachelor of science degree in commercial economics from South Dakota State University in December of 1979.

MS. WIEST: Can people hear? Is there anyone who cannot hear? Okay.

Q And where were you employed upon graduation, Bob?

A I started employment with the Public Utilities Commission in March of 1980.

Q And have you been employed there since?

A Yes, I have.

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Q What is your current position with the Public Utilities Commission?

A I'm currently the director of the transportation warehouse division.

Q And is it part of your job working with the PUC to monitor licensed dealers and warehousemen?

A Yes, it is.

Q And in the process of doing so, did you become familiar with the name Jeff Mulder?

A Yes, I did.

Q Did Mr. Mulder apply to become a licensed dealer and warehouseman with the PUC?

A Yes, he did.

Q I'm handing you what is now premarked Staff Exhibit A. Could you please describe that, that exhibit please, Bob.

A Yes. This is Freeman Fertilizer Company, Inc., McCook Feed & Fertilizer Company's South Dakota public grain warehouse license, and South Dakota grain dealer's license for the current year. The license began on July 1st of 2000 and expires on June 30th of 2001.

Q Okay. And is that the type of license that is ordinarily issued to people who want to become licensed dealers and warehousemen?

A Yes, it is.

Q Does this license appear to have the same content and

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form as it was -- as far as you know when the license was issued?
A Yes, it does.
MR. FRAZIER: At this point then, I would move to enter Staff Exhibit A.
MS. WIEST: Any objection? If not, it's admitted.
MR. FRAZIER: And these preliminary matters, to save walking around, I'm going to distribute the exhibits that I meant to pre-distribute this morning.
Q Okay. We have just reviewed Exhibit A which was the license of Jeff Mulder. In order to obtain that license, was Mr. Mulder required to post a bond?
A Yes. He was required to post a bond for the warehouse license and the grain dealer license as part of the licensing process.
Q I'm handing you now what is premarked Staff Exhibit B. Could you explain what Staff Exhibit B is, please.
A Yes, I can. This is a bond for use by public grain warehousemen and grain dealers. It's for the period of July 1 of 2000 and ending June 30th for 2001. There is a 25,000 dollar bond for the warehouse license, and a 50,000 dollar bond for the grain dealer's license.
Q Does this bond appear to be -- is this the original bond, to your knowledge?
A Yes, it is.

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Q Does it appear to be in the same form and content that it was when it was issued to your knowledge?
A To my knowledge, yes.
MR. FRAZIER: At this point then I would move to enter Staff Exhibit B.
MS. WIEST: Any objection? If not, it's admitted.
Q Okay. Bob, I would like to take you back to approximately February 8th of this year. During that time frame, did you receive any complaints regarding Mr. Mulder?
A Yes, I did.
Q What was the nature of that complaint?
A I received a call from Dale Strasser, S-t-r-a-s-s-e-r, I believe, an attorney for Tim Jensen on February 8th in regard to a non-sufficient fund check for approximately 12,000 dollars from McCook Feed & Fertilizer. And there was another check for approximately 14,000 that Mr. Jensen indicated that the bank said will not clear at this time.
Q And what did you do as a result of that complaint?
A As soon as I got off the phone with Mr. Strasser and Mr. Jensen, I called Mr. Mulder up, and basically what I asked Mr. Mulder is if he could pay for the checks that were outstanding to Mr. Jensen. He said he could not. He also said that his line of credit with his bank was

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all used up. He didn't think they would extend him anymore credit. I told him I did not want him to buy or sell anymore grain at this time, and until the Commission looks into this matter. He agreed with this. February 9th, 2001, I sent Mr. Mulder a certified letter, and also faxed him a copy of the same, that would confirm that Mr. Mulder agreed that he would not buy or sell any grain.
Q Okay. And as a result of these conversations, did -- did Mr. Mulder enter into a stipulated agreement with the Commission?
A Yes, he did.
Q I'm handing you now what is premarked as Staff Exhibit C. Could you please explain what that exhibit is, Bob.
A Yes, I can. This is a stipulation regarding the grain dealer's public warehouse licenses of Freeman Fertilizer Company, Inc., d/b/a McCook Feed & Fertilizer. Essentially what it did was -- is the company voluntarily relinquished its grain dealer's and public grain warehouse licenses to the Commission, including all rights and benefits bestowed by such licenses. This agreement was signed by Mr. Mulder on the 13th day February, 2001 when he relinquished his licenses to the Commission.
Q Does that appear to be the original?

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A Yes, it is.
Q Does that appear to have the same form and content as it did when you viewed it previous to the signing?
A Yes, it is.
MR. FRAZIER: At this point then I would move to enter Staff Exhibit C.
MS. WIEST: Any objection? If not, it's admitted.
Q Okay. After Bob -- I'm sorry. After Mr. Mulder entered into the stipulated agreement, did you then take the possession of his facilities?
A Yes, we did.
Q Okay. How did you do so?
A We placed a notice to the public on the door that essentially stated that Mr. Mulder has voluntarily relinquished his public grain warehouse license and grain dealer licenses to the Commission, and he is without authority to buy, sell, or accept grain for storage. We also put padlocks on the side chutes and bins and the main power supplies for the grain legs.
Q And you also then commenced or continued an audit of his inventory and his books?
A Yes, we did. We started that on I believe it was February 9th. One of our inspectors went down and started an audit of his books.
Q Okay. And in doing so, did you create a list of people

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that you thought might have been affected by this insolvency?
A Yes, we did.
Q Did you send a letter to all the potential claimants?
A Yes, we did. On February 21st, 2001, we sent letters along with proof of claims for these potential claimants to file with the Commission. We sent those to approximately 60 people.
Q Okay. And after you sent out this letter and the claim forms, did the PUC then apply for receivership in circuit court?
A Yes, they did.
Q To your understanding was that receivership granted?
A Yes. The receivership was granted I believe on March 27th.
Q And it's your understanding that pursuant to that receivership an order was signed by Judge McMurchie ordering that this hearing today be held?
A That's my understanding.
Q As a result of this process and the letters, did you also send out some legal notices in the newspapers?
A Yes. We sent out notices in four different papers, notice to the public of the hearing today.
Q And in reviewing books, did you then title the claims in your audit of the books, the receipt of claim forms, and

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come up to a formal recommendation to make to the commission pursuant to the order of Judge McMurchie?
A Yes, I did.
Q And you have those – you have that recommendation and the claims with you. At this point you are prepared to proceed with formal recommendations?
A Yes, I am.
Q I'm now handing you what has been premarked as Staff Exhibit 1. Could you please describe what Staff Exhibit 1 is, Bob.
A Yes, I can. Staff Exhibit 1 is – essentially it is the total of all the proof of claims that were submitted by the different producers. It also has the February 21st, 2000 letter that we just spoke about earlier that I sent to the potential claimants requesting them to submit proof of claims. So basically what they are, they are original proof of claims that were filed with the Commission in this matter.
Q Could you please describe Staff Exhibit 1A?
A Staff Exhibit 1A would be the February 21, 2001 letter to the patrons requesting proof of claims.
Q And does that appear to be in the same form and content that it was when you sent it?
A Yes, it does.
Q Staff Exhibit 1B.

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A That is a proof of claim filed by Gary Waltner.
Q Is that an original?
A Yes, it is.
Q Same form and content as you received it?
A Yes, it is.
Q Staff Exhibit 1C.
A It is proof of claim filed by Richard Lauck.
Q Same form and content as when you received it?
A Yes, it is.
Q Appears to be an original?
A Yes, it is.
Q Staff Exhibit 1D.
A Is a proof of claim filed by Leroy Klockman.
Q That is an original?
A Yes, it is.
Q And same form and content as when you received it?
A Yes, it is.
Q Staff Exhibit 1E.
A That is a claim filed by Lake Preston Cooperative Association.
Q And that is an original?
A Yes, it is.
Q Same form and content as when you received it?
A Yes, it is.
MR. FRAZIER: At this point, for the sake of

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expediency, I would like to just read through the list of names of potential claimants. If there is any objections to foundation, then I ask that those be made so we can enter the exhibit as a whole for the record.
MS. WIEST: Go ahead.
Q Could you just read through the list of claimants then for the rest of those.
A Lester Kappenman, Jeff Scott, Tim Jensen, Gilbert Buehner, Pat Kappenman, William Perrenoud. I hope I'm not slaughtering these too bad. Jeff Weber, Dale Seubert, Larry Weber, Farmers National Company-Nichols, Farmers National Company-Ott/Jackson, Farmers National Company-Graham, Farmers National Company-Paul, Farmers National Company-Nagano, Lucille Helmbrecht, Richard Hoffman, Helen Eide, Gene Hofer, Derald Klueber, Leonard Buehner, Alvin Scott, Charles Langle, Leroy Pullman, Arlo Hofer, James McGregor, Maynard Yoder, Jerry Herlyn, Roger Waltner, Charles Deckert, and Oren Stahl.
Q And all of those are originals?
A Yes, they were.
Q All appear to be in the same form and content that they were when you received them?
A Yes, they do.
MR. FRAZIER: At this point I would move to enter Staff Exhibit 1.

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MS. WIEST: Is there any objection?
MR. DAMGAARD: I have a limited objection. I don't have any objection to the fact that these are the claims that these people actually submitted and that that's a potential claim and a claim they feel they had, but I would object to the extent that anyone would be deeming these claims to be valid or their priority established by the mere fact that they are being submitted.
MS. WIEST: Right. That will be how they are accepted.
MR. DAMGAARD: Thank you.
MR. FRAZIER: No objection to that.
MS. WIEST: So Staff Exhibit 1, including Exhibits 1A through 1AI, are admitted.
Q Okay. Bob, I'm now handing you what has been premarked as Staff Exhibit D. Could you please explain what that exhibit is.
A That's a claim from Home Federal Savings Bank.
Q Does that appear to be an original?
A Yes, it does.
Q Appear to be in the same form and content that it was when you received it?
A Yes, it does.
Q And would you categorize this as another claim?
A Yes, it would be a claim on the grain inventory.

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MR. FRAZIER: I would move then to enter Staff Exhibit D.
MS. WIEST: Any objection to Staff Exhibit D? If not, it's admitted.
Q I would like to you review what you have before you as Staff Exhibit 2 and Staff Exhibit 3. Do you have those with you, Bob?
A No, I don't.
Q Could you explain what Staff Exhibit 2 is, please.
A Can I speak to -- (confers with Mr. Frazier).
Q Okay. Before we move on to Staff Exhibit 2, I would like to ask you a couple of questions about the categories you've done. You have broken the claims down into a series of categories, is that true?
A That's correct.
Q Could you define what those categories are, please.
A I have broken the claims down into seven different categories. And first category would be grain bank. That is grain which is received by a public grain warehouse from depositors for storage, and it's to be withdrawn and processed to feed as needed.
The second category would be hold for storage; grain which is received by a public grain warehouse from producers which has not been converted to a warehouse receipt, cash, check, or other grain purchase contract, or in other words, the producer has not determined what he wants to do with the grain.
Category three would be cash sales which would be grain which has been sold and a check has been issued. It does not include deferred payment contracts and delayed price contracts.
Fourth category would be priced unpaid. Grain which has been sold and a check has not been issued. Does not include deferred payment contracts and grain price contracts.
Category five would be delayed price contracts. It's a written contract where title to the grain passes to the buyer at the time of delivery, and the purchase price is set by the seller of grain at some point in the future.
Category six is deferred payment contract. The written contract or title to the grain passes to the buyer at the time of delivery when payment is made to the seller at some point in the future.
Category seven is not categorized. It is a proof of claim that needs further clarification.
Q And have you categorized all of these claims according to whether they were corn, beans and oats?
A Yes, I have.
Q Okay. At this point then I would like to draw you to what has been premarked as Staff Exhibit 2 and Staff Exhibit 3. Could you please explain what Staff Exhibit 2 is.
A Yes, I can. What Staff Exhibit 2 is is claims -- a summary basically of Staff Exhibit 1, the proof of claims that were submitted by different producers, and it also would include Staff recommendation to those claims after Staff reviewed the proof of claims in the company's records that were pertinent to those claims.
Q And I see some people straining out in the audience. Could you pull your mike up a little bit. Please explain Staff Exhibit 3.
A Okay. What Staff Exhibit 3 is is -- is documentation for Staff changes to the filed proof of claims from the producers. If my recommendation would differ from what -- the proof of claim filed, Staff Exhibit 3 would provide support from the company's records to support my recommendation.
Q And these exhibits were prepared by you, correct?
A That is correct.
Q In preparing these documents, did you rely on the books?
A Yes. I relied on the pertinent books and records of the company.
Q Did you rely on the claim forms that had been filed?
A Yes, I did.
Q And did you rely on your 20 plus years of experience as

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an analyst for the PUC to make the -- to fill these out?
A Yes, I did.
Q And they appear to be in the same form and content as they were when you prepared them?
A Yes, they do.
MR. FRAZIER: At this point I would then move to enter Exhibit 2 and Exhibit 3.
MS. WIEST: Is there any objection to Exhibits 2 and 3? If not, they are admitted.
Q Okay. Starting with Exhibit 2, I would like to have you start with Page -- with Exhibit 2B, if you would, Bob, and please explain what Exhibit 2B is.
A This is Staff's category of grain bank - corn.
Q Okay. And could you explain the claim of Leroy Pullman in 2B.
A Yes. Leroy Pullman is claiming 80 to 90 bushels of corn in grain bank, and the company's records show that he has 88.61 bushels of corn. Staff would recommend that 88.61 bushels of corn as a valid claim for Mr. Pullman.
Q And for clarification then, since your recommendation is different than the information that was filled out on the claim form, you have documented that difference in Staff Exhibit 3J, is that correct?
A That's correct. The support for the change in my recommendation would be on Staff Exhibit 3J.

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Q Could you please explain the claim of Arlo Hofer.
A Yes. Arlo Hofer has a claim of 2,858.38 bushels of corn in grain bank. The company records show 2,868.27 bushels of corn. Staff recommends 2,868.27 bushels as a valid claim.
Q And, again, the documentation for the variance between the claim and your recommendation can be found in Staff Exhibit 3K, is that correct?
A That's correct.
Q James McGregor, please.
A James McGregor is claiming 2,788.91 bushels of corn in grain bank. The company records show 1,931.09 bushels of corn. Mr. McGregor's proof of claim does not include deductions for grain that was processed and delivered on January 5th in the amount of 285.71 bushels, January 12th in the amount of 285.71 bushels, January 16th in the amount of 285.71 bushels. Staff recommends 1,931.09 bushels as a valid claim for Mr. McGregor.
Q And, again, the justification for the variation between the claim and your recommendation is found in documentation or Staff Exhibit 3L, correct?
A That's correct.
Q Maynard Yoder.
A Maynard Yoder is claiming approximately 3,050 bushels of corn in grain bank. The company records show 3,036.68

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bushels of corn. Staff recommends 3,036.86 bushels as a valid claim for Mr. Yoder.
Q And Staff Exhibit 3M explains that difference between your recommendation and his claim?
A That is correct.
Q Jerry Herlyn.
A Jerry Herlyn is claiming approximately 3,115.17 bushels of corn in grain bank. The company records show 3,397.46 bushels of corn. Staff recommends 3,397.46 bushels as a valid claim for Mr. Herlyn.
Q And the justification for the variance again will be found in Staff Exhibit 3N?
A That is correct.
Q Roger Waltner.
A Roger Waltner is claiming 1,092.43 bushels of corn in grain bank as of February 7, 2001. The company records show 1,092.43 bushels as of February 7, 2001. Mr. Waltner had 176.79 bushels of corn processed on February 9, 2001. That was not reflected in the company's records. Staff recommends 915.64 bushels as a valid claim for Mr. Waltner.
Q And Staff Exhibit 3O would explain that variance?
A That's correct.
Q Charles Deckert, please.
A Charles Deckert is claiming approximately 45 bushel of

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corn in grain bank. The company records show 49.46 bushels of corn. Staff recommends 49.46 bushel as a valid claim for Mr. Deckert.
Q And the difference between the claim and the recommendation can be found in Staff Exhibit 3P?
A That would be correct.
Q Oren Stahl.
A Oren Stahl is claiming 904.69 bushels of corn in grain bank. The company records would support this. Staff recommends that 904.69 bushels is a valid claim.
Q Okay. Staff Exhibit 2C, could you explain that, please.
A Yes. This is Staff's category of open storage - corn.
Q And could you explain the claim of Jeff Weber under that category, please.
A Yes, I can. Jeff Weber is claiming 3142.66 bushels of corn in open storage. The company records show 3,146.06 bushels of corn. Staff recommends 3,146.06 bushels as a valid claim for Mr. Weber.
Q And the justification for the variance can be found in Staff Exhibit 3G?
A That is correct.
Q Dale Seubert.
A Dale Seubert is claiming 7,327.77 bushels. The company records would support this. I recommend that 7,327.77 bushels as a valid claim for Mr. Seubert.

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Q And Staff Exhibit 3H would explain what, Bob?
A What Staff Exhibit 3H does is provides scale tickets that was not included in Mr. Seubert's proof of claim.
Q Okay. And Farmers National for Nagano?
A Farmers National is claiming 704.80 bushels. And the company records would support this. Staff recommends that this is a valid claim, Farmers National-Nagano.
Q Could you explain Staff Exhibit 2D, please.
A Yes. That is a category of cash sale - corn.
Q And could you explain the claim of Gary Waltner, please.
A Yes. Gary Waltner has a claim of 2,462 dollars and 59 cents. The company records would support this. Staff recommends that this is a valid claim for Mr. Waltner.
Q Richard Lauck.
A Richard Lauck has a claim for 584 dollars 80 cents. The company records would support this. Staff recommends that this is a valid claim for Mr. Lauck.
Q Farmers National for Nagano.
A Farmers National-Nagano has a claim for 5,500 dollars and 75 cents. The company records would support this. Staff recommends that this is a valid claim for Farmers National-Nagano.
Q Could you explain the claim of Lake Preston Co-Op?
A Yes, I can. Lake Preston proof of claim -- they have a proof of claim for 17,640 dollars and 39 cents for cash

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sale - corn. That would include 10,077.14 bushels. The company records show 10,072.85 bushels of corn with a value of 17,487 dollars and 37 cents. The differences are due mainly to the check off and discount deductions and the difference in total bushels. Staff recommends 10,072.85 bushels, and a value of 17,487.37 as a valid claim.
Q And the justification for the variance between the claim and your recommendation can be found in Staff Exhibit 3A?
A That is correct.
Q Lester Kappenman.
A Lester Kappenman has a claim of 1,535 dollars and 48 cents for cash sale - corn. Company records show the value as 1,527 dollars and 20 cents. The difference is due to the check off deduction. Staff recommends the value of 1,527 dollars and 20 cents as a valid claim.
Q And the justification for the variation can be found in Staff Exhibit 3B, correct?
A That's correct.
Q Farmers National for Paul?
A Yes. Farmers National-Paul has a claim of 244 dollars and 12 cents for cash sale - corn. The company records show a value of 205 dollars and 9 cents. The differences are due to the check off and discount deductions. Staff recommends a value of 205 dollars and 9 cents is a valid

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claim.
Q And 3C explains that difference?
A That is correct.
Q Tim Jensen.
A Tim Jensen didn't provide a signed proof of claim, but he did provide assembly sheets and a non-sufficient fund check of 12,826 dollars and 65 cents. The company records support this. I recommend this as a valid claim for Mr. Jensen.
Q And William Perrenoud.
A William Perrenoud has a claim for 6,327 dollars and 12 cents for priced unpaid - corn. The company records show a value of 6,112 dollars and 49 cents. The difference -- differences are due to the check off discount deductions. Staff recommends the value of 6,112 dollars and 49 cents as a valid claim for Mr. Perrenoud.
Q And Staff Exhibit 3 explain -- 3F explains that difference?
A That is correct.
Q Could you explain Staff Exhibit 2E, please.
A Yes. That is Staff's category of priced unpaid - corn.
Q And the claim of Gilbert Buchner.
A Gilbert Buchner has a claim of 5,023 dollars and 93 cents. Company records would support this. Staff recommends this as a valid claim for Mr. Buchner.

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Q And the claim of Pat Kappenman.
A Pat Kappenman has a claim of 10,027 dollars and 93 cents. The company records would support this. Staff recommends this as a valid claim for Mr. Kappenman.
Q And what would Staff Exhibit 3E explain?
A Staff Exhibit 3E would provide further documentation for Mr. Kappenman's claim. Basically what it is is scale tickets. He didn't have those included in his proof of claim.
Q Okay. And Farmers National for Nagano?
A Farmers National-Nagano has a claim for 2,626 dollars. The company records would support this. Staff would recommend this as a valid claim for Farmers National-Nagano.
Q And Staff Exhibit 2F.
A That is a category of delayed price contracts on corn.
Q And could you explain the claim of Farmers National-Graham.
A Yes. Farmers National-Graham has a claim for 2200 bushels. The company records would show this. Staff recommends this as a valid claim for Farmers National-Graham.
Q Farmers National-Ott/Jackson.
A Farmers National-Ott/Jackson has a claim for 4,285.21 bushels. The company records support this. Staff would

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recommend that this is a valid claim for Farmers National Ott/Jackson.
Q And Leroy Klockman.
A Leroy Klockman has a claim for 1,827.86 bushels of corn. The company records would support and staff recommends this as a valid claim for Mr. Klockman.
Q And Farmers National for Nagano?
A Farmers National-Nagano has a claim for 3,730.36 bushel. The company records support this. Staff would recommend that this is a valid claim for Farmers National-Nagano.
Q And Helen Eide?
A Helen Eide has a claim for 5,817.87 bushels of corn. The company records show 5,817.87 bushels of corn, delayed pricing contract number 20862 which was paid by check number 3822 that cleared the bank on January 9th, 2001. Staff recommends that there is no valid claim for this corn.
Q And the documentation for that can be found in Staff Exhibit 3I?
A That is correct.
Q Staff Exhibit 2G, please.
A That is the category of deferred payment contracts for corn.
Q And the claim of Pat Kappenman.
A Pat Kappenman has a claim of 2,178 dollars and 43 cents.

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Company records would support this. Staff recommends that this is a valid claim for Mr. Kappenman.
Q And the claim of Larry Weber.
A Larry Weber has a claim for 6,764 dollars and 79 cents. The company records would support this. Staff recommends that this is a valid claim for Mr. Weber.
Q And Farmers National-Nichols?
A Farms National-Nichols has a claim for 1,162 dollars and 90 cents. The company records would support this. Staff would recommend that this is a valid claim for Farmers National-Nichols.
Q And Farmers National-Ott/Jackson.
A Farmers National-Ott/Jackson has a claim for 1,101 dollars and 24 cents. The company records would support this. The Staff recommends that this is a valid claim for Farmers National-Ott/Jackson.
Q Could you please explain Staff Exhibit 2H.
A That is the category of open storage - beans.
Q And the claim of Gene Hofer?
A Yes. Mr. Hofer has a claim for 1,626.65 bushels of beans. The company records would support this. Staff recommends that this is a valid claim for Mr. Hofer.
Q Could you explain Staff Exhibit 2I, please.
A That is the category of cash sale - beans.
Q And the claim of Rich Lauck or Rick Lauck?

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A Rick Lauck has a claim for 6,119 dollars and 22 cents. Company records would support this. Staff would recommend that this is a valid claim for Mr. Lauck.
Q Staff Exhibit 2J.
A That is the category priced unpaid - beans.
Q And the claim of Derald Klueber?
A Derald Klueber has a claim for 7,113 dollars and 40 cents. Company records would support this. Staff recommends that this is a valid claim for Mr. Klueber.
Q On to Staff Exhibit 2K.
A It's a category of deferred payment contracts for beans.
Q And the claim of Farmers National-Ott/Jackson, please.
A Farmers National-Ott/Jackson has a claim for 2,610 dollars and 88 cents. The company records would support this. Staff recommends that this is a valid claim for Farmers National-Ott/Jackson.
Q And Farmers National for Nichols.
A Farms National-Nichols has a claim for 1,337 dollars and 83 cents. Company records would support this. Staff recommends that this is a valid claim for Farmers National-Nichols.
Q And finally Pat Kappenman.
A Pat Kappenman has a claim for 7,296 dollars and 40 cents. The company records support this. Staff recommends that this is a valid claim for Mr. Kappenman.

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Q And please explain Staff Exhibit 2L.
A Staff Exhibit 2L is the category of delayed price contracts - beans.
Q And the claim of Leonard Buehner.
A Leonard Buehner has a claim for 408.14 bushels. The company records would support this. Staff recommends that this is a valid claim for Mr. Buehner.
Q And the claim of Helen Eide.
A Helen Eide has a claim for 1,861.76 bushels of soybeans. Company records show 973.87 bushels of soybeans. Delayed pricing contract number 20855. The differences are due to Miss Eide not including scale ticket number 14334 in her proof of claim, and not reflecting that her share is 40 percent of the total bushels. Staff recommends 973.87 bushels as a valid claim for Mrs. Eide.
Q And the documentation for that variance can be found in Staff Exhibit 3I, correct?
A That is correct.
Q Farmers National for Ott/Jackson.
A Farms National-Ott/Jackson has a claim for 719.06 bushels. The company records support this. Staff would recommend that this is a valid claim for Farmers National-Ott/Jackson.
Q And Farmers National-Graham?
A Farmers National-Graham has a claim for 700 bushels. The

company records would support this. Staff would recommend that this is a valid claim for Farmers National-Graham.

Q And the claim of Tim Jensen.

A Tim Jensen did not provide a signed proof of claim, but he did provide evidence that he has 2,329.80 bushels -- excuse me. Company records show that Mr. Jensen entered into delayed pricing contract number 14063 for 3,644.53 bushels of soybeans, number 20859 for 2,329.80 bushels of soybeans. Staff recommends that the -- that these delayed pricing contracts are valid claims for Mr. Jensen.

Q And please explain Staff Exhibit 3D.

A Staff Exhibit 3D would provide the delayed pricing contracts for the soybeans that Mr. Jensen did not provide in his documentation to the Commission.

Q Okay. Staff Exhibit 2M.

A Staff Exhibit 2M is the category grain bank - oats.

Q Charles Langle.

A Charles Langle has a claim for 400 bushels. The company records support this. Staff would recommend that this is a valid claim for Mr. Langle.

Q And Staff Exhibit 2N.

A That is a category of not categorized - corn.

Q And what is your understanding regarding the claim of

Lucille Helmbrecht?

A Lucille Helmbrecht has entered into a delayed price contract number 20854 for 2,397.51 bushels. Al Scott signed the contract for Lucille, and it's my understanding that he wants to provide further testimony today, so that is why it's in the not categorized category. Or Al Scott or somebody else. I don't know who it is for sure.

Q So it's your understanding that more evidence is going to be necessary to categorize this claim?

A Yes, it is.

Q What is your understanding regarding the claim of Jeff Scott?

A Jeff Scott has a claim for 7,172.15 bushels. He entered delayed price contract number 20865, and his proof of claim states that Mr. Mulder told him he couldn't issue warehouse receipts. His intent was to store.

Q Is it your under -- or it your feeling that more evidence is necessary to categorize this claim?

A Yes, it is.

Q What is your understanding regarding the claim of Rich Hoffman?

A Rich Hoffman has entered into delayed price contract number 20866 for 1,957.15 bushels of corn. It's my understanding that Mr. Hoffman wants to provide further

testimony at the hearing today.

Q Okay. So you feel more evidence is necessary to characterize this claim?

A Yes, I do.

Q Staff Exhibit 2O.

A That is a category of not categorized - beans.

Q And what's your understanding regarding the claim of Jeff Scott?

A Jeff Scott is claiming 6,835.60 bushels. He has entered into delayed price contract number 14061. The proof of claim states that Mr. Mulder told him he couldn't issue warehouse receipts. His intent was to store.

Q So it's your feeling that more evidence is necessary to characterize this claim?

A Yes, it is.

Q And the claim of Alvin Scott?

A Al Scott has a claim for 5,661.71 bushels of beans. He has entered into delayed price contract number 14062. His proof of claim says that Mulder told Scott he couldn't issue a warehouse receipt. His intent was to store.

Q So you feel more evidence is necessary to categorize this claim?

A Yes, I do.

Q I would like to take you back to Staff Exhibit 2A which

we skipped when we started these recommendations. Could you please explain Staff Exhibit 2A.

A Staff Exhibit 2A is a summary of claims which, in Staff's opinion, are valid claims in this proceeding.

Q And regarding the corn?

A What I have is a grain bank and open storage against basically the corn and soybeans and oats on Lines 1 through 18. It is Staff's opinion that Staff's categories of grain bank and open storage as depicted on Staff Exhibits 2B, 2C, 2H and 2M are valid claims against the grain inventory. It appears there is ample inventory to cover all the claims in these two categories. For example, if you look at Line 1 which is an inventory which is approximately 47,974 bushels for corn, the grain bank accounts and open storage amounts would be deducted from that corn inventory, leaving a remaining inventory of 23,603.47 bushels.

If you move onto the soybeans, the measured inventory is approximately 27,776 bushel which is on Line 7. From that I would deduct the open storage of 1,626.67 bushels which would leave the remaining inventory of approximately 19,149.

You move onto the oats, the measured inventory is approximately 746 bushel. And the grain bank accounts are 40 bushels. I would deduct that from that inventory

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which would leave a remaining inventory of 346 bushel.
Q And what's your recommendation regarding the remaining inventory then?
A Home Federal is claiming a superior valid and perfected first security interest in any grain under delayed pricing contracts, deferred payment contracts, by virtue of its prior and perfected security interest. Home Federal is not waiving its interest in any other grain stored in the elevator. After conferring with legal counsel, in Staff's opinion Home Federal has a valid claim against the remaining inventory unless it can be shown that other claims have superior security interest to Home Federal's security interest.
Q Could you move onto your -- to the breakdown of the bond here, please.
A Yes, I can. It is Staff's opinion that Staff's categories of cash sale and priced unpaid, as depicted on Staff Exhibits 2D, 2E, 2I, and 2J, are valid claims against the 50,000 dollar grain dealer bond for the period of July 1st, 2000 through June 30th of 2001. These claims total 77,617 dollars and 42 cents. Staff recommends that these claims be paid on a pro rata basis out of the grain dealer's bond proceeds. In other words, each claim would receive approximately 64.4 percent of its total claim. Unless it can be shown that the 27,617

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dollars and 42 cent amount not covered by the bond has a superior security interest to the claim submitted by Home Federal Bank, there is no valid claim against the remaining grain inventory.
Q Okay. Moving on to Page 2 of Staff Exhibit 2A. Could you explain your recommendation finally regarding the deferred payment contracts and delayed price contracts.
A It's Staff's opinion that delayed price contracts and deferred payment contracts as depicted on Staff Exhibits 2F, 2G, 2K and 2L are not protected by South Dakota statutory bond coverages. Title to the grain passes to the buyer upon delivery. Therefore, there is no valid claim against the bonds for these categories. Unless it can be shown that the claims in these categories have a superior security interest to the claims submitted by Home Federal bank, there is no valid claim against the remaining grain inventory.
Q And that includes -- moving on then to your explanation of the corn in bushels.
A Right. There would be a total of -- for corn the total for delayed price contracts and deferred payment contracts would be a total of 20,086.30 bushels. For soybeans, the total bushels would be 11,377.74 bushels.
Q And you feel, looking at Lines 32 and 33, these are the ones you feel needed more evidence to categorize?

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A Right. At this time Staff does not have a recommendation on this category. And these amounts are depicted on Staff Exhibits 2N and 2O.
Q Do you feel that there is any claims or any categories here that need further clarification at this point, Bob?
A No, I don't.
Q Moving on then, as director of the warehouse division, are you familiar with the rules and statutes that regulate warehouse -- warehousemen and dealers?
A Yes, I am.
Q Are you familiar with Section 49-43-11 which deals with whether warehousemen can refuse to take grain? Are you just aware of that statute?
A I am aware of that statute.
Q To your knowledge, can a warehouseman refuse to issue a warehouse receipt where he has room to store the grain and his facilities are in suitable condition?
A No, he cannot.
Q And if a dealer does this, to your knowledge does the statute define that as a criminal act?
A I believe it defines it as a Class 2 misdemeanor.
Q Okay. And other than the claims that you have received, are there any other claim forms or -- that you know of out there? Are there any claims out there?
A Not at this time. I believe there is -- we did receive a

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claim for the rent of the facility from R&R Ag Inputs.
Q What is your opinion regarding that -- that claim from R&R Ag Input?
A Can I speak -- (witness confers with Mr. Frazier).
Q Handing you what's been premarked as Staff Exhibit E. Could you explain what that exhibit is, please.
A Yes, I can. This is the charges for the rent of the facility at Canistota that was submitted by R&R Ag Inputs.
Q And how much is that claim asking for?
A What it says on here, there is a -- the rent of the facility, there is a charge 2000 dollars a month starting March 1st of 2001. And they also have a charge to load out the grain when it does get loaded out at 5 cents per bushel.
Q And do you feel more evidence is necessary to form an opinion on that exhibit, Bob?
A I think what we need is a further breakdown of the 2,000 dollar a month charge, I guess, that is depicted on this exhibit. What I have done, I guess, in a short period of time since we received this on April 30th was -- is -- what I did was looked at the maximum charge that the commission allows for storage warehouse is .001042 a day. And what I did then was -- is I took that .001042 times the amount of bushel that staff measured at the elevator

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which is approximately 69,500, took that times an average month of 30.42 days, to come up to a charge of 2200 dollars.

Then I also looked at what most elevators currently charge for a storage rate, and that is .001 a day. And I took it times the same calculation as I talked about previously, and that would come up with approximately 2100 dollars a month. And these rates here for the storage rate would include, you know, insurance, bond coverage and any losses relating to the spoiling, et cetera, which at that point R&R Ag does not provide.

So I guess that would be some evidence that the Commission could look at when they make a consideration of what the charge would be for the rent of the facility. But I do believe that we would need a further breakdown on the 2000 dollars to make a better recommendation at this time. But like I said, they have a charge for 5 cents loaded out. Currently that is what generally 99 percent of the elevators charge at this point in time to load out grain.

Q Okay. Do you feel that there are any questions or any issues that we haven't addressed here between you and I regarding Staff Exhibits 1, 2 and 3?

A No, there is not.

MR. FRAZIER: I have nothing further.

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MS. WIEST: Do you have any questions, Mr. Fink?

MR. FINK: No, I do not.

MS. WIEST: Would you like to offer Exhibit --

BY MR. FRAZIER:

Q I'm sorry. This Staff Exhibit E that I gave you, does that appear to be in the same form and content as it was when you received it?

A Yes, it was. They faxed it to you.

MR. FRAZIER: At this point I would move to enter Staff Exhibit E.

MS. WIEST: Is there any objection to Exhibit E? If not, it's admitted. Mr. Damgaard, do you have any questions?

MR. DAMGAARD: I do not.

MS. WIEST: Mr. Stevens, do you have any questions?

MR. STEVENS: No.

MS. WIEST: Do any of the potential claimants have any questions of Mr. Knadle? You have a separate opportunity to give testimony, but if you specifically have any questions, you can ask him at this time. If not, do any of the Commissioners have any questions at this time?

EXAMINATION BY CHAIRMAN BURG:

Q I had just one. On Staff Exhibit 2E you had -- how do you establish the claim value when no price is indicated on the -- on the scale tickets? I'm trying to remember which page that was.

A That was -- I have Staff Exhibit 2A, and I believe you are talking about Buehner.

Q Which Page is that?

A It's 2E, Staff Exhibit 2E.

MR. FRAZIER: The top of each page should have a number after the letter.

Q Yes. 2E.

A Right, that's correct.

Q Okay. You had no price established. How did you come up with a value of the claim?

A For example, on Buehner, his claim indicated a price of 1 dollar 80. What I did is I looked at some of the scale tickets that the elevator had, and Mr. Buehner sold his corn on January 15th of 2001. The price of corn on January 11th, 2001 was a dollar 85, so it was my opinion that a dollar 80 seemed reasonable.

Q Then the next one had none indicated on Kappenman?

A That's correct. Mr. Kappenman's proof of claim said -- his claim showed 4,000 bushels from January delivery at a dollar 59, 2,000 for January delivery at a dollar 70, 148.85 bushels at a dollar 80. That was the price on the board. And what I deducted was -- the price appeared to be reasonable based on the contract for future delivery

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of Farmers National-Nagano which had a price of 2 dollars and 2 cents.

Q So you used 2 dollars and 2 cents to arrive at that value?

A No. I just used the values that Mr. Kappenman claimed in his proof of claim. And if I look at Farmers National-Nagano, which is the one right below that, which showed he had a claim of 2 dollars and 2 cents. He had a contract for future delivery that showed that price of 2 dollars and 2 cents for delivery date of January 31st. So I thought Mr. Kappenman's claim was reasonable.

CHAIRMAN BURG: Okay. Thank you.

MS. WIEST: Any other questions? Any redirect?

MR. FRAZIER: None.

MS. WIEST: Thank you.

(Witness excused.)

MS. WIEST: Do you have any further witnesses, Mr. Frazier?

MR. FRAZIER: Yes, I have. At this point I would like to call Alvin Scott to the stand.

ALVIN SCOTT,

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRAZIER:

Q Good morning, Alvin.

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A Good morning.
Q Could you please state your name, and spell it for the record.
A Alvin Scott. A-l-v-i-n S-c-o-t-t.
Q What is your occupation, Mr. Scott?
A Full-time farmer.
Q And do you farm in the Canistota area?
A Yes, I do.
Q And besides your own crops, did you harvest anybody else's crops this year?
A I have several landlords, and I harvested theirs. Otherwise I did no custom work.
Q Did you harvest the crops of Lucille Helmbrecht?
A Yes, I did.
Q And did you place your grain and the grain of Lucille's in McCook Feed & Fertilizer?
A Yes, I did. Not all of it. I store some at home.
Q Okay.
A And I believe we took a few loads to Freeman.
Q Okay. Prior to that storage, did you have any meetings with either Mr. Mulder or his employees?
A Yes, we did.
Q A meeting was called by Lloyd Langley. Is that true?
A Correct.
Q And at that meeting were you told that the warehouse was

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in financially good condition?
A Yes.
Q What would you – would you kind of explain the gist of that meeting, please.
A Well, during that July and first part of August, we could see that we were going to have more grain to harvest than we could store at home, so we were looking for a reliable place to store some. So we began stopping at the Canistota elevator, McCook, and asked them if they were going to be open at harvest, if they were going to be storing grain, and if we could depend on payment. And Mr. Langley said you need to talk to Mr. Mulder. Mr. Langley was the one that was normally present. And after we had asked for information several times, he said I'm going to have Mr. Mulder come and talk to you. And he set up a meeting, I believe the date was August 24th, at 4:00 p.m.
Q Okay. And would it be fair to say that at that time you had some reservations about placing your grain in the facility?
A That is true. The former manager had left, and also the bookkeeper. And there was also some rumors that the financial condition was not the greatest.
Q Would it be fair to say that but for that meeting you wouldn't have placed your grain in the Canistota

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elevator?
A I believe that's true.
Q I'm handing you a document which was premarked Staff Exhibit 1Z – 1Z, which was the claim of Alvin Scott. Do you recognize that claim, Al?
A Yes, I do.
Q And do you recall filling that claim out?
A Yes.
Q And attached to that claim form is a contract, correct?
A Yes, it is.
Q Now, prior to signing this contract, had you had any discussions with Jeff Mulder regarding warehouse receipts?
A Yes, I had.
Q What was the nature of those discussions?
A Since we were concerned about the financial condition, we asked Jeff or told Jeff that we would prefer – I say "we," I am talking about my son and I – that we would prefer warehouse receipts. And he said – well, he was very vague about the answers, and he said I don't think we can do that and I'm not sure that I'm qualified to do that. And that was kind of the gist of his comments.
Q So you attempted to get warehouse receipts, is that correct?
A Correct.

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Q Would he issue them for you?
A No.
Q So as a result then, over the – because of this meeting where you had been reassured that the elevator was in good shape, you brought some of your grain and Lucille's grain into this elevator, right?
A Yes.
Q And since you couldn't get a warehouse receipt, you ended up signing a contract, is that right?
A That's true.
Q And that was the delayed price contract?
A Yes, it is.
Q When you first – when was the first time you discussed warehouse receipts with Mr. Mulder?
A I would say that I think it's in August.
Q When it came to your knowledge in August, was there room in his elevator for putting grain?
A Yes, I'm sure there was.
Q And at that time he said he couldn't issue you warehouse receipts?
A He was a difficult man to pin down. And we – we asked numerous times about the options that we would have, and whether or not we could have warehouse receipts, and he didn't plan on issuing any warehouse receipts.
Q When you signed the contract, to your knowledge was there

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room in the elevator to store the grain?
A I believe there was.
Q At that time did you ask for a warehouse receipt?
A No, not when I signed the contract. After numerous requests, we didn't see any reason to ask anymore.
Q So basically you signed the contract because you couldn't get warehouse receipts?
A Right.
Q If you could have gotten a warehouse receipt, you would have taken that instead of signing this contract?
A Yes.
Q Would it be fair to say then that it was Mr. Mulder's refusal to give you a warehouse receipt, and the reassurances that you had gathered from that meeting that was called on behalf of Mr. Mulder, were those the two factors that led you to enter into the contract and store the grain with him?
A True, plus we were trying to support the local facility. It's a good facility, it's convenient. We had several -- I have several farms that I rent on share, and we felt the fairest way to divide the share would be to deliver it to the elevator. And that's what we did.
Q I'm now handing you what was premarked as Staff Exhibit 1T, claim of Lucille Helmbrecht. Attached to that is the contract. Does that contract look familiar, Al?

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A Yes, it does.
Q What is that contract?
A It's delayed pricing contract number 20854.
Q 1T, this would have been in the very large pile. I have some extras here for convenience. Would you like an extra? These are deep in Exhibit 1. I pulled them out for convenience. Again, so that is a contract, a delayed price contract, is that correct?
A True.
Q And did you sign that on behalf of Lucille Helmbrecht?
A Yes, I did.
Q What were some of the factors that led you to signing that contract for Lucille?
A I talked to -- Lucille is the land lady, but she is at least 70 years old, and I talk business with her son, Bob Helmbrecht, which is present here, and discussed his options with the share. And he said to do with his or hers what I did with mine.
Q Okay. So --
A But she wanted to store it.
Q So the same considerations that you had -- when you entered into her contract for her were the same considerations you had when you entered into your contract?
A That's true.

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Q And part of those considerations were the fact that you couldn't get warehouse receipts?
A Right.
Q And you had been reassured that the elevator was in good shape?
A That is true.
Q So you felt safe entering into this contract?
A Right. In fact, he asked me -- Bob asked me on the phone, he said is this a reliable dealer. And I said, I believe it is. That's what I'm doing with mine.
Q So is it fair to say that you wouldn't have placed your grain or Lucille's grain in that elevator but for that meeting in August?
A That's true. Right.
Q And that you had attempted to get warehouse receipts?
A Right.
Q That Mr. Mulder refused to give you warehouse receipts?
A Right.
Q And to your knowledge, he had space in the elevator?
A I believe he did.
Q And you signed the contract because you couldn't get a warehouse receipt, and you had been reassured everything was just fine?
A Right.
MR. FRAZIER: I have no further questions.

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MS. WIEST: Do you have any questions?
MR. FINK: Just very briefly.
CROSS-EXAMINATION BY MR. FINK:
Q When you brought corn in that season, did you unload corn in the elevator, either your own corn or Mr. -- Mrs. Helmbrecht's corn?
A Yes. There were two locations, the old wood structure and the other one by the steel bins.
Q Okay. So you -- you specifically remember instances where you actually unloaded corn in the facility?
A Yes.
MR. FINK: That's all.
A Many loads.
MR. FINK: That's all I have.
MS. WIEST: Mr. Damgaard.
MR. DAMGAARD: I have no questions.
MS. WIEST: Mr. Stevens.
MR. STEVENS: No.
MS. WIEST: Any of the potential claimants have any questions of this witness? Do any of the Commissioners?
CHAIRMAN BURG: Yeah, I have a couple.
EXAMINATION BY CHAIRMAN BURG:
Q So I understand this, the proof of claims for stored grain, would that be -- the one you signed, the top page, is that considered an assembly sheet or what would you

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classify that?
A Which contract are we dealing with?
Q Lucille Helmbrecht's.
A I don't believe the assembly sheet is there.
Q Oh.
A I believe the tickets -- the warehouse receipt or scale ticket numbers are all listed with all the loads there.
Q And they don't indicate any price on any of those, is that correct, or disposition of those, what type of delivery they were?
A It was a delayed pricing contract, with the price to be set at a later time.
Q But that isn't indicated on the tickets, correct?
A Ticket 14472, do you have that?
Q Right.
A It says PL. Price later.
Q Price later. That's what that indicates, okay.
A Sometimes -- it was not in this particular instance, but sometimes it was written "store" on there, too.
CHAIRMAN BURG: Again, I know that -- what are the first two pages of this? Are they what the Commission put together?
MR. KNADLE: That is the proof of claims. We sent out the letter to the different producers. They sent that back and signed and notarized it.

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Q And on that page, that signature of Lucille Helmbrecht, is that actually her signature?
A Yes, it is. And I think there is other testimony for this.
MR. FRAZIER: Her son will be testifying also.
CHAIRMAN BURG: All right. Thank you. That's all I have.
MS. WIEST: Any other questions of this witness?
COMMISSIONER NELSON: I have a couple of questions.
EXAMINATION BY COMMISSIONER NELSON:
Q Who did you say was at the meeting on August 24th?
A Mr. Langley, which worked for the elevator, and Mr. Ray Marquardt, one of the new owners of the elevator, and several farmers. My son was there also.
Q And Mr. Langley and Mr. Marquardt all assured you that the elevator was in sound shape and it wouldn't be a problem?
A It was primarily Mr. Marquardt. Mr. Langley doesn't say too much. And that's one of the reasons he called the meeting is because he did not want the responsibility to -- was asking some of the same questions we were.
Q But Mr. Marquardt assured you that there was no financial problem?
A Right.
Q Thank you. You realize when you signed those deferred

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payment contracts, though, that it said that, right where you sign it, it's not covered by any bond, right?
A Yes.
Q And you did it anyway?
A Well, I felt we needed to have some kind of a contract.
Q Were there any other options? Couldn't you go to a different elevator?
A We could have. We don't have the biggest trucks, we don't have semis. Like I said, I was trying to support the local elevator.
COMMISSIONER NELSON: Thank you.
MS. WIEST: Any other questions of this witness? If not, thank you.
(Witness excused.)
MS. WIEST: Do you have any further witnesses?
MR. FRAZIER: Yes. At this time I would like to call Bob Helmbrecht. Would it be okay with the Commission if Bob testified from back here with this stand mike?
MS. WIEST: Sure.
BOB HELMBRECHT,
called as a witness, having been first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. FRAZIER:
Q Okay. Bob, could you state your name, and spell it for the record.

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A Bob Helmbrecht, B-o-b H-e-l-m-b-r-e-c-h-t.
Q And, Bob, what's your relation to Lucille Helmbrecht?
A She is my mother.
Q And as her son, do you tend to and handle some of her financial affairs?
A One hundred percent, all of it.
Q Okay. And did you have some conversations with Al Scott regarding the harvest this year?
A Yeah. Earlier before we started, he wanted to know where I wanted to take it, and I said wherever he takes his is good enough for me.
Q Okay. And it was your understanding that he placed the grain with McCook Feed & Fertilizer?
A Correct.
Q At the time the grain was placed with McCook Feed & Fertilizer, was it your understanding it went into the facilities?
A Correct.
Q That there was room in the facility when it went in?
A Yes.
Q After the grain went in, did you have any conversations with Mr. Mulder?
A No, not until we received in the mail the delayed price contract or the PL, and we didn't get a warehouse receipt. I called him. And he said that he didn't issue

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warehouse receipts. This was a better deal with the price of storage.
Q So he refused to give you a warehouse receipt?
A Yes.
Q And at this point you — your grain was in the elevator, right?
A Yes.
Q How many times did you try to reach him?
A Quite a few. Numerous. I called Al Scott about, you know, why we didn't get a warehouse receipt. And he got the same answer from Al — from — Mr. Mulder gave Al.
Q And what was that answer?
A That he just wouldn't issue a warehouse receipt. It's a better deal this other way.
Q If you could have gotten a warehouse receipt instead of a delayed price contract, would you have done so?
A Correct. A hundred percent.
Q Why is that?
A You are guaranteed. You know, the only way we do it at home is with — is warehouse receipt.
Q So you said guarantee. Did you have some concerns regarding the grain and the money?
A Well, when I talked to Al when he was going to take it in, he said that they had a meeting I believe sometime in August, you know, because he had some questions, but told

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them that everything was A-okay.
Q So for that reason, they put the grain in the elevator and accepted the delayed price contracts?
A Correct.
Q So ultimately it's fair to say if you could have gotten the warehouse receipt, you would have instead of entering into this contract?
A Definitely.
Q And you made ample attempts to get those from Mr. Mulder, right?
A Definitely.
MR. FRAZIER: I have nothing further.
MS. WIEST: Mr. Fink, any questions?
CROSS-EXAMINATION BY MR. FINK:
Q Just to clarify something you said. You referred to a conversation where somebody referred to a delayed pricing contract as being a good deal. Who said that?
A Mr. Mulder.
Q Obviously it wasn't a good deal.
A Definitely not.
MR. FINK: That's all I have.
MS. WIEST: Mr. Damgaard.
MR. DAMGAARD: No questions.
MS. WIEST: Mr. Stevens.
MR. STEVENS: No, Your Honor.

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MS. WIEST: Any of the potential claimants have any questions FOR this witness. Commissioners?
COMMISSIONER NELSON: I have one. Did it occur to you to complain to the Public Utilities Commission when he refused to issue the receipt?
THE WITNESS: No, because when I talked to Al, sounded like, you know, it was going to be all right. And I live in Iowa, and we don't have a public utilities commission. We have what we call an ICC, Interstate Commerce Commission.
COMMISSIONER NELSON: Okay. Thank you.
MS. WIEST: Thank you.
(Witness excused.)
MS. WIEST: Do you have any further witnesses, Mr. Frazier?
MR. FRAZIER: Yes. I would like to call Jeff Scott to the stand.
JEFF SCOTT,
called as a witness, having been first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. FRAZIER:
Q Good morning. Could you state your name, and spell it for the record, please.
A Jeff Scott. J-e-f-f S-c-o-t-t.
Q And what is your occupation?

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A Farmer.
Q And do you farm in the Canistota area?
A Yes, that's correct.
Q And this — this year did you place any of your inventory in McCook Feed & Fertilizer?
A Yes, I did. All my beans and a third of my corn.
Q I'm handing you what was premarked as Staff Exhibit 1G which should be in the large pile for all the attorneys. You don't have to — could you describe that document, please.
A This would be the proof of claim that I sent in to the PUC.
Q And that's your signature, and you filled that out?
A Yes, I did.
Q And on the explanation of claim, what did you write there?
A "My intent was to store the corn and beans in McCook Feed & Fertilizer, and sell them at a later date. I asked Mr. Mulder several times about warehouse receipts, and was told that they were not available."
Q So you attempted to get warehouse receipts?
A Yes, I did.
Q He refused to issue them?
A That's correct.
Q Was it this refusal that caused you to enter into the

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delayed price contract?
A Yes. After the meeting, I figured that it was fairly stable, that it would not be too big a risk, and I planned on getting rid of it early in the year, so I did sign it.
Q You mentioned the meeting. You were at the meeting?
A Yes, I was.
Q What feelings did you get coming away from that meeting?
A I felt fairly secure. We were told that it was going to be business as usual, and the past few years things have worked fine. I was fairly sure of -- secure about it.
Q At that meeting were you reassured that the elevator was in good financial shape?
A Yes, I was.
Q And Lloyd Langley was there at that time, right?
A Yes.
Q And a lot of the reassuring came from Ray Marquardt, is that correct?
A Yes.
Q But Lloyd works for Mr. Mulder, right?
A Yes, he does.
Q And he didn't disagree with Ray that things were in good shape?
A No, he didn't.
Q So did you feel that since Lloyd worked there and knew

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Mr. Mulder, that if -- that if things weren't in good shape and Ray said they were, Lloyd would speak up and say it's not true?
A The deal with Lloyd is he was kind of kept in the dark by Mulder most of the time, so he never really knew what was happening. So I don't know if he could say either way.
Q But he never disagreed that things were in good shape?
A No, he didn't.
Q So when you began putting your grain in the elevator, what was your intent?
A To store it and go for price appreciation.
Q But ultimately you ended up signing the contract?
A Yes. That's correct.
Q And in summary, it would be fair to say that the reason you signed the contract was because you couldn't get a warehouse receipt and because you had been reassured the facility was in fine financial shape?
A That's correct.
Q And if you could have gotten a warehouse receipt instead of signing that contract, you would have?
A Yes.
MR. FRAZIER: I have no further questions.
MS. WIEST: Mr. Fink.
CROSS-EXAMINATION BY MR. FINK:
Q What percentage of your crop approximately did you place

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in storage at -- excuse me, did you place at the McCook County Feed & Fertilizer facility?
A Of which crop?
Q Corn.
A About a third of my corn.
Q What percentage of your bean crop?
A All of it. A hundred percent.
Q Did you have primarily beans or primarily corn that year, or how did that split up?
A Half and half.
Q So well over half your crop was at this site?
A That's correct.
MR. FINK: That's all I have.
MS. WIEST: Mr. Damgaard.
MR. DAMGAARD: No questions.
MS. WIEST: Mr. Stevens.
MR. STEVENS: No.
MS. WIEST: Any questions from potential claimants? Commissioners.
EXAMINATION BY COMMISSIONER NELSON:
Q I have a couple. Did it occur to you to complain to the Public Utilities Commission when the guy -- Mr. Mulder refused to give you a warehouse receipt?
A No, it didn't. We were told that he -- he told us that he did not have some federal license or something that

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he -- so he was unable to issue then. So we just took him for his word.
Q Did you get any -- at this meeting that you had on the 24th, what -- did he give you any kind of proof besides his word that things were A-okay that made you feel good about this?
A It was all verbal. There were no numbers shown to us or nothing, but Ray had told us that they were considering merging, and they wouldn't merge with nothing if it wasn't a strong company, so we decided that they were fairly stable.
COMMISSIONER NELSON: Thank you.
EXAMINATION BY CHAIRMAN BURG:
Q You may have already answered at least, but my question was what was Mr. Marquardt's relationship with McCook Feed and Grain at that time?
A Presently he had no financial interest, but he was a spokesman there at the meeting.
Q And that's why -- and that was his purpose of being there at the meeting, was to sort of assure everybody that --
A I am assuming so.
Q -- that McCook was all right?
A Right.
CHAIRMAN BURG: Okay. Thank you.
MR. FRAZIER: That prompted a couple of questions

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from me if that is okay.

REDIRECT EXAMINATION BY MR. FRAZIER:

Q Were you aware that the PUC had jurisdiction over warehouse receipts and things of that nature?

A Never really thought about it. I had never had problems, so I didn't worry about it.

Q Did you know that there might -- that there is potentially criminal sanctions for failing to issue warehouse receipts? Have you ever heard of that?

A No.

Q You said he said he didn't have a federal license to issue warehouse receipts, something like that?

A He said there is some federal warehouseman's deal that cost him -- it was a 500,000 dollar bond or something. I don't know. It was some reason that he could not do it, and that's why he told me they weren't available.

Q Have you ever heard anything more about that?

A No. I asked Bob at the first meeting if we -- that we had, and he said that they could have issued them by just the state license, but he said they weren't available.

Q Okay. And to your knowledge, was there room in the elevator when you placed your grain there?

A Yes.

Q How much do you and your father stand to lose if these contracts fail?

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A Close to 65,000.

MR. FRAZIER: 65,000. I have nothing further.

MS. WIEST: Any other questions of this witness? Thank you.

(Witness excused.)

MS. WIEST: Any further witnesses?

MR. FRAZIER: One last witness, please. Richard Hoffman, please.

RICHARD HOFFMAN,

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRAZIER:

Q Richard, would you please state your name, and spell it for the record.

A Richard Hoffman, R-i-c-h-a-r-d H-o-f-f-m-a-n.

Q And what is your occupation, Richard?

A I am a farmer.

Q Do you farm here in the Canistota area?

A Yes, I do.

Q And did -- this year did you end up placing some of your harvest in McCook Feed & Fertilizer?

A Yes, I did.

Q I'm handing you what's premarked as Staff Exhibit 1U. Do you recognize that, Richard?

A Yes, I do.

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Q What is that?

A The first sheet would be the claim that I sent to the PUC. The second sheet would be the delayed pricing contract that I had with McCook Feed & Fertilizer.

Q And attached to the claim form, that contract, you signed that, right?

A That's correct.

Q Prior to signing that contract, had you had any meeting with either Jeff Mulder or his employees? Were you at that meeting that the Scotts were at?

A Yes, I was.

Q What was your -- what was your feelings from that meeting?

A As Scotts had stated before, there was some rumors that perhaps the elevator was in some kind of financial trouble or something because there was -- the manager had quit and they had not replaced the manager. The bookkeeper had quit, and they hadn't replaced her. And so there was a lot of questions as to what was going on because we were going into harvest. And so they called a meeting, or Lloyd called several people at -- from my understanding with Mulder's request, and we had a meeting with Mr. Marquardt.

Q Would it be fair to say that prior to that meeting you had some serious concerns about whether you wanted to put

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your inventory in that elevator?

A Yes, I would say that. Yes.

Q Did that meeting dispels those fears?

A Yes, it did.

Q And you had been reassured they were in good shape?

A Mr. Marquardt has a track record, he owns several elevators. And, yes, as he stated at the meeting, that they were considering a business arrangement, either a merger or some other kind of partnership with Mr. Mulder.

Q Okay. So after that meeting then, you ended up putting some of your harvest in the elevator, correct?

A That's correct.

Q You ended up signing the contract. Have you ever signed one of those contracts before?

A No, I have never -- I usually sell everything on cash, but I did put this little dribble of corn here, 1900 bushel, on a delayed pricing.

Q Okay. And when you went to sign that contract, you -- well, describe what happened when you entered into the contract.

A I had delivered some corn for myself and for my landlord, and because the price was very poor at that point in time, I didn't quite know what to do with the corn that I delivered. My landlord sold hers on cash. I asked Mr. Mulder what options he had available for pricing,

whether it was -- whether it was wise to store it or what other options he had. He said the only option that he offered was delayed pricing. And approximately a week to ten days later he came with his contract.

Q Okay. And did he -- did you ask him to explain the contract to you?

A I read through the contract. And he had filled out the parts that -- I guess he had filled it out, all of it, with the exception of my signature. I looked it over, and the scale ticket numbers and et cetera were correct, and the bushels were correct. And I asked him what this meant, that it wasn't covered by bond, grain dealer bond.

Q What was his response?

A He said that it was just a standard contract, and he said doesn't mean anything, and that if anything happened, the corn would be here in the elevator.

Q What did you think he meant by the corn will be here?

A That -- what I understood that he meant was that he couldn't sell or move the grain until I priced the grain to him.

Q And so you have never entered into one of these contracts?

A I've never entered into one of these contracts before. I've never even seen one before.

Q And it's apparent that he does these contracts on a

regular basis, right?

A My understanding is that, yeah. Exactly.

Q So did -- basically did you rely on his description of what this contract meant when you signed it?

A Well, exactly, because I pointed out to him or asked him what that meant, that is not covered by bond. And he said, well, that really doesn't mean much of anything because the corn is here. If I -- if I want the corn or whatever, it's here.

Q So you took that to mean that he didn't take complete possession until what?

A Until I priced it to him.

Q Is it fair to say that you wouldn't have signed that contract if he hadn't kind of intimated to you if you wanted to come pick up the corn, you could?

A That's correct.

MR. FRAZIER: I have no further questions.

MS. WIEST: Mr. Fink.

MR. FINK: No questions.

MS. WIEST: Mr. Damgaard.

MR. DAMGAARD: No questions.

MS. WIEST: Mr. Stevens? Any potential claimants, any questions? Commissioners?

CHAIRMAN BURG: Yeah.

EXAMINATION BY CHAIRMAN BURG:

Q Give me the list of names of the people that were at the meeting again.

A The list of all the people that were there at the meeting?

Q Do you know or -- give me the ones that you are aware of.

A Well, it would be Lloyd Langley who was -- he wasn't really acting as the manager, but he was the on-site person for McCook Grain & Feed. Ray Marquardt was there, Alvin and Jeff Scott, Dale Shumaker I believe was there. Quite frankly, outside of that, I can't remember.

Q I don't want you to speculate.

A Yeah.

Q Were -- to your knowledge -- let's see, you signed and Jeff and Alvin Scott signed. What did Dale do, do you know?

A I have no idea.

Q What is your feeling because -- Marquardts own the elevator now, is that correct?

A That's correct.

Q What is your feeling about doing business with him after this situation or the fact that they now own the elevator?

A Kind of ambivalent. We really don't know what --

Q Excuse me. Go ahead. Do you hold them at all liable for what happened?

A Not necessarily as they -- at the meeting that we had, they explained that they were going to enter into a business relationship with Mr. Mulder, and they hadn't determined what that kind of relationship was going to be at that time, whether it was going to be a complete merger or perhaps taking over the elevator completely as far as management. They hadn't determined that. The only thing that they had determined was there was going to be a relationship of some sort. And that's what we -- and he was there to reassure us that -- the fact that the elevator was sound and everything was business as usual because of the fact that we were right on top of harvest and there was no manager, no secretary, basically just one person on-site at that time. And so, you know, we are all kind of wondering what the heck is going on here.

Q Did you feel that that was -- they were more or less assuring that it would be secure? I mean I have been getting the feeling from the discussion that the fact that Ray Marquardt said it will be okay led you to go ahead with the -- with this process.

A Well, yeah. You're correct in that assumption because of the fact that we were all aware of the fact that Marquardts have a track record. They own several elevators, and we all assume that they are financially sound. And so when he comes in and says, you know, we

are going to enter into a business proposition of some sort, and they hadn't determined what that was going to be, but at some point in the near future they were going to sit down with Mulder and determine what their relationship was going to be. And he was there to reassure us that they had their financial clot, meaning their elevator's, so on and so forth, that everything was fine, and he wanted to make sure that none of us was hesitant about selling our grain to the elevator because of the decision that was taking place there.

Q So do you feel they are going to do anything about helping you recover any losses because you went on their word?

A No.

CHAIRMAN BURG: That's all.

MS. WIEST: Any other questions of this witness? If not. Thank you.

(Witness excused.)

MS. WIEST: Again, any further witnesses, Mr. Frazier?

MR. FRAZIER: I have no further witnesses.

MS. WIEST: Let's talk about a schedule. Let just go off the record. I'm sorry, can we recall Bob -- Bob, Chairman Burg has a couple of questions.

BOB KNADLE,

recalled as a witness, having been previously duly sworn, testified further as follows:

EXAMINATION BY CHAIRMAN BURG:

Q Bob, I -- do you happen to have that part of the statute that indicates that they have to take warehouse grain if they have room? Would you just read that section.

A It's 49-43-11. "Duty to receive grain - Exceptions - Violation is a misdemeanor. The lessee, owner or manager of a public grain warehouse which has furnished a bond and received a public grain warehouse license, shall receive for storage all grain offered for storage at the warehouse, which at the time of such offer are in suitable condition for storage, and which are tendered in the usual course of business. However, if the capacity of the warehouse to receive the grain is exhausted and the owner, lessee or manager of the warehouse is prevented from shipping the grain to a terminal market by inability to obtain cars for shipment or some other valid cause rendering the receiving of such grain impossible and over which the owner, lessee or manager has no control, the provisions of this section are waived. A violation of this section is a Class 2 misdemeanor."

Q Are you aware of any time when we've really enforced this part, where we had to determine whether there was -- whether they could receive grain or not?

A Not since I have been in my present position.

Q You know, if you are requested to do that, do you have any idea how you determine that?

A You just have to go out and investigate if they have enough storage that was suitable for storage.

Q So what -- and let me see if you agree with this. What that section means, the way I see it, is that if they hold themselves out to be a warehouse, that if they have space, they are required to non-discriminatorily give that -- offer that space to whoever asks to store, is that -- is that the essence of that section?

A That would be my opinion. I'm not a lawyer, but that would be the way I would interpret it.

CHAIRMAN BURG: I guess that's all I have.

EXAMINATION BY COMMISSIONER NELSON:

Q I guess I have a question for Bob. Marquardt has other grain dealers' licenses in the State of South Dakota at the present time, is that right?

A Yes. He has grain dealer licenses and public storage warehouses for grain.

Q And do we believe that his other facilities are solvent and running, operating in good stead?

A Yes, I believe they are.

COMMISSIONER NELSON: Okay. Thanks.

MS. WIEST: Any other questions of this witness? If

not, thank you.

(Witness excused.)

COMMISSIONER NELSON: Can we recall some of the other people that have already testified? I would like to talk to Mr. Alvin Scott.

MR. FRAZIER: Just for the record, Al, you are still under oath.

ALVIN SCOTT,

recalled as a witness, having been previously duly sworn, testified further as follows:

EXAMINATION BY COMMISSIONER NELSON:

Q Mr. Scott, thank you. Did you put your grain in this facility because of things that Mr. Marquardt told you?

A Yes, that was one of the considerations.

Q Do you have a problem now with the fact that he was less than forthright about his recommendation?

A Yes, I do.

Q And it would be a problem for you in the future in doing business with a man like this?

A Well, I have no -- I don't know what he was basing his opinion on. As I look back on it, it must have been an opinion, and I -- which I was aware that they were considering some type of business arrangement, so I assume that they did their background check and considered the financial records. So I -- I based part

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of my decision on that, plus I was -- also wanted to do business locally.

Q Did you feel any pressure that from -- at that meeting that Marquardt was there to help convince farmers in the area they should continue to do business with this elevator, and that he was saying that it was in good financial shape, or did you just assume? Did he really say this place was solvent and okay and wasn't a problem?

A Yes, he did. He encouraged us to continue doing business.

Q And he -- he really did say that he felt this was a solvent, fine, no problem kind of operation at the present time?

A That's what I interpreted his remarks.

Q Okay. Thank you. Do you have any sense that he was willing to back this up? Did -- I mean did you think he had any -- any involvement in the elevator, any personal financial responsibility?

A Toward the end of the meeting he was asked that question, and he said, no, he did not have any money involved at that time.

Q And he didn't make you any assurance that what he was saying he would back up if the elevator didn't -- wasn't stable?

A No. We didn't ask him if he would guarantee anything.

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MS. WIEST: Thank you.

MR. FINK: Actually, I have -- could I ask some questions?

CROSS-EXAMINATION BY MR. FINK:

Q Who called the meeting in the first place? Was it Lloyd?

A I am thinking since we -- my son and I stopped and talked to Lloyd quite often because we were trying to line up storage, that Lloyd could not get the answers from Mr. Mulder, so he said he talked to Mr. Mulder, and then he let us know that this -- there was going to be a meeting on August 24th at 4:00 o'clock.

Q So when you show up on at this meeting in August, is it your understanding that Jeff Mulder would be there?

A Yes. That's who I thought we would be talking to.

Q So when Mr. Marquardt shows up, what did you think? Why did you think that Marquardt showed up?

A Well, he told us that they were working on a business arrangement, so that seemed like a good reason. We couldn't quite understand why Mr. Mulder was not present.

Q Okay. Was it your understanding that Marquardt was speaking on behalf of Mulder?

A I guess I can't say for sure that I felt he was definitely representing Jeff.

Q But obviously they had talked to each other beforehand?

A Yes. And I'm not sure -- I think Mr. Mulder invited him

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there earlier in the day, and left again. I'm not sure.

MR. FINK: That's all I have.

EXAMINATION BY CHAIRMAN BURG:

Q In follow up I had a question, and I noticed on all these, I forgot to ask them before, the person signing the delayed pricing contract on behalf of McCook Feed & Fertilizer, is that a Peg Waltner? Is that right?

A That was the bookkeeper located in Freeman.

Q And that person had the right to -- what does Freeman have to do -- is Freeman part of McCook Feed?

A Yes, Freeman Fertilizer doing business as McCook Feed & Fertilizer. They did not have -- as I understand, they don't have a grain facility down there, but they had a feed store, and I'm not sure if they had some fertilizers down there.

Q And this person to your knowledge is someone that had the authority to sign these delayed pricing contracts for McCook Feed?

A I would -- to my knowledge she had the authority. She also signed checks, I'm sure.

MS. WIEST: Any other questions?

MR. FRAZIER: That prompts a question from me.

CROSS-EXAMINATION BY MR. FRAZIER:

Q I guess I would like to find out the delayed pricing contracts that you just mentioned here to Mr. Burg. I

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know that there is no detail filled in. These are just signed, but none of the dates or information on the contracts are filled in. Why is that? Is the thing normally left incomplete and just signed?

CHAIRMAN BURG: Ones we have are --

Q If you look at the contents of the delayed pricing contracts of Lucille Helmbrecht and Alvin Scott, the very center of the contract, there is no details in the contract itself. Did you mean for those -- who was supposed to fill those in?

A That I don't know. This is what -- everything was filled out except for our signatures when we got the contract, and Jeff had only -- he said the charge will be, if I recall correctly, five months' storage for 12 cents a bushel.

Q But none of the details or anything put in this contract?

A That's correct.

Q And it doesn't state how many days that it's going to sit there or anything of that?

A No, it does not.

Q Pretty incomplete contract, isn't it?

A Right.

MR. FRAZIER: Okay. I have nothing further.

MS. WIEST: Any other questions for this witness? Thank you.

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(Witness excused.)
MS. WIEST: Let's just go off the record for a moment.
(Off the record discussion.)
MS. WIEST: Okay. We will go back on the record. Commissioner Nelson wanted to recall Mr. Knadle.

BOB KNADLE,

recalled as a witness, having been previously duly sworn, testified further as follows:

EXAMINATION BY COMMISSIONER NELSON:

Q Mr. Knadle, when was last time that the Commission Staff, like the director, looked at -- that we looked at financials of the elevator?

A Of McCook? When they licensed, the licensing year. We did -- we did receive some financials when we did -- after we found out that they couldn't pay on those checks, we did receive a preliminary audit by their accountant at that point in time.

Q When we go out and inspect and stuff we look at the books, right?

A We look at their, you know, daily position record, their contracts that they enter into, their warehouse receipts, their scale tickets, and et cetera.

Q So based on that, is that -- would you be able to decide the elevator was in A-okay financial shape, insolvent, or

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is that what we are making in part our decision on and the purpose of our inspection?

A The purpose of the inspection, like I said, was to make sure that the grain they do have in their facilities, they do have proof that shows how it's backed up. They will have warehouse receipts, they will have grain bank, they will have open storage, they will have different contracts that they enter into. What we do is we take their daily position record in, tie that back out to the different things that they have open. For example, in receipts, if they have a number of bushels there, we go to the warehouse receipt book, make sure that matches what they show on their DPR. we do the same for grain bank and the same for the different kind of contracts they entered into.

Q I guess what I'm trying to get at, Mr. Knadle, is based on -- what would Mr. Marquardt have had to and Mr. Langley have had to have looked and taken into consideration when they represented in a meeting on August 24th that this grain elevator was A-okay and in fine financial shape?

A I guess, you know, I wasn't there, but I can take a guess that they probably had some financial statements that they got from Mr. Mulder. And I can't say that for sure, but I would imagine that is what they are looking at. He

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might prepare monthly ones, quarterly. I don't know. That is what they are looking at. They are looking at his different finances, I would imagine.

Q So assuming that they reviewed these somewhat near the August 24th meeting, when would have been the last time that you or the Commission Staff, people representing us, reviewed that same kind of financial data to determine that they were solvent?

A Like I said, we would have reviewed financial data -- during the licensing process they are required to submit the most recent financial statement that has been prepared by an independent source. That is what we review when we look at their financials for relicensing. They have to meet certain minimum requirements. One of those is a positive working capital. The other one is a positive net worth to be licensed. They also have to have bonds from a bonding company. And the bonding company also reviews their financials when they issue them bonds. And I don't know what kind of requirements that the bonding companies have, but they do look at those financial statements.

Q And they get a license every year?

A I think they have been licensed since October, I believe, of 1992, McCook has.

Q But do they renew it every year?

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A Every year they have to come do the same thing. The license is good for July 1st of one year to June 30th of the next year. They go through the same process every year to get relicensed.

Q So you would have looked at those financial papers July of that year?

A Well, what we do is different companies have different year ends. Some have a year end of December, some January, some March. What we try to do is -- for example, I think McCook's was a year end of December. What we will do is we send out a letter in -- about two months after year end because their accountants have to have time to prepare them. We will send them a letter requesting their most recent financial statement. And that way we would have it, you know, a couple of months after their year end, which in the licensing process, their license doesn't expire until June 30th. So we would have, you know, four months before that basically we are looking at their financial records as of December.

Q What I'm trying to figure out here, Bob, is at what point was the last point that you looked at those papers financially, and decided that this company -- I mean that you could be reasonably assured that they were solvent until we had other evidence that they were not?

A That would have been the last licensing year, so it would

have been their December 31st of 1999 financial statement I believe is what the year would be. We probably received that in April or May. I don't know the exact date. But that's what I'm guessing before the license for this licensing year.

Q So you are saying that it would have been almost a year, close to, since you looked at those financial papers because it was -- somewhere I got the impression that the last time you really looked at that stuff was in March, and then I was assuming that Marquardt and Langley looked at that stuff prior to the August 24th meeting more recently, so what I'm trying to find out from you is when was the last time you would have reviewed that financial information and --

A It would have been when we relicense them for this current -- for this current licensing year. I can't give you an exact date.

Q Well, can you give me a month?

A April or May, right in that range probably.

COMMISSIONER NELSON: okay. Thank you.

MS. WIEST: Any other questions --

COMMISSIONER NELSON: No.

MS. WIEST: -- of any witness? Thank you.

(Witness excused.)

MS. WIEST: Mr. Damgaard.

MR. DAMGAARD: At this time I would call Mike Pierce.

MIKE PIERCE,

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DAMGAARD:

Q Mr. Pierce, would you state your full name for the record.

A Mike Pierce, M-i-k-e P-i-e-r-c-e.

Q And your current address?

A 6525 West Essex, Sioux Falls, South Dakota.

Q How are you currently employed?

A The collection special assets manager for Home Federal Savings Bank.

Q And how long have you been employed in that capacity?

A About ten years.

Q Could you briefly describe for the Commission your duties, the duties of your current position.

A Basically manage the collection staff. We collect and service the loan portfolio for the bank.

Q And, Mr. Pierce, are you familiar with the contractual relationship between Home Federal Savings Bank and Freeman Fertilizer Company, Incorporated?

A Yes. I am.

MR. DAMGAARD: May I approach?

MS. WIEST: Yes.

MR. DAMGAARD: Thank you.

Q Mr. Pierce, I'm handing you what's been marked previously by the court reporter as HF Number 1. Do you recognize that document?

A Yes, I do.

Q What is it?

A That's a promissory note, executed by principals of Freeman Fertilizer, a loan dated December 29, 1997 in the amount of one million dollars.

Q And who executed that document?

A Jeffrey Mulder and Janice Mulder.

Q On behalf of what entity?

A Freeman Fertilizer.

Q Next I'm going to hand you what's previously been marked for identification purposes as HF Number 2. Do you recognize that document?

A Yes, I do. It's a current statement of account for the previously mentioned loan. Balance outstanding of just over 600,000 dollars.

Q So you are telling me that the outstanding balance on Exhibit Number 1 is in excess of 600,000 dollars?

A Yes.

Q Next I'm going to hand you what's previously been marked for identification purposes as HF Number 3. Do you recognize that document?

A Yes, I do. That's a SBA or Small Business Administration note, again, executed at Home Federal Savings Bank by the principals of Freeman Fertilizer dated December 29th, 1997 in the amount of 700,000 dollars.

Q Next I'm handing you what's been previously marked for identification as Home Federal Exhibit Number 4. Do you recognize that document?

A Yes, I do. Again, it's a statement of account for the SBA loan, current balance outstanding 237,624.81.

Q Would it be an accurate statement that Number 4, Exhibit Number 4, reflects the current balance of the note that is Exhibit Number 3?

A Yes.

Q Thank you. Next I'm going to hand you what's previously been marked for identification purposes as Home Federal Exhibit Number 5. Do you recognize that document?

A Yes, I do. This is the blanket security agreement executed by Freeman Fertilizer.

Q And is there a date on that document?

A Dated December 29th, 1997.

Q And does that document purport to grant a security interest to the bank in inventory?

A Yes, it does.

Q Thank you. Next I'm going to hand you what's been previously marked for identification purposes as Home

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Federal Exhibit Number 6. Do you recognize that document?
A Yes, I do. Again, security agreement concerning the Small Business Administration loan dated December 29th, 1997.
Q And does this security agreement purport to grant a security interest in inventory to Home Federal?
A Yes, it does.
Q Thank you. Finally I'm going to hand you what's been marked for identification purposes as Home Federal Exhibit Number 7. Do you recognize that multi-page exhibit?
A Yes, I do. Certified State of South Dakota certified UCC financing statements.
Q Okay. When you say "certified," you mean the Secretary of State has certified the UCC records for Home Federal –
A Correct.
Q – regarding Freeman Fertilizer?
A That's correct.
Q Mr. Pierce, are you one of the people at Home Federal who has custody and care of Home Federal's records, business records kept in the ordinary course as relates to Home – as relates to Freeman Fertilizer, Inc.?
A Yes.

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Q Are you one of the persons who has custody and care of those records?
A Yes.
MR. DAMGAARD: At this time I would move for the admission of Exhibits 1 through 7.
MS. WIEST: Any objection?
MR. FRAZIER: No objection.
MS. WIEST: If not, they are admitted.
MR. DAMGAARD: I have no further questions for this witness.
MS. WIEST: Mr. Frazier.
MR. FRAZIER: Yes.
CROSS-EXAMINATION BY MR. FRAZIER:
Q Based on these two loans then, at this point the bank – it appears to be out about over 830,000 dollars?
A Yes, that's correct.
Q Were there discussions prior to the suspension of credit for Mr. Mulder recording this balance?
A There could have been. I wouldn't have been part of that. Again, I'm just brought in for collection, liquidation, et cetera.
Q You would have nothing to do with the decision on whether to suspend his credit –
A No, I would not.
Q – or the timing of that suspension?

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A No.
Q Would Mr. – obviously if title transfers on a bunch of grain, would that – under the security agreement, if Mr. Mulder had a lot of grain transferred title to him, does that affect the amount of money he is going to owe this bank if he goes insolvent or his credit is suspended?
MR. DAMGAARD: I'm going to object. That calls for a legal conclusion. You may answer the question, but the objection stands.
A I guess I'm not sure. I wouldn't think so.
Q So having – having a large inventory titled in his name would have no effect on his balance?
MR. DAMGAARD: Same objection.
A It would – it could have a possible impact on the money that we could recover I guess, if that's – yeah.
MR. FRAZIER: I have no further questions.
MS. WIEST: Mr. Fink.
CROSS-EXAMINATION BY MR. FINK:
Q What was the date that the decision was made to suspend credit?
A Again, I couldn't exactly say, not being in that position when that decision was made. I was notified mid February perhaps that a liquidation was pending. That's, again, where I was kind of brought on line to work in that

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respect.
Q Okay. Is it your understanding that that decision was made after harvest?
MR. DAMGAARD: I'm going to object to that. He stated he didn't know when the decision was made.
MS. WIEST: Do you know when the decision was made?
A I don't – I do not know the date the decision was made, no.
Q Well, from the bank's perspective, it would be most beneficial to wait until after harvest to pull the plug?
A I guess I couldn't speculate on that either.
Q Well, if an elevator – let me start it this way. It's your position that these – with these delayed pricing contracts that the grain that was taken to the elevator now falls under your security agreement?
A I believe so, yes.
Q And unless – or if that grain is brought to the elevator and stored as, say, open storage, that wouldn't fall under your security agreement?
MR. DAMGAARD: I will object to that. That, again, calls for a legal conclusion. Mr. Pierce is not a lawyer, nor does he claim to be.
A I honestly couldn't answer, again, not being a legal backing, you know.
Q Okay. Well, if – if you've got an elevator that's

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bringing in grain and buying that grain under what's called a delayed pricing contract, it would be most beneficial from your perspective to allow that practice to continue until as much grain is in the elevator as possible, right?

MR. DAMGAARD: Objection. Calls for a legal conclusion.

A. Perhaps, I guess. Again, I'm more involved in the liquidation of assets and so on. As far as the timing of any of it, I really wasn't a part of that. I do know that if the decision was based on timing, sitting at a loss of over 800,000 dollars, the timing wasn't, in my opinion, very good.

Q. Would it have been any better at any other time of the year?

A. I -- I don't know. I guess speculation. I don't know. That's a good question.

Q. Okay. So when you say that it wasn't very good timing, you're speculating about that?

A. Correct.

MR. FINK: Okay. That's all the questions I have.

MS. WIEST: Mr. Stevens? Do any of the potential claimants have any questions of this witness?

UNIDENTIFIED VOICE: Can we get copies of all this stuff from the bank now that you have put them into --

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now that you have got ahold of them? Can we have copies to look at these, better understand where the bank's coming from?

MS. WIEST: Right, you can -- they will be filed as confidential. You can have copies of these. Do you have any questions for this witness or would you like to look at a copy now?

UNIDENTIFIED VOICE: Well, he doesn't seem to be able to answer anything.

MS. WIEST: Does anyone have any questions for this witness?

UNIDENTIFIED VOICE: Why was the building sold before the grain was taken out? Now we have to pay storage on the grain yet, too.

THE WITNESS: Why was the building sold before the grain was taken out?

UNIDENTIFIED VOICE: Yeah.

THE WITNESS: Again, the decision was made, a buyer was found, and it was sold. The PUC stepped in and it was hands off on the grain, as I was told, so --

UNIDENTIFIED VOICE: How can you sell the building with all the farmers' grain in it, though?

THE WITNESS: I guess I'm not sure.

UNIDENTIFIED VOICE: What about the assets, can you tell us about the assets that have been acquired through

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sales?

THE WITNESS: As far as --

UNIDENTIFIED VOICE: Liquidation of assets.

THE WITNESS: Hard assets, land, building and equipment, for the most part were sold, yes.

UNIDENTIFIED VOICE: Correct. Is there a dollar amount on that? Is that in with these sheets that you handed in?

THE WITNESS: That would not be in there, no.

UNIDENTIFIED VOICE: It would not.

MR. DAMGAARD: But the amounts that you testified to would reflect the balance due and owing after the application of the sale proceeds from all the assets previously sold, isn't that correct?

THE WITNESS: Correct. The balance -- the 830 some thousand dollars is net of what we have sold hard assets.

MS. WIEST: Are there any assets remaining subject to your security agreement that have not yet been sold?

THE WITNESS: With the exception of this -- the outcome of this meeting, the grain.

MS. WIEST: Just the grain. Do the Commissioners have any question?

UNIDENTIFIED VOICE: Now, how do you -- I guess I don't follow how you got a secured interest in grain that has never been paid for.

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MR. DAMGAARD: This again calls for a legal conclusion. I would object to the question.

MS. WIEST: That would call for a legal conclusion. And it will be the Commission who will make those legal determinations. And we will submit a proposed decision to the circuit court, and then the circuit court can either accept or reject that.

CHAIRMAN BURG: The question I have is -- you know, I am a little disappointed that we have somebody here that does not know what the history of this loan was because I'm very interested in knowing at what point -- why it got to the point of losing 800,000 dollars, and at what point the bank determined that they were not going to extend anymore. But you've indicated you don't have any of that knowledge, is that right?

THE WITNESS: Really no direct firsthand knowledge. The loan officer working on that I believe had a prior commitment, but I -- I guess I do know as far as the business situation, we had business checking accounts with them, and at the point where we were not honoring checks on an account that would not cover them.

CHAIRMAN BURG: What was that point then that you said you were knowledgeable of that?

THE WITNESS: It came about, I would assume, January, February, about that time when I think some of the

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claimants here notified the PUC of holding NSF checks, et cetera. I can't give you exact dates, no.
MS. WIEST: Any other questions of this witness? Go ahead, sir.
UNIDENTIFIED VOICE: I have one question. How do you justify loaning a million dollars to an individual or corporation with 300,000 dollars worth of assets?
MR. DAMGAARD: I would object to that question. Assumes facts not in evidence.
MS. WIEST: I believe it does assume facts not into evidence. Can you rephrase that question at all?
UNIDENTIFIED VOICE: How did he get so over-leveraged then?
THE WITNESS: Again, I was not involved when the loan was made at the time.
UNIDENTIFIED VOICE: why does he have such a low bond? Why is the bond only 75,000?
THE WITNESS: I honestly can't answer that question. I don't know.
UNIDENTIFIED VOICE: well, surely this guy made you nervous or you wouldn't have taken SBA loan guarantees on his loans, correct?
THE WITNESS: The bank utilizes guarantees for several types of loans, home loans, et cetera, private mortgage insurance.

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UNIDENTIFIED VOICE: But you don't need them if the guy is a secured interest. If he is a secured person, you don't need those. Correct?
THE WITNESS: The SBA – in order for the SBA to do the loan, to approve the loan, they wanted – or for us to do a loan, we wanted SBA guarantee on a portion of it, right.
UNIDENTIFIED VOICE: Because he was high risk?
THE WITNESS: Perhaps.
UNIDENTIFIED VOICE: You know he wasn't or you wouldn't have taken that. Correct?
THE WITNESS: Again, I can't – wasn't involved in when the loan was made, but –
UNIDENTIFIED VOICE: Well, it's right there in black and white. He was high risk. That's why you took a SBA loan guarantee on him.
THE WITNESS: That could very well be.
MS. WIEST: Any other questions of this witness? Any redirect? I'm sorry. There is no more questions.
UNIDENTIFIED VOICE: I got one more question. Why did they send you out here if you don't know anything?
THE WITNESS: Well, it's a situation everybody in this room is sitting here looking at potentially losing some money, and I think the bank is holding the biggest bag. Again, I am responsible for the collections, sale

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of the hard assets, the inventory, et cetera, and I guess that's what we understood this meeting to be. So –
UNIDENTIFIED VOICE: Why didn't you sell the building with the right – that the people had the right to get their grain out of there without having to pay a load out fee and a per day charge and all that? Sitting there making a bunch of money on a bunch of people losing money all right.
THE WITNESS: I guess I can't answer that. I don't know.
UNIDENTIFIED VOICE: You know, you could have had so many days or months or whatever to get the grain out of there.
MS. WIEST: Any other questions of this witness? If not, thank you.
(Witness excused.)
MS. WIEST: Do you have any further witnesses, Mr. Damgaard?
MR. DAMGAARD: I do not.
MS. WIEST: At this point –
MR. FINK: I have got a witness.
MS. WIEST: I'm sorry.
MR. FINK: I'm going to call Ray Marquardt.
MR. MARQUARDT: I would like to make one statement first. I wasn't aware we would be involved in this

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hearing. I have got no legal counsel here. If you want to ask me questions, I can't answer them right now without legal counsel.
MR. FINK: sir, I intend to ask you questions about SDCL 49-43-11 which is pertaining to a criminal charge, and you do have a right to an attorney. And if you would like to preserve that right, you can say so.
MR. MARQUARDT: I would like to preserve that right.
MR. FINK: With that in mind, I don't have any questions.
MS. WIEST: Thank you.
I will go through the list here. According to my list the people who said they wanted to testify and have not testified were Tim Jensen, Derald Klueber, Gilbert Buehner, and Richard Lauck. Would any of those witnesses care to testify at this time?
UNIDENTIFIED VOICE: will it do much good as of today?
MS. WIEST: Any testimony that you give will be considered by the Commission. I should point out that what Staff says is a recommendation. The Commission will make its own decision on this. We will make a proposed decision. It will go to the circuit court. I think at that point you can also make any objections to the proposed decision, but I certainly wouldn't discourage

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anybody from testifying. If you have additional, you know, any additional information on your claim or if you would like to state anything for the record that you think would be helpful for your claim, feel free to do so.

So is there anyone who would like to testify at this point? So no one would like to testify?

MR. TIM JENSEN: Well, I can just as well as long as I am here, I guess.

MS. WIEST: Sure.

TIM JENSEN,

called as a witness, having been first duly sworn, testified as follows:

MS. WIEST: Could you first begin by stating your name and address, and then just tell us what your claim is.

MR. TIM JENSEN: Tim Jensen, Canistota. And my particular case is -- Mr. Mulder, he wrote me out checks, none of which were any good, which I found rather odd. Why would a guy write checks when he didn't think he had money in his account.

MS. WIEST: Do you have anything further you would like to add? Mr. Frazier, do you have some questions?

CROSS-EXAMINATION BY MR. FRAZIER:

Q We have spoke a couple of times on the phone, haven't he?

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A Yeah.

Q You are out a heck of a lot of money on this?

A Right.

Q And you are in pretty much -- some of your claims are in some of the worst categories as far as the deferred price contracts?

A Correct.

Q Do you think that Jeff Mulder committed any fraud, misled you? Is there any basis you think for throwing that contract out? I mean did he make promise -- obviously he wrote a check, right?

A Yep.

Q And that check didn't clear.

A Right.

Q Would you consider that a type of fraud on the contract?

A Well, of course.

Q I mean do you -- do you think it was his intent at that time to actually purchase your grain or get his inventory up to assist in the purchase of his facility?

A That I'm not sure of. As far as these contracts are concerned, I asked for a storage contract. That's it. I didn't ask for delayed price, price later. I asked for a storage contract.

Q You wanted a warehouse receipt?

A I didn't ask for a warehouse receipt either. I just

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asked for a storage contract.

Q So you asked him to store it, he refused to store it?

A No, he did not. Well, he handed me this price later contract. But I assume that these were legal. They had been around for years. Is that correct?

Q Yeah, they have been around for a long time.

A If -- I guess none of us really understands how they were written up. But a guy needs some sort of proof that his grain is there, right? Correct? You have to sign something.

Q And since he wouldn't give you a storage contract, you entered into this one?

A Well, this supposedly is a storage contract was my understanding.

Q Did he explain to you what this contract was when you got it -- when you signed off on it?

A No.

Q Had you read through regarding the fact that title transfers and this --

A No, I never read that. I didn't understand all that. I just wanted something, though, signed to prove that I had grain there.

Q And it was your intent essentially just to store it and not give him title?

A Correct.

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Q And he never let you know when you put that stuff there and signed that contract that he was getting title to it?

A No.

Q And from what you heard today, that pretty much helped him out on trying to get this place sold, didn't it?

A Evidently.

Q So would it be fair to state from your position that maybe he didn't even intend to pay you; maybe he intended just to get his inventory up so he could get the business sold?

A That very well could be.

Q If that were the case, then would you say the contract is no good since he never really intended to abide by it in the first place?

A I guess.

Q I have nothing further unless there is something else you wanted to say about that.

A No, not at the moment.

MS. WIEST: Any other questions of this witness? Have you entered into delayed price contracts before this?

THE WITNESS: Yes.

MS. WIEST: With this elevator or warehouse, with others?

THE WITNESS: With other elevators I have. I think

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this is pretty much a standard form, isn't it?
MS. WIEST: Okay.
EXAMINATION BY CHAIRMAN BURG:
Q Tell me just to get -- just for a little information, how it worked other years when you have done this.
A Well, usually I get my grain or my money.
Q Well, I know. But have you ever taken your grain back?
A No.
Q So you -- you deliver the grain to the elevator, you sign this contract?
A Correct.
Q When have you been paid or did -- can you request payment on these?
A You determine when you want to get paid. It's -- three cents a month is a pretty basic storage charge. You can leave it there for 12 months if you like.
Q And --
A But there is always a minimum charge.
Q And then you determine when you want your money?
A Correct.
Q In this case, you had requested your money and he wrote you checks, bad checks --
A Yes.
Q -- that bounced?
A Yep.

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Q Do you know, does Mr. Mulder have anything personally?
A Personal assets?
Q Yeah.
A I don't know what he has got left. That would be a question for the bank.
Q Well, I don't know if the bank would know either.
MS. WIEST: Any other questions of this witness?
EXAMINATION BY COMMISSIONER NELSON:
Q But right on the contract that you signed did -- it says it's not covered or protected. Were you --
A Well, it says it's not covered by a bond. But that's all he had to offer. What else was I going to sign?
Q Well -- and your alternative was to find another elevator?
A That's true. But they all -- I told you that is pretty standard form. I think all elevators use it.
Q I think it's a standard form, but I think that it offers -- it says right on the form that you are leaving it there unprotected. And I think that option is available at all elevators, but there are other options that are also that are more secure available at all elevators.
A You are probably right. But I mean if you ask somebody for a storage contract, walk into just about any elevator, that is what he is going to hand you. That I do know.
Q Are you telling me that elevator managers in South Dakota are trying to pawn off, despite the fact that it says right on there that it's unprotected, deferred -- getting farmers to sign deferred price contracts versus storage contracts?
A I think it's easier for them. Certain contracts they have to tie up grain in their facilities. Most of their facilities are not big enough to handle. They use these so they can move the grain around also is my understanding.
Q Right, I agree. And I think that that's true. And I think it's a sad situation because so many people are going to lose so much money. But the bottom line here is that there are other options available, and perhaps this is the least secured and least protection for the farmer himself.
A Well, that's probably true.
Q You know, I guess for myself, I probably wouldn't risk anything like that, but --
A Well, I had lots of questions as to the fact why wasn't this guy, Mr. Mulder, required to have a larger bond.
CHAIRMAN BURG: The bond is established by state law.
Q And the legislature.
A Right. But in this case what is 50,000.

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CHAIRMAN BURG: That is exactly right. We struggle with that. What would be the right size?
A Well, I would think that would kind of go with his -- it's my understanding that his balance sheet even showed a 90,000 dollar loss. I would think he surely should have had a much larger bond. You know, I think if you look at his balance sheet or financial statement, one or the other --
CHAIRMAN BURG: But the problem is nothing you had is covered by bond, so it wouldn't have made any difference if he had a million dollar bond.
A Well, that's -- maybe. Because a lot of these should be covered by the bond. I see there is a lot going on there that should be covered by this bond.
Q But the bond was only 50,000 dollars depending on which bond. And one guy already has a 65,000 dollar claim. So the bond is not adequate.
A Correct. But this guy sent in a financial statement, balance sheet to the PUC I believe, and it showed a 90,000 dollar loss. I think bottom line on that balance sheet will show a 90,000 dollar a year loss.
MS. WIEST: Any other questions?
COMMISSIONER NELSON: No.
A I guess another thing I guess is if he is issued licenses, why don't they go to his financial institution

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to acquire their information instead of outside, you know? You can make that look anyway you want.

MS. WIEST: Anything further?

THE WITNESS: No.

MS. WIEST: Thank you.

(Witness excused.)

MS. WIEST: Were there any other potential claimants who would like to make any -- have any testimony at this time?

UNIDENTIFIED VOICE: Mr. Chairman, I would like to know, I was one of the ones that had grain in there, and sold it and never got paid. I sold right there on the 5th of January. Now, apparently I'm going to lose about half of it. Where did it go? Somebody has it got it. Who's got it? That corn did not fall in a big hole. It disappeared. Somebody has got it. Somebody made a profit on it. Where is it?

MS. WIEST: I don't think we can answer those questions. The only person is perhaps Mr. Knadle, but I don't think he has an answer either. Is there anyone who would like to give any testimony?

MR. FRAZIER: I could give some response to you. My understanding was he was selling a lot of that grain before we had a chance to lock him up, so a lot of that stuff could have got sold before we got our first

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complaint. We got our first complaint on February 8th. I believe it was Lloyd Langley who finally shut Mulder down, and he said I'm not going to move anymore of this stuff because you are selling more than you are getting. And so I think he kind of stepped in, and then that's when we got -- it was soon after that I think we got the complaint and locked him up the next day. But I don't think it fell in a hole. My guess is he might have sold it off to cover whatever debt he might have had.

UNIDENTIFIED VOICE: Why don't we have Mr. Mulder here so we can ask him questions himself?

MR. FRAZIER: I think he would take the Fifth.

UNIDENTIFIED VOICE: He could have brought his lawyer.

MR. FRAZIER: I think he has got a bankruptcy attorney he is working with right now.

UNIDENTIFIED VOICE: Now he is going to bankruptcy, too.

MR. FRAZIER: That's my understanding.

MR. FINK: He would no doubt refuse to answer any questions.

MS. WIEST: Is there anyone else who would like to present any testimony?

MR. MARQUARDT: Yeah. I am Ray Marquardt with R&R Ag. Can I just make a statement at this time?

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MR. FINK: If this witness is going to make a statement, then I would ask an opportunity to cross examine.

MS. WIEST: If you are going to make a statement, we are going to have to swear you in and you will be subject to questioning.

MR. MARQUARDT: Okay.

MS. WIEST: Doesn't appear to be anyone else who would like to testify at this point?

MR. MARQUARDT: Again, may I ask that I get an opportunity to counsel and send a statement to the PUC?

MR. FINK: I would object.

MS. WIEST: I think there would be an objection to that because then there would be no opportunity for cross examination of that statement is the trouble.

Any other potential claimant have any testimony they would like to give at this point? If not --

COMMISSIONER NELSON: I have one more question for Mr. Knadle. Can I have him back?

MS. WIEST: Sure, I was going to ask if Mr. Frazier had any rebuttal or further testimony.

BOB KNADLE,

recalled as a witness, having been previously duly sworn, testified further as follows:

EXAMINATION BY COMMISSIONER NELSON:

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Q Mr. Knadel, based on the records that you reviewed, the company's records, you were able to reconcile the scale tickets and grain bank and all the other information that is financially applicable to this grain elevator. Wouldn't it also be -- it would be possible to go back on August 24th and in the month of August and see what the -- if the company was really A-okay in August or whether or not it wasn't, right, based on their records?

A What I reviewed in this is basically --

Q I'm not asking what you reviewed. I'm asking would it be possible to review the records and determine that in August or on August 24th or thereabouts that this company was financially A-okay or not A-okay?

A If those records were available, yes, it would be.

Q My question is are they available?

MR. FRAZIER: I can address that for the Commission if they would like.

COMMISSIONER NELSON: Does Bob know this?

MR. FRAZIER: I don't think he does. I have all of McCook Feed & Fertilizer's account statements from that period of time. At the end of every month -- I looked, and at the end of every month, he had a positive balance. Even though there was bouncing, the bank was extending credit to him. At the end of every month I saw a positive balance.

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COMMISSIONER NELSON: Okay. Thank you.
(Witness excused.)
MS. WIEST: At this point then I would ask if there are some legal issues involved, do any of the parties wish to present any briefs to the Commission on any of these issues?
MR. FRAZIER: In lieu of a closing argument, I would move to be able to file a brief on behalf of the recommendations and the statements from the Scotts regarding their claims, Helmbrecht and Richard Hoffman, and also the claim of Tim Jensen here with some of the new testimony that he brought in.
MS. WIEST: Would any of the other attorneys want any opportunity for briefing?
MR. DAMGAARD: I would like that option.
MR. FINK: I would.
MS. WIEST: Let's go off record and we will talk about the schedule here.
(Off the record discussion.)
MS. WIEST: Let's go back on the record. We have discussed a briefing schedule. And the briefing schedule will be Mr. Fink and Commission Staff have agreed to submit an initial brief two weeks from the day the transcript is received. And Mr. Damgaard may submit a brief two weeks from the service of those briefs. And

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then there will be an optional rebuttal by Mr. Fink and/or Commission Staff one week from service of the bank's brief.
Is there anything else that I've forgotten or that we need to cover? I am assuming that these briefs are in lieu of closing arguments unless someone would care to make a closing argument at this point or statement.
MR. FRAZIER: I would further, based on the testimony from Bob Knadle, request that Ray Marquardt – you filed that claim for the 2,000 dollar a month rent. Maybe you could give us a breakdown, just a better breakdown of those numbers, where they came from, et cetera.
MR. MARQUARDT: Just a flat rent fee. That can be negotiated.
MR. FRAZIER: He said that is a flat fee that can be negotiated.
MS. WIEST: Well, anything else will be submitted into the Commission record and everybody will get an opportunity to look at anything else that comes in. Is there anything else that should come before the Commission at this point?
For the benefit of everyone here, we will have to wait until the briefs come in. The Commission will make a decision. We will make a proposed decision since we are actually acting as a receiver, and that will be

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submitted to the circuit court for a final decision. And we will certainly keep you informed of any of the decisions that are made. Thank you.
(End of proceedings at 12:50 p.m.)

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STATE OF SOUTH DAKOTA)
:SS CERTIFICATE
COUNTY OF MINNEHAHA)

I, Kerry Lange, Court Reporter in the above-named County and State, certify that the above-entitled proceedings were reported by me, and the foregoing Pages 1 - _____, inclusive, are a true and correct transcript of my stenotype notes.
Dated at Sioux Falls, South Dakota, this _____ day of May, 2001.

Kerry Lange

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

LEGAL NOTICE OF SALE OF GRAIN INVENTORY

The Commission has been appointed receiver of the grain inventory at McCook Feed & Fertilizer at Canistota, South Dakota, and has been authorized to liquidate the grain inventory. The purpose of this notice is to solicit a list of bidders interested in purchasing the inventory located in the McCook facilities at Canistota, South Dakota.

The grain inventory is as follows:

1. Corn–approximately 48,000 bushels
2. Soybeans–approximately 21,000 bushels
3. Oats–approximately 750 bushels
4. Mixed corn and soybeans–approximately 750 bushels

The grain inventory will be put out for bids by interested parties (separate bids for each type of grain). Bids must be for total inventory of each type of grain as referenced above. The grain will be sold on-site at Canistota and the successful bidder must provide for subsequent handling. Payment must be made with a cashier's check. The grain is expected to be available toward the latter part of May.

If you are interested in purchasing the grain inventory, please contact Marlette Fischbach at 605-773-5280. Please respond by May 15, 2001.

Printer's Affidavit of Publication

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF McCOOK)

TROY SCHWANS of said County and State, being first duly sworn on his oath, says THE SALEM SPECIAL is a weekly newspaper of general circulation, printed and published in Salem, McCook County State of South Dakota, and has been such newspaper during the time hereinafter mentioned; that the said newspaper is a legal paper, that it has a bonafide circulation of more than 200 copies daily, that it has been published within said County of McCook for more than fifty-two successive weeks prior to the publication of the notice hereinafter mentioned and has been printed during said period at the present time, in whole in an office maintained at said place of publication; and that I, the undersigned, am publisher or employee of said newspaper, in charge of the advertising department thereof, and have personal knowledge of all facts in this affidavit;

the advertisement headed Legal Notice of Sale of Grain Inventory

a printed copy of which is hereto attached, was printed and published in the newspaper for. . 1 . . weeks; that said notice was published in the issues of said paper on the dates as follows, to wit:

The first publication being made on

. . . . . May 10 . . . . . ,2001

the second publication on . . . . . ,19 . . .

the third publication on . . . . . ,19 . . .

the fourth publication on . . . . . ,19 . . .

the fifth publication on . . . . . ,19 . . .

the sixth publication on . . . . . ,19 . . .

and the last publication on . . . . . ,19 . . .

that $ 12.50 being the full amount of the fees for publication of the annexed notice, insures solely to the benefit of the publisher of the said newspaper; that no agreement or understanding for a division thereof has been made with any person; and that no part thereof has been agreed to be paid to any person whomsoever.

. . . . . Troy Schwans . . . . . .

Subscribed and sworn to before me this . . . 10th . . . . . day of . . . . . May . . . . . ,2001

PHYLLIS KNUDSON
NOTARY PUBLIC
SOUTH DAKOTA

. . . . . Phyllis Knudson . . . . . .

Notary Public, ... McCook . . . . . County

My commission expires . . . 5-19-02 . . . . . .

P.U.C. Att Bob Knadle GD01-001

Charges For Rent

March - April - May Total $3,000.00

Charge for Loading Out Grain

.05¢ A Bu

Our Costs For Tractor approximatly $1400.00

$20.00 Ar hour Rent 70 hrs

9.00 An hr Labor 9.00 hr + Costs = $12.00 pr hr $840.00

Electric Bill Approximatly $300.00 To Load

$2540.00

Contact

Ray Marquardt

665-0589

RECEIVED

MAY 25 2001

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BJORKMAN & FINK, P.C.
LAWYERS
304 MAIN AVENUE, P.O. BOX 444
BRIDGEWATER, SOUTH DAKOTA 57319-0444
TELEPHONE (605) 729-2552
FACSIMILE (605) 729-2445

TIMOTHY W. BJORKMAN
MIKE C. FINK

May 31, 2001

FAX: (605) 773-3809
Public Utilities Commission
Pierre, SD

RE: In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., d/b/a McCook Feed & Fertilizer.

Dear Sir or Madam:

This letter is to follow my telephone conference with Kelly Fraizer on May 31, 2001. I advised Kelly that I received the hearing transcript for the above matter on May 30, 2001. He requested that I FAX you a short note indicating the time frame by which I expect to file my brief. I will be able to file such brief on or before June 8, 2001. It is my understanding Mr. Fraizer will be requesting that his brief be due the same day. Please call me if you have any questions.

Thank you and kind regards.

Very truly yours,

BJORKMAN & FINK, P.C.

Mike C. Fink

Mike C. Fink

c: Al Scott

Invoice Number: 3220

Argus Leader
AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA } ss

Beth Buchanan being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Monday ,the 14 day of May 2001 ,

_____ ,the _____ day of _____ 2001 ,

_____ ,the _____ day of _____ 2001 ,

_____ ,the _____ day of _____ 2001 ,

_____ ,the _____ day of _____ 2001 ,

_____ ,the _____ day of _____ 2001 ,

_____ ,the _____ day of _____ 2001 ,

and that $29.27 was charged for publishing the same including A $5.00 affidavit fee.

Beth Buchanan

Subscribed and sworn to before May 16, 2001 .

JOAN STAHL
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

Joan Stahl
Notary Public, South Dakota

My Commission expires June 30th, 2005

LEGAL NOTICE OF SALE OF GRAIN INVENTORY

The Commission has been appointed receiver of the grain inventory at McCook Feed & Fertilizer at Canistota, South Dakota, and has been authorized to liquidate the grain inventory. The purpose of this notice is to solicit a list of bidders interested in purchasing the inventory located in the McCook facilities at Canistota, South Dakota.

The grain inventory is as follows:

1. Corn - approximately 48,000 bushels; 2. Soybeans - approximately 21,000 bushels; 3. Oats - approximately 750 bushels; 4. Mixed corn and soybeans - approximately 750 bushels.

The grain inventory will be put out for bids interested parties (separate bids for each type of grain). Bids must be for the total inventory of each type of grain as referenced above. The grain will be sold on-site at Canistota and the successful bidder must provide for subsequent handling. Payment must be made with a cashier's check. The grain is expected to be available toward the latter part of May.

If you are interested in purchasing the grain inventory, please contact Mariette Fischbach at 605-773-5280. Please respond by May 15, 2001.

3220

RECEIVED
MAY 30 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Affidavit of Publication

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF McCOOK:)

The undersigned, being first duly sworn, on his oath says: THE CANISTOTA CLIPPER is a weekly newspaper of general circulation, printed and published in the City of Canistota, McCook County, South Dakota, by MATTHEW ANDERSON, and has been such newspaper during the times hereinafter mentioned: that is has bona fide circulation of more than 200 copies weekly; that is has been published within said County of McCook in the English language and admitted to the United States mail under the second class mailing privilege for more than one year next prior to the publication of the notice hereinafter mentioned, and has been printed during such period and at the present time in part in an office maintained at the said place of publication: that I, the undersigned, am either "the publisher" or "an employee of the said publisher" of said newspaper and have personal knowledge of all the facts stated in the affidavit: that the advertisement headed

Legal Notice of Sale of Grain Inventory

a printed copy of which is hereto attached, was printed and published in the said newspaper for one(1) successive weeks; that said notice was published in the issues of said paper on the dates as follows, to-wit:

The first publication be made on 5-17

The second publication on _____

The third publication on _____

The fourth publication on _____

that 10.56 Being the full amount of the fee for publication of the annexed notice, insured solely to the benefit of the publisher of the said newspaper, that no agreement or understanding for the division thereof have been made with any other person whomsoever, and that said newspaper is a legal newspaper under the law of the State of South Dakota.

Matt D Anderson

Subscribed and sworn to before me this 23 day of May 2001.

MARY ANN FETERL
NOTARY PUBLIC SEAL
STATE OF SOUTH DAKOTA

Mary Ann Feterl
Notary Public, South Dakota

My Commission Expires 7-30-2004

PUBLIC NOTICE

Legal Notice Of Sale Of Grain Inventory

The Commission has been appointed receiver of the grain inventory at McCook Feed & Fertilizer at Canistota, South Dakota and has been authorized to liquidate the grain inventory. The purpose of this notice is to solicit a list of bidders interested in purchasing the inventory located in the McCook facilities at Canistota, South Dakota.

The grain inventory is as follows:

1. Corn - approximately 48,000 bushels.
2. Soybeans - approximately 21,000 bushels.
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The grain inventory will be put out for bids by interested parties (separate bids for each type of grain). Bids must be for the total inventory of each type of grain as referenced above. The grain will be sold on -site at Canistota and the successful bidder must provide for subsequent handling. Payment must be made with a cashier's check. The grain is expected to be available toward the latter part of May.

If you are interested in purchasing the grain inventory, please contact Marlette Fischbach at 605-773-5280. Please respond by May 18, 2001.

5-17-1tc

9162 99 72



South Dakota
Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

DATE: June 1, 2001

TO: All interested persons and entities

FROM: South Dakota Public Utilities Commission

RE: GD01-001, IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED & FERTILIZER

On May 25, 2001, the Public Utilities Commission received a revised request from Ray Marquardt for expenses relating to the storage of the grain located at the McCook facilities in Canistota. The Commission will mark this request as Exhibit F. The request is enclosed. Parties may comment on Exhibit F in their briefs.

In addition, at the hearing, the parties agreed that Mr. Fink and Commission staff would submit initial briefs two weeks from the date the transcript is received. The Commission received the transcript on May 18, 2001. However, on May 31, 2001, the Commission received a letter from Mr. Fink stating that he had not received the hearing transcript until May 30, 2001. Mr. Fink stated that he would file his brief on or before June 8, 2001. Therefore, initial briefs are due on or before June 8, 2001.

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
www.state.sd.us/puc/

Jim Burg
Chairman
Pam Nelson
Vice-Chairman

Debra Elofson
Executive Director

Harlan Best
Martin C. Bettmann
Sue Cichos
Karen E. Cremer
Christopher W. Downs
Terry Emerson
Michele M. Farris
Marlette Fischbach
Heather K. Forney
Kelly D. Frazier
Mary Giddings
Leni Healy
Mary Healy
Lisa Hull
Dave Jacobson
Amy Kayser
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

0162.99.73

P.U.C. Att Bob Knadle GD01-001

Charges For Rent

March - April - May Total $3,000.00

Charge for Loading Out Grain

.05¢ ABu

Our Costs For Tractor

$20.00 An hour Rent Approximatly 70 hrs $1400.00

9.00 AN hr labor 9.00 hr + Costs = $12.00 per hr $840.00

Electric Bill Approximatly $300.00 To Load

$2540.00

Contact

Ray Marquardt

665-0589

RECEIVED

MAY 25 2001

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

EXHIBIT F

0162393744

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED & FERTILIZER	))))	ORDER ACCEPTING BIDS GD01-001 (Civ. 01-023)

On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook), entered into a stipulation with the Public Utilities Commission (Commission) surrendering his licenses as a grain dealer and grain warehouseman and permitted the Commission to take immediate possession of his facilities. On March 8, 2001, the Commission filed with the First Judicial Circuit a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 21-21, 49-42, 49-43, and 49-45, specifically 49-42-15.1, 49-43-5.6, 49-43-5.8, 49-45-13, 49-45-16, and 49-45-18. Pursuant to the order of the Court, the Commission shall determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory currently located at the Canistota facility. A hearing was held as scheduled on the claims as described above on May 3, 2001, beginning at 10:00 a.m., at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, South Dakota.

By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. On May 22, 2001, the Commission considered the bids. A list of the bids is attached and incorporated by reference. The Commission accepted the following bids:

> FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at $4.12 per bushel, subject to the discount tables; and
>
> Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at $1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at $2.25 per bushel; and approximately 48,000 bushels of corn at $1.51 per bushel, subject to the discount tables.

The bids are subject to the terms of the bidding as contained in the Commission's May 16, 2001, letter to potential bidders, which is attached and incorporated by reference. It is therefore

0162.99.75

ORDERED, that the Commission accepts the bids as listed above, subject to the terms of the bidding as contained in the Commission's May 16, 2001, letter to potential bidders.

Dated at Pierre, South Dakota, this 1st day of June, 2001.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 6/1/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Canistota

ID	Name	Other	City	Telephone Number	Commodity	Bid Amount
4	FRE MAR FARMERS COOPERATIVE	BRAD KOHLS	MARION	605-648-9341	Corn	$1.51
5	HANSON COUNTY GRAIN STORE LLC	GREG KOTAS	ALEXANDRIA	605-239-4396	Corn	$1.51
15	CENEX HARVEST STATES COOPERATIVE	MARK GROVE	MITCHELL	605-996-7004	Corn	$1.48
8	UTICA GRAIN INC		UTICA	605-665-0589	Corn	$1.46
1	DEBRUCE GRAIN, INC.	DARIN HANSON	FREMONT	800-726-0878	Corn	$1.37
23	HANSON COUNTY GRAIN	GREG KOTAS	ALEXANDRIA	605-239-4396	Oats	$1.31
27	CENEX HARVEST STATES COOPERATIVE	MARK GROVE	MITCHELL	605-996-7004	Oats	$1.30
20	UTICA GRAIN INC	RAYMOND	UTICA	605-665-0589	Oats	$0.95
24	HANSON COUNTY GRAIN	GREG KOTAS	ALEXANDRIA	605-239-4396	Soybean/Corn	$2.25
28	CENEX HARVEST STATES COOPERATIVE	MARK GROVE	MITCHELL	605-996-7004	Soybean/Corn	$1.75
25	FRE MAR FARMERS COOPERATIVE	BRAD KOHLS	MARION	605-648-3941	Soybeans	$4.12
21	HANSON COUNTY GRAIN	GREG KOTAS	ALEXANDRIA	605-239-4396	Soybeans	$4.10
7	THE SCOULAR COMPANY	JEFF BHEND	OMAHA	800-488-3500	Soybeans	$4.08
26	CENEX HARVEST STATES COOPERATIVE	MARK GROVE	MITCHELL	605-996-7004	Soybeans	$4.07
19	UTICA GRAIN INC	RAYMOND	UTICA	605-665-0589	Soybeans	$4.04
29	DEBRUCE GRAIN INC	DARIN HANSON	FREMONT	800-726-0878	Soybeans	$4.00

0162.99.77

SD01-001

South Dakota
Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

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Warehouse Division
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1-800-877-1113

Internet Website
www.state.sd.us/puc/

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Harlan Best
Martin C. Bettmann
Sue Cichos
Karen E. Cremer
Christopher W. Downs
Terry Emerson
Michele M. Farris
Marlette Fischbach
Heather K. Forney
Kelly D. Frazier
Mary Giddings
Leni Healy
Mary Healy
Lisa Hull
Dave Jacobson
Amy Kryser
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

May 16, 2001

TO: BIDDERS OF GRAIN INVENTORY AT CANISTOTA, SOUTH DAKOTA

FROM: BOB KNADLE
DIRECTOR TRANSPORTATION/WAREHOUSE DIVISION

RE: REQUIREMENTS FOR SUBMITTING BIDS ON THE GRAIN INVENTORY LOCATED IN THE MCCOOK FACILITIES AT CANISTOTA, SOUTH DAKOTA

1. Bids must be FAXED to the Commission between 1:45 p.m. and 2:15 p.m. on Tuesday, May 22, 2001, at the following numbers: (605)773-3809 and (605)773-3225.

2. Each load of grain will be weighed and a sample will be taken and tested on the premises at Canistota. These measurements will determine any adjustments to the bid price and/or bushels for test weight, moisture, foreign material, etc. Payment will be based on the above mentioned measurements. Successful bidders or their representatives are welcome to observe the testing during loadout.

3. The attached discount tables shall be utilized for any adjustments to the bid price. A Commission representative will determine any adjustments to the bid price and/or bushels from the sample taken during loadout.

4. There will not be any charge assessed to the successful bidder(s) for loading the grain out.

5. Provide a contact person and telephone number on the bid submittal.

6. Both the Commission and the Circuit Court must approve the successful bids. Once approval is granted, the Commission will contact the successful bidder(s) as soon as possible. We will make every attempt to do so before 5:00 p.m. on Tuesday, May 22, 2001; however, we can't guarantee we will be able to do so.

7. If you are the successful bidder(s), you will be required to do the following:
A. Submit a deposit in the form of a cashier's check payable to "SDPUC as Receiver of McCook Feed & Fertilizer" for 50% of the bid price per bushel times

the estimated bushels before any grain is moved.

B. Provide for subsequent handling.

C. Submit a list of truckers that will haul the grain for you. The list should include company name, driver name and pickup or contract numbers.

D. Have the grain removed from the McCook facilities no later than June 8, 2001. The grain can be removed from the facility during the hours of 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding Memorial Day(May 28) unless other arrangements have been approved. A reasonable charge will be assessed if the grain is not removed by June 8th.

E. Final payment in the form of a cashier's check payable to "SDPUC as Receiver of McCook Feed & Fertilizer" must be made within five days after the grain is removed from the McCook facilities.

8. It appears that the corn will likely fall into the No. 2 grade, the soybeans into the No. 2 grade and the oats test weight is in the range of 36-38 pounds.

If you have any questions, please contact Marlette Fischbach at 605-773-5280.

Thank you for your attention to this matter.

Soybeans

FACTOR RANGE	HEAT DMG DISCOUNT	TOTAL DAMAGE	MOISTURE	DISCOUNT	CORN DISCOUNT
	% of contract price	includes green damage		% of contract price	
.0 to .2%			MT RANGE	DISCOUNT	
.3 to 1.0%	.5%		13.1 to 13.5%	1%	Soybeans with 3%
1.1 to 1.5%	1.0%		13.6 to 14.0%	2%	or more corn will
1.6 to 2.0%	1.5%		14.1 to 14.5%	3%	be discounted 5
2.1 to 2.5%	2.0%	$0.02	14.6 to 15.0%	4%	cents per bu. for
2.6 to 3.0%	2.5%	.03	15.1 to 15.5%	8%	each 1% or fraction
3.1 to 3.5%	3.0%	.04	15.6 to 16.0%	10%	thereof over 3%
3.6 to 4.0%	3.5%	.05	16.1 to 16.5%	12%	plus the weight will
4.1 to 4.5%	4.0%	.07	16.6 to 17.0%	15%	be deducted from
4.6 to 5.0%	4.5%	.09	17.1 to 17.5%	17%	the gross weight
5.1 to 5.5%	5.0%	.11	17.6 to 18.0%	19%	
5.6 to 6.0%	5.5%	.13	18.1 to 18.5%	21%	
6.1 to 6.5%	6.0%	.15	18.6 to 19.0%	23%	
6.6 to 7.0%	6.5%	.17	19.1 to 19.5%	25%	
7.1 to 7.5%	7.0%	.19	19.6 to 20.0%	27%	
7.6 to 8.0%	7.5%	.21	20.1 to 20.5%	29%	
8.1 to 8.5%	8.0%	.25	20.6 to 21.0%	31%	

TEST WEIGHT: 1/2 cent per bushel for each pound or fraction thereof under 54.0 to 52.0.
1 cent per bushel for each pound or fraction thereof under 52.0 to 49.0 minimum.

FOREIGN MATERIAL: All foreign material in excess of 1% shall be deducted from the gross weight and will not be paid for up to 5%. FM over 5% shall be deducted 1 1/2 times from gross weight. FM over 10% shall be deducted 2 times from gross weight.

OTHER DISCOUNTS: 10 cents per bushel for musty, sour, weevily or materially weathered.
15 cent per bushel discount on any unload of less than 400 bushels.

BUYER RESERVES THE RIGHT TO REJECT OR SEVERLY DISCOUNT ANY SHIPMENT OF BEANS WHICH GRADES OVER 16% MOISTURE; OVER 3% HEAT DAMAGE; OVER 8% TOTAL DAMAGE; OVER 10% FOREIGN MATERIAL, COFO, HEATING, DISTINCTLY LOW QUALITY (DLQ) OR UNKNOWN FOREIGN SUBSTANCE.

SHRINK		
	13.5	.75%
	14.0	1.50%
	14.5	2.25%
	15.0	3.00%

Soybeans

FACTOR RANGE	HEAT DMG DISCOUNT	TOTAL DAMAGE	MOISTURE	DISCOUNT	CORN DISCOUNT
	% of contract price	includes green damage		% of contract price	
.0 to .2%			MT RANGE	DISCOUNT	
.3 to 1.0%	.5%		13.1 to 13.5%	1%	Soybeans with 3%
1.1 to 1.5%	1.0%		13.6 to 14.0%	2%	or more corn will
1.6 to 2.0%	1.5%		14.1 to 14.5%	3%	be discounted 5
2.1 to 2.5%	2.0%	$0.02	14.6 to 15.0%	4%	cents per bu. for
2.6 to 3.0%	2.5%	.03	15.1 to 15.5%	8%	each 1% or fraction
3.1 to 3.5%	3.0%	.04	15.6 to 16.0%	10%	thereof over 3%
3.6 to 4.0%	3.5%	.05	16.1 to 16.5%	12%	plus the weight will
4.1 to 4.5%	4.0%	.07	16.6 to 17.0%	15%	be deducted from
4.6 to 5.0%	4.5%	.09	17.1 to 17.5%	17%	the gross weight
5.1 to 5.5%	5.0%	.11	17.6 to 18.0%	19%	
5.6 to 6.0%	5.5%	.13	18.1 to 18.5%	21%	
6.1 to 6.5%	6.0%	.15	18.6 to 19.0%	23%	
6.6 to 7.0%	6.5%	.17	19.1 to 19.5%	25%	
7.1 to 7.5%	7.0%	.19	19.6 to 20.0%	27%	
7.6 to 8.0%	7.5%	.21	20.1 to 20.5%	29%	
8.1 to 8.5%	8.0%	.25	20.6 to 21.0%	31%	

TEST WEIGHT: 1/2 cent per bushel for each pound or fraction thereof under 54.0 to 52.0.
1 cent per bushel for each pound or fraction thereof under 52.0 to 49.0 minimum.

FOREIGN MATERIAL: All foreign material in excess of 1% shall be deducted from the gross weight and will not be paid for up to 5%. FM over 5% shall be deducted 1 1/2 times from gross weight. FM over 10% shall be deducted 2 times from gross weight.

OTHER DISCOUNTS: 10 cents per bushel for musty, sour, weevily or materially weathered.
15 cent per bushel discount on any unload of less than 400 bushels.

BUYER RESERVES THE RIGHT TO REJECT OR SEVERLY DISCOUNT ANY SHIPMENT OF BEANS WHICH GRADES OVER 16% MOISTURE; OVER 5% HEAT DAMAGE; OVER 8% TOTAL DAMAGE; OVER 10% FOREIGN MATERIAL, COFO, HEATING, DISTINCTLY LOW QUALITY (DLQ) OR UNKNOWN FOREIGN SUBSTANCE.

SHRINK		
	13.5	.75%
	14.0	1.50%
	14.5	2.25%
	15.0	3.00%

0162.99.80

CORN DISCOUNT SCHEDULE

TW.	53.9 - 53.0	-0.02	T.W. -.02 EA. 1.0% 54.0 - 50.0
	52.9 - 52.0	-0.04	T.W. -.03 EA. 1.0% 50.0 - 48.0
	51.9 - 51.0	-0.06	
	50.9 - 50.0	-0.08	
	49.9 - 49.0	-0.11	
	48.9 - 48.0	-0.14	
M.T.	15.1 - 15.5	-0.025	M.T. -.025 EA. 1/2% 15.0 - 20.0
	15.6 - 16.0	-0.05	
	16.1 - 16.5	-0.075	
	16.6 - 17.0	-0.1	
	17.1 - 17.5	-0.125	
	17.6 - 18.0	-0.15	
	18.1 - 18.5	-0.175	
	18.6 - 19.0	-0.2	
	19.1 - 19.5	-0.225	
	19.6 - 20.0	-0.25	(IF ACCEPTABLE TO MERCHANT)
DMG.	5.1 - 6.0	-0.02	
	6.1 - 7.0	-0.04	
	7.1 - 8.0	-0.06	
	8.1 - 9.0	-0.08	
	9.1 - 10.0	-0.1	
F.M.	3.1 - 4.0	-0.03	F.M. -.03 EA. 1.0% 3.0 - 4.0
	4.1 - 5.0	-0.07	F.M. -.04 EA. 1.0% 4.0 - 5.0
	5.1 - 6.0	-0.12	F.M. -.05 EA. 1.0% 5.0 - 6.0
	6.1 - 7.0	-0.18	
	7.1 - 8.0	-0.25	
HT. DMG.	.31 - .40	-0.01	HT. DMG. -.01 EA. 1/10% .3 - .5
	.41 - .50	-0.02	HT. DMG. -.02 EA. 1/10% .5 - 1.0%
	.51 - .60	-0.03	
	.61 - .70	-0.05	
	.71 - .80	-0.07	
	.81 - .90	-0.09	
	.91 - 1.0	-0.11	
MUSTY		-0.07	
SOUR		-0.1	
COFO		-0.15	

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U.S. Domestic Oats

EFFECTIVE May 15, 1996

U.S. #2 Heavy Oats, Milling Quality, 38 lb Test Wt, 96% SCO
13.0% Maximum Moisture, 3.0% Maximum FM
15% Thins thru 05/64 x 3/4 oblong dockage sieve
* 1.5% Barley count * 1.5% Wheat count * 1.0% Wild Oats
14% Min Crude Protein on Groats Dry Matter Basis

SCO Prem @ 38= min TW (SSC only)	
99.5 - 99.9	+.04
99.0 - 99.4	+.03
98.5 - 98.9	+.02
98.0 - 98.4	+.01

IF TAKEN BELOW 94, .02 PER 1/2

Test Weight Prem @ 96 SCO (SSC only)	
40.0	+.04
39.5 - 39.9	+.03
39.0 - 39.4	+.02
38.5 - 38.9	+.01

IF TAKEN BELOW 35, .02 PER 1/2
MIN 32 LB TEST WT ACCEPTED

SCO discounts

95.9 - 95.5	-.01	93.4 - 93.0	-.10
95.4 - 95.0	-.02	92.9 - 92.5	-.12
94.9 - 94.5	-.04	92.4 - 92.0	-.14
94.4 - 94.0	-.06	91.9 - 91.5	-.16
93.9 - 93.5	-.08	91.4 - 91.0	-.18

Test Wt Discounts

37.9 - 37.5	-.01	34.9 - 34.5	-.10
37.4 - 37.0	-.02	34.4 - 34.0	-.12
36.9 - 36.5	-.03	33.9 - 33.5	-.14
36.4 - 36.0	-.04	33.4 - 33.0	-.16
35.9 - 35.5	-.06	32.9 - 32.5	-.18
35.4 - 35.0	-.08	32.4 - 32.0	-.20

Thins Discount (basis 15% or less)

15.1 to 20.0 -.01 each point
20.1 to 25.0 -.02 each point

IF TAKEN ABOVE 25%, SCALE CONTINUES AT .02 EACH POINT

Wheat and/or Barley Count

-.01 each 1/4% above 1.5%

Wild Oats

-.01 each 1/4% above 1.0%

Moisture Discount (basis 13.0% or less)

13.1 to 13.5	-.02
13.6	-.03
13.7	-.04
13.8	-.05
13.9	-.06
14.0	-.07

(maximum acceptable moisture)

FM Discount (basis 3.0%)

3.1 - 3.5	-.02
3.6 - 4.0	-.04
4.1 - 4.5	-.06
4.6 - 5.0	-.08

IF TAKEN ABOVE 3.0%

NOTE: No Premiums paid at SSC if ANY discount is taken on ANY factor

LIVE INFESTATION, WEATHERED, SOUR, SMUT, MUSTY, AND HEAT DAMAGE FACTORS ARE ALL SUBJECT TO REJECTION. IF TAKEN WITH ANY OF THE FORESMENTIONED (EXCEPT LIVE INFESTION), AN ADDITIONAL .10 PER BU DISCOUNT WILL BE TAKEN. IF LIVE INFESTATION ACCEPTED, SHIPPER PAYS ALL COSTS ASSOCIATED WITH FUMIGATION PLUS THE ADDITIONAL .10 PER BU DISCOUNT.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-025) NOTICE AND MOTION TO REOPEN FOR FURTHER EVIDENCE

Comes now staff attorney, Kelly D. Frazier, and hereby MOTIONS the Public Utilities Commission to reopen for good cause the above case pursuant to ARSD 20:10:01:27:01 for the purpose of receiving into evidence affidavits from claimants in the above action regarding their contracts with McCook Feed and Fertilizer.

Notice is hereby given that arguments on this matter will be heard at the regularly held meeting of the Commission, 500 East Capitol Ave., Pierre, SD 57501-5070, on Tuesday June 19, 2001 at 1:30 p.m., or as soon thereafter as the Motion can be heard. If you wish to join this meeting by conference call, please contact the Commission at 605-773-3201.

Respectfully submitted and signed this 8th day of June, 2001

Kelly D. Frazier
Staff Attorney

0162.99.083



South Dakota
Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

June 8, 2001

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Re: In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., Inc. dba McCook Feed & Fertlizer
Docket GD01-001

Dear Counsel:

Enclosed each of you will find a copy of Brief in Support of Staff's Recommendations with reference to the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Kelly D. Frazier
Staff Attorney

KDF:dk
Enc.

Capitol Office
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FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
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Consumer Hotline
1-800-332-1782

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED & FERTILIZER	))))	BRIEF IN SUPPORT OF STAFF'S RECOMMENDATIONS GD01-001

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) BRIEF IN SUPPORT OF STAFF'S RECOMMENDATIONS

Comes now, Kelly D. Frazier, staff attorney for the South Dakota Public Utilities Commission, in support of the recommendations made by Bob Knadle, Director of the Transportation Warehouse Division for the Public Utilities Commission at the publicly held hearing on May 3, 2001. Also contained in this brief will be recommendations made by this attorney regarding the claims that Mr. Knadle listed as "Not Categorized" in Staff Exhibit 2. For the sake of convenience all exhibits will be referenced in the same manner as they were at the above-mentioned hearing. All references to the transcripts from that hearing will be referenced as follows: T-Page Number-Line Number.

I. FACTS AND PROCEDURAL HISTORY

On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co., Inc. d/b/a McCook Feed and Fertilizer (McCook), entered into a stipulation with the Public Utilities Commission (Commission) surrendering his licenses as a grain dealer and grain warehouseman and as a result permitted the Commission to take immediate possession of his facilities. On March 8, 2001, the Commission filed with the First Circuit a Petition to Appoint South Dakota Public Utilities Commission as Receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota. On May 3, 2001, the Commission conducted a public hearing at Canistota, South Dakota for the purposes of determining claims against the grain dealer's and grain warehouseman's bonds and the grain inventory located at the Canistota facility. Testimony was also gathered in order for staff to make a final recommendation to the Commission in the form of this brief.

II. FINAL RECOMMENDATIONS

A1. GRAIN BANK – CORN

Staff Exhibit 2B provides a summary of all of the claimants that Mr. Knadle determined had valid claims against the grain bank corn (T-21-13). Mr. Knadle's recommendations were as follows:

- Leroy Pullman has a valid claim in the amount of 88.61 bushels (T-21-18).
- Arlo Hofer has a valid claim in the amount of 2,868.27 bushels (T-22-4).
- James McGregor has a valid claim in the amount of 1,931.09 bushels (T-22-17).
- Maynard Yoder has a valid claim in the amount of 3,036.68 bushels (T-23-1).
- Jerry Herlyn has a valid claim in the amount of 3,397.46 bushels (T-23-9).
- Roger Waltner has a valid claim in the amount of 915.64 bushels (T-23-20).
- Charles Deckert has a valid claim in the amount of 49.46 bushels (T-24-2).
- Oren Stahl has a valid claim in the amount of 904.69 bushels (T-24-10).

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendations, staff here argues that these are the valid claims against the grain bank inventory. Staff recommends that these claimants receive the value of these claims out of the proceeds of the liquidation of the grain inventory and the grain warehouseman's bond. If there are not enough proceeds to satisfy all claims, staff recommends that proceeds be distributed on a pro rata basis.

A2. GRAIN BANK – OATS

Exhibit 2M provides a summary of all claimants that Mr. Knadle determined were properly categorized as grain bank for oats (T-33-18). His recommendation was as follows:

- Charles Langle has a valid claim in the amount of 400 bushels (T-33-20)

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendation, staff here argues that this is the valid claim against the grain bank oats inventory. Staff recommends that this claimant receive the value of the claim out of the proceeds of the liquidation of the grain inventory and the grain warehouseman's bond. If there are not enough proceeds to satisfy all claims, staff recommends that proceeds be distributed on a pro rata basis.

B1. OPEN STORAGE – CORN

Staff Exhibit 2C provides a summary of all of the claimants that Mr. Knadle determined had valid claims that would qualify as open storage (T-24-12). Mr. Knadle's recommendations were as follows:

- Jeff Weber has a valid claim in the amount of 3,146.06 bushels (T-24-17).
- Dale Seubert has a valid claim in the amount of 7,327.77 bushels (T-24-24).
- Farmer's National – Nagano has a valid claim in the amount of 704.80 bushels (T-25-5).

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendations, staff here argues that these are valid open storage claims. Staff recommends that these claimants receive the value of these claims out of the proceeds of the liquidation of the grain inventory and the grain warehouseman's bond. If there are not enough proceeds to satisfy all claims, staff recommends that proceeds be distributed on a pro rata basis.

B2. OPEN STORAGE – BEANS

Exhibit 2H provides a summary of all claimants that Mr. Knadle determined were properly categorized as open storage for beans (T-30-18). His recommendation was as follows:

- Gene Hofer has a valid claim in the amount of 1,626.67 bushels. (T-30-20)

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendation, staff here argues that this is a valid open storage claim for beans. Staff recommends that this claimant receive the value of this claim out of the proceeds of the

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liquidation of the grain inventory and the grain warehouseman's bond. If there are not enough proceeds to satisfy all claims, staff recommends that proceeds be distributed on a pro rata basis.

C1. CASH SALES – CORN

Staff Exhibit 2D provides a summary of all of the claimants Mr. Knadle determined had valid claims under the cash sale category (T-25-9). Mr. Knadle's recommendations were as follows:

- Gary Waltner has a valid claim in the amount of $2,462.59 (T-25-11)
- Rich Lauck has a valid claim in the amount of $584.80 (T-25-15)
- Farmer's National Nagano has a valid claim in the amount of $5,500.75 (T-25-19)
- Lake Preston Cooperative has a valid claim in the amount of $17,487.37 (T-26-6)
- Lester Kappenman has a valid claim in the amount of $1,527.20 (T-26-16)
- Farmer's National Paul has a valid claim in the amount of $205.09 (T-26-25)
- Tim Jensen has a valid claim in the amount of $12,826.65 (T-27-7)
- William Perrenoud has a valid claim in the amount of $6,112.49 (T-27-15)

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendations, staff here argues that these are valid cash sales claims. Staff recommends that these claimants receive the value of these claims out of the proceeds of the grain dealer's bond. If there are not enough proceeds to satisfy all claims, staff recommends that proceeds be distributed on a pro rata basis.

C2. CASH SALES – BEANS

Staff Exhibit 2I provides a summary of all claimants that Mr. Knadle determined were properly categorized as cash sale for beans (T-30-24). His recommendation was as follows:

- Rick Lauck has a valid claim in the amount of $6,119.22 (T-31-1)

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendation, staff here argues that this is a valid claim for the cash sale of beans. Staff recommends that this claimant receive the value of this claim out of the proceeds of the liquidation of the grain dealer's bond. If there are not enough proceeds to satisfy all claims, staff recommends that proceeds be distributed on a pro rata basis.

D1. PRICED UNPAID – CORN

Staff Exhibit 2E provides a summary of all the claimant's that Mr. Knadle determined had valid claims in the category of priced unpaid corn (T-27-21). Mr. Knadle's recommendations were as follows:

- Gilbert Buehner has a valid claim in the amount of $5,023.93 (T-27-23).
- Pat Kappenman has a valid claim in the amount of $10,027.93 (T-28-2).
- Farmers National Nagano has a valid claim in the amount of $2,626.00 (T-28-11).

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Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendations, staff here argues that these are valid priced unpaid corn claims. Staff recommends that these claimants receive the value of these claims out of the proceeds of the grain dealer's bond. If there are not enough proceeds to satisfy all claims, staff recommends that proceeds be distributed on a pro rata basis.

D2. PRICED UNPAID – BEANS

Exhibit 2J provides a summary of all claimants that Mr. Knadle determined were properly categorized as priced unpaid for beans (T-31-5). His recommendation was as follows:

- Derald Klueber has a valid claim in the amount of $7,113.40 (T-31-7)

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendation, staff here argues that this is a valid claim for priced unpaid beans. Staff recommends that this claimant receive the value of this claim out of the proceeds of the grain dealer's bond. If there are not enough proceeds to satisfy all claims, staff recommends that proceeds be distributed on a pro rata basis.

E. RECOMMENDATION IN FAVOR OF RESCISSION OF THE DELAYED PRICE AND DEFERRED PAYMENT CONTRACTS

1. STATEMENT OF THE LAW

SDCL 21-12-1 states as follows:

> §21-12-1. Grounds for rescission.
> The rescission of a written contract may be adjudged on the application of a party aggrieved:
> (1) In any of the cases mentioned in § 53-11-2;
> (2) Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault;
> (3) When the public interest will be prejudiced by permitting it to stand.

SDCL 53-11-2 states as follows:

> §53-11-2. Rescission by party to contract - Grounds.
> A party to a contract may rescind the same in the following cases only:
> (1) If consent of the party rescinding or of any party jointly contracting with him was given by mistake or obtained through duress, fraud, or undue influence exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;
> (2) If through fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part;
> (3) If the consideration becomes entirely void from any cause;
> (4) If such consideration before it is rendered to him fails in a material respect from any cause; or
> (5) By consent of all the other parties.

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It is my position as staff attorney that these statutes and the case law applying them support the argument that the delayed price and deferred payment contracts in this case should be rescinded upon the request of the contracting parties.

2. ARGUMENT IN FAVOR OF RESCISSION

THE CONTRACTS SHOULD BE RESCINDED PURSUANT TO SDCL §§ 21-12-1, 53-11-2 AND 57A-2-721

Subsections (2), (3) and (4) of §53-11-2 all provide grounds for the rescission of the contracts in this case. Clearly we have a failure of consideration through no fault of the rescinding parties. Richard Hoffman, Farmers National, Leroy Klockman, Pat Kappenman, Larry Weber, Leonard Buehner, Helen Eide, Tim Jensen, Jeff Scott, Alvin Scott and Lucille Helmbrecht all entered into either a delayed price contract or a deferred payment contract with McCook. For their part, it is not contested that they did in fact deliver their grain to McCook. They have not been paid. Obviously receiving payment goes to the very heart of their contract. The parties themselves have indicated that they are seeking rescission in this case. Attached to this brief is Addendum A, the signed and notarized affidavits of the parties requesting a rescission of any and all delayed price and deferred payment contracts they have involved in this case. It is hereby referenced and incorporated by reference.

Case law also supports the position that these contracts can be rescinded. In Merican State Bank v. Cwach et. ux., 187 N.W.2d. 107 (1971) the South Dakota Supreme Court cited the above statute for this very purpose. In that case the bank got the plaintiff to execute notes by promising to extend credit. The bank failed to extend the credit and the Court found rescission to be an appropriate remedy. In its decision the Court wrote:

> "SDCL 53-11-2(4) provides a contract may be rescinded by a party if the consideration for his obligation fails in whole or in part through fault of the party as to whom he {*567} rescinds. If there is a total failure or want of consideration, rescission is excused and a party may assert failure of consideration as a bar to the action. Iowa National Bank of Ottumwa, Iowa, v. Sherman, 23 S.D. 8, 119 N.W. 1010; Richardson v. Carlis, 26 S.D. 202, 128 N.W. 168; Union National Bank of Columbus, Ohio v. Mailloux, 27 S.D. 543, 132 N.W. 168, and Coleman v. Valentin, 39 S.D. 323, 164 N.W. 67.
>
> The foregoing South Dakota cases are in accordance with the majority rule. It is said in 17 Am.Jur.2d, Contracts, § 397, "where there is a total failure of consideration and the defendant has derived no benefit from the contract or none beyond the amount of money which he has already advanced, such total failure of consideration may be shown in bar of the action." Also see 17 C.J.S. Contracts § 129 and Cotner College v. Hester's Estate, 155 Neb. 279, 51 N.W.2d 612."

As to the application of §21-12-1(3), permitting these contracts to stand in this case will clearly prejudice the public interest. Agriculture is the heart of this state's economy and public faith in that industry is essential to its very existence. Producers must be able to know that they can safely take their grain to state licensed warehouses and be afforded the protections our state statutes were intended to provide them. Though not all producers in this category were deceived by Mr. Mulder, evidence at the hearing indicated that Mr. Mulder was not dealing with clean hands. As is argued below, Mr. Mulder was intentionally deceiving people in the community regarding the financial condition of his facility. In small communities such as this, word of mouth is very valuable. It could easily be that any

dissemination of false information would spread to other producers and convince them that it was safe to enter into these contracts. It appears Mulder was refusing to store grain for producers when he had the space, which if true, is a criminal act in violation of SDCL§ 49-43-11. Mulder clearly had a motive to attempt to push these contracts in order to get title and to increase his standing with the bank. The bank, who will receive this grain if it is not distributed to these producers, clearly had a motive to wait until Mulder's inventory was high to shut his credit down in the hopes of cutting its losses at the expense of these producers. The equities in these circumstances swell in favor of allowing these farmers to rescind these contracts and the law permits their wishes to be heard.

Given the statutes at hand, the case law in support of this interpretation along with the equities of this case, I, as staff attorney, hereby recommend that the Commission recommend to the Circuit Court that these contracts be rescinded at the request of the producers.

3. DISPOSITION OF GRAIN IF CONTRACTS ARE RESCINDED

Case law is very clear as to the disposition of this grain in the event that these contracts are rescinded. In the event of rescission, the law is to treat the parties as if there had never been a contract at all. In S & S Trucking v. Whitewood Motors, Inc., 346 N.W.2d 297, 300 (1984) the South Dakota Supreme Court ruled squarely on this issue when it stated: "It is a well-recognized rule of contract law that once a party rescinds a contract... the contract is extinguished and there is no longer any right of recovery under the contract provisions." Citing Koch v. Han-Shire Investments, Inc., 140 N.W.2d 55 (Minn. 1966); Anson v. Grace, 117 N.W.2d 529 (Neb. 1962); 17A C.J.S. Contracts §440 (1963). The result then is that the parties will occupy the position they would have occupied had there never been a contract. See 12 Williston on Contracts § 1455 (1970); Dusek v. Reese, 119 N.W.2d 656 (1963).

This principle is not only the law of this state but it is also the law of surrounding states as well and is the majority opinion. See Chase Manhattan Bank, N.A. New York, NY v. Clusiau Sales & Rental, 308 N.W.2d 490 (Minn. 1981); Kracl v. Loseke, 461 N.W.2d 67 (Neb 1990); Funk v. Baird, 6 N.W.2d 569 (ND 1942). See also C.J.S. on Contracts §492.

As a result, if there is no contract then there is no clause taking the parties out from under the bond protection, title does not transfer and the bank's security interest does not apply. It is staff's recommendation that grain inventory which is titled in a producer's name and is merely located at the facility would qualify as open storage and I, as staff attorney, would argue that these producers should be categorized in the appropriate open storage categories above and should have valid claims against the inventory and the warehouseman bond proceeds. In the event there is insufficient inventory and bond proceeds, I would recommend payment on a pro-rata basis.

In the event the Commission rules that rescission is not appropriate, then I would follow the recommendations made by Bob Knadle at the hearing as follows.

F1. DELAYED PRICE CONTRACTS – CORN RECOMMENDATIONS IN THE ALTERNATIVE

Staff Exhibit 2F provides a summary of all claimants that Mr. Knadle determined were properly categorized as delayed price contracts on corn (T-28-16). Mr. Knadle's recommendations were as follows:

- Farmers National Graham has a valid claim in the amount of 2,200 bushels (T-28-19).
- Farmers National Ott/Jackson has a valid claim in the amount of 4,285.21 bushels (T-28-24).
- Leroy Klockman has a valid claim in the amount of 1,827.86 bushels (T-29-4)
- Farmers National Nagano has a valid claim in the amount of 3,730.36 bushels (T-29-8).
- Helen Eide does not have a valid claim since her check cleared the bank on 1/9/01 (T-29-15).

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendations, staff here argues that these are delayed price contracts on corn claims. According to these contracts, the title to the corn transferred to McCook at the time of delivery and the contract is not covered by the bond. See Staff Exhibits 1Q, 1P, 1D, 1S and 1V respectively as to claimants. The bank is claiming a security interest in the inventory and has established that McCook Feed and Fertilizer was in debt to the bank in excess of $800,000 at the time the grain changed title to McCook. See Bank Exhibits HF1 through 7, attached and incorporated by reference herein. Unless some other priority security interest is proven or the contract voided, staff recommends that this category of claimants have no interest in either the inventory or the bond proceeds.

F2. DELAYED PRICE CONTRACTS – BEANS RECOMMENDATIONS IN THE ALTERNATIVE

Exhibit 2L provides a summary of all claimants that Mr. Knadle determined were properly categorized as delayed price contracts for beans (T-32-2). His recommendations were as follows:

- Leonard Buehner has a valid claim in the amount of 408.14 bushels (T-32-5)
- Helen Eide has a valid claim in the amount of 973.87 bushels (T-32-14)
- Farmer's National Ott/Jackson has a valid claim in the amount of 719.06 bushels (T-32-20)
- Farmer's National Graham has a valid claim in the amount of 700.00 bushels (T-32-25)
- Tim Jensen has a valid claim in the amount of 2,329.80 bushels (T-339)+ 3,644.53 bushels (T-33-8)

Mr. Tim Jensen later took the stand and under oath he stated that the only reason that he entered into these contracts was because Mulder gave him delayed price contracts when it was his intent to actually store the grain. (T-102-20 & T-103-13). He also indicated that he felt Mulder had committed fraud. (T-102-16). Based on the testimony I, as legal counsel, argue that the contracts in this case are invalid. Mr. Jensens's claim will be addressed in more detail below.

Other than the testimony of Mr. Jensen, there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendations. Staff here argues that these are delayed price contracts on beans except for Mr. Tim Jensen's contracts. According to these contracts, the title to the beans transferred to McCook at the time of delivery and the contract is not covered by the bond. See Staff Exhibits 1Y, 1V, 1P, 1Q and 1H (in the exception of Tim Jensen) respectively as to claimants. The bank is claiming a security interest in the inventory and has established that McCook was in debt to the bank in excess of $800,000 at the time the grain changed title to McCook. See Bank Exhibits HF1 through 7, attached and incorporated by reference herein. Unless some other priority security interest is proven or the contract voided, staff recommends that this category of claimants have no interest in either the inventory or the bond proceeds.

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G1. DEFERRED PAYMENT CONTRACTS- CORN RECOMMENDATIONS IN THE ALTERNATIVE

Exhibit 2G provides a summary of all claimants that Mr. Knadle determined were properly categorized as deferred payment contracts for corn (T-29-22). Mr. Knadle's recommendations were as follows:

- Pat Kappenman has a valid claim in the amount of $2,178.43 (T-29-25).
- Larry Weber has a valid claim in the amount of $6,764.79 (T-30-4).
- Farmers National Nichols has a valid claim in the amount of $1,162.90 (T-30-8).
- Farmer's National Ott/Jackson has a valid claim in the amount of $1,101.24 (T-30-13).

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendations, staff here argues that these are deferred payment contracts on corn claims. According to these contracts the title to the corn transferred to McCook at the time of delivery and the contract is not covered by the bond. See Staff Exhibits 1J, 1N, 1O, and 1P respectively as to claimants. The bank is claiming a security interest in the inventory and has established that McCook was in debt to the bank in excess of $800,000 at the time the grain changed title to McCook. See Bank Exhibits HF1 through 7, attached and incorporated by reference herein. Unless some other priority security interest is proven or the contract voided, staff recommends that this category of claimants have no interest in either the inventory or the bond proceeds.

G2. DEFERRED PAYMENT CONTRACTS – BEANS RECOMMENDATIONS IN THE ALTERNATIVE

Exhibit 2K provides a summary of all claimants Mr. Knadle determined were properly categorized as deferred payment contracts on beans (T-31-11). His recommendations were as follows:

- Farmers National Ott/Jackson has a valid claim in the amount of $2,610.88 (T-31-13).
- Farmers National Nichols has a valid claim in the amount of $1,337,83 (T-31-18).
- Pat Kappenman has a valid claim in the amount of $7,296.40 (T-31-23).

Given that there were no objections to this testimony and no evidence introduced which would contradict Mr. Knadle's recommendations, staff here argues that these are deferred payment contracts on beans. According to these contracts the title to the beans transferred to McCook at the time of delivery and the contract is not covered by the bond. See Staff Exhibits 1P, 1O and 1J respectively as to claimants. The bank is claiming a security interest in the inventory and has established that McCook was in debt to the bank in excess of $800,000 at the time the grain changed title to McCook. See Bank Exhibits HF1 through 7, attached and incorporated by reference herein. Unless some other priority security interest is proven or the contract voided, staff recommends that this category of claimants have no interest in either the inventory or the bond proceeds.

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III. THE CONTRACTS OF ALVIN SCOTT, LUCILLE HELMBRECHT, JEFFERY SCOTT, TIM JENSEN AND RICHARD HOFFMAN ARE INVALID CONTRACTS

A. FACTS

1. THE CLAIM OF ALVIN SCOTT

On his claim form Alvin Scott wrote: "I intended to store the soybeans at McCook Feed and Fertilizer and to make the sale and set the price sometime after harvest. I inquired about a warehouse receipt and Mr. Mulder indicated they were not available." Staff Exhibit 1Z. Being aware that SDCL §49-43-11 makes it a criminal act under certain circumstances to refuse to store grain, the claim of Alvin Scott was not categorized so that further evidence could be gathered regarding the validity of his contract (T-35-24).

Prior to harvest, Alvin Scott (Alvin) testified that he had some reservations about whether or not he was going to place grain in the McCook elevator. He was concerned about whether he was going to get paid (T-46-11). To his knowledge there was no manager, no bookkeeper and there were rumors regarding the financial stability of the elevator (T-46-21). Alvin inquired about this with an employee of Mulder's by the name of Lloyd Langley (Langley), who told Alvin he was going to have to speak with Mulder (T-46-12). He set up a meeting sometime around August 24, 2000 at 4:00 p.m. for a number of farmers to attend (T-46-16). Mulder was not at the meeting, but Ray Marquardt (Marquardt), the current owner, was there (T-54-18). At the meeting Marquardt encouraged the farmers to continue to do business with McCook and assured the farmers in attendance that the operation was solvent, fine and had no problems (T-77-11). As a result of these assurances Alvin decided that it would be safe to put his grain in the McCook elevator (T-76-14).

In August, Alvin also began discussing warehouse receipts with Mulder (T-48-15). At that time Mulder told him that he did not plan on issuing any warehouse receipts this year (T-48-24). Alvin attempted numerous times to get warehouse receipts, however Mulder refused to give him any (T-49-5). At one point Mulder even told Alvin that he was not qualified to issue warehouse receipts (T-47-21). Eventually, based on the assurances that the facility was in good financial conditions combined with Mulder's refusal to give him storage, Alvin entered into a delayed price contract (T-49-18). On each occasion that Alvin attempted to obtain a storage contract, to his knowledge, there was room to store the grain. (T-48-18, T-49-2 & T-52-11) No testimony was presented to suggest that the facility was not in suitable condition to store grain. Ultimately the McCook facility failed and Alvin was required to submit a claim form to the Public Utilities Commission for his grain. Alvin stored a total of 5,661.71 bushes of beans at the McCook facility. Staff Exhibit 2O

2. THE CLAIM OF LUCILLE HELMBRECHT

The claim of Lucille Helmbrecht was also placed by staff in the uncategorized grouping for the same considerations that Alvin Scott's claim was (T-34-11). Lucille Helmbrecht is Alvin's landlady and he also placed some of her crop in the McCook facility (T-45-17). Alvin knew that Lucille wanted to store her grain (T-50-20), but he was unable to get a storage agreement for her just as he was unable to get storage for himself (T-51-18). As was the case with him, but for the assurances that he received that the facility was in good financial condition and Mulder's refusal to give storage, he would not have entered into the delayed price contract on behalf of Lucille (T-51-25).

Bob Helmbrecht (Bob) is Lucille's son. Bob handles all of Lucille's financial affairs (T-56-6). When he received the delayed price contract in the mail he immediately called up Mulder asking why he did not get a storage contract (T-56-25). Mulder's response was that he did not issue warehouse receipts and refused to permit the Helmbrechts to store their grain (T-57-4). Mulder assured Bob that the delayed price contract was a "better deal" (T-57-1). But for the fact that Mulder refused to allow him to store his grain in the elevator, Bob would not have entered into the delayed price contract with Mulder (T-58-8). Bob testified that it has always been his practice to store grain because it is guaranteed (T-57-21). There is also no evidence that there was no space to store the grain since at this point, the grain was already in the elevator (T-57-7). Lucille stored a total of 2,397.51 bushels of corn at the McCook facility.

3. THE CLAIM OF JEFF SCOTT

On his claim form, Jeff Scott wrote, "My intent was to store the corn and soybeans at McCook Feed and Fertilizer and sell them at a later date. I asked Mr. Mulder several times about warehouse receipts and was told they were not available." Staff Exhibit 1G. Based on this fact and the fact that refusing to permit storage in certain circumstances is a criminal act, the claim of Jeff Scott was not categorized so that further information could be gathered surrounding the validity of his contract (T-34-20).

Just as his father Alvin, Jeff Scott (Jeff) intended to store his grain at the McCook facility (T-62-11). As with his father, Mulder refused to permit him to store the grain at the facility, telling him that warehouse receipts were not available (T-60-20). Jeff was also at the meeting called by Mulder's employee, Langley, where he and other farmers were assured that the facility was in fine financial shape (T-61-14). Langley, Mulder's employee, was present when these assurances were being made and made no attempt to disagree with the statements made by Marquardt (T-61-24). Based on Mulder's refusal to permit him to store his grain and the fact that he had been assured that the facility was in stable financial condition, Jeff entered into the delayed price contracts (T-61-2, T-62-18). Jeff stored a total of 7,172.15 bushels of corn and 6,835.60 bushels of beans at the McCook facility. Staff Exhibits 2N and 2O respectively.

4. THE CLAIM OF TIM JENSEN

Part of the claim of Tim Jensen (Tim) was originally categorized as delayed priced contracts for beans. Staff Exhibit 2L. At the hearing, Tim Jensen took the stand and challenged the validity of those contracts (T-102-16). Like the others Tim also attempted to obtain storage from Mulder (T-102-25). In response to this request Mulder handed him a contract which transferred title to the facility (T-103-3). Mulder did not inform Tim that this contract was not a storage contract and did not inform him that the contract transferred title (T-104-1). At the time he signed that contract, Tim's intent was merely to store the grain and he had no intent to transfer title (T-103-25). Tim testified that he did not understand the contract and merely signed it to provide proof that he had his grain in there (T-103-7). In completion of the contract, Mulder issued two checks to Tim totaling $24,788.27 which were returned for non-sufficient funds. Staff Exhibit 2L, (T-105-24).

5. THE CLAIM OF RICHARD HOFFMAN

Like the other claimants, Richard Hoffman (Hoffman) was at the meeting called by Langley. He believed the meeting to have been set up at Mulder's request (T-67-22). He too was concerned about the financial condition of the facility and was concerned that there was no bookkeeper or manager to

help run the place (T-67-14). After attending the meeting he was reassured that the elevator was a safe place to put his grain and in fact did so (T-68-12). Upon delivery, he asked Mulder whether it was wiser to store the grain or what other options were available. Mulder stated that the only option available was a delayed pricing contract (T-69-1). Approximately seven to ten days later Mulder came to Hoffman with a delayed pricing contract completely filled out with the exception of Hoffman's signature (T-69-9). Hoffman looked over the contract and asked Mulder about the clause that excluded coverage under the bond (T-69-12). Mulder responded that the clause didn't mean anything and if anything happened, the corn would be here in the elevator (T-69-15). Hoffman had never signed one of these contracts before (T-68-15) and took Mulder's assurances to mean that Mulder couldn't sell or move the grain until Hoffman priced it (T-69-18). Based on this explanation of the contract by Mulder, Hoffman signed the contract. Hoffman thought he was free to come pick up the corn if he wished (T-70-16). Hoffman deposited 1,957.15 bushels of corn in the elevator under this contract. Staff Exhibit 2N.

B. THE CONTRACTS OF ALVIN SCOTT, LUCILLE HELMBRECHT, JEFF SCOTT AND TIM JENSEN ARE INVALID FOR FRAUD

1. STATEMENT OF THE LAW

§ 53-4-4 states that fraud is either actual or constructive. Actual Fraud is defined in § 53-4-5 as follows:

"Actual fraud in relation to contracts consists of any of the following acts committed by a party to the contract, or with his connivance, with intent to deceive another party thereto or to induce him to enter into the contract:
(1) The suggestion as a fact of that which is not true by one who does not believe it to be true;
(2) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believe it to be true;
(3) The suppression of that which is true by one having knowledge or belief of the fact;
(4) A promise made without any intention of performing it; or
(5) Any other act fitted to deceive.
Actual fraud is always a question of fact."

Constructive fraud on the other hand is described in § 53-4-6 as follows:

"Constructive fraud consists:
(1) In any breach of duty which, without any actually fraudulent intent, gains an advantage to the person in fault or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him; or
(2) In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud."

It is my position, as staff attorney, that the conduct of Jeff Mulder on behalf of McCook Feed and Fertilizer, if not actual fraud, constituted constructive fraud.

2. ARGUMENT FOR FRAUD IN THE CASES OF ALVIN SCOTT, LUCILLE HELMBRECHT, JEFF SCOTT AND TIM JENSEN

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Fraud is never presumed and must always be proven by the party asserting it. This does not mean that fraud will always be proven by positive or direct evidence. Facts and circumstances may be sufficient which can allow fraud to be inferred. "To secure avoidance and rescission of a property sale, it is incumbent ...clearly to establish that there was expressly or by course of conduct misrepresentation or concealment of a material fact that they were induced thereby to [make an agreement] which would not otherwise have been made. Breneman v. Aune, 44 N.W.2d 219 (1950) citing Geister et. al v. Brown, 207 N.W. 98 (1926) and Life Benefit, Inc. v. Elfring 7 N.W.2d 133 (1942).

In the present case we do not have a smoking gun whereby Jeff Mulder has admitted he committed fraud on these producers. We do have a course of fraudulent conduct and a misrepresentation of material fact, which induced these farmers to enter into their contracts. Mulder had to be aware that people in the community were concerned about the financial well-being of his facility. Why else would he have called a special meeting for the purpose of convincing them otherwise. The fact that he had Ray Marquardt convey the misrepresentations does not make them any more truthful. Lloyd Langley, Mulder's employee and apparent agent, was present while these representations were being made and made no effort to disagree. The clear purpose of that meeting was to get these producers to bring their grain to the elevator come harvest. Each of these producers testified that they were concerned that the elevator was in bad financial shape and were induced to bring their grain to the elevator as a result of that meeting. Yet a mere five months later Mulder's continued financial peril caused the bank to suspend his credit and essentially shut him down. Clearly the assurances of the strong financial condition of the elevator were an intentional misrepresentation by Mulder to get these farmers to bring their grain to him. Mulder lied. The fact that he used Marquardt and his employee Langley to carry out that lie does not mean he didn't make misrepresentations to these farmers.

Each of these producers also testified that they sought storage from Mulder and he refused to store their grain, even though he had the room to store the grain and the elevator was in a condition to store it. If these facts are true, and there is no testimony to the contrary, then Mulder committed a criminal act. SDCL §49-43-11 makes it a misdemeanor for a licensed and bonded warehouseman to refuse to store grain where he has capacity and his conditions are suitable to store. There was absolutely no testimony to suggest that any of the exceptions found under that statute prevented Mulder from storing their grain. The record as is stands would indicate that Mulder did in fact commit a crime when he refused to store that grain.

This begs the question: should a person be permitted to commit a criminal act to induce a person to enter into a contract and then receive the benefit of that contract? The case law on this is clear and convincing. No. When Mulder said he could not store the grain he committed a crime and he lied. He committed actual fraud. Actual fraud is the suggestion of a fact which is not true by one who does not believe it to be true. Actual fraud is the suppression of that which is true by one having knowledge or belief of the fact. Actual fraud is any act fitted to deceive. All of these are covered under the definition of actual fraud. He suggested that he could not store the grain and that was not true. He also could not have believed it to be true since the grain was already stored in the elevator. He suppressed the truth of the matter, which is that he was obliged to store their grain by statute. He intended to deceive.

Facts very much in parallel with this can be found in Johnson v. Berry, 104 N.W. 1114 (1905). In that case, Berry contracted Johnson to thresh his field. Johnson, by law, was required to post a $500 bond to be a licensed thresher. He had not done so. Failure to do so was a misdemeanor. When Berry refused to pay Johnson for the work, Johnson sued. The court refused to enforce the contract because

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Johnson had committed a misdemeanor by not getting the bond before threshing the field. The court stated: "Questions upon illegal contracts have arisen very often, both in England and in this country; and no principle is better settled than that no action can be maintained on a contract, the consideration of which is either wicked in itself, or prohibited in law." The court refused to enforce the contract even though Berry may not have known that Johnson was supposed to have a bond.

The parallel with the facts in this case is striking. Mulder induced these parties to enter into a contract by refusing to store the grain. Refusing to store grain under the circumstances was a misdemeanor. He committed a criminal act by refusing to do so. The consideration in this case was wicked in that he committed not only fraud, but behaved criminally in the inducement. Contracts obtained in this matter cannot be enforced.

Irregardless of the illegal aspects of Mulder's refusal to store the grain, his statement was fraudulent and it induced the parties to enter into these contracts. Case law in this state is replete with the notion that if the consent of a party to a contract would not have been given except for the fraud then the contract can be avoided. For instance in Bill Vermilyea and Jan Vermilyea, d/b/a Cost Cutters, vs. BDL Enterprises, Inc. 462 N.W.2d 885 (1990) the court rescinded a lease on the basis that the defendant had lied to the plaintiff and told them that only 20 year leases were available. The plaintiff wanted a 5 year lease but took the 20 year lease based on the misrepresentation. The court stated: "a party to a contract may rescind the same . . if [the] consent of the party rescinding . . . was given by mistake or obtained through fraud . . . exercised by or with the connivance of the party as to whom he rescinds . . . ." SDCL 53-4-2 provides that "consent is deemed to have been obtained through . . . fraud . . . or mistake, only when it would not have been given except for one or [both] of them." SDCL 53-4-9 provides that a "mistake of fact is a . . . belief in the present existence of a thing material to the contract which does not exist . . . ." For other cases ruling that fraud is the basis for the voiding of a contract see also Ivory v. Reserve Life Insurance Company, 101 N.W.2d 517 (1960); Life Benefit, Inc. v. Elfring 7 N.W.2d 133 (1942); Kenny Baatz And Peggy Baatz, Vs. Arrow Bar A/K/A Arrow Bar, Inc., Edmond E. Neuroth, Lavella J. Neuroth, And Jacquette J. Neuroth, 452 N.W.2d 138 (1990).

Clearly, the statutes and the case law indicate that fraud is the basis for avoiding a contract. Mulder lied. He refused to store when he had a statutory obligation. Whether this Commission chooses to recommend rescission on the basis that there was illegality in the inducement or fraud, staff recommends that the Commission finds these contracts invalid.

C. THE CONTRACT OF TIM JENSEN IS INVALID FOR FRAUD IN THE EXECUTION

In the event the Commission does not choose to conclude that Tim Jensen's contract is invalid for fraud, staff argues in the alternative that his contract is void for fraud in the execution. In Hauck v. Crawford, 62 N.W.2d 92 the South Dakota Supreme Court defined fraud in the execution as follows:

> "This type of fraud relates to misrepresentation of the contents of a document by which one is induced to sign a paper thinking that it is other than it really is. It was this type of fraud with which this court was dealing in the case of Federal Land Bank v. Houck, 68 S.D. 449, 4 N.W.2d 213, 218. In this cited case we held that, as between the original parties, when a person is fraudulently induced to sign a paper believing that it is something other than it really is "the contractual knot was never tied" and such paper or instrument is not only voidable but actually void. In that case it was further held in conformity with prior holdings that "neither reason nor policy justifies the reception of a showing of negligence on the part of him who is overreached, as a countervailent or

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neutralizer of fraud." In other words, the perpetrator of the fraud cannot avoid his acts by a showing that the person upon whom the fraud was committed was negligent."

The facts in Hauck were that the plaintiff was tricked into signing a mineral deed when he believed that he was signing a lease for oil and gas. The defendant handed him a mineral deed and told him that it was a lease for oil and gas. The defendant attempted to defend on the basis that the contract was right in front of him and the plaintiff could have read it at any time. The court refused to allow the defendant to get enforcement of the contract based on the plaintiff's negligence as a defense to the fraud.

In the present case, Tim Jensen testified that he went to Mulder and asked for a storage contract and was given a delayed price contract. He testified that he did not know that the contract he signed transferred title to Mulder and merely signed it as proof that he had his grain in the facility. Clearly it was fraudulent of Mulder to hand Jensen a delayed price contract when Jensen had made it clear that he was seeking storage. This is no different than handing a person a mineral deed when he has asked you for an oil and gas lease. For this reason, staff here argues that Mulder committed fraud in the execution of that document and his contract should be deemed void. Per the argument, above his grain would revert to open storage.

D. THE CONTRACT OF RICHARD HOFFMAN IS INVALID FOR FRAUD IN THE EXECUTION

It is well settled law that to permit a party to admit that he signed a contract but to deny that it expresses the agreement he made or to allow him to admit that he signed it but did not read it or know its stipulations would absolutely destroy the value of all contracts. Marilyn Clark Lucero, Vs. Lila Van Wie, 598 N.W.2d 893 (1999). Ignorance of the contents of a contract generally does not relieve the liability of the person who signed it. Dinsmore v. Piper Jaffray, 593 N.W.2d 41 (1999). However there are circumstances that do permit relief from a contract. As has been discussed in detail above, fraud is grounds for rescission of a contract. In this case Hoffman testified that when he asked Mulder how this contract worked he was assured that if he did not like the way things were going that the corn would be in the elevator. Hoffman also testified that he had never entered into one of these contracts before. Mulder on the other hand, as a warehouseman, must have been familiar with the workings of these contracts for years. The question is whether Mulder should be permitted to take advantage of his superior knowledge of the operation of the contract to gain an advantage over a man who has never signed one before?

One must also consider the circumstances of how Mulder secured this signature. When Mulder came to Hoffman with the contract all of the terms and conditions had already been filled out. Hoffman relied on Mulder to explain what it all meant and Mulder made a statement that would lead any reasonable person to conclude that if Hoffman signed the contract he still had the option of coming and picking up his grain. By filling out all of the terms of the contract Mulder reduced the need for Hoffman to review it. Mulder then makes a statement that leads Hoffman to believe that signing the contract is not truly significant because if Hoffman finds he does not like the way this agreement works he can merely come and pick up his grain. That was not true and Hoffman would not have signed that contract but for the fact that Mulder took advantage of his superior knowledge and misrepresented the operation of the contract to Hoffman, who had never signed one of these contracts before. Hoffman could not legally come and pick up his grain and leading him to believe he could was, by definition of statute, fraud. §53-4-5 (1) defines fraud as "the suggestion as a fact of that which is not true by one who does not believe it to be true". The statute does not state that the

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misrepresentation has to be direct, just that the "suggestion" of something which is not true. To tell Hoffman that if he is not satisfied with the way the contract operates that the grain will be in the elevator is to suggest that Hoffman can come and pick up that grain. This is a misrepresentation of the truth. Hoffman reasonably relied on that misrepresentation, given Mulder's superior knowledge. Given this fraudulent suggestion and the circumstances under which Mulder secured that signature, Hoffman should be permitted to avoid the contract.

IV. THE CLAIM OF RAY MARQUARDT

A. RENTAL FEES

R&R Ag. Inputs purchased the McCook facility on or about February 22, 2001. All grain was located in the facility until liquidation. Ray Marquardt, one of the owners of R&R Inputs, has submitted a revised claim for rental in the amount of $3000, which approximates $1000 a month. The maximum rate for storage allowed by the Commission is $.001042 per bushel per day, though the majority of elevators charge $.001 per bushel per day. This storage would include insurance, bond coverage and losses related to spoilage. There were approximately 69,500 bushels located at the facility for that 3 month period of time. At a rate of $.001 per day per bushel the approximate storage fee would equal $6,881. Marquardt has requested $3,000, which is approximately $3,881 less than storage would normally cost and nearly 42% of the rate that would be charged by most elevators. Given that Marquardt was not providing insurance, bond coverage or loss coverage for spoilage, staff concludes that this is a reasonable amount and recommends that these funds come from the assets from the liquidation of the inventory.

B. LOAD OUT

Marquardt has also submitted a claim requesting compensation in the amount of $.05 per bushel for load out. Generally 99% of elevators charge this rate for load out. At an estimated 69,500 bushels this would amount to load out fees of approximately $3,475. Given that this rate is equivalent to that charged by most elevators staff concludes that this is a reasonable charge and recommends that these funds come from the assets from the liquidation of the inventory.

V. CONCLUSION

For the foregoing reasons staff hereby prays the Commission makes the above recommendations to the Circuit Court.

Respectfully submitted this 8th day June, 2001.

Kelly D. Frazier
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Ave.
Pierre, SD 57501-5070
(605) 733-3201

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ADDENDUM A

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF LUCILLE HELMBRECHT

Lucille Helmbrecht, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Lucille Helmbrecht and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred payment contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Lucille Helmbrecht

On this 6th day of June, 2001, came before me, a Notary Public in and for the State of ~~South Dakota~~ Iowa, Lucille Helmbrecht, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" ~~in my presence~~.

(SEAL)

Pat Peyton
Notary Public

Notary Print Name: Pat Peyton
My Commission Expires: 1-12-04

0162.99.105

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF ALVIN SCOTT

Alvin Scott, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Alvin Scott and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred payment contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Alvin Scott

On this 6 day of June, 2001, came before me, a Notary Public in and for the State of South Dakota, Alvin Scott, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

MARY ANN FETERL
NOTARY PUBLIC SEAL
STATE OF SOUTH DAKOTA

Mary Ann Feterl
Notary Public

Notary Print Name:
My Commission Expires:

My Commission Expires 7-30-2004

RECEIVED
JUN 07 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF JEFF SCOTT

Jeff Scott, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Jeff Scott and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred payment contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Jeff Scott

On this 6 day of June, 2001, came before me, a Notary Public in and for the State of South Dakota, Jeff Scott, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

MARY ANN FETERL
NOTARY PUBLIC SEAL
STATE OF SOUTH DAKOTA

Mary Ann Feterl
Notary Public

Notary Print Name:
My Commission Expires:

My Commission Expires 7-30-2004

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JUN 07 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

0162.99.107

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF TIM JENSEN

Tim Jensen, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Tim Jensen and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred payment contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Tim Jensen

On this 6th day of June, 2001, came before me, a Notary Public in and for the State of South Dakota, Tim Jensen, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

Dale L. Strasser
Notary Public

Notary Print Name: Dale L. Strasser
My Commission Expires: 6/5/2002

RECEIVED
JUN 07 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF HELEN EIDI

Helen Eide, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Helen Eide and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred payment contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Helen Eide

On this 8 day of June, 2001, came before me, a Notary Public in and for the State of South Dakota, Helen Eide, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

Justine Hougen
Notary Public

Notary Print Name: Justine Hougen
My Commission Expires: Jan. 31, 2006

JUSTINE HOUGEN
Notary Public–Minnesota
Fairbault County
My Comm. Expires Jan. 31, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF LEONARD BUEHNER

Leonard Buehner, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Leonard Buehner and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred price contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Leonard Buehner

On this 6th day of June, 2001, came before me, a Notary Public in and for the State of South Dakota, Leonard Buehner, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

Notary Public

Notary Print Name:
My Commission Expires: 6-12-05

RECEIVED
JUN 07 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF LARRY WEBER

Larry Weber, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Larry Weber and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred payment contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Larry Weber

On this 7th day of June, 2001, came before me, a Notary Public in and for the State of South Dakota, Larry Weber, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

Beth Kennedy
Notary Public

BETH KENNEDY
NOTARY PUBLIC
SOUTH DAKOTA

Notary Print Name: Beth Kennedy
My Commission Expires: Aug. 25, 2005

0162.99.111

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF PAT KAPPENMAN

Pat Kappenman, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Pat Kappenman and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred payment contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Pat Kappenman

On this 6th day of June, 2001, came before me, a Notary Public in and for the State of South Dakota, Pat Kappenman, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

Kelly J Arend
Notary Public

Notary Print Name: Kelly J Arend
My Commission Expires: 5/6/05

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JUN 07 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

0162.99.112

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF LEROY KLOCKMAN

Leroy Klockman, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Leroy Klockman and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred payment contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

LeRoy Klockman

On this 5th day of June, 2001, came before me, a Notary Public in and for the State of South Dakota, Leroy Klockman, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

R.R. DeHaeck
Notary Public

Notary Print Name: R.R. DeHaeck
My Commission Expires: 11-3-2003

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JUN 07 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) AFFIDAVIT OF TOM JASS FARMER'S NATIONAL

Tom Jass, after being duly sworn upon his oath, hereby states and deposes as follows:

1. I am an employee of Farmer's National Company;
2. In the course of my business I have the authority to enter into contracts on behalf of my company and the producers we work with;
3. During the course of my business I entered into several delayed price contracts and deferred price contracts that at issue in the above manner;
4. I hereby state that it is my desire to have any and all delayed price contracts and deferred payment contracts that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Tom Jass
Farmers National Co
PO Box 798
Brandon, SD 57005
(605) 582-2798

On this 6th day of June, 2001, came before me, a Notary Public in and for the State of South Dakota, Tom Jass, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

Notary Public

Notary Print Name: Darry W Pearson
My Commission Expires: My Commission Expires 6-27-06

DARRY W. PEARSON
NOTARY PUBLIC
SOUTH DAKOTA
SEAL SEAL

RECEIVED
JUN 07 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (C1V01-023) AFFIDAVIT OF RICHARD HOFFMAN

Richard Hoffman, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Richard Hoffman and I have filed a claim in the above matter;
2. I hereby state that it is my desire to have any and all delayed price contracts and/or deferred payment contracts that I am a party to that are at issue in this matter rescinded for failure of consideration.

Further affiant sayeth not.

Richard L. Hoffman

On this ____ day of _____, 2001, came before me, a Notary Public in and for the State of South Dakota, Richard Hoffman, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)

Notary Public
R.R. Herlock
Notary Print Name:
My Commission Expires: 11-3-2003

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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of Brief in Support of Staff's Recommendations were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 8th day of June, 2001.

Mr. Mike C. Fink
Attorney at Law
Bjorkman & Fink, P.C.
P. O. Box 444
Bridgewater, SD 57319-0444

Mr. Roger W. Damgaard
Attorney at Law
Woods, Fuller, Schultz & Smith
P. O. Box 5027
Sioux Falls, SD 57117

Mr. Michael D. Stevens
Attorney at Law
Blackburn, Stevens & Miller
P. O. Box 753
Yankton, SD 57078

Kelly D. Frazier
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

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BJORKMAN & FINK, P.C.
LAWYERS
304 MAIN AVENUE, P.O. BOX 444
BRIDGEWATER, SOUTH DAKOTA 57319-0444
TELEPHONE (605) 729-2552
FACSIMILE (605) 729-2445

TIMOTHY W. BJORKMAN
MIKE C. FINK

June 8, 2001

Ms. Debra Elofson
Executive Director-PUC
500 E. Capitol
Pierre, South Dakota 57501

RE: In the matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co, d/b/a McCook Feed & Fertilizer

Dear Debra:

Enclosed please find the original and five (5) copies of the Brief of Alvin Scott, Jeff Scott and Lucille Helmbrecht in the above matter.

Copies have been sent today, by U.S. Mail, to Rolayne Wiest, Kelly Frazier, Roger Damgaard, and Michael Stevens.

Kind regards.

Very truly yours,

BJORKMAN & FINK, P.C.

Mike C. Fink

Mike C. Fink

Enclosure

c: Ms. Rolayne Wiest
Mr. Kelly Frazier
Mr. Roger Damgaard
Mr. Michael Stevens
Mr. Alvin Scott

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co, d/b/a McCook Feed & Fertilizer.	:	Docket GD01-001 Brief of Alvin Scott, Jeff Scott and Lucille Helmbrecht

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INTRODUCTION

COME NOW Alvin Scott, Jeff Scott and Lucille Helmbrecht, [Scotts and Helmbrecht] by and through their attorney, Mike C. Fink, and submit their Brief addressing the "Delayed Pricing Contracts" and their claim against the cash proceeds of the grain dealer's bonds, grain warehouseman's bonds and the grain inventory in the above entitled matter. References to the Commission Hearing transcript will be referred to by "T", followed by the appropriate page number.

FACTS

The Scotts farm their own and rented land in the Canistota, South Dakota area. One of their landlords is Lucille Helmbrecht, whose financial affairs are handled by her son, Bob Helmbrecht [Helmbrecht]. Freeman Fertilizer Co., d/b/a McCook Feed & Fertilizer is located in Canistota, South Dakota and operated by Jeff Mulder [Mulder].

In the late summer of 2000, the Scotts were seeing signs of a big harvest and anticipated that they would produce more grain than they could collectively store. (T 46). As a result, they searched for a reliable place to store their grain and began making inquiries at McCook Feed & Fertilizer. Id. On several occasions, they asked McCook Feed & Fertilizer employee Lloyd Langley [Langley] whether the facility would be open at harvest, and if they could depend on

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payment for stored grain. Id. Langley responded that such inquiries should be addressed to Mulder. Id.

As harvest approached, the Scotts still had reservations about placing grain at the McCook Feed & Fertilizer. (T 46). However, they wanted to store grain at the facility since they do not have large trucks for transporting grain long distances, and desired to support a local business. (T 55). Finally, Langley informed the Scotts that he would ask Mulder come to Canistota and talk to the farmers about their concerns. (T 46). At this meeting, held August 24, 2000, Al and Jeff Scott expected Mulder to show up and answer their questions, however, Mulder did not attend. (T 78).

Instead, Ray Marquardt [Marquardt] appeared and informed the group that he was considering a merger with McCook Feed & Fertilizer and assured those present that the Canistota facility was in good financial condition. (T 46, 64). According to Jeff Scott, Marquardt stated that they (meaning Marquardt's company) wouldn't merge with anything but a strong company. (T 64). According to those it attendance, Marquardt told the group that he and Mulder were in the process of working out the details and encouraged those present to continue doing business with McCook Feed & Fertilizer. (T 73, 78). Langley, who had arranged the meeting, remained silent for the most part. (T 54).

Those in attendance were encouraged by Marquardt's statements since he appeared to have a good track record and was known to own several other elevators. But for this meeting, the Scotts would not have placed their grain, and Helmbrecht's grain, at McCook Feed & Fertilizer. (T 46-47). Jeff Scott testified that based upon Marquardt's assertions at this meeting, he felt fairly secure, having been told by Marquardt that it was "business as usual." (T 61).

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Another local farmer, Richard Hoffman, also attended the August 24 meeting. (T 71). Hoffman testified:

> "At the meeting that we had, they explained that they were going to enter into a business relationship with Mr. Mulder, and they hadn't determined what that kind of relationship was going to be at that time, whether it was going to be a complete merger or perhaps taking over the elevator completely as far as management. They hadn't determined that. The only thing they had determined was ***there was going to be a relationship of some sort***. And that's what we -- and he was there to reassure us that -- the fact that ***the elevator was sound*** and everything was business as usual because of the fact that we were right on top of harvest and there was no manager, no secretary, basically just one person on-site at that time. . .".

(T 72).

With harvest approaching, the Scotts sought to store their grain and talked to Mulder, stating they would prefer warehouse receipts. (T 47, 48). According to Al Scott, Mulder responded that he couldn't issue warehouse receipts and would not be issuing warehouse receipts later in the fall. (T 48). Mulder made this statement, even though it was clear to Al Scott that, in August of 2000, Mulder had room to store grain within the elevator. (T 48).

When harvest arrived, the Scotts hauled a large portion of their grain to McCook Feed & Fertilizer. Jeff Scott transported ***all*** of his soybean crop and one third of his corn crop to the facility. (T 60). Jeff received warehouse scale tickets for each load. See Exhibit 2. Ticket 15254A indicates that grain was delivered on contract or for sale, with a price per bushel indicated. Id. Ticket 15310A is silent as to how the grain was to be treated. Id. Other tickets are likewise incomplete.

Still seeking to store his grain, Jeff Scott asked Mulder what would be available for storage or pricing options. (T 69). At that time, with Jeff Scott's grain already having been delivered, Mulder informed Jeff that the only option available was delayed pricing. Id.

Approximately a week to 10 days later, Mulder provided Jeff Scott with the "delayed pricing contract." (T 69). Jeff Scott had never entered into such a contract before. Id. Mulder had filled in only a portion of the terms and asked Jeff Scott for his signature. Id. Jeff Scott reviewed the scale ticket numbers and other information and "asked him what this meant, that it wasn't covered by bond, grain dealer bond." Id. Mulder answered by telling him that it was just a "standard contract", and that ***if anything happened, "the corn would be here in the elevator."*** Id.

The Scotts' experience is similar to other farmers dealing with Mulder in the fall of 2000. As was the case with the Scotts, Tim Jenson asked Mulder for a storage contract and was instead talked into an identical "delayed price contract." (T 103). It was Jenson's understanding however, that he was actually signing some type of storage contract. Id.

Likewise, Richard Hoffman was told by Mulder that the only option available to him was delayed pricing. (T 69). According to Hoffman, Mulder told him that the "delayed price contract" was just a standard contract and ***"if anything happened, the corn would be here at the elevator."*** Id. Hoffman understood Mulder to be saying that McCook Feed & Fertilizer could not sell or move the grain until Hoffman priced the grain to him. Id. When Hoffman asked Mulder about the contract language stating that their was no bond coverage, Mulder told him ***"that really doesn't mean much of anything because the corn is here. . . . If I – if I want the corn or whatever, it's here."*** (T 70).

It even appears that McCook Feed & Fertilizer was itself treating the "delayed price contracts" as a type of storage arrangement. On Helen Eide's "delayed pricing contract" contract # 20862, the plain language of the document seems to suggest that a "***storage***" charge was

deducted from the amount paid on the contract. See Exhibit 3. Likewise, Eide contract # 20855 includes a notation indicating a ***storage*** charge was being assessed. Id.

When Bob Helmbrecht, received a "delayed price contract" in the mail, he called Mulder and asked for a warehouse receipt. (T 56-57). Again, Mulder refused, informing Helmbrecht that he didn't issue warehouse receipts and that the delayed price contract was ***a better deal***. Id. Having been advised of the August 24, 2000 meeting by Al Scott, and feeling he had no other options, Helmbrecht directed Al Scott to sign contract #20854.

ARGUMENT

1. The "delayed pricing contracts" entered into by the Scotts and Helmbrecht are void as a matter of law.

a. Marquardt was serving as Mulder's agent when he appeared at the August 24, 2000 meeting at McCook Feed & Seed.

South Dakota law provides: "Agency is actual when the principal appoints the agent. . . . agency is ostensible when by conduct or want of ordinary care the principal causes a third person to believe another, who is not actually appointed, to be his agent." **SDCL § 59-1-4, 5.** In this case, Marquardt was actually, or at the very least ostensibly serving as Mulder's agent, when he spoke at the August 24, 2000 meeting and announced that he was in a business relationship with Mulder and that the business was financially sound.

The meeting had been called by Langley, after farmers expressed a desire to question Mulder about the financial status of the business. Langley, the McCook Feed & Fertilizer employee who set up the meeting, never indicated that Marquardt was not authorized to speak on behalf of Mulder. It seems clear that Mulder must have directly authorized Marquardt to speak on his behalf at this meeting. Again, even if actual authority was not granted, Marquardt was, at

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the very least, acting under ostensible authority.

Pursuant to South Dakota law, a principal is liable for the fraud and deceit of his agent acting within the scope of his actual or apparent authority. **Dahl v. Sittner**, 429 N.W. 2d 458 (S.D. 1988).

By sending Marquardt to the August 24, 2000 meeting, Marquardt was able to convince area farmers that business was usual at McCook Feed & Fertilizer. In fact, by asserting that Mulder and Marquardt were entering into a business venture, those at the meeting were let to believe that business was probably ***better than usual***. In any event, Mulder cannot avoid responsibility for the statements made by Marquardt.

b. Fraud.

An essential element to the existence of a contract is ***consent***. It is a universal rule of law that ***free*** consent is the essence of all contracts. **Cochrane v. Nelson**, 189 N.W. 700 (SD 1922). Consent is not real or free and is voidable when obtained through:

(1) Duress;
(2) Fraud:
(3) Undue Influence; or
(4) Mistake.

SDCL § 53-4-1. As a result of the assertions made by Mulder and his agent Marquardt, the Scotts and Helmbrecht were duped into signing "delayed price contracts."

Pursuant to South Dakota law, actual fraud in relation to contracts consists of any of the following acts committed by a party to the contract, or with his connivance, with intent to deceive another party thereto or to induce him to enter into the contract:

(1) The suggestion as a fact of that which is not true by one who does not believe it to be true;

(2) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believe it to be true;

(3) The suppression of that which is true by one having knowledge or belief of the fact;

(4) a promise made without any intention of performing it; or

(5) Any other act fitted to deceive.

SDCL § 53-4-5.

It appears that Mulder and his agent, arguably with the intent to deceive the Scotts and Helmbrecht, induced them to enter into the "delayed price contracts" by suggesting facts which were not true, knowing that those facts were not true. As set forth above, Mulder's agent told those at the August 24, 2000 meeting that the financial condition of McCook Feed & Fertilizer was sound. Moreover, Mulder himself told the Scotts and Helmbrecht that he could not give them warehouse receipts. With these assertions, it appears Mulder committed actual fraud pursuant to sub-sections (1) & (3) of SDCL § 53-4-5.

At the very least, Mulder and his agent made positive assertions, in a manner not warranted by the information of the persons making them, of that which was not true, though they may have believed them to be true. See SDCL § 53-4-5(2). As such the Scotts' and Helmbrecht's consent was voidable, as it was obtained by fraud.

While there appears to be no South Dakota authority directly pertaining to the issue before this Commission, the case of **Tucker v. Durham**, 686 S.W.2d 402, (Ark. 1985) is helpful. In Tucker, the Arkansas public grain warehouse commissioner filed a distribution plan which excluded from participation in the bond money an intervenor named Maddox. Maddox had signed a deferred pricing contract by which he apparently transferred title of his grain to the

subject elevator owner, Durham. Id.

However, the trial court found that the contract had been "back dated" and thus Durham fraudulently induced Maddox to sign the deferred pricing contract. Id. It was believed that Durham had already sold, transferred and disposed of the beans, without obtaining a written document transferring title. Id. The trial court ruled that since the attempt to transfer was void, Maddox was allowed a share of the bond money. Id. Affirming, the Supreme Court of Arkansas noted that the warehouse laws' purpose is to protect those who store grain. Id. The Court further held:

> "But for the contract, Maddox would have been as entitled as other storers to participate in the bond proceeds. . . . Obviously Maddox would not have signed the contract had he known Durham had already illegally disposed of his beans."

Id.

As is the case in Arkansas, the South Dakota warehouse laws have the purpose of protecting those who store grain. In the case before this Commission, the Scotts and Helmbrecht were duped into signing "delayed price contracts" contracts that seek to avoid the protection of the warehouse laws, by assertions made by Mulder and his agent. It bears notice that SDCL § 49-43-11 reads:

> "The lessee, owner or manager of a public grain warehouse which has furnished a bond and received a public grain warehouse license, ***shall*** receive for storage all grain offered for storage at the warehouse, which at the time of such offer are in suitable condition for storage, and which are tendered in the usual course of business. However, if the capacity of the warehouse to receive the grain is exhausted and the owner, lessee or manager of the warehouse is prevented from shipping the grain to a terminal market by inability to obtain cars for shipment or some other valid cause rendering the receiving of such grain impossible and over which the owner, lessee or manager has no control, the provisions of this section are waived. ***A violation of this section is a Class 2 misdemeanor.***" (***emphasis***

added)

Clearly, Mulder violated South Dakota law when he told the Scotts and Bob Helmbrecht that he could not issue warehouse receipts. Then, when Jeff Scott inquired about the terms of the "delayed price contract", Mulder told him that it was just a "standard contract", and that if anything happened, "the corn would be here in the elevator." This statement was fitted to deceive and, therefore, constitutes actual fraud. SDCL § 53-4-5(5).

Based upon the foregoing, the Scotts and Helmbrecht ask that the "delayed price contracts" be deemed void, thus allowing them to share in the cash proceeds of the grain dealer's bonds, grain warehouseman's bonds and the grain inventory as deemed appropriate.

2. Even if the "delayed price contracts" are not deemed void, the Scotts and Helmbrecht are entitled to recision.

SDCL§ 21-12-1 states:

> "The rescission of a written contract may be adjudged on the application of a party aggrieved:
>
> (1) In any of the cases mentioned in *§ 53-11-2*;
>
> (2) Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault;
>
> (3) When the public interest will be prejudiced by permitting it to stand.

SDCL § 53-11-2 reads, in part:

> "A party to a contract may rescind the same in the following cases only:
>
> (1) If consent of the party rescinding or of any party jointly subcontracting with him was given by mistake or obtained through duress, fraud, or undue influence exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;

(2) If through fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part;

(3) If the consideration becomes entirely void from any cause;

(4) If such consideration before it is rendered to him fails in a material respect from any cause; . . .".

Rescission is an equitable remedy, not generally permitted for casual, technical, or unimportant breaches of the contract. Talley v. Talley, 566 N.W. 2d 846, 852 (S.D. 1997). The breach must be substantial and relate to a material part of the contract. Id. In this case however, the Scotts and Helmbrecht are entitled to rescission since McCook Feed & Fertilizer has failed, in all respects, to perform its part of the bargain.

Section 21-12-1(1) applies to the facts of this case since, as set forth above, the "delayed price contracts" obtained by fraud on the part of Jeff Mulder and his agent. Moreover, McCook Feed and Fertilizer cannot perform its end of the contract, thus entitling the Scotts and Helmbrecht to rescission. As such the McCook Feed & Fertilizer has failed to render adequate consideration. See, SDCL § 53-11-2(4).

Subsection (3) of §21-12-1 also applies since the contract was arguably used by Mulder for the purpose of improving his financial position with his lender. What other reason would Mulder have for illegally refusing to issue Warehouse Receipts and promoting "delayed price contracts?" Since warehousemen are dealing with customers who may not be educated on the intricacies of the law, such efforts to avoid issuing warehouse receipts prejudice the public interest and should not be enforceable.

Based upon the foregoing, if the "delayed price contracts" are not deemed void, the Scotts and Helmbrecht may, in any event, rescind the contracts and recover their grain, ***or the value***

thereof. See, Union Nat. Bank of Columbus, Ohio v. Mailloux, 132 N.W. 168 (S.D. 1911).

CONCLUSION

For the forgoing reasons, the Scotts and Helmbrecht ask that the "delayed price contracts" be deemed void, and that they share in the cash proceeds of the grain dealer's bonds, grain warehouseman's bonds and the grain inventory as deemed appropriate. If it is determined that the "delayed price contracts" are not void, the Scotts and Helmbrecht ask that those contracts be deemed rescinded and, again, that they share in the cash proceeds of the grain dealer's bonds, grain warehouseman's bonds and the grain inventory as deemed appropriate..

Dated this 8th day of June, 2001.

BJORKMAN & FINK, P.C.

Mike C. Fink

Mike C. Fink
304 Main PO Box 444
Bridgewater, SD 57319
(605) 729-2552
Attorney for Scotts and Helmbrecht

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served by U.S. Mail, postage prepaid to:

Ms. Rolayne Ailts Wiest
PUC
500 E. Capitol
Pierre, South Dakota 57501

Mr. Kelly D. Frazier
PUC
500 E. Capitol
Pierre, South Dakota 57501

Mr. Roger W. Damgaard
Woods, Fuller, Shultz & Smith
P.O. Box 5027
Sioux Falls, South Dakota 57117

Mr. Michael D. Stevens
Blackburn, Stevens & Miller
P.O. Box 753
Yankton, South Dakota 57078

this 8th day of June, 2001.

Mike C. Fink
Mike C. Fink

DD01-001

Assembly Sheet - Beans

Scale ticket	Date	Net Pounds	Gross Bu.	FM %	Test Wt.	Moisture	Net Dollars	Comments	Trucker Name
118	05/31/2001	50500	841.67	1	57	9.6	$3,140.93	6% corn	Ray- #30
119	05/31/2001	50830	847.17	1.9	56	9.9	$3,458.91		Bob- #19
120	05/31/2001	50770	846.17	0.6	56.5	10.1	$3,486.21		Ray- #30
121	05/31/2001	52860	881.00	1.5	56	10	$3,611.57		Bob- #19
211	06/01/2001	48500	808.33	1	56	8.3	$3,330.33	20% Splits	Paul- Jake Tckg
212	06/01/2001	49160	819.33	0.8	56.5	8.4	$3,375.65	20% Splits	Paul- Jake Tckg
213	06/01/2001	48900	815.00	0.8	57.5	8.5	$3,357.80	18% Splits	Paul- Jake Tckg
214	06/01/2001	48160	802.67	0.9	55.5	8.5	$3,306.99	15% splits	Paul- Jake Tckg
215	04-Jun	53640	894.00	0.9	56.5	8.6	$3,683.28	18% Splits	Glanzer
216	06/04/2001	56000	933.33	0.6	57	8.7	$3,845.33	17% Splits	Glanzer
217	06/04/2001	51660	861.00	0.9	56.8	8.7	$3,547.32		Bob- #19
218	06/04/2001	59520	992.00	0.8	56	8.7	$4,087.04		Glanzer
219	06/04/2001	51780	863.00	0.7	56.5	8.8	$3,555.56		Bob- #19
220	06/04/2001	56620	943.67	0.5	56.5	8.9	$3,887.91		Glanzer
221	06/04/2001	52320	872.00	0.8	57	8.8	$3,592.64		Bob- #19
222	06/04/2001	56660	944.33	0.8	56.5	8.9	$3,890.65		Glanzer
223	06/05/2001	55440	924.00	0.8	57	8.6	$3,806.88		Glanzer
232	06/05/2001	55340	922.33	1.3	55	12.6	$3,788.61		Jim Hansen

Total Dollars:
$64,753.62

Total Gross Bu.	Average	Average	Average
15811.00	0.92	56.43	9.14

PRICE: $4.12

Dollars Owed- Beans

Dollars Paid:	$ 43,260.00
In Dispute:	$ 1,500.00
Dollars Owed:	$19,993.62
Total Dollars:	$ 64,753.62

Assembly Sheet - CORN

Scale ticket	Date	Net Pounds	Gross Bu.	FM %	Test Wt.	Moisture	Net Dollars	Trucker Name
100	05/24/2001	53280	951.43	0.8	57	14.8	1436.66	Adam- HDP
101	05/25/2001	49220	878.93	2	57	15	1327.18	Dave
102	05/25/2001	52930	945.18	1	58	15	1427.22	Adam- HDP
103	05/25/2001	51450	918.75	0.6	58	15.2	1364.34	Jim Hansen
104	05/25/2001	49000	875.00	1	58.5	14.7	1321.25	Dave
105	05/25/2001	52430	936.25	0.8	60	14.5	1413.74	Adam- HDP
106	05/25/2001	51440	918.57	2.3	59	14.4	1387.04	Jim Hansen
107	05/25/2001	48710	869.82	1	59	12.9	1313.43	Dave
108	05/25/2001	52370	935.18	1.2	58	12.8	1412.12	Adam- HDP
109	05/25/2001	51570	920.89	2.2	58.5	13.6	1390.55	Jim Hansen
110	05/25/2001	53500	955.36	4	56.8	12.6	1442.59	Adam- HDP
111	05/25/2001	51920	927.14	3	57.5	13.8	1399.99	Jim Hansen
112	05/30/2001	52600	939.29	1.9	59	13.4	1418.32	Adam- HDP
113	05/30/2001	52530	938.04	3.5	56.5	12.8	1388.29	Adam- HDP
114	05/30/2001	52230	932.68	2.8	58	13.6	1408.34	Dave
116	05/30/2001	24130	430.89	2.5	56.5	16	629.10	Paul- Jakes Trucking
200	05/30/2001	54470	972.68	1	57	15.8	1420.11	Adam- HDP
117	05/30/2001	49720	887.86	0.8	58	15.8	1296.27	Dave
201	05/30/2001	46920	837.86	0.8	57	15.9	1223.27	LC
202	05/31/2001	49020	875.36	1	57	15.9	1278.02	Paul- Jakes Trucking
203	05/31/2001	52400	935.71	0.5	57	16	1366.14	LC
204	05/31/2001	51340	916.79	0.5	57.8	16	1338.51	Dave
205	05/31/2001	53080	947.86	0.9	57	15.7	1383.87	Adam- HDP
206	05/31/2001	50900	908.93	0.8	57	15.2	1349.76	Paul- Jakes Trucking
207	05/31/2001	48640	868.57	0.3	57.2	15	1311.54	Adam- HDP
208	05/31/2001	49780	888.93	1.1	59	15.4	1320.06	Paul- Jakes Trucking
209	05/31/2001	56380	1006.79	1	58	15	1520.25	Ray #30
210	05/31/2001	51940	927.50	0.9	58	15.5	1377.34	Adam- HDP
224	06/05/2001	53780	960.36	0.4	58	15.4	1426.13	Jim Hansen

Total Money Owed

	Dollars Owed:	Dollars Paid:	Total Dollars:
Corn	$ 33,901.44	$ 36,240.00	$ 70,141.44
Oats	$ 244.81	$ 491.25	$ 736.06
Mixed Grain	$ 5,730.27	$ 843.75	$ 6,574.02
	========	==========	==========
TOTAL:	$ 39,876.51	$ 37,575.00	$ 77,451.51

DAKOTA VALLEY GRAIN LLC

YDC1-001

PO Box 357, Marion, SD 57043 • 605-648-3941

Closing Prices
6/7 4.61 1/2
6/8 4.61 1/2
6/11 4.66 1/2
6/12 4.73 3/4

June 14th, 2001

Dear Sirs:

On May 22nd, 2001 Dakota Valley Grain entered into a soybean contract with the South Dakota Public Utilities Commission (SDPUC) for approximately 21, 000 bushels to be picked up at the Canistota Elevator.

The price established was $4.44-.32= $4.12, on Wednesday June 13th, when Chris Downs was to settle the contract, it was discovered that only 15.811 bushels had actually been hauled in and that was all the soybeans there was. The close of the day on Wednesday soybeans were worth $4.74-.32=$4.42 picked up at Canistota, creating a difference of .30 cents times the undelivered bushels of 5189 or a total of $1,559.67 that Dakota Valley Grain is to stand.

What typically happens in the grain industry is the selling party need to buy out of the contract, which Dakota Valley would settle for $1,500.

Any questions please call Brad Kohls at Dakota Valley Grain at 1-800-658-3544

Sincerely,

Brad Kohls
Grain Merchandiser

0192.99.136

WOODS, FULLER, SHULTZ & SMITH P.C.
LAWYERS
300 SOUTH PHILLIPS AVENUE, SUITE 300
POST OFFICE BOX 5027
SIOUX FALLS, SOUTH DAKOTA 57117-5027
TELEPHONE (605) 336-3890
TELECOPIER (605) 339-3357

E-MAIL: dsittig@wfss.com

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RICHARD O. GREGERSON
WILLIAM G. TAYLOR
WILLIAM P. FULLER
STUART L. TIEDE
GARY P. THOMSEN
BRADLEY C. GROSSENBURG
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KRISTINE KREITER O'CONNELL
ELIZABETH A. LEWIS
TIMOTHY P. SHATTUCK

MELANIE L. CARPENTER
SUSAN M. SABERS
WILLIAM G. BECK
DEBRA S. SITTIG
DANIEL J. HARMELINK
JENNIFER L. WOLLMAN
LISA MARSHIK PROSTROLLO

CHRISTOPHER J. LENT*
*LICENSED ONLY IN NEW HAMPSHIRE

FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1899-1983)
HOWELL L. FULLER (1909-1981)
JOHN B. SHULTZ (1912-1975)

June 21, 2001

Kelly D. Frazier
SD Public Utilities Commission
Capitol Building - First Floor
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: Home Federal Savings Bank/Freeman Fertilizer

Dear Kelly:

Per your telephone conversation with my secretary this morning, I am enclosing the original Motion to Reopen for Further Evidence.

If you need anything further, please contact me.

Sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.

Debra S. Sittig

Enclsoure

FAX Received JUN 19 2001

RECEIVED
JUN 25 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC., D/B/A MCCOOK FEED AND FERTILIZER	)))))	GD01-001 (CIV.01-023) MOTION TO REOPEN FOR FURTHER EVIDENCE

Comes now attorney, Debra S. Sittig, and hereby moves the Public Utilities Commission to reopen for good cause the above case pursuant to ARSD 20:10:01:27:01 for the purpose of receiving into evidence the Affidavit of Richard Shane on behalf of Home Federal Savings Bank in the above action regarding alternative methods of selling grain and the usual practices concerning the issue of elevator contracts.

Respectfully submitted and signed this 19th day of June, 2001.

WOODS, FULLER, SHULTZ & SMITH P.C.

By Debra S. Sittig

Debra S. Sittig
300 South Phillips Avenue, Suite 300
Post Office Box 5027
Sioux Falls, South Dakota 57117-5027
(605)336-3890
Attorneys for Home Federal Savings Bank

FAX Received JUN 19 2001

RECEIVED
JUN 25 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC., D/B/A MCCOOK FEED AND FERTILIZER	)))))	GD01-001 (CIV.01-023) MOTION TO REOPEN FOR FURTHER EVIDENCE

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Respectfully submitted and signed this 19th day of June, 2001.

WOODS, FULLER, SHULTZ & SMITH P.C.

By Debra S. Sittig

Debra S. Sittig
300 South Phillips Avenue, Suite 300
Post Office Box 5027
Sioux Falls, South Dakota 57117-5027
(605)336-3890
Attorneys for Home Federal Savings Bank

0162.39.139



South Dakota
Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

June 20, 2001

RE: IN THE MATTER OF GRAIN DEALER'S AND GRAIN WAREHOUSEMAN'S BONDS OF JEFF MULDER D/B/A FREEMAN FERTILIZER CO., INC.D/B/A MCCOOK FEED & FERTILIZER AND GRAIN INVENTORY

TO ALL CONCERNED PARTIES REGARDING THE ABOVE MATTER,

The enclosed is intended as a Notice of Meeting. Attendance is not necessary however if you wish to attend this meeting by conference call, please contact the Commission at 605-773-3201.

Sincerely,

Kelly D. Frazier
Staff Attorney

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
www.state.sd.us/puc/

Jim Burg
Chairman
Pam Nelson
Vice-Chairman

Debra Elofson
Executive Director

Harlan Best
Martin C. Bettmann
Sue Cichos
Karen E. Cremer
Christopher W. Downs
Terry Emerson
Michele M. Farris
Marlette Fischbach
Heather K. Forney
Kelly D. Frazier
Mary Giddings
Leni Healy
Mary Healy
Lisa Hull
Dave Jacobson
Amy Kayser
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

0162.99.140

GD01-001

DAKOTA VALLEY
GRAIN LLC

PO Box 357, Marion, SD 57043 • 605-648-3941

Closing Prices
6/7 4.61 1/2
6/8 4.61 1/2
6/11 4.66 1/2
6/12 4.73 3/4

June 14th, 2001

Dear Sirs:

On May 22nd, 2001 Dakota Valley Grain entered into a soybean contract with the South Dakota Public Utilities Commission (SDPUC) for approximately 21, 000 bushels to be picked up at the Canistota Elevator.

The price established was $4.44-.32= $4.12, on Wednesday June 13th, when Chris Downs was to settle the contract, it was discovered that only 15.811 bushels had actually been hauled in and that was all the soybeans there was. The close of the day on Wednesday soybeans were worth $4.74-.32=$4.42 picked up at Canistota, creating a difference of .30 cents times the undelivered bushels of 5189 or a total of $1,559.67 that Dakota Valley Grain is to stand.

What typically happens in the grain industry is the selling party need to buy out of the contract, which Dakota Valley would settle for $1,500.

Any questions please call Brad Kohls at Dakota Valley Grain at 1-800-658-3544

Sincerely,

Brad Kohls
Grain Merchandiser

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC., D/B/A MCCOOK FEED AND FERTILIZER	)))))	GD01-001 (CIV.01-023) MOTION TO REOPEN FOR FURTHER EVIDENCE

Comes now attorney, Debra S. Sittig, and hereby moves the Public Utilities Commission to reopen for good cause the above case pursuant to ARSD 20:10:01:27:01 for the purpose of receiving into evidence the Affidavit of Richard Shane on behalf of Home Federal Savings Bank in the above action regarding alternative methods of selling grain and the usual practices concerning the issue of elevator contracts.

Respectfully submitted and signed this 19th day of June, 2001.

WOODS, FULLER, SHULTZ & SMITH P.C.

By Debra S. Sittig

Debra S. Sittig
300 South Phillips Avenue, Suite 300
Post Office Box 5027
Sioux Falls, South Dakota 57117-5027
(605)336-3890
Attorneys for Home Federal Savings Bank

0162.39.142

South Dakota Public Utilities Commission Meeting

Tuesday, June 26, 2001; 1:30 P.M.
State Capitol Building, Room 412, Pierre, South Dakota

NOTE: If you wish to join this meeting by conference call, please contact the Commission at 605-773-3201 by 5:00 p.m. on June 25, 2001.

NOTE: Notice is further given to persons with disabilities that this Commission meeting is being held in a physically accessible place. If you have special needs, please notify the Commission and we will make all necessary arrangements.

AGENDA OF THE AD HOC MEETING

1. GD01-001 IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED AND FERTILIZER. (Transportation/Warehouse Director: Bob Knadle. Staff Attorney: Kelly Frazier.)

On March 8, 2001, the Commission filed with the McCook County Clerk of Courts a Petition To Appoint South Dakota Public Utilities Commission As Receiver. On March 27, 2001, a hearing was held by the Circuit Court, the Petition was granted by Judge Boyd L. McMurchie and an Order Appointing Receiver was filed with the Clerk of Courts for McCook County. Subsequently the Commission filed a Motion to Liquidate Grain Inventory. On April 24, 2001, a hearing was conducted and the Court granted the Commission's Motion. On May 3, 2001, the Commission conducted a hearing at Canistota, South Dakota, for the purposes of receiving evidence regarding the disposition of the grain inventory and the bond proceeds. Pursuant to the Order Authorizing Liquidation of Grain Inventory signed May 8, 2001, the Commission sent notice to licensed grain dealers in the state and published notice in the Freeman, Canistota, Salem and Sioux Falls newspapers of its intent to solicit bids for the inventory of McCook Feed and Fertilizer. The bidding process was conducted on May 22, 2001, and on that same day the Commission accepted bids for the liquidation of the inventory of McCook Feed and Fertilizer. On June 8, 2001, Staff filed a Motion to Reopen for Further Evidence for the purpose of receiving into evidence affidavits from claimants regarding their contracts with McCook Feed and Fertilizer. On June 20, 2001, Home Federal Savings Bank filed a Motion to Reopen for Further Evidence for the purpose of receiving into evidence the Affidavit of Richard Shane.

On June 14, 2001, the Commission received a request from Dakota Valley Grain LLC to settle for $1500 due to a shortage in the Soy Bean inventory when the contract was entered into on May 22, 2001.

TODAY, shall the Commission grant the Motions to Reopen for Further Evidence? ALSO, how shall the Commission act on Dakota Valley Grain's request regarding the shortage of Soy Bean inventory? AND, how shall the Commission proceed in this matter?

Sue Cichos, Deputy Executive Director
sue.cichos@state.sd.us
June 20, 2001

0162.99.143

AFFIDAVIT OF PUBLICATION

County of Hutchinson)

) ss.

State of South Dakota)

RECEIVED

JUN 21 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Tim L. Waltner, of said county and state, being duly sworn, on his oath, deposes and says: That the Freeman Courier is a weekly newspaper of general circulation and a legal newspaper as required by law, printed and published in the town of Freeman in said county and state by Tim L. Waltner, and has been such newspaper during the time hereinafter mentioned: That I, Tim L. Waltner, the undersigned, am publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the advertisement headed **Sale of Grain**

a printed copy of which is hereto attached, was printed and published in the said newspaper for one successive issues to-wit:

The first publication on:
May 16, 2001

the second publication on:

and the third publication on:

That the full amount of the fees charged for publishing the same to-wit: The sum of $11.73 insures solely to the benefit of the publisher of the Freeman Courier, that no agreement or understanding for any division thereof has been made with any other person whomsoever, and the amount of $11.73 is the rate for publishing legal notices.

T L Waltner

Subscribed and sworn to before me this 31st day of May 2001.

Linda Wipf

Notary Public
Commission expires: 10/9/06

Publication fee:	$11.73
Notary fee:	
Total:	$11.73

SALE OF GRAIN INVENTORY

The Commission has been appointed receiver of the grain inventory at McCook Feed & Fertilizer at Canistota, South Dakota, and has been authorized to liquidate the grain inventory. The purpose of this notice is to solicit a list of bidders interested in purchasing the inventory located in the McCook facilities at Canistota, South Dakota.

The grain inventory is as follows:

1. Corn - approximately 48,000 bushels.
2. Soybeans - approximately 21,000 bushels
3. Oats - approximately 750 bushels
4. Mixed corn and soybeans - approximately 750 bushels

The grain inventory will be put out for bids by interested parties (separate bids for each type of grain). Bids must be for the total inventory of each type of grain as referenced above. The grain will be sold on-site at Canistota and the successful bidder must provide for subsequent handling. Payment must be made with a cashier's check. The grain is expected to be available toward the latter part of May.

If you are interested in purchasing the grain inventory, please contact Marlette Fischbach at 605-773-5280. Please respond by May 18, 2001.

1-6

0162.99.144

GD01-001

DAKOTA VALLEY GRAIN
PURCHASE SETTLEMENT 100-018454

06/20/01
Soybeans
SDCOMM SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

CONTRACT	SHEET#	VARIETY	Bushels	PRICE	EXTENSION
0003997-01	013226-01		15,659.97	4.12000	$64,519.08
TOTAL:			15,659.97		$64,519.08

Splits	$1,265.46-
---------- SUBTOTAL	$63,253.62
Advance Deduction	$43,260.00-
SETTLEMENT AMOUNT:	$19,993.62

CHECK No. 164129 SOUTH DAKOTA PUBLIC UTILITIES COMMI $19,993.62

OPEN CONTRACTS:

CONTRACT NUMBER	BEGIN DATE	DUE DATE	QUANTITY	PRICE	COMMODITY
0003997-01	05/23/01	06/08/01	5,340.03	4.12000	Soybeans

STORAGE UNPAID/DP

*** No stored or unpaid transactions ***

RECEIVED
JUN 21 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
TRANSPORTATION/WAREHOUSE DIV
500 EAST CAPITOL AVE
PIERRE SD 57501-5070

WOODS, FULLER, SHULTZ & SMITH P.C.
LAWYERS
300 SOUTH PHILLIPS AVENUE, SUITE 300
POST OFFICE BOX 5027
SIOUX FALLS, SOUTH DAKOTA 57117-5027
TELEPHONE (605) 336-3890
TELECOPIER (605) 339-3357

E-MAIL: dsittig@wfss.com

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MARK J. WELTER
JAMES E. MOORE
KRISTINE KREITER O'CONNELL
ELIZABETH A. LEWIS
TIMOTHY R. SHATTUCK

MELANIE L. CARPENTER
SUSAN M. SABERS
WILLIAM G. BECK
DEBRA S. SITTIG
DANIEL J. HARMELINK
JENNIFER L. WOLLMAN
LISA MARSHIK PROSTROLLO

CHRISTOPHER J. LENT*
*LICENSED ONLY IN NEW HAMPSHIRE

FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1899-1983)
HOWELL L. FULLER (1909-1981)
JOHN B. SHULTZ (1912-1975)

June 28, 2001

TO ALL PARTIES IDENTIFIED IN CERTIFICATE OF SERVICE:

Re: In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., Inc.,d/b/a McCook Feed and Fertilizer/GD01-001 (CIV.01-023)

Ladies and Gentlemen:

Enclosed please find a copy of the Affidavit of Richard C. Shane in the above-referenced matter. This is intended as service upon you by mail.

Sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.

Debra S. Sittig

Debra S. Sittig

Enclosures
cc: Home Federal Savings Bank

FAX Received JUN 28 2001

RECEIVED
JUL 02 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC., D/B/A McCOOK FEED AND FERTILIZER	GD01-001 (CIV.01-023) **AFFIDAVIT OF DR. RICHARD C. SHANE**

o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o

FAX Received JUN 28 2001

RECEIVED
JUL 03 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF BROOKINGS)

Richard C. Shane, being first duly sworn upon oath, states as follows:

1. My name is Richard C. Shane. I am the Chairman of the Economics Department at South Dakota State University ("SDSU"), Brookings, South Dakota.

2. I have a Ph.D. in Agricultural Economics from Washington University, Pullman, Washington, and have been a professor in the Economics Department at SDSU since 1977, specializing in Agricultural Economics. (My vitae is attached as Exhibit 1 and incorporated herein by reference.)

3. I have written extensively on various topics in the Agricultural field including the buying, selling, and storage of grain, and various marketing strategies. (A partial list of articles and publications is included in Exhibit 1, attached and incorporated herein by reference.)

4. I prepare and present a weekly half hour public TV program entitled "Midwest Market Analysis" which includes commodity market analysis and other special reports on agricultural topics.

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5. Producers of grain have several marketing alternatives available to them before and after harvest. These alternatives for the pricing and sale of grain are made possible through grain elevator use of futures and options contracts.

6. The farmer may sell grain off the combine, store the crop for later delivery or deliver the crop. Pricing and/or payment for the grain happens at various times, at delivery or in the future, depending on the type of contract initiated by the farmer. After harvest, cash forward contracts (CFC), basis contracts (BC) hedged-to-arrive (H-T-A) contracts, minimum price contracts (MPC), delayed price (DP) contracts, and deferred payment contracts are some of the alternatives offered by grain elevators. The best contract for the farmer to use largely depends on the current and expected cash price, basis, and futures price and varies from year to year.

7. The first decision the farmer must make is to price or hold grain. The price can be set by cash sale, CFC, or hedging. If the farmer decides not to price grain, he must choose the most appropriate method to benefit from expected higher prices in the future. The farmer may store grain on the farm or in a commercial storage facility (warehouse) or use deferred pricing contracts offered by grain buyers. Deferred pricing arrangements allow farmers to price grain after delivery or some time after the title of the grain has passed to the buyer. Deferred pricing contracts take on two basic forms: a basis contract and a delayed pricing contract. A short discussion of each pricing method follows:

(a) Cash sale – the grain is delivered to the buyer and the seller is paid for the quantity and quality of grain delivered. The farmer incurs no storage costs

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and has use of the grains' cash flow value which can be invested to draw interest or used to pay off loans and stop interest from accruing. The elevator takes title to the grain and moves it through marketing channels.

(b) On-Farm Storage – the grain is dried to 13.5% moisture (can deliver to elevator at 15 to15.5%) and placed in storage. The farmer must maintain grain quality and is liable for shrinkage. The farmer may hold the grain for cash price improvement, hedge the grain (sell futures), cash forward contract or HTA contract with the elevator. The farmer bears the risk of a price decline and interest cost on debt continues to accrue. The farmer must pay for additional handling and bears the risk of not being able to deliver the grain when demanded due to poor weather conditions.

(c) Warehouse/Commercial Storage – the farmer delivers grain to a facility and receives a receipt for a given quantity and quality of grain (13.5% moisture). The farmer usually pays a minimum upfront storage charge of 10 to 12 cents per bushel which is applied to the monthly storage rate of 3 to 4 cents per bushel. If the farmer does not store for several months the upfront charge remains. The farmer may have to pay a load out charge of 5 to 10 cents depending on where the grain is stored. The farmer retains title, and continues to pay interest but the storage facility owner is responsible to maintain the grain. The farmer is at risk if the warehouse owner encounters financial difficulties and the grain has been moved through marketing channels except to the extent that the loss is fully or partially covered by a

bond. Most elevator managers allocate only a portion of their storage capacity to warehousing in order to maintain merchandising flexibility. They use part of their storage capacity to accumulate grain to fill unit train(s) and to meet delivery contracts that they have entered in advance of grain delivery to their facility.

(d) Basis Contract – the farmer delivers grain to the buyer and title passes to the buyer. Basis is set but price will be determined at some time in the future based off of a selected futures contract. The farmer pays no storage but incurs interest cost and a service charge based on elevator costs for futures transactions. If the elevator passes the grain through to fulfill their contracts with buyers or for cash sale, they will replace the grain with futures (buy) as a hedge against price increases that must be paid to the farmer. If the elevator sells the grain, they can use the sales proceeds until the farmer sets the price and is paid for the grain. With basis contracts, farmers are often paid a portion of the expected value of the grain at delivery. If the price goes too low, part of this "advance" payment will have to be repaid to the elevator. If the grain buyer encounters financial difficulties, the farmer may have a low probability of receiving full payment depending on the bonding of the elevator.

(e) Delayed Pricing – the farmer delivers and transfers title to the grain to the buyer/elevator. The farmer is subject to price risk, but they can choose the pricing date at any time within the time frame specified on the contract. A

schedule of service charges is part of the contract. Service charges depend on how the elevator handles the grain. If the buyer stores the grain, the service charges may be similar to the buyers storage costs. However, in most cases, elevators move the grain on through the marketing channels and pass the service charges of the terminal back to the producer (usually less than storage). The elevator will also take a long futures position to protect itself against price risk and often passes the cost of futures transactions on to the farmer as part of the service charge. The farmer is at risk if the elevator encounters financial difficulties. Farmer use of marketing alternatives like delayed pricing gives them long term flexibility because storage facilities are not built. Once the storage facility is built the farmer incurs storage costs whether they store grain or not.

(f) Deferred Payment Contract – the farmer delivers grain to the elevator and receives a receipt (contract) that specifies quantity and quality of grain. Title passes to the elevator and a price is set for the commodity. Payment or partial payment is deferred to a later date. The elevator moves the grain on through the marketing channels. The interest gained by the elevator offsets many accrued service charges or costs of the farmer. The farmer spreads his cash flow over a longer period of time. Many farmers use this alternative to defer some of their grain income into the next tax year in order to reduce their overall tax liability. The farmer pays no storage unless

it is part of the contract agreement. The farmer is at risk if the elevator encounters financial difficulties except to the extent that a loss is partially or fully covered by a bond.

Dated this 28th day of June, 2001.

Richard C. Shane

Dr. Richard C. Shane

Subscribed and sworn to before me

this 28th day of June, 2001.

Angelia K. Johnson

Notary Public - South Dakota

My Commission Expires: October 1, 2003

0162.99.151

VITAE

Richard C. Shane

Personal Data

Home Address: 1045 Circle Drive
Brookings, SD 57006
Phone: (605) 692-8789

Office Address: Economics Department
South Dakota State University
Box 504A Scobey Hall
Brookings, SD 57007-0895
Phone: (605) 688-4141
Fax: (605) 688-6386

Education

B.S., Agricultural Economics, South Dakota State University, Brookings, South Dakota. 1965-1969

M.S., Agricultural Economics. University of Arizona, Tucson, Arizona, 1969-1971

Ph.D., Agricultural Economics, Washington State University. Pullman, Washington, 1974-1977. Degree conferred 1978.

Work Experience

Position	Dates	Job Description	Employer
Department Head, Acting	1996–	Administration	Economics Dept. SDSU
Professor of Economics	1987–1996	Extension 100%--Grain Marketing Specialist	Economics Dept. SDSU
Director: Small Business Institute	1985--1996	Coordinate and supervise student consultant teams working with local business managers. Consulting typically involves business plan and/or marketing plan writing, market research, financial analysis and goal setting.	Economics Dept. SDSU (in co-operation with Small Business Administration)

EXHIBIT 1

Visiting Professor - Poland	March-May 1993	Develop one week "How to Write a Marketing Plan" workshop. Train Polish University and Extension educators to conduct workshops.	Polish-American Extension Project
Associate Professor of Economics	1985-1987	Extension 100%--Grain Marketing Specialist	Economics Dept. SDSU
Associate Professor of Economics	1983-1985	Teaching 100% -- Farm Managment & Agricultural Marketing	Economics Dept. SDSU
Farmer	1979-1989	Actively engaged in livestock farming with a 100-200 head herd of stock cows.	Self
Assistant Professor of Economics	1977-1983	Teaching 30% -- Farm and Ranch Management and Agricultural Marketing, Research 70%	Economics Dept. SDSU
Graduate Research Assistant	1974-1977	Conduct economic analysis of effects of increasing energy prices on Washington's competitive position in eastern U.S. food markets.	Ag Econ Dept. W.S.U.
Officer U.S. Army	1971-1973 1973-1974	Chief, Supply Section Chief, Personnel and Administration Division, Hohenfels, Germany, U. S. Army Training Area	U.S. Army
Graduate Research Assistant	1969-1971	Research the effects of risk and uncertainty on Arizona crop production	Ag Econ Dept U of Arizona
Undergraduate Assistant	1967-1969	Conduct labs and grade exams for Macroeconomics and Farm Management	Economics Dept. SDSU
Farmer	1964-1965	Hard work & high risk	Self/father

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Professional Contributions:

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Wildermuth, John, Richard Shane and Russel Gum, "Risk and Diversification in Arizona Crop Farm Planning." Progressive Agriculture in Arizona. 3 Part Series. Vol. XXII, No. 5, 1971; No. 6, 1971; and Vol. XXIV, No. 1, 1972. College of Agriculture, University of Arizona, Tucson, Arizona.

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Shane, Richard C. "Impacts of Inflation on Farm Management." Paper presented at Agri-Business Day, March 30, 1981, Brookings.

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Vigil, F.R., L.B. Embry and R.C. Shane. "Forage Production and Utilization Systems for Growing and Finishing Beef Cattle." Completion Report to Cooeprative State Research Service, USDA, Washington, D.C. South Dakota Agricultural Experiment Station, SDSU, Brookings, 1981.

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Shane, Richard C. "Larger Crops, Diminishing Exports and Growing Stocks." Paper presented at 19th Annual SD Seed Trade Association Meeting. Brookings, SD, Jan. 1986.

Shane, Richard C. and Clarence Mends. "Grain Price Outlook," EMC 889, Cooperative Extension Service, USDA, SDSU, February, 1986.

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Shane, Richard C. "A Primer on Technical Trading Techniques in Grain and Livestock Futures Markets." Presented to Pipestone and Lake Benton, MN Area Farm Marketing Clubs at The Pipestone Area Vocational Technical Institute, August, 1986.

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Shane, Richard C. "Wheat Program – 1987." Paper prepared for Tri-State Livestock News: Farm/Ranch Management Special Edition. Sturgis, SD, November, 1986.

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Shane, Richard C. "Curriculum Review, Interfaculty Study Program in Agri-business Management." Agricultural University, Lublin, Poland. April 6, 1993.

Shane, Richard C. "Review and Evaluation of the Curriculum of Post Graduate Study in Marketing and Agribusiness Management." Agricultural University, Lublin, Poland. April 1993.

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Shane, Richard C. and Jim Julson. "On-Farm Stored Wheat Management." Paper presented at Regional Stored Grain Integrated Pest Management Workshop, North Dakota State University, Fargo, ND. March 30, 1994.

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Shane, Richard C. "Grain Outlook - 1994." Economics Commentator No. 333, Economics Department, SDSU, Brookings, SD. April 11, 1994.

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Flaskerud, George and Richard C. Shane. "Use of Crop Futures and Options by the Nontrader." North Central Regional Extension Publication No.217, Fact Sheet No. 18. CED, USDA, NDSU, June 1994.

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Shane, Richard C. "Feed Grain Situation and Outlook." Paper presented at Midwest Outlook Conference. Iowa State University, Ames, IA. August 16-17, 1994.

Shane, Richard C. "Economics of Grain Handling." Paper presented at South Dakota Wheat Growers Grain Drying and Storage Seminar, Redfield, SD. September 7-8, 1994.

Shane, Richard C. "Early, Quick Harvest Pressures Row Crop Prices." Economics Commentator No. 340, Economics Department. SDSU, Brookings, SD. September 29, 1994.

Shane, Richard C. "Non-Trader Use of Futures: Sell or Store." Economics Commentator No. 341, Economics Department, SDSU, Brookings, SD. November 3, 1994.

Shane, Richard C. "Marketing Plan Execution." Economics Commentator No. 342, Economics Department, SDSU, Brookings, SD. November 21, 1994.

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Shane, Richard C. "Grain Marketing Alternatives." Economics Commentator No. 349, Economics Department, SDSU, Brookings, SD. May 26, 1995.

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Shane, Richard C. "Weather: Wet, Drought, Frost, Corn & Soybean Outlook." Economics Commentator No. 351, Economics Department, SDSU, Brookings, SD. July 28, 1995.

Shane, Richard C. "Grain Price, Exports and Frost." Economics Commentator No. 353, Economics Department, SDSU, Brookings, SD. August 25, 1995.

Shane, Richard C. "Crop Market Alternatives." Economics Commentator No. 356, Economics Department, SDSU, Brookings, SD. November 30, 1995.

Shane, Richard C. "Trend Yield Estimation: Its Impact on Production and Price Forecasts." Economics Commentator No. 358, Economics Department, SDSU, Brookings, SD. January 25, 1996.

Shane, Richard C. "Volatile Spring Market Expected." Economics Commentator No. 359, Economics Department, SDSU, Brookings, SD. February 15, 1996.

Shane, Richard C. "Grain Market Volatility--Is $4.00 Corn Possible in Eastern South Dakota?" Economics Commentator No. 361, Economics Department, SDSU, Brookings, SD. April 2, 1996.

Shane, Richard C. "Agricultural Trade--Growth and Impact." Economics Commentator No. 362, Economics Department, SDSU, Brookings, SD. April 16, 1996.

Shane, Richard C. "Will The World Experience Hunger and Starvation?" Economics Commentator No. 365, Economics Department, SDSU, Brookings, SD. June 17, 1996.

OTHER

- Prepares and presents "Midwest Market Analysis", a weekly half-hour public TV program that provides agricultural new, commodity market analysis, and special reports of interest to the agricultural sector. A weekly audience of 20,000 has been estimated for MMA.
- Regularly prepares grain market outlook articles for departmental newsletter (with a subscriber list of 450)
- Author of numerous information bulletins and pamphlets for local and regional dissemination of information to agricultural producers and agribusiness professionals.
- Provides major presentations dealing with grain market outlook at local meetings and regional conferences.
- Provides weekly radio tapes for distribution to radio stations in S.D. and surrounding area.
- Serves as reference source for articles in regional magazines and newspapers.
- Gamma Sigma Delta Extension Award, SDSU, 1995.
- Dean's Award For Excellence, August 29, 1994.
- South Dakota Extension Specialists' Distinguished Series Award, 1992.
- South Dakota Extension Specialists' Merit Award, 1986.
- National Association of Wheat Growers, Excellence in Extension Award, 1990.
- Chaired the North Central Regional Extension Marketing Committee.
- Chaired the South Dakota Extension Specialists Committee.
- Chaired Western Agricultural Economics Association Outstanding Thesis Award Committee.
- Served as a member of numerous regional, state and local committees
- Polish American Extension Project: Marketing Advisor - 3 month assignment in Lublin, Poland. Established a one week workshop, "How To Write an Agribusiness Marketing Plan".

Shane, Richard and Penny Stover. "Seasonal Corn and Soybean Pricing." Economics Commentator. December 23, 1997.

Shane, Richard. "Economic Impacts of Post-CRP Policy Options in South Dakota." Western Agricultural Economics Association Paper, Reno, NV. July 12-16, 1997.

Shane, Richard and Dwight Adamson. "Impact of Higher Education on South Dakota's Economy." SDSU Research Report to the President. December 1998.

Shane, Richard. "Preparing for the Next Millennium: The Economists Role." Paper presented at National Agricultural Communicators Convention, Sioux Falls. May 4, 1998.

Shane, Richard. "Retail Marketing Strategies to Expand Consumer Demand for Organic Foods in the Upper Midwest." Symposium at American Agricultural Economics Association annual meeting, Salt Lake City, UT. July 1998.

Shane, Richard. "Ex Post-Evaluation: Upper Midwest Organic Marketing Project Demand Component-
Grocery Retailers." Prepared for The PEW Charitable Trusts. August 17, 1998.

Dobbs, Thomas, Dillon Feuz and Richard Shane. "Expanding the Organic Food and Agricultural System in the U.S.'s Upper Midwest: Strategies and Lessons of a Pilot Project. Report on Final Evaluation of the Upper Midwest Organic Marketing Project. Submitted to the PEW Charitable Trusts. December 10, 1998.

Shane, Richard. Symposium Discussant. "Responses to Changing Consumer Tastes and Preferences in the Beef, Pork, and Poultry Industries." American Agricultural Economics Association annual meeting, Nashville, TN. August 8-11, 1999.

Dobbs, Thomas, Dillon Feuz and Richard Shane. "Expanding the Organic Food and Agriculture System in the U.S.'s Upper Midwest: Strategies and Lessons of a Pilot Project." Final Evaluation of the Upper Midwest Organic Marketing Project. The PEW Charitable Trusts. August 1999.

Dobbs, Thomas, Richard Shane and Dillon Feuz. "Prospects for Organic Agriculture in the Upper Midwest." Economics Commentator No. 402. November 19, 1999.

Dobbs, Thomas, Richard Shane and Dillon Feuz. "Lessons Learned from the Upper Midwest Organic Marketing Project." American Journal of Alternative Agriculture. Vol. 15, No. 3. November 3, 2000.

Shane, Richard and Dwight Adamson. "University Student Expenditures, Impact on Brookings Area." SDSU Report to the President. November 2000.

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20___

From _____ Dkg. _____ lbs.

Gross _____ lbs. To _____

Tare _____ lbs. Test _____ Moist. _____

Net 22980 lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by

FRONT

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20___

From _____ Dkg. _____ lbs.

Gross 3 lbs. To _____

Tare _____ lbs. Test _____ Moist. _____

Net ~~50830~~ 27850 lbs. Price 8.48 Amt. $ _____

_____ on _____ off Weigher _____

Received by

BACK

NO. 119

DATE 5-31-01

CUSTOMER'S NAME Free-Horn

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Bob
19

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.9	56	9.9	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Sign Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 79930

Tare 29100

Net 50830

Bu. 846

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 79 700 lbs. To _____

Tare 29 200 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Ray 118

NO. 118

DATE 5-31-01

CUSTOMER'S NAME Free Mar

ADDRESS Marion

COMMODITY Beans

Grade and Grain	% Dock.	T.W.	Moisture	Price Per Bu.
U.S. No.	1.0	57	9.6	

Dam.	F.M.	Other Factors	For:	Prem/Discount
			☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Snt No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Ray
30

Gross 79700

Tare 29700

Net 50500

Bu. 842

Chris Downs

AGENT OR MANAGER

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE
Inspection not valid for purposes of the United States Grain Standards Act.

100 0020247
INBOUND
B/L#4388
05/31/01

Driver On:Y
Truck ID:30
Commodity:Soybeans

MARION NORTH

SAMPLE ID 12

SDCOMN SOUTH DAKOTA PUBLIC UTILITIES

PIERRE SD 57501-5070

05/31/01 10:29	30080	Lbs.
05/31/01 10:40	29740	Lbs.
Net Wgt:	50340	Lbs.
Gross Bu	839.00	

Test Wt	Moistur	Damage
57.2	9.9	1.1

#116/MCCOOK F&T
CONTRACTS
Split Info:PENDING FM, SPLITS TESTING.

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

PRODUCER COPY

BOB HICKEY
Licensed Inspector & Weigher

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO. 30
TRAILER LICENSE NO. T1
DATE 5-31-01

LADING NO. 004388

CONSIGNED TO: McCook

APPLY ON CONTRACT NO

SCALE TICKET NO 20227

☐ SELL ON ARRIVAL
☐ STORAGE

GRAIN RNS

GRADE & FACTORS

DESTINATION ELEVATOR Dakota Valley Grain

LOCATION (CITY & STATE) Marion

FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER

COMMENTS: #118

— SHIPPER'S WEIGHT —

GROSS POUNDS	79700
TARE POUNDS	29210
NET POUNDS	50,500
GROSS BUSHELS	842
NET BUSHELS	

FREIGHT BILL

DATE

SCALE TICKET NO.

DESTINATION WGHT.

FREIGHT CHARGES

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.

The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN

LOADED BY

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

CARRIER Freeman

ADDRESS Marion

BY Raynesfield

CHAUFFEUR LICENSE NO

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE
Inspection not valid for purposes of the United States Grain Standards Act.

100 0020227
INBOUND
B/L#4306
05/31/01
12

Driver On:Y
Truck ID:30
Commodity:Soybeans

MARION NORTH

SAMPLE ID

SDCOMM SOUTH DAKOTA PUBLIC UTILITIES

PIERRE SD 57501-5070

05/31/01 10:29 80080 Lbs.
05/31/01 10:40 29740 Lbs.
Net Wgt: 50340 Lbs.
Gross Bu 839.00

Test We	Moistur	Damage
57.2	9.9	1.1

FM 6.52 (CORN) SPLITS 19.85%

#118/MCCOOK F&f
CONTRACTS
Split Info:PENDING FM/SPLITS TESTING. (SAMPLE SAVED)

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

BOB HICKEY
Licensed Inspector & Weigher

ORIGINAL

#110

8 | 42
NET BUSHELS

FREIGHT CHARGES

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20__

From _____ Dkg. _____ lbs.

Gross _____ lbs. To _____

Tare _____ lbs. Test _____ Moist. _____

Net 50770 lbs. Price _____ Amt. $ _____

_____ on _____ off 846 Weigher _____

Received by Ray 120

NO. 120

DATE ~~5-~~ 5-31-01

CUSTOMER'S NAME Free Mar

ADDRESS Marion

COMMODITY Beans

McLEOD'S—74071

Grade and Grain U.S. No.			% Dock.	T.W.	Moisture	Price Per Bu.
			16	56.5	10.1	
Dam.	F.M.	Other Factors	For: ☐Storage ☐Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.				

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☑ OUT

Ray 30

Gross 79960

Tare 29190

Net 50770

Bu. 846

AGENT OR MANAGER

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO	30
TRAILER LICENSE NO.	71
DATE	5-31-01
LADING NO.	NO. 004389
FREIGHT BILL	
DATE	
SCALE TICKET NO.	
DESTINATION WGHT.	
FREIGHT CHARGES	

CONSIGNED TO: SD Public Utilities Grain

APPLY ON CONTRACT NO.

SCALE TICKET NO.

☐ SELL ON ARRIVAL
☐ STORAGE

GRAIN: BNS

GRADE & FACTORS:

DESTINATION ELEVATOR: Dakota Valley Grain

LOCATION (CITY & STATE): Marion SD

FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER

COMMENTS: (McCook) #120

— SHIPPER'S WEIGHT —

GROSS POUNDS	79960
TARE POUNDS	29190
NET POUNDS	50770
GROSS BUSHELS	846 —
NET BUSHELS	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER: DAKOTA VALLEY GRAIN

LOADED BY: [signature]

1) WHITE — Elevator Copy
2) YELLOW — Destination Copy
3) PINK — Truckers Copy
4) GOLDEN ROD — Mail Copy

CARRIER: Fisher Farms Corp

ADDRESS: Marion SD

BY: Ray Neufeld

CHAUFFEUR LICENSE NO.

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE
Inspection not valid for purposes of the United States Grain Standards Act.

100 0020244
INBOUND
B/L#43389
05/31/01

Driver On:Y
Truck ID:30 MARION NORTH
Commodity:Soybeans SAMPLE ID BF

SDCOMM SOUTH DAKOTA PUBLIC UTILITIES 05/31/01 12:24 80400 Lbs.
05/31/01 12:30 29680 Lbs.
PIERRE SD 57501-5070 Net Wt: 50720 Lbs.
Gross Bu 845.33

Test We	Moistur	Damage	Foreign	Splits
54.7	7.6	1.1	1.3	27.4

CONTRACTS
Split Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL BOB HICKEY Licensed Inspector & Weigher

DAKOTA VALLEY GRAIN
P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO: 30
TRAILER LICENSE NO: T1
DATE: 5-31-01
CONSIGNED TO: SD Public Utilities Comm
APPLY ON CONTRACT NO.
SCALE TICKET NO: 20244
☐ SELL ON ARRIVAL ☐ STORAGE
GRAIN: BWS
GRADE & FACTORS
DESTINATION ELEVATOR: Dakota Valley Grain
LOCATION (CITY & STATE): Marion SD
FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER
COMMENTS: (McCook) #120

— SHIPPER'S WEIGHT —
GROSS POUNDS: 79960
TARE POUNDS: 29190
NET POUNDS: 50770
GROSS BUSHELS: 846 =
NET BUSHELS:

LADING NO.: № 004389
FREIGHT BILL
DATE
SCALE TICKET NO.
DESTINATION WGHT.
FREIGHT CHARGES

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN
LOADED BY Chris Vom

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

CARRIER Freistar Farmers Coop
ADDRESS Marion SD
BY Ray Neufeld
CHAUFFEUR LICENSE NO.

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20___

From _____ Dkg. _____ lbs.

Gross 44980 lbs. To _____

Tare 21760 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Front

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20___

From _____ Dkg. _____ lbs.

Gross 37060 lbs. To _____

Tare 7420 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Back

NO. 121

DATE 5-31-9

CUSTOMER'S NAME Rice Mar

ADDRESS Marion

COMMODITY Beans

McLEOD'S—14071

Grade and Grain U.S. No.			% Dock. 1.5	T.W. 56	Moisture 10.0	Price Per Bu.
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.				

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

B-6

Gross 82040

Tare 29180

Net 52860

Bu. 881

AGENT OR MANAGER

NO. 211

DATE 6-1-01

CUSTOMER'S NAME Free-Mar

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		56	8.3	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	1.0%	splits 20%	some black ☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Paul - Jakes

8:11 A.M. 06/01/01

Gross G+079320 lb

7:25 A.M. 06/01/01

Tare G+030020 lb

Net 48500

Bu. 809

AGENT OR MANAGER

NO. 212

DATE 6-1-01

CUSTOMER'S NAME Free-Mar Coop

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		56.5	8.4	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	1.8	20% splits	☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Paul

9:55 A.M. 06/01/01

Gross G+079360 lb

9:13 A.M. 06/01/01

Tare G+030800 lb

Net 49160

Bu. 820

AGENT OR MANAGER

NO. 213

DATE 6-1-01

CUSTOMER'S NAME Tree Mar Coop

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	0	57.5	8.5	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	.8		18% splits ☐ Storage ☐ Purchase	

This ticket is entered on and made a part of			Net Price
Grain Check No.	Sige Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Paul

12:21 P.M. 06/01/01

Gross G+079580 lb

11:16 A.M. 06/01/01

Tare G+030680 lb

Net 48900

Bu. 815

AGENT OR MANAGER

NO. 214

DATE 6-1-01

CUSTOMER'S NAME Tree-Mar

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	0	55.5	8.5	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	.9		15% splits ☐ Storage ☐ Purchase	

This ticket is entered on and made a part of			Net Price
Grain Check No.	Sige Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Paul

2:03 P.M. 06/01/01

Gross G+078800 lb

1:22 P.M. 06/01/01

Tare G+030640 lb

Net 48160

Bu. 803

AGENT OR MANAGER

NO. 215

DATE 6-4-01

CUSTOMER'S NAME Rice-Mar Corp

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No	% Dock	T.W.	Moisture	Price Per Bu
	1	54.5	8.6	

Dark	F.M.	Other Factors	For:	Prem/Discount
	1.7		18% Splits ☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No	Bins Receipt No	Assembly Shl No

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Glanzer

7:52 A.M. 06/04/01

Gross 61082400 lb 7:13 A.M. 06/04/01

Tare 61026700 lb

Net 53640

Bu. 894

AGENT OR MANAGER

NO. 216

DATE 6-4-01

CUSTOMER'S NAME Rice-Mar

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No	% Dock	T.W.	Moisture	Price Per Bu.
		57	8.7	

Dark	F.M.	Other Factors	For:	Prem/Discount
	1.6		17% splits ☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No	Bins Receipt No.	Assembly Shl No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Glanzer

8:26 A.M. 06/04/01

Gross 61089920 lb 84720

Tare 28900 28720

Net 56000

Bu. 934

AGENT OR MANAGER

NO. 217

DATE 6-4-01

CUSTOMER'S NAME Tree-Mar Coop

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Bob

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu
		56.8	8.7	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	1.9		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Bht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

10:34 A.M. 06/04/01 — 10:35 A.M. 06/0

Gross G+046180 lb — G+035160 lb

9:58 A.M. 06/04/01 — 9:58 A.M. 06/04/01 81340

Tare G+022060 lb — G+007620 lb — 29680

Net 51660

Bu. 861

AGENT OR MANAGER

NO. 218

DATE 6-4-01

CUSTOMER'S NAME Tree-Mar

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Glanzer

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu
		56	8.7	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	1.8		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Bht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

11:12 A.M. 06/04/01

Gross G+088360 lb

10:15 A.M. 06/04/01

Tare G+028840 lb

Net 39520

Bu. 992

AGENT OR MANAGER

NO. 219

DATE 6-4-01

CUSTOMER'S NAME Tri-Mar

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
		56,5	8.8	

Dam.	F.M.	Other Factors	For	Prem/Discount
	17		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Bob

12:09 P.M. 06/04/01 — Gross G+045260 lb

11:31 A.M. 06/04/01 — Tare G+021780 lb

Net 51780

Bu. 863

AGENT OR MANAGER

12:10 P.M. 06/04/01 — Gross G+035860 lb 8120

~~G+007880 lb 06/04/01~~

11:35 A.M. 06/04/01 — Tare G+007560 lb

Net 29340

NO. 220

DATE 6-4-01

CUSTOMER'S NAME Tri-Mar Coop

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		58,5	8,9	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	15		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Glanzer

12:53 P.M. 06/04/01 — Gross G+085180 lb

12:05 P.M. 06/04/01 — Tare G+028560 lb

Net 56620

Bu. 944

AGENT OR MANAGER

NO. 221

DATE 6-4-01

CUSTOMER'S NAME Free-Mar

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		57	8.8	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	1.8		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Bob

1:52 P.M. 06/04/01 — 1:52 P.M. 06/04/01

Gross G+045400 lb — G+036860 lb

1:08 P.M. 06/04/01 — 1:09 P.M. 06/04/01

Tare G+021880 lb 29460 — G+007580 lb

Net 52320

Bu. 872

AGENT OR MANAGER

NO. 222

DATE 6-4-01

CUSTOMER'S NAME Free Mar

ADDRESS Marion

COMMODITY beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		56.5	8.9	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	1.8		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☐ OUT

3:20 P.M. 06/04/01

Gross G+085180 lb

1:43 P.M. 06/04/01

Tare ON-028440 lb

Net 56660

Bu. 945

AGENT OR MANAGER

NO. 223

DATE 6-5-01

CUSTOMER'S NAME Tree-Mar

ADDRESS

COMMODITY beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		57	8.6	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	.8		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—7407

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☐ OUT

8:01 A.M. 06/05/01

Gross G+084180 lb

7:02 A.M. 06/05/01

Tare G+020740 lb Glomer

Net 55440

Bu. 924

AGENT OR MANAGER

NO. 232

DATE 6-5-01

CUSTOMER'S NAME Tree-Mar

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		55	12.6	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	1.3		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—7407

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Jim

2:58 P.M. 06/05/01

Gross G+084180 lb

1:48 P.M. 06/05/01

Tare G+028840 lb

Net 55340

Bu. 923

AGENT OR MANAGER

NO. 118

DATE 5-31-01

CUSTOMER'S NAME Free Mar

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Grade and Grain U.S. No.			% Dock. 1.0	T.W. 57	Moisture 9.6	Price Per Bu.
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.	Stge Receipt No.	Assembly Shf No.				
Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.						

Gross 79700

Tare 29200

Net 50500

Bu. 842

AGENT OR MANAGER

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE
Inspection not valid for purposes of the United States Grain Standards Act.

100 0020227
INBOUND
B/L#4386
05/31/01
SAMPLE ID 12

Driver On:Y
Truck ID:30
Commodity:Soybeans
MARION NORTH

SDCOMM SOUTH DAKOTA PUBLIC UTILITIES
PIERRE SD 57501-5070

05/31/01 10:39 80080 Lbs.
05/31/01 10:40 29740 Lbs.
Net Wgt: 50340 Lbs.
Gross Bu 839.00

Test Wt	Moistur	Damage
57.2	9.9	1.1

FM 6.52 (CORN) SPLITS 19.85%

#118/MCCOOK F&F
CONTRACTS
Split Info:PENDING FM/SPLITS TESTING. (Sample saved)

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL

303 HICKEY
Licensed Inspector & Weigher

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO: 30
TRAILER LICENSE NO: T1
DATE: 5-31-01

LADING NO.: № 004388
FREIGHT BILL:
DATE:
SCALE TICKET NO.:
DESTINATION WGHT.:
FREIGHT CHARGES:

CONSIGNED TO: McCook
APPLY ON CONTRACT NO:
SCALE TICKET NO: 20227

☐ SELL ON ARRIVAL
☐ STORAGE

GRAIN: RWS
GRADE & FACTORS:
DESTINATION ELEVATOR: Dakota Valley Grain
LOCATION (CITY & STATE): Marion
FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER
COMMENTS: #118

— SHIPPER'S WEIGHT —

GROSS POUNDS	79700
TARE POUNDS	29210
NET POUNDS	50,500
GROSS BUSHELS	842
NET BUSHELS	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER: DAKOTA VALLEY GRAIN
CARRIER: Freeman
LOADED BY:
ADDRESS: Marion
BY: Ray Neufeld
CHAUFFEUR LICENSE NO:

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

NO. 211

DATE 6-1-01

CUSTOMER'S NAME Free Mar

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER

Canistota, South Dakota

☐ IN ☒ OUT

Paul - Jakes

8:11 A.M.

Gross 84078920 lb

7:25 A.M.

Tare

Net 48500

Bu. 809

AGENT OR MANAGER

Grade and Grain U.S. No.	% Dock.	T.W. 56	Moisture 8.3	Price Per Bu.
Dam.	F.M. 1.0%	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount
This ticket is entered on and made a part of				Net Price
Grain Check No.	Stge Receipt No.	Assembly Shf No.		

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE
Inspection not valid for purposes of the United States Grain Standards Act.

100 0020301
INBOUND

Driver On:Y
Truck ID:DK GRN JAKE MARION NORTH B/L# 06/01/01
Commodity:Soybeans SAMPLE ID 15

SDCOMM	SOUTH DAKOTA PUBLIC UTILITIES	06/01/01 09:32	77480	Lbs.
		06/01/01 09:41	31040	Lbs.
	PIERRE SD 57501-5070	Net Wgt:	46440	Lbs.
		Gross Bu.	807.33	

Test Wt	Moistur	Damage	Foreign	1.57
55.7	8.1	1.1	1.[illegible]	

Sample saved

CONTRACTS
Basis Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL

835 HIDEY

Licensed Inspector & Weigher

0162.99.185

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO	
TRAILER LICENSE NO	
DATE	6/1/01
CONSIGNED TO	S.D. PUB. UTIL. PIERRE, SD
APPLY ON CONTRACT NO.	
SCALE TICKET NO.	20301
☐ SELL ON ARRIVAL ☐ STORAGE	
GRAIN	BEANS
GRADE & FACTORS	
DESTINATION ELEVATOR	FREMAR
LOCATION (CITY & STATE)	MARION, SD
FREIGHT TO BE PAID BY	☐ SHIPPER ☐ BUYER
COMMENTS:	
GROSS POUNDS	79480
TARE POUNDS	31040
NET POUNDS	48440
GROSS BUSHELS	807.33
NET BUSHELS	
LADING NO.	№ 005870
FREIGHT BILL	
DATE	
SCALE TICKET NO.	
DESTINATION WGHT.	
FREIGHT CHARGES	

— SHIPPER'S WEIGHT —

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN

LOADED BY Mc Cook

1) WHITE — Elevator Copy
2) YELLOW — Destination Copy
3) PINK — Truckers Copy
4) GOLDEN ROD — Mail Copy

CARRIER JAKES TKY

ADDRESS WINFRED, SD

BY [signature]

CHAUFFEUR LICENSE NO.

NO. 214

DATE 6-1-01

CUSTOMER'S NAME Free-Mar

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER

Canistota, South Dakota

☐ IN ☒ OUT Paul

Gross [illegible]

Tare [illegible]

Net 48160

Bu. 803

AGENT OR MANAGER

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	0	55.5	8.5	

Dam.	F.M.	Other Factors	For	Prem/Discount
	1.9		15% splits ☐Storage ☐Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Sale Receipt No.	Assembly Slip No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

DAKOTA VALLEY ELEVATORS

[illegible]

[illegible]

[illegible]

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE

Inspection not valid for purposes of the United States Grain Standards Act.

100 0020360
INBOUND

B/L#

04/01/01

MARION NORTH

SAMPLE ID 74

[illegible]

[illegible]

[illegible]

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO.	
TRAILER LICENSE NO.	
DATE	6/1/11
CONSIGNED TO	SD Dakota Pud Val Pierre SD
APPLY ON CONTRACT NO.	
SELL ON ARRIVAL / STORAGE	☐ SELL ON ARRIVAL ☐ STORAGE
SCALE TICKET NO.	20360
GRADE	BEANS
GRADE & FACTORS	
DESTINATION ELEVATOR	FREEMAN
LOCATION (CITY & STATE)	MARION SD
FREIGHT TO BE PAID BY	☐ SHIPPER ☐ BUYER
COMMENTS:	

— SHIPPER'S WEIGHT —

GROSS POUNDS	79020
TARE POUNDS	30840
NET POUNDS	48180
GROSS BUSHELS	803.00
NET BUSHELS	

LADING NO.	№ 005873
FREIGHT BILL	
DATE	
SCALE TICKET NO.	
DESTINATION WGHT.	
FREIGHT CHARGES	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN

LOADED BY Mc Cox

CARRIER JAKE

ADDRESS Wilmot, SD

BY

CHAUFFEUR LICENSE NO.

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

0162.99.188

NO. 212

DATE 6-1-01

CUSTOMER'S NAME Free-Mar Coop

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER

Canistota, South Dakota

☐ IN ☒ OUT

Paul

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		56.5	8.4	

Dam.	F.M.	Other Factors	For.	Prem/Discount
	.8		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of			Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross [illegible]

9:13 A.M. [illegible]

Tare [illegible]

Net 49160

Bu. 820

[signature]

AGENT OR MANAGER

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE

Inspection not valid for purposes of the United States Grain Standards Act.

100 0020323
INBOUND
B/L#5571
06/01/01

Driver On:Y
Truck ID:GRN JAKE MARION NORTH
Commodity:Soybeans SAMPLE ID 37

SDCOMM SOUTH DAKOTA PUBLIC UTILITIES 06/01/01 11:27 80060 Lbs.
06/01/01 11:35 30980 Lbs.
PIERRE SD 57501-5070 Net Wgt: 49080 Lbs.
Gross Bu. 215.00

Test We	Moistur	Damage	Foreign	Splits
55.1	8.2	1.1	.8	12.2

10X2
CONTRACTS
Split Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL

BOB HICKEY Licensed Inspector & Weigher

0162.99.189

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO	
TRAILER LICENSE NO.	
DATE	6/1/01
CONSIGNED TO	SD Pub Util. Pierre SD
APPLY ON CONTRACT NO.	
SCALE TICKET NO.	20323
☐ SELL ON ARRIVAL ☐ STORAGE	
GRAIN	BEANS
GRADE & FACTORS	
DESTINATION ELEVATOR	
LOCATION (CITY & STATE)	
FREIGHT TO BE PAID BY	☐ SHIPPER ☐ BUYER
COMMENTS:	

— SHIPPER'S WEIGHT —

GROSS POUNDS	80060
TARE POUNDS	30980
NET POUNDS	49080
GROSS BUSHELS	818.00
NET BUSHELS	

LADING NO	№ 005871
FREIGHT BILL	
DATE	
SCALE TICKET NO.	
DESTINATION WGHT.	
FREIGHT CHARGES	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN

LOADED BY McCook

1) WHITE — Elevator Copy
2) YELLOW — Destination Copy
3) PINK — Truckers Copy
4) GOLDEN ROD — Mail Copy

CARRIER JAKE

ADDRESS WINFRED

BY ✓

CHAUFFEUR LICENSE NO.

0162.99.190

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE
Inspection not valid for purposes of the United States Grain Standards Act.

100 0020390
INBOUND
B/L# 5875
06/04/01

Driver On:Y
Truck ID:GLANZER RED MARION NORTH
Commodity:Soybeans SAMPLE ID 15

SDCOMM SOUTH DAKOTA PUBLIC UTILITIES 06/04/01 10:37 84740 Lbs.
06/04/01 10:42 28920 Lbs.
PIERRE SD 57501-5070 Net Wgt: 55820 Lbs.
Gross Bu 930.33

Test We	Moisture	Damage	Foreign	Splits
56.3	8.5	1.1	1.3	19.7

CONTRACTS #216
Split Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL BOB HICKEY Licensed Inspector & Weigher

TRUCK LICENSE NO.
TRAILER LICENSE NO.
DATE 6/4/01

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

LADING NO. № 005875
FREIGHT BILL
DATE
SCALE TICKET NO.
DESTINATION WGHT.
FREIGHT CHARGES

CONSIGNED TO: SDPVC PIERRE SD
APPLY ON CONTRACT NO.
SCALE TICKET NO. 20390
☐ SELL ON ARRIVAL ☐ STORAGE
GROSS POUNDS 84740
TARE POUNDS 28920
NET POUNDS 55820
GROSS BUSHELS 930.33
NET BUSHELS
— SHIPPER'S WEIGHT —
GRAIN BEANS
GRADE & FACTORS FREMAR-N
DESTINATION ELEVATOR MARION, SD
LOCATION (CITY & STATE)
FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER
COMMENTS: #216

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN
CARRIER GLANZER
LOADED BY
ADDRESS B'WTR, SD
BY SG
CHAUFFEUR LICENSE NO.

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

0162.99.191

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE
Inspection not valid for purposes of the United States Grain Standards Act.

100 0020380
INBOUND
E/L#5874
06/04/01

Driver On:Y
Truc ID:SLANDER RED MARION NORTH
Commodity:Soybeans SAMPLE ID B

EDCOMM SOUTH DAKOTA PUBLIC UTILITIES 06/04/01 07:05 82640 Lbs.
06/04/11 09:30 28960 Lbs.
PIERRE SD 57501-3070 Net wei: 53680 Lbs.
Gross Bu 894.67

Test We Moisture Damage Foreign Splits
58.1 8.6 1.1 1.4 21.1

QE:E
CONTRACT#
Split Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL

BOB HICKEY
Licensed Inspector & Weigher

DAKOTA VALLEY GRAIN
P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO.
TRAILER LICENSE NO.
DATE 6/4/01

LADING NO. Nº 005874
FREIGHT BILL
DATE
SCALE TICKET NO.
DESTINATION WGHT.
FREIGHT CHARGES

CONSIGNED TO SDPUC
PIERRE, SD

APPLY ON CONTRACT NO.

SCALE TICKET NO. 20380

☐ SELL ON ARRIVAL
☐ STORAGE

GRAIN BEANS
GRADE & FACTORS

DESTINATION ELEVATOR FREMAR
LOCATION (CITY & STATE) MARION, SD

FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER

COMMENTS: # 215

— SHIPPER'S WEIGHT —
GROSS POUNDS 82640
TARE POUNDS 28960
NET POUNDS 53680
GROSS BUSHELS 894.67
NET BUSHELS

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN

LOADED BY

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

CARRIER VLANZER
ADDRESS BRIDGEWATER, SD
BY S.G.

CHAUFFEUR LICENSE NO.

0162.99.192

NO. 217

DATE 6-4-01

CUSTOMER'S NAME Free-Mar Coop

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER

Canistota, South Dakota

☐ IN ☒ OUT

Bob

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		56.8	8.7	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	.9		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of			Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

10:34 A.M. 06/04/01 10:35 A.M. 06/

Gross [illegible] 81340

Tare [illegible] 29680

Net 51660

Bu. 861

Chris Downs

AGENT OR MANAGER

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT

GRAIN INSPECTION & WEIGHT CERTIFICATE

Inspection not valid for purposes of the United States Grain Standards Act.

100 0020400
INBOUND
B/L# 5865
06/04/01

Driven On:
Truck ID:RED
Commodity:Soybeans

MARION NORTH

SAMPLE ID 25

SDCOMY SOUTH DAKOTA PUBLIC UTILITIES 06/04/01 11:50 81100 Lbs.
06/04/01 11:55 29480 Lbs.
PIERRE SD 57501-5070 Net Wgt: 51620 Lbs.
Gross Bu. 860.33

Test Wt	Moisture	Damage	Foreign	Splits
55.2	8.6	1.1	1.2	19.2

CONTRACTS #217
Split Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL

BOB HICKEY Licensed Inspector & Weigher

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO.

TRAILER LICENSE NO.

DATE 6-4-01

LADING NO. № 005865

FREIGHT BILL

DATE

CONSIGNED TO South Dakota P.D.C
Pierre SD

APPLY ON CONTRACT NO.

SCALE TICKET NO. 20400

☐ SELL ON ARRIVAL
☐ STORAGE

GRADE & FACTORS

DESTINATION ELEVATOR Fremont Elev.

LOCATION (CITY & STATE) Marion SD

FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER

COMMENTS: #2 217

SHIPPER'S WEIGHT

GROSS POUNDS 81100

TARE POUNDS 29480

NET POUNDS 51620

GROSS BUSHELS 860.33

NET BUSHELS

SCALE TICKET NO.

DESTINATION WGHT.

FREIGHT CHARGES

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN

LOADED BY

CARRIER DTB

ADDRESS Mitchell SD

BY

CHAUFFEUR LICENSE NO.

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

0162.99.194

NO. 219

DATE 6-4-01

CUSTOMER'S NAME Free-Mar

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER

Canistota, South Dakota

☐ IN ☒ OUT Bob

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		56.5	8.8	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	.7		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of			Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

12:09 P.M. 06/04/01 12:10 P.M. 06/04/01

Gross G+045260 lb G+035880 lb 81120

11:31 A.M. ~~[illegible]~~ 11:35 A.M. 06/04/01

Tare ~~G+021780 lb~~ G+007560 lb

Net 51780 29340

Bu. 863

Chris Downs

AGENT OR MANAGER

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT

GRAIN INSPECTION & WEIGHT CERTIFICATE

Inspection not valid for purposes of the United States Grain Standards Act.

100 0020414
INBOUND
B/L#5868
06/04/01
SAMPLE ID 29

Driver On:Y
Truck ID:RED D&B
Commodity:Soybeans

MARION NORTH

SDCOMM SOUTH DAKOTA PUBLIC UTILITIES 06/04/01 13:29 81100 Lbs.
06/04/01 13:36 29460 Lbs.
PIERRE SD 57501-5070 Net Wgt: 51640 Lbs.
Gross Bu 860.67

Test We	Moistur	Damage	Foreign	Splits
56.5	8.8	1.1	1.6	15.7

CONTRACTS #219
Split Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL

BRENT EDWARDS Licensed Inspector & Weigher

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO.

TRAILER LICENSE NO.

DATE 6-4-01

LADING NO. № 005868

FREIGHT BILL

DATE

CONSIGNED TO S.D. P.U.C Pierre SD

APPLY ON CONTRACT NO.

SCALE TICKET NO. 20414

☐ SELL ON ARRIVAL
☐ STORAGE

GRAIN Corn

GRADE & FACTORS

DESTINATION ELEVATOR Farmers Elev

LOCATION (CITY & STATE) Marion SD

FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER

COMMENTS:

– SHIPPER'S WEIGHT –

GROSS POUNDS 81,100.

TARE POUNDS 29460

NET POUNDS 51640

GROSS BUSHELS 860.167

NET BUSHELS

SCALE TICKET NO.

DESTINATION WGHT.

FREIGHT CHARGES

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.

The carrier acknowledges receipt of and the shippor acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN

LOADED BY [signature]

CARRIER [signature]

ADDRESS Mitchell SD

BY [signature]

CHAUFFEUR LICENSE NO.

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

0162.99.196

NO. 221

DATE 6-4-01

CUSTOMER'S NAME Free-Mar

ADDRESS Marion

COMMODITY Beans

McCOOK FEED & FERTILIZER

Canistota, South Dakota

☐ IN ☒ OUT Bob

1:52 P.M. 06/04/01 1:52 P.M. 06/04/01

Gross 0+045400 lb 0+096850 lb 81780

Tare 29460

Net 52320

Bu. 872

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		57	8.8	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	.8		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of			Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Chris Downs

AGENT OR MANAGER

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE

Inspection not valid for purposes of the United States Grain Standards Act.

100 0020431
INBOUND
B/L# 5867
06/04/01

Driver Only
Truck ID:RED DB MARION NORTH
Commodity:Soybeans SAMPLE ID 56

SDCOMM SOUTH DAKOTA PUBLIC UTILITIES 06/04/01 15:16 82240 Lbs.
06/04/01 15:25 29380 Lbs.
PIERRE SD 57501-5070 Net Wgt: 52860 Lbs.
Gross Bu 881.00

Test We	Moisture	Damage	Foreign	Splits
55.4	9.4	1.1	.7	17.1

0221
CONTRACTS
Split Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States [illegible] net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including [illegible] re as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

BOB HICKEY Licensed Inspector & Weigher

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO. [illegible]
TRAILER LICENSE NO.
DATE 6-4-01

LADING NO. № 005867
FREIGHT BILL
DATE
SCALE TICKET NO.
DESTINATION WGHT.
FREIGHT CHARGES

CONSIGNED TO: S.D. P.U.C. Pierre SD

APPLY ON CONTRACT NO.

SCALE TICKET NO. 20431

☐ SELL ON ARRIVAL
☐ STORAGE

— SHIPPER'S WEIGHT —

GROSS POUNDS 82240
TARE POUNDS 29380
NET POUNDS 52860
GROSS BUSHELS 881.00
NET BUSHELS

GRAIN Beans
GRADE & FACTORS

DESTINATION ELEVATOR [illegible]

LOCATION (CITY & STATE) Marion SD

FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER

COMMENTS: #221

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.

The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN

LOADED BY [signature]

CARRIER [signature]

ADDRESS [signature]

BY [signature]

CHAUFFEUR LICENSE NO.

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

0162.99.200

DAKOTA VALLEY ELEVATORS

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE
Inspection not valid for purposes of the United States Grain Standards Act.

100 0020407
INBOUND
B/L#
06/04/01
SAMPLE ID 21

Driver On:Y
Truck ID:GLANZER RED MARION NORTH
Commodity:Soybeans

SDCOMM SOUTH DAKOTA PUBLIC UTILITIES 06/04/01 12:22 88440 Lbs.
06/04/01 12:38 28920 Lbs.
PIERRE SD 57501-5070 Net Wgt: 59520 Lbs.
Gross Bu 992.00

Test We	Moisture	Damage	Foreign	Splits
56.1	8.7	1.1	2.8	16.0

0212
CONTRACTS
Split Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL BOB HICKEY Licensed Inspector & Weigher

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO
TRAILER LICENSE NO
DATE 6/4/01

LADING NO. № 005876
FREIGHT BILL
DATE
SCALE TICKET NO
DESTINATION WGHT.
FREIGHT CHARGES

CONSIGNED TO: SDPU
Pierre, SD

APPLY ON CONTRACT NO.
☐ SELL ON ARRIVAL
☐ STORAGE

SCALE TICKET NO. 20407

GRAIN: BEANS
GRADE & FACTORS: FREMAR-N
DESTINATION ELEVATOR: MARION SD
LOCATION (CITY & STATE)
FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER
COMMENTS: 218

— SHIPPER'S WEIGHT —
GROSS POUNDS 88440
TARE POUNDS 28920
NET POUNDS 59520
GROSS BUSHELS 992.00
NET BUSHELS

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER **DAKOTA VALLEY GRAIN**
LOADED BY ✓

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

CARRIER GLANZER
ADDRESS BRIDGEWATER, SD
BY SG
CHAUFFEUR LICENSE NO.

DAKOTA VALLEY ELEVATORS

Driver On:Y
Truck ID:ERN JAKE
Commodity:Soybeans

UNITED STATES WAREHOUSE ACT
GRAIN INSPECTION & WEIGHT CERTIFICATE

Inspection not valid for purposes of the United States Grain Standards Act.

100 0020345
INBOUND
B/L#5E7E
06/01/01
5F

MARION NORTH

SAMPLE ID

EDCOMM SOUTH DAKOTA PUBLIC UTILITIES
PIERRE SD 57501-5070

06/01/01 13:41	79760	Lbs.
06/01/01 13:50	30920	Lbs.
Net Wgt:	48840	Lbs.
Gross Bu	814.00	

Test Wt	Moistur	Damage	Foreign	Splits
55.7	8.4	1.1	1.8	33.7

QEIS
CONTRACTS
Split Info:

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to inspect, grade and weigh the kind of grain covered by this certificate, that on the above date and at the above place I inspected, graded and weighed the regulations, and that the grade of said grain according to the official grain standards of the United States, and the net weight thereof, following lot or parcel of grain stored or to be stored in the DAKOTA VALLEY ELEVATOR, named above, a warehouse licensed under said Act and including dockage, if any, were as stated above. THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that settlement has or has not been consummated.

ORIGINAL

BOB HICKEY
Licensed Inspector & Weigher

NO. 213

DATE 6-1-01

CUSTOMER'S NAME Free Mar Coop

ADDRESS Marion

COMMODITY Beans

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
		57.5	8.5	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	1.8		18% split 3 ☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Paul

Gross

Tare

Net 48900

Bu. 815

AGENT OR MANAGER

0162.99.202

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO.	
TRAILER LICENSE NO.	
DATE	6/1/01
CONSIGNED TO	SD Bus Util Bierre SD
APPLY ON CONTRACT NO.	
SCALE TICKET NO.	20345
☐ SELL ON ARRIVAL ☐ STORAGE	
GRAIN	Beans
GRADE & FACTORS	
DESTINATION ELEVATOR	
LOCATION (CITY & STATE)	
FREIGHT TO BE PAID BY	☐ SHIPPER ☐ BUYER
COMMENTS:	213

— SHIPPER'S WEIGHT —

GROSS POUNDS	79760
TARE POUNDS	30920
NET POUNDS	48840
GROSS BUSHELS	814.100
NET BUSHELS	

LADING NO.	№ 005872
FREIGHT BILL	
DATE	
SCALE TICKET NO.	
DESTINATION WGHT.	
FREIGHT CHARGES	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER DAKOTA VALLEY GRAIN

LOADED BY M Cook

1) WHITE – Elevator Copy
2) YELLOW – Destination Copy
3) PINK – Truckers Copy
4) GOLDEN ROD – Mail Copy

CARRIER Jake

ADDRESS Winfred SD

BY ✓

CHAUFFEUR LICENSE NO.

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 46450 lbs. To _____

Tare 27470 lbs. Test _____ Moist. _____

Net 17980 lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by

NO. 302

DATE 6-8-01

CUSTOMER'S NAME Horizon Co. Grain

ADDRESS Alexandria

COMMODITY Oats

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Gross 45450

Tare 27470

Net 17980

Bu. 561.88

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Mixed Grain Date _____ 20 ___

From _____ Dkg. _____ lbs.

Gross 64470 lbs. To _____

Tare 27600 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by

NO. 301

DATE 6-6 9

CUSTOMER'S NAME Harrison Co Grain

ADDRESS Mck.

COMMODITY Mixed Grain

McLEOD'S 7407T

Grade and Grain U.S. No	% Dock.	T.W.	Moisture	Price Per Bu.
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount
This ticket is entered on and made a part of				Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.		

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

Mclean

☐ IN ☒ OUT

Gross 64470

Tare 27600

Net 36870

Bu. _____

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 76800 lbs. To _____

Tare 30600 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by LC 115

NO. 115

DATE 5-30-01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

L. C.

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	2.0	57.3	14.0	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 76800

Tare 30600

Net 46200

Bu. 825

AGENT OR MANAGER

MCLEOD'S 7407T

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Mixed Grain Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 83860 lbs. To _____

Tare ~~27670~~ 27670 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by

NO. 300

DATE 6-8-21

CUSTOMER'S NAME Harrison Co Grain

ADDRESS _____

COMMODITY Mixed Grain

McLEOD'S—7407

Grade and Grain U.S. No	% Dock.	T.W.	Moisture	Price Per Bu.

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of			Net Price
Grain Check No.	Stge Receipt No.	Assembly Shl No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Gross 83860

Tare 27670

Net 56190

Bu. _____

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 27590 lbs. To _____

Tare 80870 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by # 160

NO. 100

DATE 5-24-21

CUSTOMER'S NAME Haugen Co Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT ADAM

Grade and Grain U.S. No 1 2	% Dock .18	T.W. 57	Moisture 14.8	Price Per Bu.
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount
This ticket is entered on and made a part of				Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.		

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 80870

Tare 27590

Net 53280

Bu. 951.43

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 79900 lbs. To _____

Tare 30680 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by

101 Dave

NO. 101

DATE 5-25-01

CUSTOMER'S NAME Hansen Co. Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Dave

Grade and Grain U.S. No.	% Dock 2%	T.W. 57	Moisture 15.0	Price Per Bu.
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount
This ticket is entered on and made a part of				Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.		

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 79900

Tare 30680

Net 49220

Bu. 878.93

Dave

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date 5-25 20 01

From _____ Dkg. _____ lbs.

Gross 81110 lbs. To _____

Tare 28180 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by

102 Adam

NO. 102

DATE 5-25-01

CUSTOMER'S NAME Hanson Co. Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.			% Dock 1%	T.W. 58	Moisture 15.0	Price Per Bu.
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.		Stge Receipt No.		Assembly Shl No.		

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Adam

Gross 81110

Tare 28180

Net 52930

Bu. 945.18

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date 5-25 20 01

From _____ Dkg. _____ lbs.

Gross 80250 lbs. To _____

Tare 28800 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Jim 103

NO. 103

DATE 5-25-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

McLEOD'S—7407T

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	,6	56	19.2	

Dam.	F.M.	Other Factors	For:	Prem/Discount
			☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Jim

Gross 80250

Tare 28800

Net 51450

Bu. 918.75

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 79900 lbs. To _____

Tare 30900 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Dave 104

NO. 104

DATE 5-25-01

CUSTOMER'S NAME Hansen Co. Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1%	58.5	14.7	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Dave

Gross 79900

Tare 30900

Net 49000

Bu. 875

Dave Brown
AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 80500 lbs. To _____

Tare 28070 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Adam

105

NO. 105

DATE 5 25 01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	.8	60	14.5	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Adam

Gross 80500

Tare 28070

Net 52430

Bu. 936.15

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date 5-25 20___

From _____ Dkg. _____ lbs.

Gross 80070 lbs. To _____

Tare 28630 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Jim

106

NO. 106

DATE 5-25 01

CUSTOMER'S NAME Hansen Co. Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

J.M.

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	2.3	59	14.4	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Slit No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 80070

Tare 28630

Net 51440

Bu. 918.57

AGENT OR MANAGER

McLEOD'S—14071

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date 5-25 20 01

From _____ Dkg. _____ lbs.

Gross 79580 lbs. To _____

Tare 30870 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Dave

107

NO. 107

DATE 5-25-01

CUSTOMER'S NAME Hansen Co. Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Dave

Grade and Grain	% Dock.	T.W.	Moisture	Price Per Bu.
U.S. No.	1%	59	12.9	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 79580

Tare 30870

Net 48710

Bu. 869.82

AGENT OR MANAGER

McLEOD'S—74071

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date 5-25 20__

From _____ Dkg. _____ lbs.

Gross 80 340 lbs. To _____

Tare 27970 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Adam 108

NO. ~~107~~ 108

DATE 5-25 01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

McLEOD'S—14071

Grade and Grain	% Dock.	T.W.	Moisture	Price Per Bu.
U.S. No.	1,2	58	12,8	

Dam.	F.M.	Other Factors	For:	Prem/Discount
			☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Shr No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Adam

Gross 80340

Tare 27970

Net 52370

Bu. 935,18

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date 5-25 20 01

From _____ Dkg. _____ lbs.

Gross 80110 lbs. To _____

Tare 28540 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher CO

Received by Jim

~~108~~ 109

NO. 109

DATE 5-25-01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.			% Dock.	T.W.	Moisture	Price Per Bu.
			2.2	58,5	13,6	
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.		Stge Receipt No.	Assembly Shi No.			

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEODS—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Jim

Gross 80110

Tare 28540

Net 51570

Bu. 920,89

Agent or Manager

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of Corn Date 5-25 20 01

From _____ Dkg. _____ lbs.

Gross 81 380 lbs. To _____

Tare 27880 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Adam 110

NO. 110

DATE 5-25 01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Adam

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	4%	56.8	12.6	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 81380

Tare 27880

Net 53500

Bu. 955.36

Chris Downs
AGENT OR MANAGER

McLEOD'S—1407

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20___

From _____ Dkg. _____ lbs.

Gross 80370 lbs. To _____

Tare 28450 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by 111 Jim

NO. 111

DATE 5-23-21

CUSTOMER'S NAME Hanson Co. Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	3%	57.5	13.8	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of

Grain Check No.	Stge Receipt No.	Assembly Stt No.	Net Price

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—7407

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Jim

Gross 80370

Tare 28450

Net 51920

Bu. 927.14

AGENT OR MANAGER

S 18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 80220 lbs. To _____

Tare 27620 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Adam

112

NO. 112

DATE 5-30-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☐ OUT Adam

Grade and Grain U.S. No.			% Dock.	T.W.	Moisture	Price Per Bu.
			1.9	59	13.4	
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.		Stge Receipt No.		Assembly Sht No.		

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 80220

Tare 27620

Net 52600

Bu. 939.29

AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 80060 lbs. To _____

Tare 27530 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Adam 113

NO. 113

DATE 5-30-01

CUSTOMER'S NAME Hansen Fa Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Adam

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	3.5	56.5	12.8	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 80060

Tare 27530

Net 52530

Bu. 938.04

AGENT OR MANAGER

McL5005—1407I

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 79940 lbs. To _____

Tare 27710 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Dave

114

NO. 114

DATE 5-30-01

CUSTOMER'S NAME Alexandria

ADDRESS [illegible] Co. Grain

COMMODITY _____

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	2,8	58	13,6	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S-74001

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Dave

Gross 79940

Tare 27710

Net 52230

Bu. 937,68

[signature]
AGENT OR MANAGER

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 78500 lbs. To _____

Tare 30010 lbs. Test _____ Moist. _____

Net _____ lbs. Price _____ Amt. $ _____

_____ on _____ off Weigher _____

Received by Paul 116

NO. 116

DATE 5-30-01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Paul

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	2.5	56.5	16.0	

Dam.	F.M.	Other Factors	For:	Prem/Discount
			☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

Gross 78500

Tare 30010

Net 48490

Bu. 865.89 435 mixed

Chris

AGENT OR MANAGER

McLEOD'S—7407

S-18 WEIGHED ON TYPE REGISTERING BEAM SCALES

Load of _____ Date _____ 20__

From _____ Dkg. _____ lbs.

Gross 82050 / 43050 lbs. To Dirty / 43050

Tare 27580 lbs. Test 27550 Moist. _____

Net _____ lbs. Price 15470 Amt. $ _____

_____ on _____ off Weigher _____

Received by Dave 117

NO. 117

DATE 5-30-01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	,8	58	15,8	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—7407

McCOOK FEED & FERTILIZER
Canistota, South Dakota

Dave

☐ IN ☒ OUT

A Dirty front B

Gross	82050	43050
Tare	27580	27580
Net	54470	15470

FM 13%

Bu. 972.68

AGENT OR MANAGER

NO. 200

DATE 5-30-01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.			% Dock.	T.W.	Moisture	Price Per Bu.
			1.0	57	15.8	
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No				

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Adam

1:05 P.M. 05/30/01

Gross 078120 lb
12:29 P.M. 05/30/01

Tare 028400 lb

Net 49720

Bu. 888

AGENT OR MANAGER

NO. 201

DATE 5-30-01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS

COMMODITY Corn

Grade and Grain U.S. No.			% Dock.	T.W.	Moisture	Price Per Bu.
			1.8	57	15.9	
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.				

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT LC

3:48 P.M. 05/30/01

Gross 077760 lb
2:53 P.M. 05/30/01

Tare 030840 lb

Net 46920

Bu. 837.86

AGENT OR MANAGER

NO. 202

DATE 5 31 01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.0	57	15.9	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of

Grain Check No.	Stge Receipt No.	Assembly Sht No.	Net Price

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

7:42 A.M. 05/31/01

Gross G+079680 lb
7:16 A.M. 05/31/01

Tare G+030660 lb

Net 49020

Bu. 875.36

AGENT OR MANAGER

NO. 203

DATE 5-31-01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.5	57	16	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of

Grain Check No.	Stge Receipt No.	Assembly Sht No.	Net Price

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

8:16 A.M. 05/31/01

Gross G+083380 lb
7:44 A.M. 05/31/01

Tare G+030980 lb

Net 52400

Bu. 936

AGENT OR MANAGER

NO. 204

DATE 5-31-01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.			% Dock.	T.W.	Moisture	Price Per Bu.
			,5	57.8	16.0	
Dam.	F.M.	Other Factors	For: ☐Storage ☐Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.		Stge Receipt No.	Assembly Sht No.			

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Dave

8:59 A.M. 05/31/01

Gross G+079660 lb

8:19 A.M. 05/31/01

Tare G+028320 lb

Net 51340

Bu. -917

AGENT OR MANAGER

NO. 205

DATE 5-31-01

CUSTOMER'S NAME Hansen Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.			% Dock.	T.W.	Moisture	Price Per Bu.
			,9	57	15.7	
Dam.	F.M.	Other Factors	For: ☐Storage ☐Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.		Stge Receipt No.	Assembly Sht No.			

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Adam

9:33 A.M. 05/31/01

Gross G+081380 lb

9:04 A.M. 05/31/01

Tare G+028300 lb

Net 53080

Bu. 948

AGENT OR MANAGER

NO. 206

DATE 5-31-01

CUSTOMER'S NAME Hanson Co. Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.8	57	15.2	

Dam.	F.M.	Other Factors	For: ☐Storage ☐Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No	Stge Receipt No	Assembly Sht No

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Paul

10:03 A.M. 05/31/01

Gross G+081460 lb
9:41 A.M. 05/31/01

Tare G+030560 lb

Net 50900

Bu. 909

AGENT OR MANAGER

NO. 207

DATE 5-31-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alex.

COMMODITY Corn

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.3	57.2	15.0	

Dam.	F.M.	Other Factors	For: ☐Storage ☐Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Adam

12:05 P.M. 05/31/01

Gross G+076840 lb
11:43 A.M. 05/31/01

Tare G+028200 lb

Net 48640

Bu. 869

AGENT OR MANAGER

NO. 208

DATE 5-31-01

CUSTOMER'S NAME Hanson Co. Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Doch.	T.W.	Moisture	Price Per Bu.
	1.1	59	15.4	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Paul

2:17 P.M. 05/31/01

Gross 64080260 lb
1:01 P.M. 05/31/01

Tare 64030480 lb

Net 49780

Bu. 889

AGENT OR MANAGER

NO. ~~208~~ 209

DATE 5-31-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alex

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.0	58	15.0	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of

Grain Check No.	Stge Receipt No.	Assembly Sht No.	Net Price

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Ray #30 to Marion

2:51 P.M. 05/31/01

Gross G+086040 lb

2:22 P.M. 05/31/01

Tare G+029660 lb

Net 56380

Bu. 1007

AGENT OR MANAGER

DAKOTA VALLEY GRAIN

P.O. Box 357
Marion, South Dakota 57043

TRUCK LICENSE NO. 30
TRAILER LICENSE NO. 71
DATE 5-31-01

LADING NO. № 004390
FREIGHT BILL
DATE
SCALE TICKET NO.
DESTINATION WGHT.
FREIGHT CHARGES

CONSIGNED TO: Hanson County Grain

APPLY ON CONTRACT NO.

SCALE TICKET NO.

☐ SELL ON ARRIVAL
☐ STORAGE

GRAIN: Corn

GRADE & FACTORS

DESTINATION ELEVATOR: Dakota Valley Grain

LOCATION (CITY & STATE): Marion SD

FREIGHT TO BE PAID BY ☐ SHIPPER ☐ BUYER

COMMENTS: From (Pine Creek)

— SHIPPER'S WEIGHT —

GROSS POUNDS: 56040
TARE POUNDS: 29660
NET POUNDS: 56380
GROSS BUSHELS: 1007
NET BUSHELS:

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER: DAKOTA VALLEY GRAIN

LOADED BY: [signature]

1) WHITE — Elevator Copy
2) YELLOW — Destination Copy
3) PINK — Truckers Copy
4) GOLDEN ROD — Mail Copy

CARRIER: Freeman Farmers Coop

ADDRESS: Marion SD

BY: Kay Neufeld

CHAUFFEUR LICENSE NO.

NO. ~~2~~ 210

DATE 5-31-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alex

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	,9	58	15,5	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Adam

3:23 P.M. 05/31/01

Gross 61080040 lb
2:55 P.M. 05/31/01

Tare 61028100 lb

Net 51940

Bu. 928

AGENT OR MANAGER

NO. 224

DATE 6-5-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	,4	58	15,4	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Jim

8:39 A.M. 06/05/01 to Marion

Gross 62082740 lb
8:14 A.M. 06/05/01

Tare 62029960 lb

Net 53780

Bu. 961

AGENT OR MANAGER

NO. 225

DATE 6.5.01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.8	39	15.2	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	✓		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Glanzer to Marion

9:19 A.M. 06/05/01

Gross G+005620 lb
8:59 A.M. 06/05/01

Tare G1028680 lb

Net 56940

Bu. 1017

AGENT OR MANAGER

NO. 226

DATE 6-5-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.5	58.3	15.4	

Dam.	F.M.	Other Factors	For:	Prem/Discount
			☐ Storage ☐ Purchase	

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Jim To Marion

11:05 A.M. 06/05/01

Gross G+078800 lb
9:33 A.M. 06/05/01

Tare G1026940 lb

Net 47860

Bu. 891

AGENT OR MANAGER

NO. 227

DATE 6-5-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.0	58.8	15.2	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Sige Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Glanzer to Marion

10:37 A.M. 06/05/01

Gross G+084960 lb
10:11 A.M. 06/05/01

Tare G+028920 lb

Net 56040

Bu. 1001

AGENT OR MANAGER

NO. 228

DATE 6-5-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.1	59	15.3	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Sige Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Jim to Marion

11:28 A.M. 06/05/01

Gross G+081000 lb
11:02 A.M. 06/05/01

Tare G+028900 lb

Net 52100

Bu. 931

AGENT OR MANAGER

NO. 229

DATE 6-5-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.9	58.5	15.2	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Glazer

11:56 A.M. 06/05/01

Gross G+086580 lb
11:29 A.M. 06/05/01

Tare G+028740 lb

Net 57840

Bu. 1033

AGENT OR MANAGER

NO. 229-230

DATE 6-5-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.0	58	15.2	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Jim
to Marion

12:52 P.M. 06/05/01

Gross G+079380 lb
12:25 P.M. 06/05/01

Tare G+028900 lb

Net 50480

Bu. 902

AGENT OR MANAGER

NO. 231

DATE 6-5-01

CUSTOMER'S NAME Hanson Co. Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.1	58	15.3	

Dam.	F.M.	Other Factors	For:	Prem/Discount
			☐ Storage ☐ Purchase	

This ticket is entered on and made a part of			Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEODS—7407I

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Glanzer to Marion

1:20 P.M. 06/05/01

Gross 61080260 lb

12:54 P.M. 06/05/01

Tare 61028560 lb

Net 51700

Bu. 924

AGENT OR MANAGER

NO. 233

DATE 6501

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

57.5 15

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.5	[illegible]	[illegible]	

Dam.	F.M.	Other Factors	For:	Prem/Discount
	[illegible]		☐ Storage ☐ Purchase	

This ticket is entered on and made a part of			Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEODS—7407I

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Soft Glanzer to Marion

3:29 P.M. 06/05/01

Gross 62082240 lb

2:10 P.M. 06/05/01

Tare 62028520 lb

Net 53720

Bu. 960

AGENT OR MANAGER

NO. 234

DATE 6-5-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu
	.9	58.5	15.3	

Dam.	F.M.	Other Factors	For: ☐Storage ☐Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Mahoney to Winner

4:05 P.M. 06/05/01 4:06 P.M. 06/05/01

Gross G+085420 lb G+045700 lb 81180

3:33 P.M. 06/05/01 3:34 P.M. 06/05/01

Tare G+021860 lb G+005720 lb 23580

Net 52600

Bu. 940

AGENT OR MANAGER

NO. 235

DATE 6-5-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alex

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.7	58.3	14.9	

Dam.	F.M.	Other Factors	For: ☐Storage ☐Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT C+L 1kg

5:18 P.M. 06/05/01

Gross G+085700 lb
4:12 P.M. 06/05/01

Tare G+027480 lb

Net 58220

Bu. 1040

AGENT OR MANAGER

NO. ~~14~~ 236

DATE 6601

CUSTOMER'S NAME Hanson County Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.3	59	15.0	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No	Sige Receipt No.	Assembly Sht No

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Glenn

7:42 A.M. 06/06/01

Gross G+084460 lb
~~6:50 A.M. 06/06/01~~

Tare G+028760 lb

Net 55700

Bu. 995

AGENT OR MANAGER

NO. ~~14~~ 237

DATE 6-6-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.1	56.6	14.9	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Sige Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Jim

9:17 A.M. 06/06/01

Gross G+079800 lb
~~7:45 A.M. 06/06/01~~

Tare G+029020 lb

Net 50780

Bu. 907

AGENT OR MANAGER

NO. 238

DATE 6-6-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alex

COMMODITY Corn

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.0	56	15.6	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No	Stge Receipt No	Assembly Sht No

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Glaizer

11:20 A.M. 06/06/01

Gross G+081440 lb
~~10:02 A.M. 06/06/01~~

Tare G+028880 lb

Net 52560

Bu. 939

AGENT OR MANAGER

NO. 239

DATE 6-6-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.0	57.8	15.7	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Jim

12:18 P.M. 06/06/01

Gross G+078840 lb
~~10:56 A.M. 06/06/01~~

Tare G+028880 lb

Net 49960

Bu. 893

AGENT OR MANAGER

NO. 240

DATE 6-6-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.0	57.3	15.5	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Adam

3:15 P.M. 06/06/01

Gross G+081220 lb
1:04 P.M. 06/06/01

Tare G+027960 lb

Net 53260

Bu. 951

AGENT OR MANAGER

NO. 241

DATE 6-6-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.7	58.5	15.7	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Glanzer

4:11 P.M. 06/06/01

Gross G+081720 lb
3:13 P.M. 06/06/01

Tare G+028500 lb

Net 53220

Bu. 951

AGENT OR MANAGER

NO. 242

DATE 6-6-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.			% Dock 1.3	T.W. 58	Moisture 15.8	Price Per Bu.
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.		Stge Receipt No.	Assembly Sht No			
Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.						

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Jim

5:11 P.M. 06/06/01

Gross G+080160 lb

3:23 P.M. 06/06/01

Tare G+028760 lb

Net 51400

Bu. 918

AGENT OR MANAGER

NO. 2403

DATE 6-7-01

CUSTOMER'S NAME Hanson County Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.			% Dock 1.0	T.W. 57.5	Moisture 15.6	Price Per Bu.
Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase			Prem/Discount
This ticket is entered on and made a part of						Net Price
Grain Check No.		Stge Receipt No.	Assembly Sht No			
Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.						

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

Glenzer

8:37 A.M. 06/07/01

Gross G+080520 lb

7:30 A.M. 06/07/01

Tare G+028600 lb

Net 51760

Bu. 926

AGENT OR MANAGER

NO. 747

DATE ~~Nov~~ 6-7-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☐ OUT Glancer

12:57 P.M. 06/07/01

Gross G+081200 lb ~~11:21 A.M. 06/07/01~~

Tare G+028780 lb

Net 52420

Bu. 936

AGENT OR MANAGER

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.8	59	14.9	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

NO. 745

DATE 6-7-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Paul

3:29 P.M. 06/07/01

Gross G+084260 lb ~~2:30 P.M. 06/07/01~~

Tare G+030380 lb

Net 53880

Bu. 962.14

AGENT OR MANAGER

Grade and Grain U.S. No.	% Dock	T.W.	Moisture	Price Per Bu.
	1.8	58.5	14.8	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of — Net Price

Grain Check No.	Stge Receipt No.	Assembly Sht No.

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

NO. 246

DATE 6-8-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	.8	58.3	14.8	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of			Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT Glauser

8:25 A.M. 06/08/01

Gross G+082200 lb ~~7:04 A.M.~~ 06/08/01

Tare G+028600 lb

Net 53600

Bu. 957

Chris Doan

AGENT OR MANAGER

NO. 247

DATE 6-8-01

CUSTOMER'S NAME Hanson Co Grain

ADDRESS Alexandria

COMMODITY Corn

Grade and Grain U.S. No.	% Dock.	T.W.	Moisture	Price Per Bu.
	1.1	58	15.0	

Dam.	F.M.	Other Factors	For: ☐ Storage ☐ Purchase	Prem/Discount

This ticket is entered on and made a part of			Net Price
Grain Check No.	Stge Receipt No.	Assembly Sht No.	

Supplemental Information Hereon (Except Grade & Weight) Not a Part of This Certificate.

McLEOD'S—74071

McCOOK FEED & FERTILIZER
Canistota, South Dakota

☐ IN ☒ OUT

9:45 A.M. 06/08/01

Gross G+080520 lb ~~8:27 A.M.~~ 06/08/01

Tare G+030600 lb

Net 49920

Bu. 891

Chris Doan

AGENT OR MANAGER

WOODS, FULLER, SHULTZ & SMITH P.C.
LAWYERS
300 SOUTH PHILLIPS AVENUE, SUITE 300
POST OFFICE BOX 5027
SIOUX FALLS, SOUTH DAKOTA 57117-5027
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CHRISTOPHER J. LENT*
*LICENSED ONLY IN NEW HAMPSHIRE

FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1899-1983)
HOWELL L. FULLER (1909-1981)
JOHN B. SHULTZ (1912-1978)

June 29, 2001

By Federal Express

South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., d/b/a McCook Feed & Fertilizer
PUC Docket GD01-001

Gentlemen:

I am enclosing Brief of Home Federal Savings Bank in Opposition to Staff's Recommendations for your consideration. Copies of the Brief have been served by mail upon Attorneys Kelly Frazier and Mike Fink. Please file this original document in your records.

Sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.

Roger W. Damgaard

Enclosure

RECEIVED
JUL 02 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

WOODS, FULLER, SHULTZ & SMITH P.C.
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FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1899-1983)
HOWELL L. FULLER (1909-1981)
JOHN B. SHULTZ (1912-1975)

June 29, 2001

Mr. Kelly D. Frazier
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., d/b/a McCook Feed & Fertilizer
PUC Docket GD01-001

Dear Mr. Frazier:

I am enclosing Brief of Home Federal Savings Bank in Opposition to Staff's Recommendations. This is intended as service by mail upon you.

Sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.

Roger W. Damgaard

Enclosure

RECEIVED
JUL 02 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RECEIVED
JUL 02 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o

Docket GD01-001

In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., d/b/a McCook Feed & Fertilizer.

BRIEF OF HOME FEDERAL SAVINGS BANK IN OPPOSITION TO STAFF'S RECOMMENDATIONS

o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o

Home Federal Savings Bank ("Home Federal") submits this brief in opposition to certain recommendations of the Staff of the Public Utilities Commission ("Staff") regarding the disposition of claims filed in conjunction with the receivership of Freeman Fertilizer Company, Inc., d/b/a McCook Feed and Fertilizer ("McCook"). This brief is also offered in response to the Brief of Alvin Scott, Jeff Scott, and Lucille Helmbrecht.

FACTS

McCook is a grain warehouse located in Canistota, South Dakota, and formerly operated by Jeff Mulder ("Mulder"). During the time in question, McCook was duly licensed by the Public Utilities Commission ("Commission") as a grain dealer and as a public grain warehouse. McCook was also bonded in compliance with South Dakota law for the period of July 1, 2000 through June 30, 2001. McCook possessed a $25,000.00 warehouse bond and a $50,000.00 grain dealer's bond.

As the 2000 harvest approached, several Canistota-area farmers inquired whether McCook would be open for grain storage during the upcoming harvest. (Transcript of May 3, 2001, Hearing (hereinafter "Tr.") at 46.) Apparently, some farmers were concerned about the financial status of the McCook elevator because of rumors that it

was suffering financially. (Tr. at 46, 67.) These concerns were expressed to Lloyd Langley, a McCook employee. (Tr. at 46, 78.) Because Mr. Langley had no knowledge himself of the financial condition of the elevator or whether it would take grain during the 2000 harvest (Tr. at 54, 62), Langley arranged an August 24, 2000, informational meeting for all interested farmers. (Tr. at 46, 67, 78.)

In attendance at the August 24 meeting were Langley and several area farmers, including Alvin Scott, Jeff Scott, and Richard Hoffman. (Tr. at 71.) Also at the meeting was Ray Marquardt, who owned several successful elevators and was considering entering into a partnership or similar business arrangement with Mulder involving the McCook elevator.[1] (Tr. at 68.) Mulder was not at the meeting. (Tr. at 71, 78.)

Marquardt controlled the August 24 meeting. (Tr. at 54, 61.) He told the farmers that he was considering a business arrangement with the McCook elevator and that the elevator was currently in sound financial condition. (Tr. at 54, 72.) The record does not reveal where Marquardt received his information concerning the financial status of the elevator. The record does show, however, that McCook was apparently in good financial condition in May and June of 2000. In May of 2000, the Commission reissued McCook's grain dealer and public warehouse licenses after reviewing McCook's financial records. (Tr. at 84-85.) Similarly, in June of 2000, the bonding company renewed McCook's grain dealer's and warehouse bonds following a review of its financial records. (Tr. at 83.)

---

[1]Marquardt subsequently purchased and now owns the McCook facility. (Tr. at 72.)

Langley said very little at the August 24 meeting. (Tr. at 54.) Instead, Langley, like the farmers, used the meeting to learn about the financial condition and the future of the McCook elevator. (Tr. at 54.) Prior to this meeting, Langley had been "kept in the dark" and was unaware of the financial status or the intended future of the elevator. (Tr. at 62.)

Relying on Marquardt's statements, several farmers decided to bring part of their upcoming harvests to the McCook elevator. (Tr. at 46-47, 72, 76.) Among these farmers were Richard Hoffman, Jeff Scott, and Alvin Scott, who also intended to harvest and oversee the sale or storage of the crops of Lucille Helmbrecht. (Tr. at 45.)

As harvest drew nearer, the Scotts and Hoffman asked Mulder about the terms under which he would take their grain. They indicated to Mulder that they preferred warehouse receipts and that the McCook elevator only store, and not purchase, their grain. (Tr. at 47, 60.) Mulder, however, told them that warehouse receipts were not presently an option and that, given the price of storage, delayed pricing or deferred payment contracts were actually a better deal for the farmers. (Tr. at 47, 56-57, 68-69.) Instead of taking their grain to another elevator where they may have been able to obtain warehouse receipts, the Scotts, Helmbrecht, and Hoffman each decided to sign delayed pricing contracts with McCook.[2] (Tr. at 55.)

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[2]Another Canistota area farmer, Tim Jensen, claims that he asked Mulder for a storage contract and that Mulder gave him a delayed pricing contract that Mulder represented to be a storage contract. (Tr. at 103.) Without reading the contract, Jensen

On February 13, 2001, Mulder, on behalf of McCook, entered into a stipulation with the Commission through which Mulder surrendered McCook's grain dealer and public grain warehouse licenses and relinquished possession of its facilities. Notices were then sent to all parties that had potential claims against the McCook facility or to the grain still stored at the facility. Several claims were filed by farmers that had stored grain with, or sold grain to, the McCook elevator. Home Federal, which holds a blanket valid and perfected first UCC security interest in all of McCook's inventory, also asserted a claim to the McCook grain.

On May 3, 2001, the Commission conducted a public hearing for purposes of determining claims against the grain dealer's and grain warehouse bonds and the grain inventory remaining at the McCook facility. Subsequent to the hearing, the Staff submitted a Brief in Support of Staff's Recommendations. In its brief, the Staff concedes that, if the delayed pricing and deferred payment contracts are valid, Home Federal has a priority security interest in the grain delivered under these contracts and is entitled to the grain delivered under them. The Staff, however, contends that the delayed pricing and deferred payment contracts executed by the Scotts, Helmbrecht, Hoffman, and Jensen are voidable, or rescindable,[3] due to Mulder's allegedly fraudulent conduct relating to such contracts. Alternatively, the Staff asserts that the delayed pricing contracts and deferred payment contracts entered into by the Scotts, Hoffman, Helmbrecht, and Jensen, as well

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[3]The terms "voidable" and "rescindable" are substantively identical under South Dakota law, and will be used interchangeably, along with their relative derivations, throughout this brief. See Shedd v. Lamb, 553 N.W.2d 241, 244 (S.D. 1996).

as by Farmers National, Leroy Klockman, Pat Kappenman, Larry Weber, Leonard Buehner, and Helen Eide, are voidable for failure of consideration and prejudice to the public interest. The Staff concludes that if these contracts are voidable, title to the grain never passed to McCook and Home Federal's security interest never attached.[4]

Home Federal submits that none of the delayed pricing and deferred payment contracts, including those executed by the Scotts, Helmbrecht, Jensen, and Hoffman, are subject to rescission. An essential element of fraud under South Dakota law is a contemporaneous intent to deceive on behalf of the alleged wrongdoer. Here, there is no evidence of such an intent. Further, these contracts were supported by adequate consideration and their enforcement will not prejudice the public interest. Finally, and most importantly, even if certain contracts may for some reason be rescinded, such rescission does not divest Home Federal of its security interest in the grain delivered pursuant to these contracts.[5]

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[4]The Staff's arguments largely mirror those made in the brief submitted by the Scotts and Helmbrecht.

[5]While the focus of this brief is on the vitality of Home Federal's security interest in the grain delivered under the delayed pricing and deferred payment contracts, Home Federal also contends that its resulting interest in the grain remaining in the McCook elevator, or the proceeds of such grain, is not inferior to those claimants that have an interest in such grain or proceeds pursuant to open storage contracts. Because grain is a fungible good, there is no way of ascertaining whether the grain that was stored in the McCook facility on February 13, 2000, is that which was delivered pursuant to the open storage contracts or the delayed pricing/deferred payment contracts. Further, Home Federal is aware of no legal principle or case law that grants first priority to the open storage claimants.

ARGUMENT

A. The Delayed Pricing and Deferred Payment Contracts of the Scotts, Helmbrecht, Hoffman, and Jensen May Not Be Rescinded for Fraud

The Staff first contends that the delayed pricing and deferred payment contracts executed by the Scotts, Helmbrecht, Hoffman, and Jensen are avoidable and may be rescinded at the election of the parties. The Staff argues that rescission is warranted because these contracts were procured by fraud, thus rendering the contracting farmers' consents avoidable pursuant to SDCL Chapter 53-4.[6] See SDCL 53-4-1 ("An apparent consent is not real or free and is avoidable when obtained through . . . fraud.").

Rescission is an extraordinary equitable remedy that may be granted only where the party seeking rescission has presented clear and convincing evidence that proper grounds for rescission exist. See Mattson v. Rachetto, 591 N.W.2d 814, 818 (S.D. 1999) ("The equitable relief of rescission, being extraordinary, should never be granted, except where the evidence is clear and convincing.") (quoting Vermilyea v. BDL Enterprises,

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[6]The Scotts and Helmbrecht at times state in their brief that a contract which is based on fraudulently obtained consent is void, rather than voidable. However, South Dakota law is clear that where a contract is procured by fraud, the contract is not void, but voidable. See Sabbagh v. Professional & Business Men's Life Ins. Co., 116 N.W.2d 513, 518 (S.D. 1962); see also Ivory v. Reserve Life Ins. Co., 101 N.W.2d 517, 519 (S.D. 1960) ("This is the application of the general rule in the law of contracts that where a party is induced to enter into a transaction with another party which he was under no duty to enter by means of fraud or material misrepresentation the transaction is voidable."); Main v. Professional & Business Men's Life Ins. Co., 122 N.W.2d 865, 867 (S.D. 1963). In such situations, an aggrieved party may elect to either rescind the contract or affirm it and sue for damages. See U.S. Lumber, Inc. v. Fisher, 523 N.W.2d 87, 89 (S.D. 1994) ("If a buyer has been defrauded, he has an election of remedies available to him. He can either rescind the contract, restore what he received and recover back what he paid, or he may affirm the agreement and sue for monetary damages.").

Inc., 462 N.W.2d 885, 888 (S.D.1990); Smith v. Hermsen, 572 N.W.2d 835, 840 (S.D. 1997) ("[T]he equitable relief of rescission should not be granted unless the evidence is clear and convincing.") (citations omitted).

Where rescission is sought due to alleged fraud, "[t]he burden is upon the party seeking rescission to produce evidence which is clear and convincing that the transaction was the result of mistake or fraud. This evidence must clearly and convincingly establish that there was, either expressly or by a course of conduct, misrepresentation or concealment of material facts." Scotland Vet Supply v. ABA Recovery Service, Inc., 583 N.W.2d 834, 837 (S.D. 1998) (quoting Northwestern Pub. Serv. Co. v. Chicago & N.W. Ry. Co., 210 N.W.2d 158, 161 (1973)). Because the existing record does not support a finding of fraud by clear and convincing evidence, rescission is not warranted and the Staff's recommendation concerning the Scotts, Helmbrecht, Hoffman, and Jensen contracts should be rejected.

1. There Is No Evidence that Mulder Engaged in Actual Fraud

The principle of fraud in South Dakota is well-established by both statute and case law. SDCL 53-4-5 defines actual fraud in relation to contracts as the making of an affirmative misrepresentation, or the suppression of information that one has a duty to disclose, with the "intent to deceive another party thereto or to induce him to enter into the contract." Thus, to establish fraud under SDCL 53-4-5, the party alleging fraud must show that the alleged wrongdoer spoke, or failed to speak when bound to do so, with a specific intent to deceive or defraud the other party to the contract. See Engels v. Ranger

Bar, Inc., 604 N.W.2d 241, 245 (S.D. 2000); Smith, 572 N.W.2d at 839. Further, the alleging party must establish that the alleged wrongdoer possessed the intent to deceive *at the time that he made the purported misrepresentations*. See Famous Brands, Inc. v. David Sherman Corp., 814 F.2d 517, 522 (8th Cir. 1987) (applying South Dakota law, holding that plaintiff failed to establish fraud claim because plaintiff failed to show that defendant had an intent to defraud plaintiff at the time defendant made alleged misrepresentations); Garrett v. BankWest, Inc., 459 N.W.2d 833, 847 (S.D. 1990) (granting summary judgment in favor of defendant where plaintiff failed to produce evidence that defendant possessed contemporaneous intent to deceive plaintiff).

Applying these principles to the existing record, the Staff's recommendation that the Scotts, Helmbrecht, and Hoffman contracts are voidable for fraud is erroneous because there is no evidence that Mulder acted with a contemporaneous intent to deceive. Before discussing this decisive issue, however, the scope of the conduct at issue must be clarified.

The Staff attempts to impute to Mulder the statements of Marquardt and the silence of Langley at the August 24 informational meeting. Such imputation is improper for two reasons. First, there is no evidence that Marquardt had actual or apparent authority to speak for Mulder. As for actual authority, there is no testimony that Mulder asked Marquardt to attend the meeting on his behalf, only speculation by the Scotts and Hoffman that they though Mulder would be at the meeting. (Tr. 78.) As for apparent authority, such authority can arise only from manifestations of the principal (Mulder) to

the third party (the farmers); the manifestations of the purported agent (Marquardt) to a third party (the farmers) cannot give rise to apparent authority on behalf of the agent. See Dahl v. Sittner, 429 N.W.2d 458, 462 (S.D. 1988); SDCL 59-3-3. Accordingly, because there is no evidence that Mulder ever told or otherwise indicated to the Scotts, Hoffman, or any other farmer at the August 24 meeting that Marquardt was acting on Mulder's behalf, Marquardt cannot be said to have been vested with apparent authority to act for Mulder. Thus, because Marquardt did not have authority, either actual or apparent, to speak for Mulder, Mulder cannot be held responsible for any statements made by Marquardt. See Dahl, 429 N.W.2d at 462 (a principal may only be held liable for the fraud of an agent acting within the scope of his or her actual or apparent authority).

Second, even if Marquardt was accorded actual or apparent authority, the record does not support a finding that any of his statements regarding the financial condition constituted misrepresentations under SDCL 53-4-5. To qualify as a misrepresentation, the party making the statement must believe that the statement being made is not true. SDCL 53-4-5(1), (2). Here, there is no evidence that Marquardt did not truly believe that the McCook elevator was in good financial condition on August 24, 2000. Indeed, just months before Marquardt made these statements, both the Commission and the bonding company concluded that the elevator was financially sound. (Tr. at 83-85.) Marquardt may have looked at the same information reviewed by the Commission and the bonding company and, like them, concluded that he could safely vouch for the elevator's financial

stability. Moreover, there is no evidence in the record even as it exists now that the McCook elevator was in financial trouble in August of 2000.

For similar reasons, the silence of Langley does not constitute a misrepresentation under SDCL 53-4-5. Jeff Scott testified that Langley "was kind of kept in the dark by Mulder most of the time, so he never really knew what was happening." (Tr. at 62.) Likewise, Alvin Scott testified that Langley called the August 24 meeting because he had some of the same questions that the farmers had regarding the financial condition of the elevator. (Tr. at 54.) Langley's silence thus was not "the suppression of that which is true by one having knowledge or belief of the fact." SDCL 53-4-5. Langley simply had no knowledge regarding the financial status of the McCook elevator prior to August 24, 2000. Accordingly, Langley's silence at the August 24 meeting does not provide a basis for fraud against Mulder.

In light of the foregoing, the only statements that can possibly constitute misrepresentations attributable to Mulder are those Mulder allegedly made to the Scotts and Hoffman concerning his inability to issue warehouse receipts and to Hoffman and Jensen not to worry about certain language in the delayed pricing contract. These statements, however, cannot support a finding of actual fraud even if they constitute misrepresentations because there is no evidence that at the time Mulder made these statements he did not fully intend to pay for the grain delivered pursuant to these contracts. Indeed, the only evidence even suggesting that Mulder did not intend to pay for this grain is the fact that he ultimately never did so, and this evidence is insufficient,

as a matter of law, to show contemporaneous intent. See Famous Brands, Inc., 814 F.2d at 522; Garrett, 459 N.W.2d at 847. For example, the court in Famous Brands dismissed the plaintiff's fraud claim for failure to establish contemporaneous intent to deceive because the only evidence of deceitful intent introduced was that the defendant ultimately failed to follow through on his original promise. See 814 F.2d at 519-20, 522.[7]

Further, there is nothing in the delayed pricing or deferred payment contracts themselves that suggest that Mulder did not intend to perform his payment obligation under such contracts. Indeed, delayed pricing and deferred payment contracts are both common in the agricultural industry and beneficial to farmers. (Affidavit of Dr. Richard C. Shane, attached as Exhibit 1.) Dr. Richard Shane, Chairman of the Economics Department at South Dakota State University and a specialist in grain marketing, stated that delayed pricing and deferred payment contracts save producers the storage charges and load out charges that are often incurred under storage contracts. (Shane Aff. at ¶¶ 1, 2, 7(c),(e),(f).) In addition, deferred payment contracts offer farmers substantial tax-saving possibilities, allowing them to defer some of their grain income until the following year in order to reduce their overall tax liability. (Shane Aff. at ¶ 7(f).) Thus, there is nothing inherently improper or fraudulent about the delayed pricing or deferred

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[7]Coincidentally, even if the statements and silence of Marquardt and Langley, respectively, were misrepresentations and could be imputed to Mulder, actual fraud still would not be established. The fact that statements were made vouching for the financial stability of the McCook elevator merely shows a desire to increase the business and expectant profitability of the elevator, not a desire to defraud the transacting farmers.

payment contracts, and Mulder's use of such contracts does not suggest that he acted with a fraudulent intent at the time that he promoted such contracts.

The Staff attempts to allude the lack of any contemporaneous intent to deceive by asserting that Mulder violated SDCL 49-43-11 by not accepting grain for storage and that this alleged violation, on its own accord, establishes fraud. To support this assertion, the Staff relies on Johnson v. Berry, 104 N.W. 1114 (S.D. 1905). Johnson, however, is inapposite to the present case.

In Johnson, the Court struck down a contract between a steam thresher and a grain owner because the steam thresher had not obtained a bond required of all steam threshers under state law. Id. at 1114-15. The Court reasoned that because the unbonded thresher could not provide the services contemplated by the contract without violating state law, the consideration was unlawful and the contract was invalid. Id. at 1115. Here, in contract, Mulder can perform his duty under the delayed pricing and deferred payment contracts – paying for delivered grain – without violating state law. Thus, the consideration promised by McCook under these contracts is not unlawful, as was the consideration in Johnson. The fact that Mulder may have violated a law that is unrelated to the delayed pricing and deferred payment contracts does not somehow render these contracts invalid.

In sum, there is no evidence that Mulder did not intend to pay for the delivered grain at the time the Scotts, Helmbrecht, Hoffman, and Jensen executed the delayed

pricing or deferred payment contracts. Accordingly, the record does not support a finding of actual fraud as grounds for rescission of these contracts.

2. There Is No Evidence of Constructive Fraud

SDCL 53-4-6 defines constructive fraud as "any breach of duty which, without actually fraudulent intent, gains an advantage to the person in fault or anyone claiming under him, by misleading another to his prejudice. . ." The South Dakota Supreme Court recently considered the application of this provision in Sejnoha v. City of Yankton, 622 N.W.2d 735, 740 (S.D. 2001). In Sejnoha, the Court held that a claim of constructive fraud cannot arise from an arms-length business transaction because the parties simply have no recognized duty towards one another, as is required to support a claim under SDCL 53-4-6. Id. Accordingly, because the Scotts, Helmbrecht, Hoffman, and Jensen each were transacting at arms-length with Mulder, Mulder had no duty to them for purposes of SDCL 53-4-6. Thus, the Staff's recommendation of rescission on the basis of fraud, either actual or constructive, is without merit.

B. The Delayed Pricing and Deferred Payment Contracts are Not Avoidable for Failure of Consideration or Prejudice to the Public Interest

The Staff alternatively contends that rescission is proper as to all of the delayed pricing and deferred payment contracts (not just those of the Scotts, Helmbrecht, Hoffman, and Jensen) under SDCL 21-12-1, which sets forth certain statutory grounds for contract rescission. First, they assert that rescission is warranted because the contracts suffer from failure of consideration. See SDCL 21-12-1(1) (incorporating SDCL 53-11-2). Second, they argue that rescission is proper because the public interest

would be prejudiced by allowing the contracts to stand. See SDCL 21-12-1(3). This argument is premised on the allegation that these contracts were procured by fraud.

As discussed in detail below, the Staff's analysis fails as a matter of fact and law. The factual record and governing case law do not support the remedy of rescission in this case. Further, even if the recorded supported the rescission of the contracts of the Scotts, Helmbrecht, Hoffman, and Jensen, there is no evidence whatsoever to justify the rescission of the other delayed pricing and deferred payment contracts.

1. The Contracts are Not Rescindable for Failure of Consideration

The delayed pricing and deferred payment contracts are not rescindable for failure of consideration. The general rule regarding failure of consideration and rescission is that "[f]ailure of consideration . . . is not generally considered a sufficient ground for equitable cancellation of an instrument in the absence of some additional circumstance independently justifying that relief, such as fraud, duress or mistake." 13 Am.Jur.2d § 19, at 364. In Olson v. Opp, 182 N.W.2d 220 (S.D. 1970), the South Dakota Supreme Court adopted this general rule, stating:

> It is the general rule that mere inadequacy of consideration or improvidence will not of itself be sufficient to warrant the rescission of a contract. 12 C.J.S. Cancellation of Instruments s 23; Orr v. Allen, 45 N.W.2d 737 (1951). In Dusek v. Reese, 119 N.W.2d 656 (1963), it was indicated that inadequacy of consideration to justify rescission must be accompanied by other inequitable incidents. . . When the accompanying incidents are inequitable and show bad faith, such as concealments, misrepresentations, undue advantage, oppression on the part of the one who obtains the benefit, or ignorance, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like, on the part of the other, these circumstances, combined with inadequacy of price, may easily induce a court to grant relief, defensive or affirmative.

Id. at 222. The Court then held that rescission was inappropriate in that case because the party seeking to rescind had shown no conduct on behalf of the other party tipping the equities in the rescinding party's favor. Id.

American State Bank v. Cwach, 187 N.W.2d 107 (S.D. 1971), the case relied upon by the Staff to support their rescission claim, is consistent with this general rule. In Cwach, the bank induced the plaintiff to execute promissory notes by promising her that it would extend her additional credit and would not foreclose on the mortgage for a time. Id. at 109. The bank then failed to extend further credit to the plaintiff and almost immediately foreclosed on the mortgage. Id. Thus, as in Olson, the equities were clearly in favor of the party seeking to rescind the contract.

In the present situation, in contrast, the equities between the two parties in dispute – the farmers and Home Federal – are equal. Even assuming that Mulder engaged in some form of fraud in relation to these contracts, Home Federal had no knowledge of any such misconduct. Indeed, Home Federal, like the farmers, stands to be harmed significantly by Mulder's actions. Thus, because the equities in favor of the party seeking to rescind are no greater than those of the party that would be harmed by such rescission, the equitable remedy of rescission is not proper in this case.

2. Allowing the Contracts to Stand Will Not Prejudice the Public Interest

The Staff also asserts that the public interest will be prejudiced by the enforcement of the delayed pricing and deferred payment contracts because such enforcement will cause producers to lose confidence in the state-regulated grain storage and warehouse

system. The Staff, however, fails to explain how the enforcement of a handful of contracts that are both common in the agricultural industry and generally beneficial to producers could have such far-reaching and dilatory effects, particularly where nearly all of the farmers that signed the contracts were fully aware of the advantages and disadvantages of a delayed pricing or deferred payment contract, as opposed to a storage contract. Thus, there is not clear and convincing evidence to support rescission on public policy grounds. See Mattson, 591 N.W.2d at 818.

Further, to the extent that the Staff and the Scotts seek to use the "public interest" provision of SDCL 21-12-1(3) to once again argue that rescission is warranted due to certain acts of fraud allegedly perpetrated by Mulder, rescission is improper. As indicated above, where rescission is sought due to alleged fraud, "[t]he burden is upon the party seeking rescission to produce evidence which is clear and convincing that the transaction was the result of mistake or fraud." Scotland Vet Supply, 583 N.W.2d at 837 (citation omitted). Also as established above, there is insufficient facts to establish a prima facie case of fraud, much less support a finding of fraud by clear and convincing evidence.

3. There Is No Evidence to Support Rescission of the Farmers National, Leroy Klockman, Pat Kappenman, Larry Weber, Leonard Buehner, and Helen Eide Contracts

Even if the delayed pricing contracts of the Scotts, Helmbrecht, Hoffman, and Jensen are for some reason voidable, there is absolutely no factual basis in the record to support the rescission of the delayed pricing or deferred payment contracts of Farmers

National, Leroy Klockman, Pat Kappenman, Larry Weber, Leonard Buehner, or Helen Eide. Indeed, the Staff admits that "not all producers in this category [those producers signing delayed pricing and deferred payment contracts] were deceived by Mr. Mulder." Nonetheless, the Staff recommends that *all* delayed pricing and deferred payment contracts be rescinded, even though some of the farmers that entered into these contracts may have specifically requested such a contract.

The law of rescission is clear in South Dakota: a contract may not be rescinded unless there is clear and convincing to justify this extraordinary remedy. See Smith v. Hermsen, 572 N.W.2d at 840. Here, there is no evidence to support the rescission of the delayed pricing or deferred payment contracts of Farmers National, Leroy Klockman, Pat Kappenman, Larry Weber, Leonard Buehner, and Helen Eide. Accordingly, rescission is improper as to these contracts.

C. Home Federal's Security Interest in the Grain Delivered Pursuant to the Delayed Pricing or Deferred Payment Contracts Persists Even if the Contracts are Voidable

Finally, even if the delayed pricing and deferred payment contracts executed by the Scotts, Helmbrecht, Hoffman, and Jensen are voidable and may be rescinded for fraud, failure of consideration, or policy reasons, such rescission does not retroactively destroy Home Federal's security interest in the grain delivered pursuant to these contracts.

It is well-established that where a debtor possesses voidable title to goods, such as where the debtor obtains the goods through fraud or by a check that is later dishonored,

the debtor possesses a sufficient interest in the goods to support the attachment of a security interest in such goods, provided that the secured party is a good faith purchaser for value. See, e.g., Interfirst Bank of Abilene, N.A. v. Lull, Mfg., 778 F.2d 228, 233 (5th Cir. 1985) (debtor had sufficient interest in forklifts to support attachment of secured party's security interest in the forklifts, despite debtor's failure to ultimately pay seller for the forklifts); Chrysler Credit Corp. v. Ferguson Pontiac-GMC, 853 P.2d 1282, 1284 (Okl.App. 1993) (debtor who purchased vehicles with dishonored checks had voidable title in vehicles, which was sufficient to permit the attachment of a security interest in the vehicles on behalf of secured party who qualified as a good faith purchaser for value); National Pawn Brokers v. Osterman, Inc., 500 N.W.2d 407, 411 (Wis.App. 1993) (debtor that received property in exchange for dishonored checks held voidable title to property and thus had sufficient rights in the property to allow secured party's security interest to attach to property); Dick Hatfield Chev., Inc. v. Bob Watson Motors, Inc., 699 P.2d 566, 571-72 (Kan.App. 1985) (same); Central National Bank v. Worden-Martin, 413 N.E.2d 539, 541-42 (Ill.App. 1980) (same); Swets Motor Sales, Inc. v. Pruisner, 236 N.W.2d 299, 304-05 (Iowa 1985) (same); Guy Martin Buick Inc. v. Colorado Springs National Bank, 519 P.2d 354, 358-59 (Col. 1974) (en banc) (same).[8]

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[8]In Continental Grain Co. v. Heritage Bank, 548 N.W.2d 507 (S.D. 1996), the South Dakota Supreme Court was faced with a case factually similar to these cases, except that certain branding statutes were also implicated. The court remanded the case to the district court to resolve, among other things, facts surrounding the branding statutes and, based on these facts, whether UCC Article 9 was overridden by such laws. Id. at 511. In a special concurrence, however, Justice Konenkamp opined that Article 9 trumped the branding laws. Id. at 512 (Konenkamp, J., concurring). Justice Konenkamp then applied the analysis employed in the line of cases cited above and concluded that the

The New Mexico Supreme Court's decision in O'Brien v. Chandler, 765 P.2d 1165 (N.M. 1988), effectively illustrates this rule in a case analogous to the present one. In O'Brien, a cattle seller delivered cattle to a debtor in exchange for the debtor's promise to pay for the cattle at a later time. Id. at 1166. The debtor then obtained a loan from a bank and pledged the cattle as collateral for the loan. Id. The bank duly perfected its security interest in the cattle. Id. After the debtor refused to tender payment to the seller for the cattle, the dealer sued to recover the cattle. Id. The bank objected, asserting that it had a security interest in the cattle and that such interest was superior to any interest in the cattle held by the seller. Id.

The court ruled in favor of the bank, concluding that it had a perfected security interest in the cattle. Id. at 1168. In so holding, the court specifically rejected the seller's assertion that the debtor did not possess sufficient rights in the cattle for the bank's security interest to attach. Id. To reach this result, the court (just as the courts in the cases cited in the preceding paragraph) relied upon UCC Section 2-403(1), which states:

> A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though: . . . (b) the delivery was in exchange for a check which is later dishonored, or . . . (d) the delivery was procured through fraud punishable as larcenous under the criminal law.

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secured party's security interest in the cattle at issue should trump all other interests, even that of the seller who never received payment for the cattle, if it could be shown that the secured party acted in good faith. Id. at 512-13 (Konenkamp, J., concurring).

See SDCL 57A-2-403(1). Section 2-403(1) thus sets forth the general rule that a debtor cannot transfer an interest in goods greater than that which he possesses. Section 2-403(1), however, also carves out an exception to this rule for situations where the original owner of the goods enters into a "transaction of purchase" with the debtor, even though the debtor obtained the goods from the owner through fraud and thus holds only voidable title to the goods. In such situations, a "good faith purchaser for value" takes the subject goods free of the debtor-transferor's defective voidable title.

Applying Section 2-403(1), the O'Brien court first found that the debtor held voidable title to the cattle pursuant to Section 2-403(1)(d), because the debtor had procured delivery of the cattle through fraud. See O'Brien, 765 P.2d at 1166. Next, the court found that the bank qualified as a "good faith purchaser for value" pursuant to this section. The court noted that the bank, like all secured parties, qualified as a "purchaser" for purposes of Section 2-403(1) under Section 1-201(32)'s broad definition of "purchase." See 57A-1-201(32) ("'Purchase' includes taking by sale, discount, negotiation, mortgage, pledge, lien . . . or any other voluntary transaction creating an interest in property.") Further, the court found that the bank had extended value to the debtor for its security interest and that there was no evidence that the bank acted in bad faith under Section 1-201(19). See 57A-1-201(19) (describing "good faith" as "honesty in fact in the conduct of the transaction concerned").

Having found that the bank was a good faith purchaser for value, the court concluded that the bank took free of the debtor's voidable title and possessed a perfected security interest in the subject cattle. Id. at 1168-69. The court stated:

> Because the goods were delivered to [the debtor] under the contract, he had the power to create a security interest in a third party. This interest attached even though [the debtor] was found to have committed a fraud against [the seller] and thus only had voidable title to the cattle. Section 2-403(1) allows certain transferors to pass greater title than they themselves claim. Section 2-403(1) gives good faith purchasers of even fraudulent buyer-transferors greater rights than the defrauded seller can assert. This harsh rule is designed to promote the greatest range of freedom possible to commercial vendors and purchasers.

Id. at 1168 (citations omitted).

The same analysis applies in this case and compels the conclusion that Home Federal has a perfected security interest in the grain delivered under the delayed pricing and deferred payment contracts, even assuming that these contracts are for some reason voidable. The debtor, McCook, possessed voidable title to the grain pursuant to SDCL 57-2-403(1)(d), and Home Federal qualifies as a good faith purchaser for value under SDCL 57-2-403(1). Home Federal is a "purchaser" under SDCL 57A-1-201(32); Home Federal gave "value" for its security interest by extending a loan to McCook; and there is no evidence that Home Federal acted in bad faith in obtaining a security interest from McCook. In fact, Home Federal retained this security interest long before Mulder's alleged fraud occurred and a bank's monitoring of a debtor's account is insufficient to support a finding of bad faith. See Dick Hatfield Chev., 699 P.2d at 572.

Furthermore, once Home Federal's security interest attached, it could not subsequently "unattach" due to the alleged fraud of McCook. The authority discussed above both implicitly and explicitly rejects such a notion. See, e.g., Interfirst Bank of Abilene; 778 F.2d at 233 ("[T]he whole point of Article Nine is the continuity of perfected security interests once they have properly attached, despite subsequent loss of control or possession of the collateral by debtor."); Swets, 236 N.W.2d at 304-305 (rejecting seller's assertion that title "reverted" to it when the debtor's payment checks were dishonored). Accordingly, even if the delayed pricing and deferred payment contracts executed by the Scotts, Helmbrecht, Hoffman, and Jensen may be rescinded, such rescission has no effect upon Home Federal's security interest in the grain subject to these contracts.[9]

CONCLUSION

For the foregoing reasons, Home Federal submits that the delayed pricing and deferred payment contracts between McCook and various farmers claiming an interest in the McCook elevator grain are valid and not subject to rescission. Further, even if these contracts, or some of them, are voidable, Home Federal's security interest in the grain delivered under such contracts persists and entitles Home Federal to such grain.

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[9]It should be noted that although the rescission of the delayed pricing and deferred payment contracts would have no effect upon Home Federal's security interest in the McCook grain, this does not necessarily mean that such rescission does not otherwise transform the delayed pricing and deferred payment contracts into storage contracts. If this is the case, the farmers that executed delayed pricing or deferred payment contracts may be eligible to recover on the warehouse bond. See Tucker v. Durham, 686 S.W.2d 402, 404-05 (Ark. 1985).

Accordingly, Home Federal requests that the Commission find that Home Federal possesses a priority interest in the grain delivered under these contracts and is entitled to such grain or its proceeds.

Dated this 29th day of June, 2001.

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2001, I sent by mail, postage prepaid, a true and correct copy of the foregoing Brief to the following:

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One of the Attorneys for Home Federal Savings Bank

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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	GD01-001 (CIV.01-023)
IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC., D/B/A McCOOK FEED AND FERTILIZER	**AFFIDAVIT OF DR. RICHARD C. SHANE**

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STATE OF SOUTH DAKOTA)
: SS
COUNTY OF BROOKINGS)

Richard C. Shane, being first duly sworn upon oath, states as follows:

1. My name is Richard C. Shane. I am the Chairman of the Economic Department at South Dakota State University ("SDSU"), Brookings, South Dakota.

2. I have a Ph.D. in Agricultural Economics from Washington University, Pullman, Washington, and have been a professor in the Economics Department at SDSU since 1977, specializing in Agricultural Economics. (My vitae is attached as Exhibit 1 and incorporated herein by reference.)

3. I have written extensively on various topics in the Agricultural field including the buying, selling, and storage of grain, and various marketing strategies. (A partial list of articles and publications is included in Exhibit 1, attached and incorporated herein by reference.)

4. I prepare and present a weekly half hour public TV program entitled "Midwest Market Analysis" which includes commodity market analysis and other special

reports on agricultural topics.

5. Producers of grain have several marketing alternatives available to them before and after harvest. These alternatives for the pricing and sale of grain are made possible through grain elevator use of futures and options contracts.

6. The farmer may sell grain off the combine, store the crop for later delivery or deliver the crop. Pricing and/or payment for the grain happens at various times, at delivery or in the future, depending on the type of contract initiated by the farmer. After harvest, cash forward contracts (CFC), basis contracts (BC) hedged-to-arrive (H-T-A) contracts, minimum price contracts (MPC), delayed price (DP) contracts, and deferred payment contracts are some of the alternatives offered by grain elevators. The best contract for the farmer to use largely depends on the current and expected cash price, basis, and futures price and varies from year to year.

7. The first decision the farmer must make is to price or hold grain. The price can be set by cash sale, CFC, or hedging. If the farmer decides not to price grain, he must choose the most appropriate method to benefit from expected higher prices in the future. The farmer may store grain on the farm or in a commercial storage facility (warehouse) or use deferred pricing contracts offered by grain buyers. Deferred pricing arrangements allow farmers to price grain after delivery or some time after the title of the grain has passed to the buyer. Deferred pricing contracts take on two basic forms: a basis contract and a delayed pricing contract. A short discussion of each pricing method follows:

(a) Cash sale – the grain is delivered to the buyer and the seller is paid for the

quantity and quality of grain delivered. The farmer incurs no storage costs and has use of the grains' cash flow value which can be invested to draw interest or used to pay off loans and stop interest from accruing. The elevator takes title to the grain and moves it through marketing channels.

(b) On-Farm Storage – the grain is dried to 13.5% moisture (can deliver to elevator at 15 to15.5%) and placed in storage. The farmer must maintain grain quality and is liable for shrinkage. The farmer may hold the grain for cash price improvement, hedge the grain (sell futures), cash forward contract or HTA contract with the elevator. The farmer bears the risk of a price decline and interest cost on debt continues to accrue. The farmer must pay for additional handling and bears the risk of not being able to deliver the grain when demanded due to poor weather conditions.

(c) Warehouse/Commercial Storage – the farmer delivers grain to a facility and receives a receipt for a given quantity and quality of grain (13.5% moisture). The farmer usually pays a minimum upfront storage charge of 10 to 12 cents per bushel which is applied to the monthly storage rate of 3 to 4 cents per bushel. If the farmer does not store for several months the upfront charge remains. The farmer may have to pay a load out charge of 5 to 10 cents depending on where the grain is stored. The farmer retains title, and continues to pay interest but the storage facility owner is responsible to maintain the grain. The farmer is at risk if the warehouse owner encounters

financial difficulties and the grain has been moved through marketing channels except to the extent that the loss is fully or partially covered by a bond. Most elevator managers allocate only a portion of their storage capacity to warehousing in order to maintain merchandising flexibility. They use part of their storage capacity to accumulate grain to fill unit train(s) and to meet delivery contracts that they have entered in advance of grain delivery to their facility.

(d) Basis Contract – the farmer delivers grain to the buyer and title passes to the buyer. Basis is set but price will be determined at some time in the future based off of a selected futures contract. The farmer pays no storage but incurs interest cost and a service charge based on elevator costs for futures transactions. If the elevator passes the grain through to fulfill their contracts with buyers or for cash sale, they will replace the grain with futures (buy) as a hedge against price increases that must be paid to the farmer. If the elevator sells the grain, they can use the sales proceeds until the farmer sets the price and is paid for the grain. With basis contracts, farmers are often paid a portion of the expected value of the grain at delivery. If the price goes too low, part of this "advance" payment will have to be repaid to the elevator. If the grain buyer encounters financial difficulties, the farmer may have a low probability of receiving full payment depending on the bonding of the elevator.

(e) Delayed Pricing – the farmer delivers and transfers title to the grain to the buyer/elevator. The farmer is subject to price risk, but they can choose the pricing date at any time within the time frame specified on the contract. A schedule of service charges is part of the contract. Service charges depend on how the elevator handles the grain. If the buyer stores the grain, the service charges may be similar to the buyers storage costs. However, in most cases, elevators move the grain on through the marketing channels and pass the service charges of the terminal back to the producer (usually less than storage). The elevator will also take a long futures position to protect itself against price risk and often passes the cost of futures transactions on to the farmer as part of the service charge. The farmer is at risk if the elevator encounters financial difficulties. Farmer use of marketing alternatives like delayed pricing give them long term flexibility because storage facilities are not built. Once the storage facility is built the farmer incurs storage costs whether they store grain or not.

(f) Deferred Payment Contract – the farmer delivers grain to the elevator and receives a receipt (contract) that specifies quantity and quality of grain. Title passes to the elevator and a price is set for the commodity. Payment or partial payment is deferred to a later date. The elevator moves the grain on through the marketing channels. The interest gained by the elevator offsets many accrued service charges or costs of the farmer. The farmer spreads his cash flow over a longer period of time. Many farmers use this alternative to defer some of their grain income into the next tax year in order to reduce their overall tax liability. The farmer pays no storage unless

it is part of the contract agreement. The farmer is at risk if the elevator encounters financial difficulties except to the extent that a loss is partially or fully covered by a bond.

Dated this 28th day of June, 2001.

Richard C. Shane
Dr. Richard C. Shane

Subscribed and sworn to before me

this 28th day of June, 2001.

Angelia K. Johnson
Notary Public - South Dakota

My Commission Expires: October 1, 2003

VITAE

Richard C. Shane

Personal Data

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South Dakota State University
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Education

B.S., Agricultural Economics, South Dakota State University, Brookings, South Dakota. 1965-1969

M.S., Agricultural Economics. University of Arizona, Tucson, Arizona, 1969-1971

Ph.D., Agricultural Economics, Washington State University, Pullman, Washington, 1974-1977. Degree conferred 1978.

Work Experience

Position	Dates	Job Description	Employer
Department Head, Acting	1996--	Administration	Economics Dept. SDSU
Professor of Economics	1987--1996	Extension 100%--Grain Marketing Specialist	Economics Dept. SDSU
Director: Small Business Institute	1985--1996	Coordinate and supervise student consultant teams working with local business managers. Consulting typically involves business plan and/or marketing plan writing, market research, financial analysis and goal setting.	Economics Dept. SDSU (in co-operation with Small Business Administration)

EXHIBIT 1

Visiting Professor - Poland	March-May 1993	Develop one week "How to Write a Marketing Plan" workshop. Train Polish University and Extension educators to conduct workshops.	Polish-American Extension Project
Associate Professor of Economics	1985-1987	Extension 100%--Grain Marketing Specialist	Economics Dept. SDSU
Associate Professor of Economics	1983-1985	Teaching 100% -- Farm Managment & Agricultural Marketing	Economics Dept. SDSU
Farmer	1979-1989	Actively engaged in livestock farming with a 100-200 head herd of stock cows.	Self
Assistant Professor of Economics	1977-1983	Teaching 30% -- Farm and Ranch Management and Agricultural Marketing, Research 70%	Economics Dept. SDSU
Graduate Research Assistant	1974-1977	Conduct economic analysis of effects of increasing energy prices on Washington's competitive position in eastern U.S. food markets.	Ag Econ Dept. W.S.U.
Officer U.S. Army	1971-1973 1973-1974	Chief, Supply Section Chief, Personnel and Administration Division, Hohenfels, Germany, U. S. Army Training Area	U.S. Army
Graduate Research Assistant	1969-1971	Research the effects of risk and uncertainty on Arizona crop production	Ag Econ Dept U of Arizona
Undergraduate Assistant	1967-1969	Conduct labs and grade exams for Macroeconomics and Farm Management	Economics Dept. SDSU
Farmer	1964-1965	Hard work & high risk	Self/father

Professional Contributions:

Shane, Richard C. "Risk and Diversification in Arizona Crop Farm Production." Unpublished M.S. Thesis, University of Arizona, 1971.

Wildermuth, John, Richard Shane and Russel Gum, "Risk and Diversification in Arizona Crop Farm Planning." Progressive Agriculture in Arizona. 3 Part Series. Vol. XXII, No. 5, 1971; No. 6, 1971; and Vol. XXIV, No. 1, 1972. College of Agriculture, University of Arizona, Tucson, Arizona.

Lee, Chinhook, Norman Whittlesey and Richard Shane. "Potential Impacts of Energy Price Changes on Consumer Food Costs." Paper presented at American Agricultural Economics Association Meetings, Columbus, Ohio August 1975.

Shane, Richard. "An Interregional Analysis of the Effects of Increased Potato Production, Processing and Transportation Factor Input Costs on the U.S. Potato Industry." Unpublished Ph.D. Dissertation, Washington State University, Department of Agricultural Economics, Pullman, 1978.

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Shane, Richard C. "Is Native Range the Best? Some Pasture Management Alternatives," Economics Newsletter No. 139, Economics Department, South Dakota State University, Brookings, August 1979.

Everson, Curtis and Richard Shane. "Irrigated Crop Production Costs: Big Sioux and Vermillion River Basins." FS755. Cooperative Extension Service, South Dakota State University, Brookings, 1980.

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Shane, Richard C. "Irrigation: Who Profits?" South Dakota Farm and Home Research. Vol. 31. No. 3, Agricultural Experiment Station, South Dakota State University, Brookings, 1980.

Shane, Richard C. "Projected Production Costs for Eastern South Dakota Crops: 1980-1990." Ag. Econ. Pamphlet 157, Economics Department, SDSU, Brookings, 1980.

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Shane, Richard C. "Impacts of Inflation on Farm Management." Paper presented at Agri-Business Day, March 30, 1981, Brookings.

Shane, Richard C. "Impact of Irrigation on Regional Economics," Economics Newsletter No. 168, August 6, 1981, Economics Department, SDSU, Brookings.

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Taylor, Donald C. and Richard C. Shane. "The Economics of Irrigated Crop Production in Eastern South Dakota." Economics Research Report 82-3. Economics Department, SDSU, Brookings, 1982.

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Shane, Richard C. "Larger Crops, Diminishing Exports and Growing Stocks." Paper presented at 19th Annual SD Seed Trade Association Meeting. Brookings, SD, Jan. 1986.

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Schmiesing, Brian H. and Richard Shane. "Livestock Producers Should Not Ignore The Food Security Act of 1985," Economics Newsletter No. 233, Economics Department, SDSU, Brookings, March 1986.

Shane, Richard C. "A Primer on Technical Trading Techniques in Grain and Livestock Futures Markets." Presented to Pipestone and Lake Benton, MN Area Farm Marketing Clubs at The Pipestone Area Vocational Technical Institute, August, 1986.

Shane, Richard C. "Outlook 87 -- Corn and Oilseeds." Paper presented at Ag Outlook 87 Conference, Minneapolis, Minnesota, September 8, 1986.

Shane, Richard C. and Wayne Ellingson. "Profitability of Feeding Cull Cows." Prepared for Cow-Calf Day, Brookings, SD, 1986.

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Shane, Richard C. "Wheat Program -- 1987." Paper prepared for Tri-State Livestock News: Farm/Ranch Management Special Edition. Sturgis, SD, November, 1986.

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Shane, Richard C. "Grain Price Outlook Dismal," Economics Commentator No. 300, Economics Department, SDSU, Brookings, July 1991.

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Shane, Richard C. "Free to Succeed--Or Fail, Polish Adjustment to Capitalism." Paper presented at Postgraduate marketing Symposium. Agricultural University, Economics Institute, Lublin, Poland. March 26, 1993.

Shane, Richard C. "Curriculum Review, Interfaculty Study Program in Agri-business Management." Agricultural University, Lublin, Poland. April 6, 1993.

Shane, Richard C. "Review and Evaluation of the Curriculum of Post Graduate Study in Marketing and Agribusiness Management." Agricultural University, Lublin, Poland. April 1993.

Shane, Richard C. "Wheat Price Outlook." Economics Commentator No. 322, Economics Department, SDSU, Brookings, SD. June 16, 1993.

Shane, Richard C. "Marketing Agricultural Products, Training Module Report." Polish American Extension Project Warsaw, Lublin Agricultural university, Lublin, Poland. July 1993.

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OTHER

- Prepares and presents "Midwest Market Analysis", a weekly half-hour public TV program that provides agricultural new, commodity market analysis, and special reports of interest to the agricultural sector. A weekly audience of 20,000 has been estimated for MMA.
- Regularly prepares grain market outlook articles for departmental newsletter (with a subscriber list of 450)
- Author of numerous information bulletins and pamphlets for local and regional dissemination of information to agricultural producers and agribusiness professionals.
- Provides major presentations dealing with grain market outlook at local meetings and regional conferences.
- Provides weekly radio tapes for distribution to radio stations in S.D. and surrounding area.
- Serves as reference source for articles in regional magazines and newspapers.
- Gamma Sigma Delta Extension Award, SDSU, 1995.
- Dean's Award For Excellence, August 29, 1994.
- South Dakota Extension Specialists' Distinguished Series Award, 1992.
- South Dakota Extension Specialists' Merit Award, 1986.
- National Association of Wheat Growers, Excellence in Extension Award, 1990.
- Chaired the North Central Regional Extension Marketing Committee.
- Chaired the South Dakota Extension Specialists Committee.
- Chaired Western Agricultural Economics Association Outstanding Thesis Award Committee.
- Served as a member of numerous regional, state and local committees
- Polish American Extension Project: Marketing Advisor - 3 month assignment in Lublin, Poland. Established a one week workshop, "How To Write an Agribusiness Marketing Plan".

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Shane, Richard and Dwight Adamson. "University Student Expenditures, Impact on Brookings Area.." SDSU Report to the President. November 2000.

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July 2, 2001

By Federal Express

RECEIVED
JUL 03 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., d/b/a McCook Feed & Fertilizer
PUC Docket GD01-001

Gentlemen:

I am enclosing the following original documents:

1. Affidavit of Dr. Richard C. Shane dated June 28, 2001; and

2. Certificate of Service of Affidavit of Dr. Richard C. Shane.

These documents are submitted for your review and filing.

Sincerely,

WOODS, FULLER, SHULTZ & SMITH P.C.

Roger W. Damgaard

Enclosure

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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	:	GD01-001 (CIV.01-023)
IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC., D/B/A McCOOK FEED AND FERTILIZER	:	**CERTIFICATE OF SERVICE OF AFFIDAVIT OF DR. RICHARD C. SHANE**
	:	

o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o

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JUL 03 2001
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UTILITIES COMMISSION

I hereby certify that on the 28th day of June, 2001, I caused to be served by United States first-class mail, postage prepaid, a true and correct copy of the Affidavit of Dr. Richard C. Shane upon all parties identified on the attached Exhibit A at the addresses indicated thereon.

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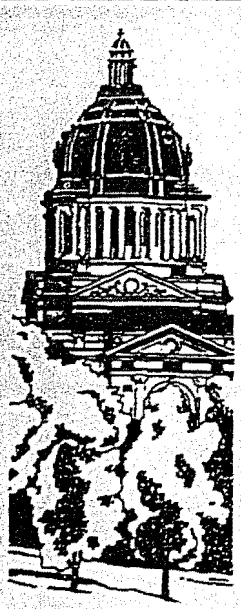

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July 9, 2001

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Re: In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., Inc. dba McCook Feed & Fertlizer
Docket GD01-001

Dear Counsel:

Enclosed each of you will find a copy of Staff's Reply Brief with reference to the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Kelly D. Frazier
Staff Attorney

KDF:dk
Enc.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTLIZIER CO., INC. DBA MCCOOK FEED AND FERTILIZER	))))	GD01-001 (CIV01-023) STAFF'S REPLY BRIEF

Comes now Kelly D. Frazier, staff attorney for the Public Utilities Commission, and in opposition to the Brief of Home Federal Savings Bank states as follows:

A. The Delayed Pricing and Deferred Payment Contracts of the Scotts, Helmbrecht, Hoffman and Jensen may be Rescinded for Fraud

1. Evidence Exists that Mulder Engaged in Actual Fraud

The bank argues that there can be no finding of fraud since there is no evidence that Mulder had fraudulent intent at the time the made the representations to the producers. This argument fails to recognize a simple fact that has been recognized with regularity in South Dakota's case law, that rarely will one find direct evidence of fraudulent intent. Circumstantial evidence will generally be the only evidence of fraudulent intent. See Breneman v. Aune, 44 N.W.2d 219 (1950). Unless Mulder were to take the stand and openly confess to such intent, circumstantial evidence will be the only means of ascertaining what his state of mind was. The bank has chosen to focus on whether there was fraudulent intent at the time Mulder called the August meeting which was essentially run by Marquardt and attended by Mulder's employee, Langley. Staff here encourages the Commission to consider that circumstantial evidence of fraudulent intent is something that is evidenced by a course of conduct. Staff is not conceding that the meeting called by Mulder was not fraud, and staff asserts the focus should also be on the moment when Mulder lied, in violation of criminal law, when refusing to issue warehouse receipts. At the time that Mulder lied, is there evidence that he intended to defraud these producers? By definition there can be no other answer than yes. Fraud as defined by SDCL 53-4-5, states that fraud is a misrepresentation with the "intent to deceive another party thereto or to induce him to enter into the contract." The only question now is to determine whether Mulder intended to

induce these parties to enter into these contracts when he misrepresented that warehouse receipts were not an option. Unless the bank is arguing that he lied for some other reason, circumstantially, staff is at a loss to conclude anything else. The fact that Mulder called the August meeting to entice these producers to bring their grain to his facility is supporting circumstantial evidence of his propensity to behave fraudulently and misrepresent the actual operations of his facility. This is further evidenced by Mulder's statement that he did not have the proper federal license to issue warehouse receipts (T-63-25, T-65-13).

The bank also takes issue to the agency status of Marquardt and Langley regarding the August meeting. Clearly, Langley, acting as Mulder's employee, would have apparent authority as far as these producers were concerned, to speak on behalf of Mulder. It is also clear from the hearing that these producers had a fair deal of faith in Langley, as they refused to impugn any ill will on him, justifying that he was generally soft-spoken and could have been left in the dark by Mulder (T-62-4). The reality is that these producers trusted Langley, acting as an agent for Mulder, a fact not necessarily lost on Mulder.

The producers also had a trust in Marquardt and stated at the hearing that Marquardt's presence was somewhat comforting, in that he had other facilities that were doing fine and proposed some respectable business opportunities that he foresaw in the future (T-68-6). It was not the prospective future profits, however, that convinced these farmers that the Canistota facility was in good shape. It was the assurances that the *current* financial condition of the facility was stable, convincing the producers to bring their grain to this facility (T-72-11). Whether Marquardt had direct knowledge of that fact is not as relevant as the fact that Mulder had every reason in the world to make sure the farmers believed these statements. Unless one assumes that Marquardt just happened to show up and merely make these facts up, one must conclude that he was conveying information relayed to him by Mulder. To say that Mulder did not misrepresent the condition of his facility because he had Marquardt lie for him does not neutralize the lie. The fact that Mulder did not have the character to

convey this lie himself does not absolve him of its untruthfulness. Whether Marquardt knew Mulder had lied to him is somewhat inconsequential. Marquardt was a messenger. He spoke at a meeting called by Mulder. He misrepresented the condition of the facility on Mulder's behalf. These producers were called there by Mulder to receive information regarding the financial status of the facility. They did, and it was false information. Any reasonable person under similar circumstances would have good reason to believe that the information they were receiving was on Mulder's behalf. What if Mulder had mailed the contents of that meeting in a letter to these producers? The bank might then argue that the information was not a misrepresentation because the mailman was not Mulder's agent and did not know whether the letter was the truth or a lie. Such an argument is nonsense.

The bank also posits the novel idea that Mulder did not commit fraud on the basis that, though he may have lied and committed criminal acts in the inducement of these contracts, the contracts are still valid because there is no evidence that he did not intend to pay for the grain. The reality is that Mulder did not pay for the grain. The simple question regarding this argument is whether the potential for a payment, which was never actually made, overrides the fraud and criminality that induced these farmers to sign the contracts in the first place.

The moment Mulder lied and said he could not store the grain, he committed fraud. This fraud was intentional and contemporaneous with the inducement to get these producers to sign the voluntary credit sale contracts. The August meeting held by Mulder is further evidence of his propensity to misrepresent the operations of his facility. So too was his statement that he did not have the proper federal license to issue warehouse receipts.

2. There is Evidence of Constructive Fraud

The bank further cites Sejnoha v. City of Yankton, 622 N.W.2d 735 (2000) for the proposition that there can be no constructive fraud in arms-length business transactions since the parties owe no duty to each other. The bank's reliance on this case is misplaced however, since Sejnoha apparently dealt with the issue of whether there was a fiduciary duty between the complainants and the city. Here, staff is

not arguing that there is a fiduciary duty between Mulder and these parties. Staff's position is that all citizens have a duty to obey the law, and that duty is owed to society at large. Our statutes forbid anyone to commit both constructive and actual fraud. SDCL 49-43-11 makes it a criminal act to refuse to store grain under certain circumstances. Constructive fraud is defined as "*any breach of duty* which, without actually fraudulent intent, gains advantage to the person in fault or anyone claiming under him, by misleading another to his prejudice...." SDCL 53-4-6. When Mulder acted in violation of the statutes of South Dakota law, he breached a duty imposed on all citizens to obey the law and thereby forfeited any rights he would have had under that contract, be it actual or constructive fraud.

B. The Delayed Pricing and Deferred Payment Contracts Are Void for Failure of Consideration and Prejudice to the Public Interests

Olson v. Opp, 182 N.W.2d 220 (1970) stands for the proposition that courts generally look to accompanying inequalities when considering whether rescission is an appropriate remedy. In the case of the Scotts, Helmbrecht, Jensen and Hoffman, staff feels that the previous arguments regarding fraud and illegality sufficiently justify a recommendation to Circuit Court supporting rescission. Staff references the Commission to a review of those arguments.

Tom Jass, on behalf of Farmer's National, Larry Weber, Helen Eide, Leonard Buehner, Pat Kappenman, and Leroy Klockman have not claimed fraud or illegality in their affidavits but are requesting rescission on the basis of failure of consideration. Staff would first note that in Olson, Id. the South Dakota Supreme Court stated that it is merely a "general rule" that courts look for these sorts of inequalities. Dusek v. Reese 119 N.W.2d 656 (1963), also cited by the bank, clarifies the application of rescission by stating:

> "One seeking the rescission of a contract on the ground of the failure, refusal, or inability of the other party to perform it must show that he, for his part, is both able and willing to discharge all the obligations which the contract casts upon him." 3 Bl.Resc. (2d Ed.) § 565, p. 1389.
>
> Furthermore, rescission of a contract is not generally permitted "for a casual, technical, or unimportant breach or failure of performance, but only for a breach so substantial as to tend to defeat the very object of the contract."

There can be no doubt that these producers have shown a willingness to discharge their obligations under the contracts. They have delivered their grain. It can not be doubted that there was a complete lack of compensation for the grain. This is a breach so substantial that it does defeat the very object of the contract.

As for other inequalities, one must consider the atmosphere in which these contracts were entered. Canistota and the surrounding area are primarily rural. It is common knowledge to the farmers who testified that there was no manager at McCook, no bookkeeper, and the financial status of the elevator was questionable. When Mulder convinced these producers that his facility was stable, the benefits of that deception could clearly move beyond those who attended the meeting. Alvin Scott stated that one of the reasons he brought grain to the elevator was his motivation to support his local community (T-55-9). This mentality is not uncommon. The question is whether public policy should support this type of mentality. When other farmers saw people bringing in grain or when they sat at the local coffee shop discussing what they had heard, the producers in the community came to believe that the elevator was a safe place to put their grain. The ripple effect of Mulder's misrepresentations manipulated these local loyalties which lie at the heart of these contracts. There was a complete lack of consideration for the grain they gave him, which defeated the very object of the contracts. Statutory law and case law support rescission, and public policy should condemn the air of validity Mulder created in the community through his misrepresentations.

C. Home Federal's Security Interest in the Grain Delivered Pursuant to the Delayed Pricing and Deferred Payment Contracts Does Not Persist Because the Contracts are Void, not merely Voidable.

The cases cited by the bank in this section rely on the distinction between contracts that are voidable as opposed to void. "A void contract is without legal effect in that the law neither gives remedy for its breach nor recognizes any duty of performance by a promisor. Restatement (Second) of Contracts § 7, comment a. Therefore, the term "void contract" is a misnomer because if an agreement

is void, at its genesis, no contract (void or otherwise) was ever created. See J. Calamari & J. Perillo, The Law of Contracts § 1-11 (2d ed. 1977). First State Bank V. Hylan, 399 N.W.2d 894 (S. Ct. 1987). Black's Law Dictionary (5th Ed.) defines a voidable contract as "one which is void as to the wrongdoer, but not void as to the wronged party, unless he elects to so treat it." The distinction here is that if a contract is declared void, it is as if the contract never existed. This being the case, there could be no contract to transfer title to the grain to Mulder. As a result, the security interest of the bank would not attach.

Staff here merely refers to the argument made in the previous brief and reiterates that upon rescission, a contract is voided. "It is a well recognized rule of contract law that once a party rescinds a contract...the contract is extinguished and there is no longer any right of recovery under the contract provisions." S&S Trucking v. Whitewood Motors, Inc., 346 N.W.2d 297 (S.D. 1984), citing Koch v. Han-Shire Investments, Inc., 140 N.W.2d 55 (Minn. 1966). Stated more concisely by the Nebraska Supreme Court, "Rescission entails the annulling, abrogation, or unmaking of a contract and the placing of the parties to it in the status quo. Wilson v. Misko, 508 N.W.2d 238 (Neb. 1993). ... 'A 'rescission' amounts to the unmaking of a contract, or an undoing of it from the very beginning, and not merely a termination...' Black's Law Dictionary (6th Ed.) at 1306."

Given this status of the law, the line of reasoning in the bank's brief in this regard is not on point, as it begins with the assumption that these contracts are merely voidable. Staff here urges the Commission to recommend to Circuit Court that these contracts be rescinded and rendered void.

1. Specifically as to the Claims of the Scotts', Helmbrecht, Jensen and Hoffman.

These parties have the strongest argument for rescission. The August meeting called by Mulder, his illegal behavior in the inducement of the contracts, combined with his misrepresentations regarding whether the federal government would permit him to issue warehouse receipts, all weigh heavily in favor of rescission or a voiding on behalf of public policy. Staff recommends that the Commission recommend to the Circuit Court that no party should be permitted to benefit from a contract induced by

illegality. In the alternative staff recommends that the Commission consider these contracts voidable for fraud and misrepresentations. See Ivory v. Reserve Life Ins. Co., 101 N.W.2d 517 (S.D. 1960), where the court ruled that where a party is induced to enter a contract by means of fraud or material misrepresentation, the transaction is voidable. This would mean that the bank's security interest in the grain would attach and these claimants would not have any claim against the inventory. Their contracts would revert to open storage, which would permit recovery against the warehouseman's bond, which appears may not be exhausted by the present claims.

2. All Other Claimants With Delayed Pricing or Deferred Payments Contracts.

Staff here merely refers the Commission to the previous brief and argues that lack of consideration has consistently been held as grounds for permitting rescission of a contract, which would render the contracts void. In the absence of some finding of fraud or misrepresentation these parties would have no recovery under the inventory or the bond and would receive nothing.

V. CONCLUSION

For the foregoing reasons, staff hereby prays the Commission make the above recommendations to the Circuit Court.

Respectfully submitted this 9th day of July, 2001.

Kelly D. Frazier
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Ave.
Pierre, SD 57501-5070
(605) 733-3201

CERTIFICATE OF SERVICE

I hereby certify that copies of Staff's Reply Brief were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 9th day of July, 2001.

Mr. Mike C. Fink
Attorney at Law
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Mr. Roger W. Damgaard
Attorney at Law
Woods, Fuller, Schultz & Smith
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Mr. Michael D. Stevens
Attorney at Law
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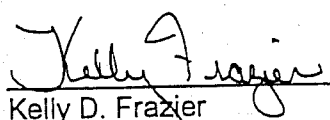
Yankton, SD 57078



Kelly D. Frazier
Staff Attorney
South Dakota Public Utilities Commission
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Debra Elofson
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Christopher W. Downs
Terry Emerson
Michele M. Farris
Marlette Fischbach
Heather K. Forney
Kelly D. Frazier
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Mary Healy
Lisa Hull
Dave Jacobson
Amy Kayser
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

July 10, 2001

Mr. Mike C. Fink
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Attorney at Law
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P. O. Box 753
Yankton, SD 57078

Re: In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co., Inc. dba McCook Feed & Fertlizer
Docket GD01-001

Dear Counsel:

We sent each of you a copy of Staff's Reply Brief in the above captioned matter on July 9, 2001. This morning it was noted that a cite did not get inserted into the fourth page of the Brief. Therefore, enclosed you will find a corrected fourth page. Please remove the fourth page of the Brief we sent you on July 9, 2001, and replace it with the enclosed page.

Thank you.

Very truly yours,

Kelly D. Frazier
Staff Attorney

KDF:dk
Enc.

BJORKMAN & FINK, P.C.
LAWYERS
304 MAIN AVENUE, P.O. BOX 444
BRIDGEWATER, SOUTH DAKOTA 57319-0444
TELEPHONE (605) 729-2552
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TIMOTHY W. BJORKMAN
MIKE C. FINK

July 10, 2001

Ms. Debra Elofson
Executive Director-PUC
500 E. Capitol
Pierre, South Dakota 57501

RE: In the matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co, d/b/a McCook Feed & Fertilizer

Dear Debra:

Enclosed please find the original and five (5) copies of the Reply Brief of Alvin Scott, Jeff Scott and Lucille Helmbrecht in the above matter.

Copies have been sent today, by U.S. Mail, to Rolayne Wiest, Kelly Frazier, Roger Damgaard, and Michael Stevens.

Kind regards.

Very truly yours,

BJORKMAN & FINK, P.C.

Mike C. Fink

Mike C. Fink

Enclosure

c: Ms. Rolayne Wiest
Mr. Kelly Frazier
Mr. Roger Damgaard
Mr. Michael Stevens
Mr. Alvin Scott

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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In the Matter of the Grain Dealer's and Public Warehouse Licenses of Freeman Fertilizer Co, d/b/a McCook Feed & Fertilizer.	:	Docket GD01-001 Reply Brief of Alvin Scott, Jeff Scott and Lucille Helmbrecht

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INTRODUCTION

COME NOW Alvin Scott, Jeff Scott and Lucille Helmbrecht, [Scotts and Helmbrecht] by and through their attorney, Mike C. Fink, and submit their Reply Brief addressing the Brief of Home Federal Savings Bank in Opposition to Staff's Recommendations.

HOME FEDERAL'S STATEMENT OF FACTS

On page two of Home Federal's statement of facts, the bank asserts: "The record does show, however, that McCook was apparently in good financial condition in May and June of 2000." ***This statement is unsupported by the testimony received at the hearing, and certainly cannot be based upon the testimony of any Home Federal witness***:

CHAIRMAN BURG: The question I have is -- you know, I am a little disappointed that we have somebody here that does not know what the history of this loan was because I'm very interested in knowing at what point -- why it got to the point of losing 800,000 dollars, and at what point the bank determined that they were not going to extend anymore. But you've indicated you don't have any of that knowledge, is that right?

MIKE PIERCE: Really no direct firsthand knowledge. The loan officer working on that I believe had a prior commitment, but I -- I guess I do know as far as the business situation, we had business checking accounts with them, and at the point where we were not honoring checks on an account that would not cover them.

CHAIRMAN BURG: What was that point then that you said you were knowledgeable of

that?

MIKE PIERCE: It came about, I would assume, January, February, about that time when I think some of the claimants here notified the PUC of holding NSF checks, et cetera. I can't give you exact dates, no."

Certainly, Home Federal is in the best position to explain the financial condition of McCook Feed & Fertilizer at the time Marquardt made his pitch to the Canistota area farmers on August 24, 2000. However, the record is void of any such explanation.

1. Home Federal's Security Agreement.

Home Federal claims that it's interest in the grain remaining at McCook elevator is not inferior to those claimants in the "open storage" classification. Home Federal's perfected security agreement only relates to ***inventory*** of McCook Feed & Fertilizer. When a farmer stores his grain, the elevator company creates a bailment. See, South Dakota Wheat Growers' Ass'n v. Farmers' Grain Co. of Firesteel, 237 N.W. 723 (S.D. 1931). The elevator company has the right to ship out and sell the grain thus stored, providing it substitutes other grain of like kind and quality. See, State v. Farmers' Elevator Co., 231 N. W. 725. In the Farmers' Elevator case, the North Dakota Court held that if a warehouseman ships out so much of the "common mass" that not enough remains to satisfy the storage tickets, then to the extent of the resulting deficiency there is a conversion. Id.

When McCook Feed & Fertilizer took in grain for storage, it was free to ship that grain, so long as it substituted other grain to replenish the "common mass." To the extent its common mass fell below the amount of grain necessary to cover the storage accounts, McCook Feed & Fertilizer has committed conversion.

In any case, a secured creditor having a security interest in the inventory of the debtor has

no interest in goods that are merely stored with the debtor. See Walter E. Heller & Co. v. Riviana Foods, Inc., 648 F.2d 1059 (CA 5 FLA.); 68A Am Jur 2d Secured Transactions § 74 (1993). The grain being held at McCook Feed & Fertilizer for storage cannot be classified as inventory and is not subject to Home Federal's security agreement.

2. Fraud.

Home Federal argues that there is no evidence that Marquardt had actual or apparent authority to speak for Mulder. This assertion is not supported by the testimony. Prior to the meeting, Langley told the Scotts that Mulder would be there to answer any questions by the farmers. (T. 46). Instead, Marquardt came to the meeting and assured those in attendance that he and Mulder had a business relationship and that McCook Feed & Fertilizer was in good financial standing. (T 46, 64). When Marquardt was called as a witness at the PUC hearing, he refused to testify.

Employee Langley's silence at the meeting conveyed that Marquardt was speaking with actual authority. However, even if Marquardt just happened to show up, without receiving actual authority from Mulder, his presence and ***Langley's silence*** clearly establish apparent authority.

Home Federal further argues that: "To qualify as a misrepresentation, the party making the statement must believe that the statement being made is not true." This statement is incorrect. Actual fraud, pursuant to SDCL § 53-4-5, can arise merely with the suggestion of a facts or positive assertions. SDCL §53-4-5(1&2). Actual fraud can also arise with the ***suppression*** of important information. SDCL §53-4-5(3). Actual fraud can arise even though the party making the statements believes those statements to be true. SDCL §53-4-5(2).

Home Federal asserts that there is no evidence McCook Feed & Fertilizer was in poor

financial standing:

> "Here, there is no evidence that Marquardt did not truly believe that the McCook elevator was in good financial condition on August 24, 2000. Indeed, just months before Marquardt made these statements, both the Commission and the bonding company concluded that the elevator was financially sound. (Tr. at 83-85) Marquardt may have looked at the same information reviewed by the Commission and the bonding company and, like them, concluded that he could safely vouch for the elevator's financial stability. Moreover, there is no evidence in the record even as it exists now that the McCook elevator was in financial trouble in August of 2000."

Of course, Home Federal presented no witnesses at the hearing that could shed light on McCook Feed & Fertilizer's financial condition in August of 2000. Neither has it submitted any affidavits regarding the elevator's financial status. Home Federal has, however, submitted the Affidavit of Dr. Richard C. Shane in support of its argument that the Scotts and other farmers were getting good deals when they entered into "Delayed Price Contracts."

The question is not whether Delayed Price Contracts can be useful tools for grain farmers. The question is whether the Delayed Price Contracts were used, in this case, in an effort to defraud farmers. Rather than presenting evidence which would shed light on this issue, Home Federal argues that there is ***no evidence in the record*** that the elevator was in financial trouble in august of 2000.

Home Federal also argues:

> "The fact that Mulder may have violated a law that is unrelated to the delayed pricing and deferred payment contracts does not somehow render these contracts invalid."

If anything, the fact that Mulder violated the law supports the theory that the Delayed Price Contracts were obtained through fraud. This fact, along with others, suggests Mulder was in financial trouble and needed to improve his financial position by taking title to more grain stocks.

3. Equities.

Home Federal argues that the equities between the two parties - the farmers and Home Federal - are equal. This is not true. Home Federal refused to extend further credit to McCook Feed & Fertilizer after the harvest season was completed and before the "Delayed Price Contracts" came due for payment. Home Federal has chosen to offer nothing regarding the financial condition of McCook Feed & Fertilizer, when it is in the ***best*** position to shed light on that issue. Armed with the record it helped to create, Home Federal argues that there is not enough evidence to show McCook Feed & Fertilizer was having financial difficulty in August of 2000.

4. Public Interest.

Home Federal argues that the public interest will not be prejudiced by the enforcement of the Delayed Price Contracts. For the benefit of the public, the South Dakota legislature enacted statutes regulating the business of grain warehousing. For the benefit of the public, South Dakota law protects citizens who entered into fraudulently induced contracts. Home Federal asks what effect the enforcement of these Delayed Price Contracts would have on the agricultural industry. One effect would be a general distrust of warehousemen in general.

5. Interfirst Bank of Abilene.

According to Home Federal, the Fifth Circuit decision in Interfirst Bank of Abilene, N.A. v. Lull Mfg., 778 F.2d 228, 233 (5th Cir. 1985) and other authority supports its argument that, even if the Delayed Price Contracts are voidable, its security agreement survives. However, a review of these cases leads to a different conclusion than that promoted by Home Federal.

In Lull, the subject bank extended two lines of credit to Evans Co., a distributor of heavy

machinery. Id. The security agreement between bank and distributor granted the bank a security interest in the distributor's inventory, including inventory acquired after the time the agreement was signed. Id. The bank properly filed its UCC statement with the Texas Secretary of State. Then, the distributor incorporated (keeping the same business name, however), without notifying the bank. Id. The Lull Court noted that Texas law did not require the distributor to give such notice to a creditor. Id.

Later, an agent of the distributor ordered a forklift from Lull, a manufacturer of heavy equipment. Id. Distributor then defaulted on its loans and bank repossessed all of distributor's inventory, including the forklift. Id. Lull, with the aid of the distributor, removed the forklift from distributor's property and the Bank brought suit for conversion. Id. Lull argued that its contract with distributor should be set aside because of unilateral mistake -- Lull claimed it thought it was dealing with a sole proprietor and not a corporation. Id.

The Lull Court did hold that the distributor's interest upon delivery of the forklift was great enough to permit attachment of a security interest. Id. However, the Court reached that decision only after first determining the forklift purchase contract valid:

> "At the time when the forklift was delivered, Lull had been doing business regularly (though perhaps ignorantly) with the corporation for over one and a half years. Furthermore, as previously mentioned, the fact of incorporation is immaterial to the contract. Thus, Lull's mistake clearly resulted from what the law characterizes as indifference or inattention. We conclude that Lull's mistake was not of the type to justify setting aside the contract for the sale of the forklift. . . "

The case before this commission is clearly distinguishable from Lull. The Delayed Price Contracts entered into by the Scotts and Helmbrecht are void for the reasons set forth earlier.

Likewise, the case of Chrysler Credit Corp v. Ferguson Pontiac -GMC, 853 P.2d 1282,

1284 (Okl.App. 1993) is not applicable. In Chrysler Credit, the Court of Appeals of Oklahoma was faced with the limited question of whether a secured party whose perfected interest arises from an after-acquired property clause, may qualify as a good faith purchaser for value and have priority over an unpaid seller. Id. The Court was not, however, asked to consider whether the underlying contract was void due to fraud on the part of the purchaser. Id.

Home Federal does not have a perfected security interest in the Scotts' and Helmbrecht's grain at McCook Feed & Fertilizer. Even if it does, as Home Federal acknowledges in its brief, the Scotts and Helmbrecht are still eligible to recover from the warehouse bond.

CONCLUSION

The Scotts and Helmbrecht join staff's argument and pray that the Commission make the recommendations set forth in Staff's Reply Brief.

Dated this 10th day of July, 2001.

BJORKMAN & FINK, P.C.

Mike C. Fink
304 Main PO Box 444
Bridgewater, SD 57319
(605) 729-2552
Attorney for Scotts and Helmbrecht

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served by U.S. Mail, postage prepaid to:

Ms. Rolayne Ailts Wiest
PUC
500 E. Capitol
Pierre, South Dakota 57501

Mr. Kelly D. Frazier
PUC
500 E. Capitol
Pierre, South Dakota 57501

Mr. Roger W. Damgaard
Woods, Fuller, Shultz & Smith
P.O. Box 5027
Sioux Falls, South Dakota 57117

Mr. Michael D. Stevens
Blackburn, Stevens & Miller
P.O. Box 753
Yankton, South Dakota 57078

this 10th day of July, 2001.

Mike C. Fink

Mike C. Fink

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED & FERTILIZER	)))))	ORDER GRANTING MOTIONS TO REOPEN RECORD GD01-001 (Civ. 01-023)

On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook), entered into a stipulation with the Public Utilities Commission (Commission) surrendering his licenses as a grain dealer and grain warehouseman and permitted the Commission to take immediate possession of his facilities. On March 8, 2001, the Commission filed with the First Judicial Circuit a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 21-21, 49-42, 49-43, and 49-45, specifically 49-42-15.1, 49-43-5.6, 49-43-5.8, 49-45-13, 49-45-16, and 49-45-18. Pursuant to the order of the Court, the Commission shall determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory currently located at the Canistota facility. A hearing was held as scheduled on the claims as described above on May 3, 2001, beginning at 10:00 a.m., at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, South Dakota.

By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. The Commission accepted the following bids:

> FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at $4.12 per bushel, subject to the discount tables; and
>
> Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at $1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at $2.25 per bushel; and approximately 48,000 bushels of corn at $1.51 per bushel, subject to the discount tables.

On June 8, 2001, the Commission received a Notice and Motion to Reopen for Further Evidence from Commission Staff. Staff requested the record be reopened for the purpose of receiving into evidence affidavits from some of the claimants requesting

rescission of their delayed price contracts and/or deferred price contracts entered into with McCook Feed and Fertilizer. On June 19, 2001, the Commission received a Motion to Reopen for Further Evidence from Home Federal Savings Bank for the purpose of receiving into evidence the Affidavit of Richard Shane regarding alternative methods of selling grain and the usual practices concerning the issue of elevator contracts. On June 28, 2001, the Commission received the Affidavit of Richard Shane.

At its July 6, 2001, meeting, the Commission considered the motions. None of the parties objected to all of the affidavits being received into evidence. None of the parties requested any additional hearings. Since there were no objections, the Commission voted to grant both motions and received the affidavits into evidence. It is therefore

ORDERED, that the Commission grants both Staff's and Home Federal Savings Bank's motions and reopens the record to receive into evidence the aforementioned affidavits.

Dated at Pierre, South Dakota, this 12th day of July, 2001.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 7/17/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN DEALER'S AND PUBLIC WAREHOUSE LICENSES OF FREEMAN FERTILIZER CO., INC. DBA MCCOOK FEED & FERTILIZER	))))	ORDER DENYING REQUEST FOR CONTRACT BUY OUT GD01-001 (Civ. 01-023)

On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook), entered into a stipulation with the Public Utilities Commission (Commission) surrendering his licenses as a grain dealer and grain warehouseman and permitted the Commission to take immediate possession of his facilities. On March 8, 2001, the Commission filed with the First Judicial Circuit a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 21-21, 49-42, 49-43, and 49-45, specifically 49-42-15.1, 49-43-5.6, 49-43-5.8, 49-45-13, 49-45-16, and 49-45-18. Pursuant to the order of the Court, the Commission shall determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory currently located at the Canistota facility. A hearing was held as scheduled on the claims as described above on May 3, 2001, beginning at 10:00 a.m., at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, South Dakota.

By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. The Commission accepted the following bids:

> FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at $4.12 net per bushel, subject to the discount tables; and
>
> Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at $1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at $2.25 per bushel; and approximately 48,000 bushels of corn at $1.51 per bushel, subject to the discount tables.

On June 14, 2001, the Commission received a letter from FreMar Farmers Cooperative (FreMar) stating that the actual bushels of soybeans received were 15,811 and requested that $1500.00 be deducted from the amount FreMar owes for the 15,811

bushels of soybeans. At the Commission's June 26, 2001, meeting, FreMar further explained its request. FreMar stated that when FreMar purchased the soybeans at $4.12 net per bushel, it then hedged its commodity position on 20,000 of the bushels it anticipated receiving. When there were only 15,811 bushels instead of 21,000 bushels, FreMar was short 5,300 bushels of futures contracts that FreMar had to buy back. FreMar stated it was advised that there were only 15,811 bushels on June 12, 2001. On that date the beans were selling at $4.41 net. FreMar stated that it then paid approximately $1500.00 to buy back the futures contract. FreMar requested that the buy back amount of $1500.00 be deducted from the amount FreMar owed for the soybeans. Commission Staff recommended that FreMar be allowed an adjustment of $908.08. Staff stated that FreMar was notified on June 6, 2001, that the soybean bushels were less than the estimated bushels of 21,000 and the closing price for June 7 and June 8 was $4.615, less $.32, leaving a net of $4.295. Thus, the difference between the bid price of $4.12 net and $4.295 net was 17.5 cents. Staff then multiplied 17.5 cents times 5,189 bushels for a total of $908.08. The Commission took the matter under advisement.

At its July 6, 2001, meeting, the Commission voted to deny FreMar's request to adjust the amount FreMar owed for the soybeans. The Commission noted that in its request for bids sent to potential bidders, the number of bushels were listed as approximate amounts. The Commission had no control over FreMar's course of action for disposal or marketing of grain. It is therefore

ORDERED, that FreMar's request that a buy back amount of $1500.00 be deducted from the amount FreMar owes for the 15,811 bushels of soybeans is denied and FreMar shall pay the Commission the remainder of the purchase price for the soybeans.

Dated at Pierre, South Dakota, this 16th day of July, 2001.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 7/17/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

Danforth, Meierhenry & Meierhenry, L.L.P.

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George J. Danforth
(1875-1952)
George J. Danforth, Jr.
(1903-1991)

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JUL 23 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

July 19, 2001

Kelly D. Frasier
Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Dear Kelly:

Thank you for visiting with me this afternoon. This letter is intended to confirm my representation of Jeff Mulder regarding the pending criminal charges in McCook County. You indicated that you would put me on the service list and keep me apprised of all further proceedings with the PUC. I certainly appreciate your cooperation in this matter.

Best regards,

DANFORTH, MEIERHENRY & MEIERHENRY, LLP

Clint Sargent

CS/dm

c Client



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Amy Kayser
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

August 7, 2001

Ms. Cheryl J. Miller
Clerk of Courts
P. O. Box 504
Salem, SD 57058

RE: In the Matter of Grain Dealer's and Grain Warehouseman's Bonds of Jeff Mulder d/b/a Freeman Fertilizer Co., Inc. d/b/a McCook Feed & Fertilizer and Grain Inventory
Civ. 01-023

Dear Ms. Miller:

Enclosed for filing you will find original Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver and Certificate of Service with reference to the above captioned matter. Also enclosed is our original file.

Thank you.

Very truly yours,

Rolayne Ailts Wiest
Special Assistant Attorney General

RAW:dk
Enc.



South Dakota
Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

August 7, 2001

Honorable Boyd L. McMurchie
Circuit Court Judge
400 South Main Street
Parker, SD 57053

RE: In the Matter of Grain Dealer's and Grain Warehouseman's Bonds of Jeff Mulder d/b/a Freeman Fertilizer Co., Inc. d/b/a McCook Feed & Fertilizer and Grain Inventory
Civ. 01-023

Dear Judge McMurchie:

Enclosed you will find original proposed Order Approving Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver. Also enclosed is a copy of Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver with reference to the above captioned matter.

Thank you.

Very truly yours,

Rolayne Ailts Wiest
Special Assistant Attorney General

RAW:dk
Enc.

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South Dakota
Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

August 7, 2001

TO: All Interested Parties and Entities:

RE: In the Matter of Grain Dealer's and Grain Warehouseman's Bonds of Jeff Mulder d/b/a Freeman Fertilizer Co., Inc. d/b/a McCook Feed & Fertilizer and Grain Inventory
Civ. 01-023

Enclosed each of you will find copies of Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver and proposed Order Approving Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver with reference to the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Rolayne Ailts Wiest
Special Assistant Attorney General

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STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF MCCOOK	)	FIRST JUDICIAL CIRCUIT
IN THE MATTER OF THE GRAIN DEALER'S AND GRAIN WAREHOUSEMAN'S BONDS OF JEFF MULDER D/B/A FREEMAN FERTILIZER CO., INC. D/B/A MCCOOK FEED & FERTILIZER AND GRAIN INVENTORY	)	CIV. 01-023
	)	PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF RECEIVER

PROCEDURAL HISTORY

On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook), entered into a stipulation with the Public Utilities Commission (Commission) surrendering his licenses as a grain dealer and grain warehouseman and permitting the Commission to take immediate possession of his facilities. On March 8, 2001, the Commission filed with the First Judicial Circuit a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota.

Pursuant to the order of the Court, the Commission was required to determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory located at the Canistota facility. A hearing was held as scheduled on the claims as described above on May 3, 2001, beginning at 10:00 a.m., at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, South Dakota. Briefs were filed following the hearing.

By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. The Commission accepted the following bids:

> FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at $4.12 net per bushel, subject to the discount tables; and
>
> Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at $1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at $2.25 per bushel; and approximately 48,000 bushels of corn at $1.51 per bushel, subject to the discount tables.

On June 14, 2001, the Commission received a letter from FreMar Farmers Cooperative (FreMar) stating that the actual bushels of soybeans received were 15,811 and requested that $1,500.00 be deducted from the amount FreMar owes for the 15,811 bushels of soybeans. At its July 6, 2001, meeting, the Commission voted to deny FreMar's request to adjust the amount FreMar owed for the soybeans.

On June 8, 2001, the Commission received a Notice and Motion to Reopen for Further Evidence from Commission Staff. Staff requested the record be reopened for the purpose of receiving into evidence affidavits from some of the claimants requesting rescission of their delayed price contracts and/or deferred payment contracts entered into with McCook. On June 19, 2001, the Commission received a Motion to Reopen for Further Evidence from Home Federal Savings Bank (Home Federal) for the purpose of receiving into evidence the Affidavit of Richard Shane regarding alternative methods of selling grain and the usual practices concerning the issue of elevator contracts. On June 28, 2001, the Commission received the Affidavit of Richard Shane.

At its July 6, 2001, meeting, the Commission considered the motions. None of the parties objected to all of the affidavits being received into evidence. None of the parties requested any additional hearings. Since there were no objections, the Commission voted to grant both motions and received the affidavits into evidence.

At its July 27, 2001, meeting, the Commission considered this matter. The Commission voted to make the following recommendations to the Court: 1) the grain bank and open storage claimants should receive an amount equal to the number of bushels of grain multiplied by the price for the grain when it was sold, less a pro rata share of the storage and handling costs; 2) Home Federal has a perfected security interest in the grain which was sold to McCook and thus, should receive the remainder of the proceeds of the grain, less its pro rata share for storage and handling costs; 3) the cash sale and priced unpaid grain claimants should receive a pro rata share of the $50,000.00 grain dealer's bond; and 4) state law specifically prohibits the use of bond money for voluntary credit sale contracts so the claimants who signed deferred payment contracts and delayed price contracts are not eligible to receive any bond proceeds. The Commission further explained that, as stated earlier, Home Federal has a valid perfected security interest in the grain which was sold to McCook, and, thus, there are no grain proceeds remaining for the claimants who signed deferred payment contracts and delayed price contracts. The Commission recognized that the claimants who signed deferred payment contracts and delayed price contracts raised issues regarding the rescission or the setting aside of those contracts based on fraud or failure of consideration. However, the Commission believed that these issues went beyond the scope of the Commission's authority as a receiver in this matter. The Court's order granting receivership required the Commission to schedule a hearing for the purpose of making a proposal to the Court regarding the disposition of the inventory and the bonds. It does not contemplate that the Commission, in its role as a receiver, would consider the rescission or setting aside of contracts.

Based on the evidence of record, the Commission makes the following proposed findings of fact and conclusions of law:

PROPOSED FINDINGS OF FACT

1. On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook), entered into a stipulation with the Commission surrendering his licenses as a grain dealer and grain warehouseman and permitting the Commission to take immediate possession of his facilities. Exhibit C. On March 8, 2001, the Commission filed with the First Judicial Circuit a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota.

2. Pursuant to the order of the Court, the Commission held a hearing on May 3, 2001, in Canistota to determine claims against the cash proceeds of the grain dealer's bonds and the grain

warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory currently located at the Canistota facility. Exhibit B.

3. By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. The Commission accepted the following bids:

> FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at $4.12 net per bushel, subject to the discount tables; and
>
> Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at $1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at $2.25 per bushel; and approximately 48,000 bushels of corn at $1.51 per bushel, subject to the discount tables.

4. On June 14, 2001, the Commission received a letter from FreMar Farmers Cooperative (FreMar) stating that the actual bushels of soybeans received were 15,811 and requested that $1,500.00 be deducted from the amount FreMar owes for the 15,811 bushels of soybeans. At its July 6, 2001, meeting, the Commission voted to deny FreMar's request to adjust the amount FreMar owed for the soybeans. The Commission noted that in its request for bids sent to potential bidders, the number of bushels were listed as approximate amounts. The Commission had no control over FreMar's course of action for disposal or marketing of the grain.

5. At the May 3, 2001, hearing, Commission Staff submitted an exhibit which classified most of the claims submitted by the claimants. Staff__Exhibit 2.

CLAIM FOR RENT AND LOAD OUT OF GRAIN

6. Prior to the hearing, a claim was received from R&R Ag Inputs Inc. for rent of the facility at Canistota of $2000.00 per month, beginning March 1, 2001, and a charge to load out the grain at $0.05 per bushel. Exhibit E. Commission Staff witness, Bob Knadle, testified that the storage rate charged by most elevators is $0.001 a day. TR. at 41. Multiplying that storage rate by Staff's estimated number of bushels at the elevator of 69,500, the storage charge would be approximately $2,100.00 per month. TR. at 40-41. However, Mr. Knadle noted that generally the storage rate includes insurance and bond coverage which R&R Ag Inputs was not providing. TR. at 41. Mr. Knadle stated that the load out charge of $0.05 per bushel is the amount charged by most elevators. *Id.*

7. Following the hearing, on May 25, 2001, R&R Ag Inputs filed a revised request for expenses related to rent. R&R Ag Inputs submitted a revised claim for rent of $3,000.00 for the months of March, April, and May.

8. The Commission finds that the charges contained in R&R Ag Inputs revised claim received May 25, 2001, are based on typical industry charges and are reasonable. The Commission finds that the charges shall be assessed to all claimants, on a pro rata basis, who receive any of the proceeds from the sale of the grain.

CLAIMS ARISING FROM STORAGE OF GRAIN

9. Eight claims were submitted for grain bank corn. Leroy Pullman claimed 80-90 bushels. Exhibit 1AB. Staff submitted documentation supporting 88.61 bushels. Exhibit 3J. Arlo Hofer claimed 2858.38 bushels. Exhibit 1AC. Staff submitted documentation supporting 2868.27 bushels. Exhibit 3K. James McGregor claimed 2788.19 bushels. Exhibit 1AD. Staff submitted documentation supporting 1931.09 bushels. Exhibit 3L. Maynard Yoder claimed 3050 bushels. Exhibit 1AE. Staff submitted documentation supporting 3036.68 bushels. Exhibit 3M. Jerry Herlyn submitted claims for 3115.17 bushels. Exhibit 1AF. Staff submitted documentation supporting 3397.46 bushels. Exhibit 3N. Roger Waltner claimed 1092.43 bushels. Exhibit 1AG. Staff submitted documentation supporting 915.64 bushels. Exhibit 3O. Charles Deckert claimed approximately 45 bushels. Exhibit 1AH. Staff submitted documentation supporting 49.46 bushels. Exhibit 3P. Oren Stahl claimed 904.69 bushels. Exhibit 1AI. Staff supported this amount. These claims are summarized on Staff__Exhibit 2B. The Commission accepts Staff's recommendations. The Commission finds that each of the claimants should be paid out of the money received from the sale of the corn stored at the warehouse. The exact amount of bushels of corn was 47,066.78 and the amount received was $70,141.44. Based on the bid price of $1.51 per bushel, subject to the discount tables, the amount received for the corn was $1.49 per bushel. Thus, each of the above claimants would receive an amount equal to their bushels multiplied times $1.49 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. Individual amounts are calculated on Appendix A.

10. Three claims were submitted for open storage corn: Jeff Weber claimed 3142.66 bushels. Exhibit 1L. Commission staff submitted documentation supporting 3146.06 bushels. Exhibit 3G. Dale Seubert claimed 7327.77 bushels. Exhibit 1M. Commission Staff agreed with that amount and submitted documentation supporting that amount. Exhibit 3H. Farmers National, Nagano, claimed 704.80 bushels. Exhibit 1S. Commission Staff agreed with that amount. These claims are summarized on Staff__Exhibit 2C. The Commission accepts Staff's recommendations. The Commission finds that each of the claimants should be paid out of the money received from the sale of the corn stored at the warehouse. The exact amount of bushels of corn was 47,066.78 and the amount received was $70,141.44. Based on the bid price of $1.51 per bushel, subject to the discount tables, the amount received for the corn was $1.49 per bushel. Thus, each of the above claimants would receive an amount equal to their bushels multiplied times $1.49 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. Individual amounts are calculated on Appendix B.

11. One claim was submitted for open storage soybeans. Gene Hofer claimed 1626.65 bushels. Exhibit 1W. Commission Staff recommended 1626.67 based on the scale tickets. This claim is summarized on Staff__Exhibit 2H. The Commission accepts Staff's recommendation. The Commission finds that the claimant should be paid out of the money received from the sale of the soybeans stored at the warehouse. The exact amount of bushels of soybeans was 15,811 and the amount received was $64,753.62. Based on the bid price of $4.12 per bushel, subject to the discount tables, the amount received for the corn was $4.095 per bushel. Thus, the above claimant would receive an amount equal to his bushels multiplied times $4.095 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. The amount is calculated on Appendix D.

12. One claim was submitted for grain bank oats. Charles Langle claimed 400 bushels. Exhibit 1AA. Commission Staff supported this amount. This claim is summarized on Staff__Exhibit 2M. The Commission accepts Staff's recommendation. The Commission finds that the claimant should

be paid out of the money received from the sale of the oats stored at the warehouse. The exact amount of bushels of oats was 561.88 and the amount received was $736.06. Based on the bid price of $1.31 per bushel, subject to the discount tables, the amount received for the oats was still $1.31 per bushel. Thus, the above claimant would receive an amount equal to his bushels multiplied times $1.31 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. The amount is calculated on Appendix C.

CLAIM OF HOME FEDERAL BANK

13. Home Federal Savings Bank (Home Federal) submitted evidence of a promissory note, executed by the principals of Freeman Fertilizer, in the amount of $1,000,000.00. Exhibit HF 1. The collection special assets manager for Home Federal, Mike Pierce, testified that an outstanding balance on the note remained in an amount of over $600,000.00. TR. at 87. Home Federal also submitted evidence of a Small Business Administration (SBA) note executed at Home Federal by the principals of Freeman Fertilizer with a current balance outstanding of $237,624.81. Exhibit HF 3. Home Federal submitted a blanket security agreement executed by Freeman Fertilizer granting a security interest to Home Federal in the inventory of Freeman Fertilizer. Exhibit HF 5. Home Federal submitted a security agreement concerning the SBA note executed by Freeman Fertilizer granting a security interest to Home Federal in the inventory of Freeman Fertilizer. Exhibit HF 6. Home Federal also provided certified state UCC financing statements. Exhibit HF 7.

14. The Commission finds that Home Federal has a perfected security interest in the proceeds of the grain that remains after the claims of open storage claimants and grain bank claimants are satisfied. Pursuant to SDCL 57A-2-403(1), "[a] purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value...." Under the express, written terms of both delayed price contracts and deferred payment contracts, title to the grain passes to the buyer even though payment is to be made to the seller at a later date. *See generally* exhibits 1J, 1Q. The definition of a purchase "includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property." SDCL 57A-1-201(32).

15. The Commission believes that Home Federal is a good faith purchaser for value and its perfected security interest attached to the grain when Freeman Fertilizer, d/b/a McCook, had voidable title in the goods. This security interest is superior to the unsecured security interests of the claimants who entered into deferred payment and delayed pricing contracts. After the open storage and grain bank claimants are paid out of the grain proceeds, the remaining proceeds total $98,707.84. Appendices E, F. After subtracting rent and load out charges, the remaining proceeds total $94,903.24. *Id.* Since the remainder of the grain proceeds is considerably less than what Home Federal is owed on its loan to Freeman Fertilizer, Home Federal should receive that amount plus the interest earned on the grain proceeds.

CASH SALES

16. Eight claims were submitted for cash sale corn. Gary Waltner claimed 1930.95 bushels for a total amount due of $2,462.59. Exhibit 1B. Commission Staff supported this amount. Richard Lauck claimed 430 bushels for a total amount due of $584.80. Exhibit 1C. Commission Staff supported this amount. Farmers National, Nagano, claimed 3700 bushels for a total amount due of $5,500.75. Exhibit 1S. Commission Staff supported this amount. Lake Preston Cooperative

claimed 10,077.14 bushels for a total amount due of $17,640.39. Exhibit 1E. Commission Staff submitted documentation supporting 10,072.85 bushels for a total amount due of $17,487.37. Exhibit 3A. Lester Kappenman claimed 829.99 bushels for a total amount due of $1,535.48. Exhibit 1F. Commission Staff submitted documentation supporting the same amount of bushels but for a total amount due of $1,527.20. Exhibit 3B. Farmers National, Paul, claimed 166.07 bushels for a total amount due of $244.12. Exhibit 1R. Commission Staff submitted documentation supporting the same amount of bushels but for a total amount due of $205.09. Exhibit 3C. Tim Jensen claimed 9258.51 bushels for a total amount due of $12,826.65. Exhibit 1H. Commission Staff supported this claim. William Perrenoud claimed 4455.72 for a total amount due of $6,327.12. Exhibit 1K. Commission Staff submitted documentation for the same amount of bushels but for a total amount due of $6,112.49. Exhibit 3F. These claims are summarized on Staff__Exhibit 2D. The Commission accepts Staff's recommendations. The Commission finds that each of these claimants should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. Individual amounts are calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amounts, on a prorated basis, at the time of disbursement.

17. Three claims were submitted for priced unpaid corn. Gilbert Buehner claimed 2791.07 bushels for a total amount due of $5,023.93. Exhibit 1I. Commission Staff supported this claim. Pat Kappenman claimed 6148.85 for a total amount due of $10,027.93. Exhibit 1J. Commission Staff submitted documentation for 6148.86 bushels with the same amount due. Exhibit 3E. Farmers National, Franz/Nagano claimed 1300 bushels for a total amount due of $2626.00. Exhibit 1S. Commission Staff supported this claim. These claims are summarized on Staff__Exhibit 2E. The Commission accepts Staff's recommendations. The Commission finds that each of these claimants should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. Individual amounts are calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amounts, on a prorated basis, at the time of disbursement.

18. One claim was submitted for cash sale soybeans. Richard Lauck claimed 1460.80 bushels for a total amount due of $6,119.22. Exhibit 1C. Commission Staff supported this claim. This claim is summarized on Staff__Exhibit 2I. The Commission accepts Staff's recommendation. The Commission finds that this claimant should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. The amount is calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amount, on a prorated basis, at the time of disbursement.

19, One claim was submitted for priced unpaid soybeans. Derald Klueber claimed 1743.48 bushels for a total amount due of $7,113.40. Exhibit 1X. Commission Staff supported this claim. This claim is summarized on Staff__Exhibit 2J. The Commission accepts Staff's recommendation. The Commission finds that this claimant should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. The amount is calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amount, on a prorated basis, at the time of disbursement.

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DELAYED PRICE AND DEFERRED PAYMENT CONTRACTS

20. Eight claims were submitted for delayed price contracts for corn. Farmers National, Graham, claimed 2200 bushels. Exhibit 1Q. Commission Staff verified this claim. Farmers National, Ott/Jackson, claimed 4285.21 bushels. Exhibit 1P. Commission Staff verified this claim. Leroy Klockman claimed 1827.86 bushels. Exhibit 1D. Commission Staff verified this claim. Farmers National, Nagano, claimed 3730.36 bushels. Exhibit 1S. Commission Staff verified this claim. Helen Eide claimed 5817.87 bushels. Exhibit 1V. Commission Staff did not verify this claim. Commission Staff submitted documentation showing that this claim had been paid by check which had cleared the bank. Exhibit 3I. Lucille Helmbrecht claimed 2397.51 bushels. Exhibit 1T. Jeff Scott claimed 7172.15 bushels. Exhibit 1G. Rich Hoffman claimed 1957.15 bushels. Exhibit 1U. These claims are summarized on Staff__Exhibits 2F and 2N.

21. Seven claims were submitted for delayed price contracts for soybeans. Leonard Buehner claimed 408.14 bushels. Exhibit 1Y. Commission Staff verified this claim. Helen Eide claimed 1861.76 bushels. Exhibit 1V. Commission Staff submitted documentation verifying 973.87 bushels. Exhibit 3I. Farmers National, Ott/Jackson, claimed 719.06 bushels. Exhibit 1P. Commission Staff verified this claim. Farmers National, Graham, claimed 700 bushels. Commission Staff verified this claim. Tim Jensen claimed 5974.33 bushels. Exhibit 1H. Commission Staff submitted documentation verifying this claim. Exhibit 3D. Jeff Scott claimed 6835.60 bushels. Exhibit 1G. Alvin Scott claimed 5661.71 bushels. Exhibit 1Z. These claims are summarized on Staff__Exhibits 2L and 2O.

22. Four claims were submitted for deferred payment contracts for corn. Pat Kappenman claimed 1515.72 bushels for a total amount due of $2,178.43. Exhibit 1J. Commission Staff verified this claim. Larry Weber claimed 5257.15 bushels for a total amount due of $6,764.79. Exhibit 1N. Commission Staff verified this claim. Farmers National, Nichols, claimed 670 bushels for a total amount due of $1,162.90. Exhibit 1O. Commission Staff verified this claim. Farmers National, Ott/Jackson, claimed 600 bushels for a total amount due of $1,101.24. Exhibit 1P. Commission Staff verified this claim. These claims are summarized on Staff Exhibit 2G.

23. Three claims were submitted for deferred payment contracts for soybeans. Farmers National, Ott/Jackson, claimed 600 bushels for a total amount due of $2,610.88. Exhibit 1P. Commission Staff verified this amount. Farmers National Nichols claimed 293 bushels for a total amount due of $1,337.83. Exhibit 1O. Commission Staff verified this claim. Pat Kappenman claimed 1709.34 bushels for a total amount due of $7,296.40. Exhibit 1J. Commission Staff verified this claim. These claims are summarized on Staff__Exhibit 2K.

24. Although the deferred payment and delayed pricing claimants have demonstrated that they are owed money for the sale of their grain to McCook, there are no grain proceeds remaining due to Home Federal's perfected security interest. *See* Findings of Fact 13-15. In addition, pursuant to SDCL 49-45-9, a grain dealer's bond "may not benefit any person entering into a voluntary credit sale with a grain dealer." A voluntary credit sale is defined as "a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts and price-later contracts." SDCL 49-45-1.1(5). Thus, deferred payment and delayed pricing contracts are statutorily excluded from bond coverage and the claimants may not receive any of the bond proceeds.

25. Following the hearing, the Commission received a Notice and Motion to Reopen for Further Evidence from Commission Staff. Staff requested the record be reopened for the purpose of receiving into evidence affidavits from some of the claimants requesting rescission of their delayed price contracts and/or deferred price contracts entered into with McCook. Since there were no objections to the admission of the affidavits, the Commission received the affidavits into evidence.

26. Rescission is considered to be an extraordinary, equitable remedy that should be granted only if the evidence is clear and convincing. *Mattson v. Rachetto*, 1999 SD 51, P17, 591 N.W.2d 814, 818. The Commission does not believe that, as a receiver, it can consider requests to rescind or set aside contracts. Generally, if a party would like to rescind or set aside a contract, that party would bring an action against the other party to the contract. *See generally Vermilyea v. BDL Enterprises, Inc.*, 462 N.W.2d 885 (S.D. 1990) (plaintiff brought action against defendant for rescission of lease); *Mattson*, 1999 SD 51, 591 N.W.2d 814 (plaintiff filed suit against defendant for rescission of land contract); *Smith v. Hermsen*, 1997 SD 138, 572 N.W.2d 835 (plaintiff sued for rescission of land sale). The Commission's notice of hearing in this case stated that it would determine claims against the bonds and the grain inventory. The contracts were entered into among McCook and individual claimants. There was no notice to McCook that contracts that it had entered into with some of the claimants were possibly subject to rescission or setting aside as a result of the hearing. Moreover, in this case, the claimants requesting rescission did not do so until after the hearing.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this matter pursuant to SDCL 49-43-5.6, 49-45-16 and SDCL Chapter 21-21.

2. The Commission has jurisdiction over this matter as a receiver appointed by the Court pursuant to SDCL Chapter 21-21, and SDCL Chapters 49-42, 49-43, and 49-45, specifically 49-42-15.1, 49-43-5.6, 49-43-5.8, 49-45-13, 49-45-16, and 49-45-18.

3. All of the above claims found valid by the Commission in findings of fact 16-19 are legitimate claims on the proceeds of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. All such claims shall be paid out of the proceeds of the bond. All of the claims found valid by the Commission in findings of fact 9-15 are legitimate claims on the proceeds of the sale of the grain. All such claims shall be paid out of the proceeds of the grain.

4. Pursuant to SDCL 57A-2-403(1), "[a] purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value...." Under the express, written terms of both delayed price contracts and deferred payment contracts, title to the grain passes to the buyer even though payment is to be made to the seller at a later date. *See generally exhibits* 1J, 1Q. The definition of a purchase "includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property." SDCL 57A-1-201(32).

5. Home Federal is a good faith purchaser for value and its perfected security interest attached to the grain when Freeman Fertilizer had voidable title in the goods. This security interest is superior to the unsecured security interests of the claimants who entered into deferred payment and delayed pricing contracts.

6. Pursuant to SDCL 49-45-9, a grain dealer's bond "may not benefit any person entering into a voluntary credit sale with a grain dealer." A voluntary credit sale is defined as "a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts and price-later contracts." SDCL 49-45-1.1(5). Thus, deferred payment and delayed pricing contracts are statutorily excluded from bond coverage and the claimants may not receive any of the bond proceeds.

7. As a receiver, the Commission cannot consider requests to rescind or set aside contracts. Rescission is considered to be an extraordinary, equitable remedy that should be granted only if the evidence is clear and convincing. *Mattson v. Rachetto*, 1999 SD 51, P17, 591 N.W.2d 814, 818. Generally, if a party would like to rescind or set aside a contract, that party would bring an action against the other party to the contract. *See generally Vermilyea v. BDL Enterprises, Inc.*, 462 N.W.2d 885 (S.D. 1990) (plaintiff brought action against defendant for rescission of lease); *Mattson*, 1999 SD 51, 591 N.W.2d 814 (plaintiff filed suit against defendant for rescission of land contract); *Smith v. Hermsen*, 1997 SD 138, 572 N.W.2d 835 (S.D. 1997) (plaintiff sued for rescission of land sale). The Commission's notice of hearing in this case stated that it would determine claims against the bonds and the grain inventory. The contracts were entered into among McCook and individual claimants. There was no notice to McCook that contracts that it had entered into with some of the claimants were possibly subject to rescission or setting aside as a result of the hearing. Moreover, in this case, the claimants requesting rescission did not do so until after the hearing.

It is therefore

ORDERED, that if these findings of fact and conclusions of law are accepted by the Court, the Commission, as receiver, shall pay the above claims from the grain dealer's bond and the grain proceeds in the amounts as listed on Appendices A-G. Accumulated interest on the grain dealer's bond shall be distributed on a pro rata basis to the eligible claimants of the bond proceeds. Accumulated interest on the grain proceeds shall be distributed to Home Federal.

Dated at Pierre, South Dakota, this 7th day of August, 2001.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 8/7/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

APPENDIX A

GD01-001 (CIV01-023)

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

Claims for the following categories:

		a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net (c-d-e)
Corn:					$4.43	$4.01	$123.59
Grain Bank -	Leroy Pullman	88.61	1.49	$132.03	$143.41	$129.65	$4,000.66
	Arlo Hofer	2,868.27	1.49	$4,273.72	$96.55	$87.29	$2,693.48
	James McGregor	1,931.09	1.49	$2,877.32	$151.83	$137.26	$4,235.56
	Maynard Yoder	3,036.68	1.49	$4,524.65	$169.87	$153.57	$4,738.78
	Jerry Herlyn	3,397.46	1.49	$5,062.22	$45.78	$41.39	$1,277.13
	Roger Waltner	915.64	1.49	$1,364.30	$2.47	$2.24	$68.99
	Charles Deckert	49.46	1.49	$73.70	$45.23	$40.89	$1,261.86
	Oren Stahl	904.69	1.49	$1,347.99	$659.60	$596.27	$18,400.06
Total Grain Bank Corn		13,191.90		$19,655.93			

Sources: Col. (a) June 8, 2001 Staff Brief and Knadle hearing Exhibits.
(b) - Corn sale proceeds of $70,141.44 / 47,066 bu. = $1.49
(d) - $.05 per bushel.
(e) - allocation of total $3,000 /66,361.45 = $.0452 bu.

APPENDIX B

GD01-001 (CIV01-023)

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

Open Storage	a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net
Jeff Weber	3,146.06	1.49	$4,687.63	$157.30	$142.20	$4,388.12
Dale Seubert	7,327.77	1.49	$10,918.38	$366.39	$331.22	$10,220.77
Farmers Nat'l -Nagano	704.80	1.49	$1,050.15	$35.24	$31.86	$983.06
	11,178.63		$16,656.16	$558.93	$505.27	$15,591.95

Sources: Column

a. Staff Exhibit 2C and Staff Brief
b. Sale amount of $70,141.44 / 47,066.78 bu. = $1.49
c. col. a x col. b
d. col. a. x $05
e. col. a. x proration ($.0452 bu.)
f. col. c less cols. d. and e.

APPENDIX C

OATS
GRAIN BANK -

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

	a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net
Charles Langlo	400	$1.310	$524.00	$20.00	$18.08	$485.92

Sources: Column

a. Staff Exhibit 2M and Staff Brief
b. Sale amount of $736.06 / 561.88 bu. = $.776
c. col. a x col. b
d. col. a. x $05
e. col. a. x proration
f. col. c less cols. d. and e.

GD01-001 (CIV01-023)

APPENDIX D

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

SOYBEANS
OPEN STORAGE -

	a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net
Gene Hofer	1,626.67	$4.095	$6,661.21	$81.33	$73.53	$6,506.35

Sources: Column

a. Staff Exhibit 2H and Staff Brief
b. Sale amount of $$64,753.62 /15,811 bu. = $4.095
c. col. a x col. b
d. col. a. x $05
e. col. a. x proration
f. col. c less cols. d. and e.

APPENDIX E

GD01-001 (CIV01-023)

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

Summary of Open Storage and Grain Bank

	a. Bushels	b Price	c. Claims	d. Load out	e. Storage	f. Net (c-d-e)
Claims						
Corn - Grain Bank	13,191.90	$1.49	$19,655.93	$659.60	$596.27	$18,400.06
Corn - Storage	11,178.63	$1.49	$16,656.16	$558.93	$505.27	$15,591.96
Oats - Grain Bank	400.00	$1.31	$524.00	$20.00	$18.08	$485.92
Soybeans - Open Storage	1,626.67	$4.10	$6,661.21	$81.33	$73.53	$6,506.35
Total	26,397.20		$43,497.30	$1,319.86	$1,193.15	$40,984.29

Auction results	a. Bushels	b. Proceeds	c. Claims	d. Excess(b-c)	e. Load out	f. Storage
Corn	47,066.78	$70,141.44	$36,312.09	$33,829.35	$2,353.34	$2,127.42
Oats	561.88	$736.06	$524.00	$212.06	$28.09	$25.40
Soybeans	15,811.00	$64,753.62	$6,661.21	$58,092.41	$790.55	$714.66
Mixed grain	2,921.79	$6,574.02	$0.00	$6,574.02	$146.09	$132.06
	66,361.45	$142,205.14	$43,497.30	$98,707.84	$3,318.07	$2,999.54

Storage - $3,000 / 66,361.45 = $.0452 bu.

	a. Proceeds	b. Load out	c. Storage	d. Net proceeds
Total	$142,205.14	$3,318.07	$2,999.54	$135,887.53
Less: Claimant portion	$43,497.30	$1,319.86	$1,193.15	$40,984.29
Net to non-farm	$98,707.84	$1,998.21	$1,806.39	$94,903.24

Source: See other appendixes.

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APPENDIX F

Summary

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

	a. Sold Bushels	b. Farmer Claims	c. Bushel Difference	d. Proceeds	e. Claims	f. Claim Difference
Corn	47,066.78	24,370.53	22,696.25	$70,141.44	$36,312.09	$33,829.35
Oats	561.88	400.00	161.88	$736.06	$524.00	$212.06
Soybeans	15,811.00	1,626.67	14,184.33	$64,753.62	$6,661.21	$58,092.41
Mixed grain	2,921.79	none	2,921.79	$6,574.02	none	$6,574.02
	66,361.45	26,397.20	39,964.25	$142,205.14	$43,497.30	$98,707.84

This doesn't include any interest on the proceeds which are invested in interim CDs.

Farm claimant load out and storage

	Load out	Storage
Grain Bank Corn	$659.60	$596.27
Open Storage Corn	$558.93	505.27
Oats	$20.00	18.08
Soybeans	81.33	73.53
Total Claimant	$1,319.86	$1,193.15

Source: See other Appendixes.

GD01-001 (CIV01-023) APPENDIX G

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

GRAIN DEALER BOND CLAIMS

	a. Claimants	b. Amount	c. Totals	d. $50,000 Bond prorate
Corn:				
1 Cash sale	1. Gary Waltner	$2,462.59		$1,586.36
	2. Rich Lauck	$584.80		$376.72
	3. Farmers Nat'l-Nagano	$5,500.75		$3,543.50
	4. Lake Preston Coop	$17,487.37		$11,265.10
	5. Lester Kappenman	$1,527.20		$983.80
	6. Farmers Nat'l -Paul	$205.09		$132.12
	7. Tim Jensen	$12,826.65		$8,262.74
	8. William Perrenoud	$6,112.49		$3,937.57
	Total cash sale corn		$46,706.94	
2. Priced-unpaid	1. Gilbert Buehner	$5,023.93		$3,236.34
	2. Pat Kappenman	$10,027.93		$6,459.84
	3. Farmers Nat'l -Franz/Nagano	$2,626.00		$1,691.63
	Total priced-unpaid		$17,677.86	
Total Corn			$64,384.80	
Soybeans:				
3. Cash sale	1. Rich Lauck	$6,119.22		$3,941.91
4. Priced-unpaid	1. Derald Klueber	$7,113.40		$4,582.35
Total Soybeans			$13,232.62	
TOTAL GRAIN DEALER BOND CLAIMS			$77,617.42	
TOTAL GRAIN DEALER BOND				$49,999.98

Source: Cols. a-c: Staff Exhibit 2
d: Column (c) x ($50,000/ $77,617.42). $50,000 is the total available bond before interest. $50,000/ $77,617.42 = 64.4185%.

0162-99-327

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF MCCOOK	)	FIRST JUDICIAL CIRCUIT
IN THE MATTER OF THE GRAIN DEALER'S AND GRAIN WAREHOUSEMAN'S BONDS OF JEFF MULDER D/B/A FREEMAN FERTILIZER CO., INC. D/B/A MCCOOK FEED & FERTILIZER AND GRAIN INVENTORY	)	CIV. 01-023 ORDER APPROVING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF RECEIVER

PROCEDURAL HISTORY

This action comes before the Court upon petition of the South Dakota Public Utilities Commission (Commission) to be appointed receiver to take possession of bond proceeds and grain inventory of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook). On February 13, 2001, Jeff Mulder, on behalf of McCook, entered into a stipulation with the Commission surrendering his licenses as a grain dealer and grain warehouseman and permitting the Commission to take immediate possession of his facilities. On March 8, 2001, the Commission filed with this Court a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver.

Pursuant to the order of the Court, the Commission was required to determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory located at the Canistota facility. A hearing was held as scheduled on the claims as described above on May 3, 2001, beginning at 10:00 a.m., at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, South Dakota. Briefs were filed following the hearing.

By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. The Commission accepted the following bids:

> FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at $4.12 net per bushel, subject to the discount tables; and
>
> Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at $1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at $2.25 per bushel; and approximately 48,000 bushels of corn at $1.51 per bushel, subject to the discount tables.

On June 14, 2001, the Commission received a letter from FreMar Farmers Cooperative (FreMar) stating that the actual bushels of soybeans received were 15,811 and requested that $1,500.00 be deducted from the amount FreMar owes for the 15,811 bushels of soybeans. At its July 6, 2001, meeting, the Commission voted to deny FreMar's request to adjust the amount FreMar owed for the soybeans.

On June 8, 2001, the Commission received a Notice and Motion to Reopen for Further Evidence from Commission Staff. Staff requested the record be reopened for the purpose of receiving into evidence affidavits from some of the claimants requesting rescission of their delayed price contracts and/or deferred payment contracts entered into with McCook. On June 19, 2001, the Commission received a Motion to Reopen for Further Evidence from Home Federal Savings Bank (Home Federal) for the purpose of receiving into evidence the Affidavit of Richard Shane regarding alternative methods of selling grain and the usual practices concerning the issue of elevator contracts. On June 28, 2001, the Commission received the Affidavit of Richard Shane.

At its July 6, 2001, meeting, the Commission considered the motions. None of the parties objected to all of the affidavits being received into evidence. None of the parties requested any additional hearings. Since there were no objections, the Commission voted to grant both motions and received the affidavits into evidence.

At its July 27, 2001, meeting, the Commission considered this matter. The Commission voted to make the following recommendations to the Court: 1) the grain bank and open storage claimants should receive an amount equal to the number of bushels of grain multiplied by the price for the grain when it was sold, less a pro rata share of the storage and handling costs; 2) Home Federal has a perfected security interest in the grain which was sold to McCook and thus, should receive the remainder of the proceeds of the grain, less its pro rata share for storage and handling costs; 3) the cash sale and priced unpaid grain claimants should receive a pro rata share of the $50,000.00 grain dealer's bond; and 4) state law specifically prohibits the use of bond money for voluntary credit sale contracts so the claimants who signed deferred payment contracts and delayed price contracts are not eligible to receive any bond proceeds. The Commission further explained that, as stated earlier, Home Federal has a valid perfected security interest in the grain which was sold to McCook, and, thus, there are no grain proceeds remaining for the claimants who signed deferred payment contracts and delayed price contracts. The Commission recognized that the claimants who signed deferred payment contracts and delayed price contracts raised issues regarding the rescission or the setting aside of those contracts based on fraud or failure of consideration. However, the Commission believed that these issues went beyond the scope of the Commission's authority as a receiver in this matter. The Court's order granting receivership required the Commission to schedule a hearing for the purpose of making a proposal to the Court regarding the disposition of the inventory and the bonds. It does not contemplate that the Commission, in its role as a receiver, would consider the rescission or setting aside of contracts.

The Commission submitted its proposed decision to the Court along with the transcripts and all exhibits. The Commission made the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook), entered into a stipulation with the Commission surrendering his licenses as a grain dealer and grain warehouseman and permitting the Commission to take immediate possession of his facilities. Exhibit C. On March 8, 2001, the Commission filed with the First Judicial Circuit a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota.

2. Pursuant to the order of the Court, the Commission held a hearing on May 3, 2001, in Canistota to determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June

30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory currently located at the Canistota facility. Exhibit B.

3. By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. The Commission accepted the following bids:

> FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at $4.12 net per bushel, subject to the discount tables; and
>
> Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at $1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at $2.25 per bushel; and approximately 48,000 bushels of corn at $1.51 per bushel, subject to the discount tables.

4. On June 14, 2001, the Commission received a letter from FreMar Farmers Cooperative (FreMar) stating that the actual bushels of soybeans received were 15,811 and requested that $1,500.00 be deducted from the amount FreMar owes for the 15,811 bushels of soybeans. At its July 6, 2001, meeting, the Commission voted to deny FreMar's request to adjust the amount FreMar owed for the soybeans. The Commission noted that in its request for bids sent to potential bidders, the number of bushels were listed as approximate amounts. The Commission had no control over FreMar's course of action for disposal or marketing of the grain.

5. At the May 3, 2001, hearing, Commission Staff submitted an exhibit which classified most of the claims submitted by the claimants. Staff__Exhibit 2.

CLAIM FOR RENT AND LOAD OUT OF GRAIN

6. Prior to the hearing, a claim was received from R&R Ag Inputs Inc. for rent of the facility at Canistota of $2,000.00 per month, beginning March 1, 2001, and a charge to load out the grain at $0.05 per bushel. Exhibit E. Commission Staff witness, Bob Knadle, testified that the storage rate charged by most elevators is $0.001 a day. TR. at 41. Multiplying that storage rate by Staff's estimated number of bushels at the elevator of 69,500, the storage charge would be approximately $2,100.00 per month. TR. at 40-41. However, Mr. Knadle noted that generally the storage rate includes insurance and bond coverage which R&R Ag Inputs was not providing. TR. at 41. Mr. Knadle stated that the load out charge of $0.05 per bushel is the amount charged by most elevators. *Id.*

7. Following the hearing, on May 25, 2001, R&R Ag Inputs filed a revised request for expenses related to rent. R&R Ag Inputs submitted a revised claim for rent of $3,000.00 for the months of March, April, and May.

8. The Commission finds that the charges contained in R&R Ag Inputs revised claim received May 25, 2001, are based on typical industry charges and are reasonable. The Commission finds that the charges shall be assessed to all claimants, on a pro rata basis, who receive any of the proceeds from the sale of the grain.

CLAIMS ARISING FROM STORAGE OF GRAIN

9. Eight claims were submitted for grain bank corn. Leroy Pullman claimed 80-90 bushels. Exhibit 1AB. Staff submitted documentation supporting 88.61 bushels. Exhibit 3J. Arlo Hofer claimed 2858.38 bushels. Exhibit 1AC. Staff submitted documentation supporting 2868.27 bushels. Exhibit 3K. James McGregor claimed 2788.19 bushels. Exhibit 1AD. Staff submitted documentation supporting 1931.09 bushels. Exhibit 3L. Maynard Yoder claimed 3050 bushels. Exhibit 1AE. Staff submitted documentation supporting 3036.68 bushels. Exhibit 3M. Jerry Herlyn submitted claims for 3115.17 bushels. Exhibit 1AF. Staff submitted documentation supporting 3397.46 bushels. Exhibit 3N. Roger Waltner claimed 1092.43 bushels. Exhibit 1AG. Staff submitted documentation supporting 915.64 bushels. Exhibit 3O. Charles Deckert claimed approximately 45 bushels. Exhibit 1AH. Staff submitted documentation supporting 49.46 bushels. Exhibit 3P. Oren Stahl claimed 904.69 bushels. Exhibit 1AI. Staff supported this amount. These claims are summarized on Staff__Exhibit 2B. The Commission accepts Staff's recommendations. The Commission finds that each of the claimants should be paid out of the money received from the sale of the corn stored at the warehouse. The exact amount of bushels of corn was 47,066.78 and the amount received was $70,141.44. Based on the bid price of $1.51 per bushel, subject to the discount tables, the amount received for the corn was $1.49 per bushel. Thus, each of the above claimants would receive an amount equal to their bushels multiplied times $1.49 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. Individual amounts are calculated on Appendix A.

10. Three claims were submitted for open storage corn: Jeff Weber claimed 3142.66 bushels. Exhibit 1L. Commission Staff submitted documentation supporting 3146.06 bushels. Exhibit 3G. Dale Seubert claimed 7327.77 bushels. Exhibit 1M. Commission Staff agreed with that amount and submitted documentation supporting that amount. Exhibit 3H. Farmers National, Nagano, claimed 704.80 bushels. Exhibit 1S. Commission Staff agreed with that amount. These claims are summarized on Staff__Exhibit 2C. The Commission accepts Staff's recommendations. The Commission finds that each of the claimants should be paid out of the money received from the sale of the corn stored at the warehouse. The exact amount of bushels of corn was 47,066.78 and the amount received was $70,141.44. Based on the bid price of $1.51 per bushel, subject to the discount tables, the amount received for the corn was $1.49 per bushel. Thus, each of the above claimants would receive an amount equal to their bushels multiplied times $1.49 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. Individual amounts are calculated on Appendix B.

11. One claim was submitted for open storage soybeans. Gene Hofer claimed 1626.65 bushels. Exhibit 1W. Commission Staff recommended 1626.67 based on the scale tickets. This claim is summarized on Staff__Exhibit 2H. The Commission accepts Staff's recommendation. The Commission finds that the claimant should be paid out of the money received from the sale of the soybeans stored at the warehouse. The exact amount of bushels of soybeans was 15,811 and the amount received was $64,753.62. Based on the bid price of $4.12 per bushel, subject to the discount tables, the amount received for the corn was $4.095 per bushel. Thus, the above claimant would receive an amount equal to his bushels multiplied times $4.095 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. The amount is calculated on Appendix D.

12. One claim was submitted for grain bank oats. Charles Langle claimed 400 bushels. Exhibit 1AA. Commission Staff supported this amount. This claim is summarized on Staff__Exhibit 2M. The Commission accepts Staff's recommendation. The Commission finds that the claimant should be paid out of the money received from the sale of the oats stored at the warehouse. The exact

amount of bushels of oats was 561.88 and the amount received was $736.06. Based on the bid price of $1.31 per bushel, subject to the discount tables, the amount received for the oats was still $1.31 per bushel. Thus, the above claimant would receive an amount equal to his bushels multiplied times $1.31 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. The amount is calculated on Appendix C.

CLAIM OF HOME FEDERAL BANK

13. Home Federal Savings Bank (Home Federal) submitted evidence of a promissory note, executed by the principals of Freeman Fertilizer, in the amount of $1,000,000.00. Exhibit HF 1. The collection special assets manager for Home Federal, Mike Pierce, testified that an outstanding balance on the note remained in an amount of over $600,000.00. TR. at 87. Home Federal also submitted evidence of a Small Business Administration (SBA) note executed at Home Federal by the principals of Freeman Fertilizer with a current balance outstanding of $237,624.81. Exhibit HF 3. Home Federal submitted a blanket security agreement executed by Freeman Fertilizer granting a security interest to Home Federal in the inventory of Freeman Fertilizer. Exhibit HF 5. Home Federal submitted a security agreement concerning the SBA note executed by Freeman Fertilizer granting a security interest to Home Federal in the inventory of Freeman Fertilizer. Exhibit HF 6. Home Federal also provided certified state UCC financing statements. Exhibit HF 7.

14. The Commission finds that Home Federal has a perfected security interest in the proceeds of the grain that remains after the claims of open storage claimants and grain bank claimants are satisfied. Pursuant to SDCL 57A-2-403(1), "[a] purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value...." Under the express, written terms of both delayed price contracts and deferred payment contracts, title to the grain passes to the buyer even though payment is to be made to the seller at a later date. *See generally* exhibits 1J, 1Q. The definition of a purchase "includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property." SDCL 57A-1-201(32).

15. The Commission believes that Home Federal is a good faith purchaser for value and its perfected security interest attached to the grain when Freeman Fertilizer, db/a McCook, had voidable title in the goods. This security interest is superior to the unsecured security interests of the claimants who entered into deferred payment and delayed pricing contracts. After the open storage and grain bank claimants are paid out of the grain proceeds, the remaining proceeds total $98,707.84. Appendices E, F. After subtracting rent and load out charges, the remaining proceeds total $94,903.24. *Id.* Since the remainder of the grain proceeds is considerably less than what Home Federal is owed on its loan to Freeman Fertilizer, Home Federal should receive that amount plus the interest earned on the grain proceeds.

CASH SALES

16. Eight claims were submitted for cash sale corn. Gary Waltner claimed 1930.95 bushels for a total amount due of $2,462.59. Exhibit 1B. Commission Staff supported this amount. Richard Lauck claimed 430 bushels for a total amount due of $584.80. Exhibit 1C. Commission Staff supported this amount. Farmers National, Nagano, claimed 3700 bushels for a total amount due of $5,500.75. Exhibit 1S. Commission Staff supported this amount. Lake Preston Cooperative claimed 10,077.14 bushels for a total amount due of $17,640.39. Exhibit 1E. Commission Staff submitted documentation supporting 10,072.85 bushels for a total amount due of $17,487.37.

Exhibit 3A. Lester Kappenman claimed 829.99 bushels for a total amount due of $1,535.48. Exhibit 1F. Commission Staff submitted documentation supporting the same amount of bushels but for a total amount due of $1,527.20. Exhibit 3B. Farmers National, Paul, claimed 166.07 bushels for a total amount due of $244.12. Exhibit 1R. Commission Staff submitted documentation supporting the same amount of bushels but for a total amount due of $205.09. Exhibit 3C. Tim Jensen claimed 9258.51 bushels for a total amount due of $12,826.65. Exhibit 1H. Commission Staff supported this claim. William Perrenoud claimed 4455.72 for a total amount due of $6,327.12. Exhibit 1K. Commission Staff submitted documentation for the same amount of bushels but for a total amount due of $6,112.49. Exhibit 3F. These claims are summarized on Staff__Exhibit 2D. The Commission accepts Staff's recommendations. The Commission finds that each of these claimants should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. Individual amounts are calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amounts, on a prorated basis, at the time of disbursement.

17. Three claims were submitted for priced unpaid corn. Gilbert Buehner claimed 2791.07 bushels for a total amount due of $5,023.93. Exhibit 1I. Commission Staff supported this claim. Pat Kappenman claimed 6148.85 for a total amount due of $10,027.93. Exhibit 1J. Commission Staff submitted documentation for 6148.86 bushels with the same amount due. Exhibit 3E. Farmers National, Franz/Nagano claimed 1300 bushels for a total amount due of $2626.00. Exhibit 1S. Commission Staff supported this claim. These claims are summarized on Staff__Exhibit 2E. The Commission accepts Staff's recommendations. The Commission finds that each of these claimants should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. Individual amounts are calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amounts, on a prorated basis, at the time of disbursement.

18. One claim was submitted for cash sale soybeans. Richard Lauck claimed 1460.80 bushels for a total amount due of $6,119.22. Exhibit 1C. Commission Staff supported this claim. This claim is summarized on Staff__Exhibit 2I. The Commission accepts Staff's recommendation. The Commission finds that this claimant should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. The amount is calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amount, on a prorated basis, at the time of disbursement.

19. One claim was submitted for priced unpaid soybeans. Derald Klueber claimed 1743.48 bushels for a total amount due of $7,113.40. Exhibit 1X. Commission Staff supported this claim. This claim is summarized on Staff__Exhibit 2J. The Commission accepts Staff's recommendation. The Commission finds that this claimant should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. The amount is calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amount, on a prorated basis, at the time of disbursement.

DELAYED PRICE AND DEFERRED PAYMENT CONTRACTS

20. Eight claims were submitted for delayed price contracts for corn. Farmers National, Graham, claimed 2200 bushels. Exhibit 1Q. Commission Staff verified this claim. Farmers National,

Ott/Jackson, claimed 4285.21 bushels. Exhibit 1P. Commission Staff verified this claim. Leroy Klockman claimed 1827.86 bushels. Exhibit 1D. Commission Staff verified this claim. Farmers National, Nagano, claimed 3730.36 bushels. Exhibit 1S. Commission Staff verified this claim. Helen Eide claimed 5817.87 bushels. Exhibit 1V. Commission Staff did not verify this claim. Commission Staff submitted documentation showing that this claim had been paid by check which had cleared the bank. Exhibit 3I. Lucille Helmbrecht claimed 2397.51 bushels. Exhibit 1T. Jeff Scott claimed 7172.15 bushels. Exhibit 1G. Rich Hoffman claimed 1957.15 bushels. Exhibit 1U. These claims are summarized on Staff__Exhibits 2F and 2N.

21. Seven claims were submitted for delayed price contracts for soybeans. Leonard Buehner claimed 408.14 bushels. Exhibit 1Y. Commission Staff verified this claim. Helen Eide claimed 1861.76 bushels. Exhibit 1V. Commission Staff submitted documentation verifying 973.87 bushels. Exhibit 3I. Farmers National, Ott/Jackson, claimed 719.06 bushels. Exhibit 1P. Commission Staff verified this claim. Farmers National, Graham, claimed 700 bushels. Commission Staff verified this claim. Tim Jensen claimed 5974.33 bushels. Exhibit 1H. Commission Staff submitted documentation verifying this claim. Exhibit 3D. Jeff Scott claimed 6835.60 bushels. Exhibit 1G. Alvin Scott claimed 5661.71 bushels. Exhibit 1Z. These claims are summarized on Staff__Exhibits 2L and 2O.

22. Four claims were submitted for deferred payment contracts for corn. Pat Kappenman claimed 1515.72 bushels for a total amount due of $2,178.43. Exhibit 1J. Commission Staff verified this claim. Larry Weber claimed 5257.15 bushels for a total amount due of $6,764.79. Exhibit 1N. Commission Staff verified this claim. Farmers National, Nichols, claimed 670 bushels for a total amount due of $1,162.90. Exhibit 1O. Commission Staff verified this claim. Farmers National, Ott/Jackson, claimed 600 bushels for a total amount due of $1,101.24. Exhibit 1P. Commission Staff verified this claim. These claims are summarized on Staff Exhibit 2G.

23. Three claims were submitted for deferred payment contracts for soybeans. Farmers National, Ott/Jackson, claimed 600 bushels for a total amount due of $2,610.88. Exhibit 1P. Commission Staff verified this amount. Farmers National Nichols claimed 293 bushels for a total amount due of $1,337.83. Exhibit 1O. Commission Staff verified this claim. Pat Kappenman claimed 1709.34 bushels for a total amount due of $7,296.40. Exhibit 1J. Commission Staff verified this claim. These claims are summarized on Staff__Exhibit 2K.

24. Although the deferred payment and delayed pricing claimants have demonstrated that they are owed money for the sale of their grain to McCook, there are no grain proceeds remaining due to Home Federal's perfected security interest. See Findings of Fact 13-15. In addition, pursuant to SDCL 49-45-9, a grain dealer's bond "may not benefit any person entering into a voluntary credit sale with a grain dealer." A voluntary credit sale is defined as "a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts and price-later contracts." SDCL 49-45-1.1(5). Thus, deferred payment and delayed pricing contracts are statutorily excluded from bond coverage and the claimants may not receive any of the bond proceeds.

25. Following the hearing, the Commission received a Notice and Motion to Reopen for Further Evidence from Commission Staff. Staff requested the record be reopened for the purpose of receiving into evidence affidavits from some of the claimants requesting rescission of their delayed price contracts and/or deferred price contracts entered into with McCook. Since there were no objections to the admission of the affidavits, the Commission received the affidavits into evidence.

26. Rescission is considered to be an extraordinary, equitable remedy that should be granted only if the evidence is clear and convincing. *Mattson v. Rachetto*, 1999 SD 51, P17, 591 N.W.2d 814, 818. The Commission does not believe that, as a receiver, it can consider requests to rescind or set aside contracts. Generally, if a party would like to rescind or set aside a contract, that party would bring an action against the other party to the contract. *See generally Vermilyea v. BDL Enterprises, Inc.*, 462 N.W.2d 885 (S.D. 1990) (plaintiff brought action against defendant for rescission of lease); *Mattson*, 1999 SD 51, 591 N.W.2d 814 (plaintiff filed suit against defendant for rescission of land contract); *Smith v. Hermsen*, 1997 SD 138, 572 N.W.2d 835 (plaintiff sued for rescission of land sale). The Commission's notice of hearing in this case stated that it would determine claims against the bonds and the grain inventory. The contracts were entered into among McCook and individual claimants. There was no notice to McCook that contracts that it had entered into with some of the claimants were possibly subject to rescission or setting aside as a result of the hearing. Moreover, in this case, the claimants requesting rescission did not do so until after the hearing.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this matter pursuant to SDCL 49-43-5.6, 49-45-16 and SDCL Chapter 21-21.

2. The Commission has jurisdiction over this matter as a receiver appointed by the Court pursuant to SDCL Chapter 21-21, and SDCL Chapters 49-42, 49-43, and 49-45, specifically 49-42-15.1, 49-43-5.6, 49-43-5.8, 49-45-13, 49-45-16, and 49-45-18.

3. All of the above claims found valid by the Commission in findings of fact 16-19 are legitimate claims on the proceeds of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. All such claims shall be paid out of the proceeds of the bond. All of the claims found valid by the Commission in findings of fact 9-15 are legitimate claims on the proceeds of the sale of the grain. All such claims shall be paid out of the proceeds of the grain.

4. Pursuant to SDCL 57A-2-403(1), "[a] purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value...." Under the express, written terms of both delayed price contracts and deferred payment contracts, title to the grain passes to the buyer even though payment is to be made to the seller at a later date. *See generally* exhibits 1J, 1Q. The definition of a purchase "includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property." SDCL 57A-1-201(32).

5. Home Federal is a good faith purchaser for value and its perfected security interest attached to the grain when Freeman Fertilizer had voidable title in the goods. This security interest is superior to the unsecured security interests of the claimants who entered into deferred payment and delayed pricing contracts.

6. Pursuant to SDCL 49-45-9, a grain dealer's bond "may not benefit any person entering into a voluntary credit sale with a grain dealer." A voluntary credit sale is defined as "a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts and price-later contracts." SDCL 49-45-1.1(5). Thus, deferred payment

and delayed pricing contracts are statutorily excluded from bond coverage and the claimants may not receive any of the bond proceeds.

7. As a receiver, the Commission cannot consider requests to rescind or set aside contracts. Rescission is considered to be an extraordinary, equitable remedy that should be granted only if the evidence is clear and convincing. *Mattson v. Rachetto*, 1999 SD 51, P17, 591 N.W.2d 814, 818. Generally, if a party would like to rescind or set aside a contract, that party would bring an action against the other party to the contract. See *generally Vermilyea v. BDL Enterprises, Inc.*, 462 N.W.2d 885 (S.D. 1990) (plaintiff brought action against defendant for rescission of lease); *Mattson*, 1999 SD 51, 591 N.W.2d 814 (plaintiff filed suit against defendant for rescission of land contract); *Smith v. Hermsen*, 1997 SD 138, 572 N.W.2d 835 (plaintiff sued for rescission of land sale). The Commission's notice of hearing in this case stated that it would determine claims against the bonds and the grain inventory. The contracts were entered into among McCook and individual claimants. There was no notice to McCook that contracts that it had entered into with some of the claimants were possibly subject to rescission or setting aside as a result of the hearing. Moreover, in this case, the claimants requesting rescission did not do so until after the hearing.

ORDERED:

1. The Commission's Proposed Findings of Fact, Conclusions of Law, and Decision is approved as it applies to claims submitted for the grain proceeds and grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001.

2. The Commission, as receiver, shall pay the above claims from the grain dealer's bond and the grain proceeds in the amounts as listed on Appendices A-G. Accumulated interest on the grain dealer's bond shall be distributed on a pro rata basis to the eligible claimants of the bond proceeds. Accumulated interest on the grain proceeds shall be distributed to Home Federal.

Dated this _____ day of August, 2001.

BY THE COURT:

_____
Circuit Court Judge

ATTEST:

_____
Clerk of Courts

(SEAL)

GD01-001 (CIV01-023)

APPENDIX A

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

Claims for the following categories:

		a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net (c-d-e)
Corn:							
Grain Bank -	Leroy Pullman	88.61	1.49	$132.03	$4.43	$4.01	$123.59
	Arlo Hofer	2,868.27	1.49	$4,273.72	$143.41	$129.65	$4,000.66
	James McGregor	1,931.09	1.49	$2,877.32	$96.55	$87.29	$2,693.48
	Maynard Yoder	3,036.68	1.49	$4,524.65	$151.83	$137.26	$4,235.56
	Jerry Herlyn	3,397.46	1.49	$5,062.22	$169.87	$153.57	$4,738.78
	Roger Waltner	915.64	1.49	$1,364.30	$45.78	$41.39	$1,277.13
	Charles Deckert	49.46	1.49	$73.70	$2.47	$2.24	$68.99
	Oren Stahl	904.69	1.49	$1,347.99	$45.23	$40.89	$1,261.86
Total Grain Bank Corn		13,191.90		$19,655.93	$659.60	$596.27	$18,400.06

Sources: Col. (a) June 8, 2001 Staff Brief and Knadle hearing Exhibits.
(b) - Corn sale proceeds of $70,141.44 / 47,066 bu. = $1.49
(d) - $.05 per bushel.
(e) - allocation of total $3,000 /66,361.45 = $.0452 bu.

APPENDIX B

GD01-001 (CIV01-023)

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

Open Storage	a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net
Jeff Weber	3,146.06	1.49	$4,687.63	$157.30	$142.20	$4,388.12
Dale Seubert	7,327.77	1.49	$10,918.38	$366.39	$331.22	$10,220.77
Farmers Nat'l -Nagano	704.80	1.49	$1,050.15	$35.24	$31.86	$983.06
	11,178.63		$16,656.16	$558.93	$505.27	$15,591.95

Sources: Column

a. Staff Exhibit 2C and Staff Brief
b. Sale amount of $70,141.44 / 47.066.78 bu. = $1.49
c. col. a x col. b
d. col. a. x $05
e. col. a. x proration ($.0452 bu.)
f. col. c less cols. d. and e.

OATS
GRAIN BANK -

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

	a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net
Charles Langle	400	$1.310	$524.00	$20.00	$18.08	$485.92

Sources: Column

a. Staff Exhibit 2M and Staff Brief
b. Sale amount of $736.06 / 561.88 bu. = $.776
c. col. a x col. b
d. col. a. x $05
e. col. a. x proration
f. col. c less cols. d. and e.

APPENDIX D

GD01-001 (CIV01-023)

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

SOYBEANS
OPEN STORAGE -

	a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net
Gene Hofer	1,626.67	$4.095	$6,661.21	$81.33	$73.53	$6,506.35

Sources: Column

a. Staff Exhibit 2H and Staff Brief
b. Sale amount of $$64,753.62 /15,811 bu. = $4.095
c. col. a x col. b
d. col. a. x $05
e. col. a. x proration
f. col. c less cols. d. and e.

GD01-001 (CIV01-023)

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

Summary of Open Storage and Grain Bank

	a. Bushels	b. Price	c. Claims	d. Load out	e. Storage	f. Net (c-d-e)
Claims						
Corn - Grain Bank	13,191.90	$1.49	$19,655.93	$659.60	$596.27	$18,400.06
Corn - Storage	11,178.63	$1.49	$16,656.16	$558.93	$505.27	$15,591.96
Oats - Grain Bank	400.00	$1.31	$524.00	$20.00	$18.08	$485.92
Soybeans - Open Storage	1,626.67	$4.10	$6,661.21	$81.33	$73.53	$6,506.35
Total	26,397.20		$43,497.30	$1,319.86	$1,193.15	$40,984.29

Auction results

	a. Bushels	b. Proceeds	c. Claims	d. Excess(b-c)	e. Load out	f. Storage
Corn	47,066.78	$70,141.44	$36,312.09	$33,829.35	$2,353.34	$2,127.42
Oats	561.88	$736.06	$524.00	$212.06	$28.09	$25.40
Soybeans	15,811.00	$64,753.62	$6,661.21	$58,092.41	$790.55	$714.66
Mixed grain	2,921.79	$6,574.02	$0.00	$6,574.02	$146.09	$132.06
	66,361.45	$142,205.14	$43,497.30	$98,707.84	$3,318.07	$2,999.54

Storage - $3,000 / 66,361.45 = $.0452 bu.

	a. Proceeds	b. Load out	c. Storage	d. Net proceeds
Total	$142,205.14	$3,318.07	$2,999.54	$135,887.53
Less: Claimant portion	$43,497.30	$1,319.86	$1,193.15	$40,984.29
Net to non-farm	$98,707.84	$1,998.21	$1,806.39	$94,903.24

Source: See other appendixes.

APPENDIX F

GD01-001 (CIV01-023)

Summary

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

	a. Sold Bushels	b. Farmer Claims	c. Bushel Difference	d. Proceeds	e. Claims	f. Claim Difference
Corn	47,066.78	24,370.53	22,696.25	$70,141.44	$36,312.09	$33,829.35
Oats	561.88	400.00	161.88	$736.06	$524.00	$212.06
Soybeans	15,811.00	1,626.67	14,184.33	$64,753.62	$6,661.21	$58,092.41
Mixed grain	2,921.79	none	2,921.79	$6,574.02	none	$6,574.02
	66,361.45	26,397.20	39,964.25	$142,205.14	$43,497.30	$98,707.84

This doesn't include any interest on the proceeds which are invested in interim CDs.

Farm claimant load out and storage

	Load out	Storage
Grain Bank Corn	$659.60	$596.27
Open Storage Corn	$558.93	505.27
Oats	$20.00	18.08
Soybeans	81.33	73.53
Total Claimant	$1,319.86	$1,193.15

Source: See other Appendixes.

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

GRAIN DEALER BOND CLAIMS

	a. Claimants	b. Amount	c. Totals	d. $50,000 Bond prorate
Corn:				
1. Cash sale	1. Gary Waltner	$2,462.59		$1,586.36
	2. Rich Lauck	$584.80		$376.72
	3. Farmers Nat'l-Nagano	$5,500.75		$3,543.50
	4. Lake Preston Coop	$17,487.37		$11,265.10
	5. Lester Kappenman	$1,527.20		$983.80
	6. Farmers Nat'l -Paul	$205.09		$132.12
	7. Tim Jensen	$12,826.65		$8,262.74
	8. William Perrenoud	$6,112.49		$3,937.57
	Total cash sale corn		$46,706.94	
2. Priced-unpaid	1. Gilbert Buehner	$5,023.93		$3,236.34
	2. Pat Kappenman	$10,027.93		$6,459.84
	3. Farmers Nat'l -Franz/Nagano	$2,626.00		$1,691.63
	Total priced-unpaid		$17,677.86	
	Total Corn		$64,384.80	
Soybeans:				
3. Cash sale	1. Rich Lauck	$6,119.22		$3,941.91
4. Priced-unpaid	1. Derald Klueber	$7,113.40		$4,582.35
	Total Soybeans		$13,232.62	
	TOTAL GRAIN DEALER BOND CLAIMS		$77,617.42	
	TOTAL GRAIN DEALER BOND			$49,999.98

Source: Cols. a-c: Staff Exhibit 2

d: Column (c) x ($50,000/ $77,617.42). $50,000 is the total available bond before interest. $50,000/ $77,617.42 = 64.4185%.

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF MCCOOK)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

CIV. 01-023

CERTIFICATE OF SERVICE

IN THE MATTER OF THE GRAIN DEALER'S AND GRAIN WAREHOUSEMAN'S BONDS OF JEFF MULDER D/B/A FREEMAN FERTILIZER CO., INC. D/B/A MCCOOK FEED & FERTILIZER AND GRAIN INVENTORY

I hereby certify that copies of Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver and proposed Order Approving Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver were served on the following by mailing the same to them by United States Post Office First Class mail, postage thereon prepaid, at the address shown below on this the 7th day of August, 2001.

See Attached Exhibit A.

s/
Rolayne Ailts Wiest
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF MCCOOK	)	FIRST JUDICIAL CIRCUIT
IN THE MATTER OF THE GRAIN DEALER'S AND GRAIN WAREHOUSEMAN'S BONDS OF JEFF MULDER D/B/A FREEMAN FERTILIZER CO., INC. D/B/A MCCOOK FEED & FERTILIZER AND GRAIN INVENTORY	)	CIV. 01-023
	)	NOTICE OF ENTRY OF ORDER APPROVING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF RECEIVER

TO: ALL INTERESTED PARTIES AND ENTITIES:

Notice is hereby given that an Order Approving Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver, a copy of which is attached hereto, was entered and filed by the Court on the 13th day of August, 2001, in the office of the Clerk of Courts of McCook County, South Dakota.

Dated this 16th day of August, 2001.

Rolayne Ailts Wiest

Rolayne Ailts Wiest
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Telephone (605) 773-3201

CERTIFICATE OF SERVICE

I hereby certify that copies of Notice of Entry of Order Approving Proposed Findings of Fact, Conclusions of Law, and Decision of Receiver were served on the following by mailing the same to them by United States Post Office First Class mail, postage thereon prepaid, at the address shown below on this the 16th day of August, 2001.

See Attached Exhibit A.

Rolayne Ailts Wiest

Rolayne Ailts Wiest
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

STATE OF SOUTH DAKOTA)		IN CIRCUIT COURT
) SS		
COUNTY OF MCCOOK)		FIRST JUDICIAL CIRCUIT
IN THE MATTER OF THE GRAIN DEALER'S AND GRAIN WAREHOUSEMAN'S BONDS OF JEFF MULDER D/B/A FREEMAN FERTILIZER CO., INC. D/B/A MCCOOK FEED & FERTILIZER AND GRAIN INVENTORY	FILED AUG 13 2001 CHERYL J. MIILLER Clerk of Circuit Court By _____ McCook County, South Dakota	CIV. 01-023 ORDER APPROVING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF RECEIVER

PROCEDURAL HISTORY

This action comes before the Court upon petition of the South Dakota Public Utilities Commission (Commission) to be appointed receiver to take possession of bond proceeds and grain inventory of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook). On February 13, 2001, Jeff Mulder, on behalf of McCook, entered into a stipulation with the Commission surrendering his licenses as a grain dealer and grain warehouseman and permitting the Commission to take immediate possession of his facilities. On March 8, 2001, the Commission filed with this Court a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver.

Pursuant to the order of the Court, the Commission was required to determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory located at the Canistota facility. A hearing was held as scheduled on the claims as described above on May 3, 2001, beginning at 10:00 a.m., at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, South Dakota. Briefs were filed following the hearing.

By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. The Commission accepted the following bids:

> FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at $4.12 net per bushel, subject to the discount tables; and
>
> Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at $1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at $2.25 per bushel; and approximately 48,000 bushels of corn at $1.51 per bushel, subject to the discount tables.

On June 14, 2001, the Commission received a letter from FreMar Farmers Cooperative (FreMar) stating that the actual bushels of soybeans received were 15,811 and requested that $1,500.00 be deducted from the amount FreMar owes for the 15,811 bushels of soybeans. At its July 6, 2001, meeting, the Commission voted to deny FreMar's request to adjust the amount FreMar owed for the soybeans.

RECEIVED
AUG 10 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

On June 8, 2001, the Commission received a Notice and Motion to Reopen for Further Evidence from Commission Staff. Staff requested the record be reopened for the purpose of receiving into evidence affidavits from some of the claimants requesting rescission of their delayed price contracts and/or deferred payment contracts entered into with McCook. On June 19, 2001, the Commission received a Motion to Reopen for Further Evidence from Home Federal Savings Bank (Home Federal) for the purpose of receiving into evidence the Affidavit of Richard Shane regarding alternative methods of selling grain and the usual practices concerning the issue of elevator contracts. On June 28, 2001, the Commission received the Affidavit of Richard Shane.

At its July 6, 2001, meeting, the Commission considered the motions. None of the parties objected to all of the affidavits being received into evidence. None of the parties requested any additional hearings. Since there were no objections, the Commission voted to grant both motions and received the affidavits into evidence.

At its July 27, 2001, meeting, the Commission considered this matter. The Commission voted to make the following recommendations to the Court: 1) the grain bank and open storage claimants should receive an amount equal to the number of bushels of grain multiplied by the price for the grain when it was sold, less a pro rata share of the storage and handling costs; 2) Home Federal has a perfected security interest in the grain which was sold to McCook and thus, should receive the remainder of the proceeds of the grain, less its pro rata share for storage and handling costs; 3) the cash sale and priced unpaid grain claimants should receive a pro rata share of the $50,000.00 grain dealer's bond; and 4) state law specifically prohibits the use of bond money for voluntary credit sale contracts so the claimants who signed deferred payment contracts and delayed price contracts are not eligible to receive any bond proceeds. The Commission further explained that, as stated earlier, Home Federal has a valid perfected security interest in the grain which was sold to McCook, and, thus, there are no grain proceeds remaining for the claimants who signed deferred payment contracts and delayed price contracts. The Commission recognized that the claimants who signed deferred payment contracts and delayed price contracts raised issues regarding the rescission or the setting aside of those contracts based on fraud or failure of consideration. However, the Commission believed that these issues went beyond the scope of the Commission's authority as a receiver in this matter. The Court's order granting receivership required the Commission to schedule a hearing for the purpose of making a proposal to the Court regarding the disposition of the inventory and the bonds. It does not contemplate that the Commission, in its role as a receiver, would consider the rescission or setting aside of contracts.

The Commission submitted its proposed decision to the Court along with the transcripts and all exhibits. The Commission made the following proposed findings of fact and conclusions of law:

FINDINGS OF FACT

1. On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook), entered into a stipulation with the Commission surrendering his licenses as a grain dealer and grain warehouseman and permitting the Commission to take immediate possession of his facilities. Exhibit C. On March 8, 2001, the Commission filed with the First Judicial Circuit a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota.

2. Pursuant to the order of the Court, the Commission held a hearing on May 3, 2001, in Canistota to determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June

30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory currently located at the Canistota facility. Exhibit B.

3. By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. The Commission accepted the following bids:

> FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at $4.12 net per bushel, subject to the discount tables; and
>
> Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at $1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at $2.25 per bushel; and approximately 48,000 bushels of corn at $1.51 per bushel, subject to the discount tables.

4. On June 14, 2001, the Commission received a letter from FreMar Farmers Cooperative (FreMar) stating that the actual bushels of soybeans received were 15,811 and requested that $1,500.00 be deducted from the amount FreMar owes for the 15,811 bushels of soybeans. At its July 6, 2001, meeting, the Commission voted to deny FreMar's request to adjust the amount FreMar owed for the soybeans. The Commission noted that in its request for bids sent to potential bidders, the number of bushels were listed as approximate amounts. The Commission had no control over FreMar's course of action for disposal or marketing of the grain.

5. At the May 3, 2001, hearing, Commission Staff submitted an exhibit which classified most of the claims submitted by the claimants. Staff__Exhibit 2.

CLAIM FOR RENT AND LOAD OUT OF GRAIN

6. Prior to the hearing, a claim was received from R&R Ag Inputs Inc. for rent of the facility at Canistota of $2,000.00 per month, beginning March 1, 2001, and a charge to load out the grain at $0.05 per bushel. Exhibit E. Commission Staff witness, Bob Knadle, testified that the storage rate charged by most elevators is $0.001 a day. TR. at 41. Multiplying that storage rate by Staff's estimated number of bushels at the elevator of 69,500, the storage charge would be approximately $2,100.00 per month. TR. at 40-41. However, Mr. Knadle noted that generally the storage rate includes insurance and bond coverage which R&R Ag Inputs was not providing. TR. at 41. Mr. Knadle stated that the load out charge of $0.05 per bushel is the amount charged by most elevators. *Id.*

7. Following the hearing, on May 25, 2001, R&R Ag Inputs filed a revised request for expenses related to rent. R&R Ag Inputs submitted a revised claim for rent of $3,000.00 for the months of March, April, and May.

8. The Commission finds that the charges contained in R&R Ag Inputs revised claim received May 25, 2001, are based on typical industry charges and are reasonable. The Commission finds that the charges shall be assessed to all claimants, on a pro rata basis, who receive any of the proceeds from the sale of the grain.

0162.99.340

CLAIMS ARISING FROM STORAGE OF GRAIN

9. Eight claims were submitted for grain bank corn. Leroy Pullman claimed 80-90 bushels. Exhibit 1AB. Staff submitted documentation supporting 88.61 bushels. Exhibit 3J. Arlo Hofer claimed 2858.38 bushels. Exhibit 1AC. Staff submitted documentation supporting 2868.27 bushels. Exhibit 3K. James McGregor claimed 2788.19 bushels. Exhibit 1AD. Staff submitted documentation supporting 1931.09 bushels. Exhibit 3L. Maynard Yoder claimed 3050 bushels. Exhibit 1AE. Staff submitted documentation supporting 3036.68 bushels. Exhibit 3M. Jerry Herlyn submitted claims for 3115.17 bushels. Exhibit 1AF. Staff submitted documentation supporting 3397.46 bushels. Exhibit 3N. Roger Waltner claimed 1092.43 bushels. Exhibit 1AG. Staff submitted documentation supporting 915.64 bushels. Exhibit 3O. Charles Deckert claimed approximately 45 bushels. Exhibit 1AH. Staff submitted documentation supporting 49.46 bushels. Exhibit 3P. Oren Stahl claimed 904.69 bushels. Exhibit 1AI. Staff supported this amount. These claims are summarized on Staff__Exhibit 2B. The Commission accepts Staff's recommendations. The Commission finds that each of the claimants should be paid out of the money received from the sale of the corn stored at the warehouse. The exact amount of bushels of corn was 47,066.78 and the amount received was $70,141.44. Based on the bid price of $1.51 per bushel, subject to the discount tables, the amount received for the corn was $1.49 per bushel. Thus, each of the above claimants would receive an amount equal to their bushels multiplied times $1.49 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. Individual amounts are calculated on Appendix A.

10. Three claims were submitted for open storage corn: Jeff Weber claimed 3142.66 bushels. Exhibit 1L. Commission Staff submitted documentation supporting 3146.06 bushels. Exhibit 3G. Dale Seubert claimed 7327.77 bushels. Exhibit 1M. Commission Staff agreed with that amount and submitted documentation supporting that amount. Exhibit 3H. Farmers National, Nagano, claimed 704.80 bushels. Exhibit 1S. Commission Staff agreed with that amount. These claims are summarized on Staff__Exhibit 2C. The Commission accepts Staff's recommendations. The Commission finds that each of the claimants should be paid out of the money received from the sale of the corn stored at the warehouse. The exact amount of bushels of corn was 47,066.78 and the amount received was $70,141.44. Based on the bid price of $1.51 per bushel, subject to the discount tables, the amount received for the corn was $1.49 per bushel. Thus, each of the above claimants would receive an amount equal to their bushels multiplied times $1.49 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. Individual amounts are calculated on Appendix B.

11. One claim was submitted for open storage soybeans. Gene Hofer claimed 1626.65 bushels. Exhibit 1W. Commission Staff recommended 1626.67 based on the scale tickets. This claim is summarized on Staff__Exhibit 2H. The Commission accepts Staff's recommendation. The Commission finds that the claimant should be paid out of the money received from the sale of the soybeans stored at the warehouse. The exact amount of bushels of soybeans was 15,811 and the amount received was $64,753.62. Based on the bid price of $4.12 per bushel, subject to the discount tables, the amount received for the corn was $4.095 per bushel. Thus, the above claimant would receive an amount equal to his bushels multiplied times $4.095 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. The amount is calculated on Appendix D.

12. One claim was submitted for grain bank oats. Charles Langle claimed 400 bushels. Exhibit 1AA. Commission Staff supported this amount. This claim is summarized on Staff__Exhibit 2M. The Commission accepts Staff's recommendation. The Commission finds that the claimant should be paid out of the money received from the sale of the oats stored at the warehouse. The exact

amount of bushels of oats was 561.88 and the amount received was $736.06. Based on the bid price of $1.31 per bushel, subject to the discount tables, the amount received for the oats was still $1.31 per bushel. Thus, the above claimant would receive an amount equal to his bushels multiplied times $1.31 per bushel, less rent and load out costs. Rent should be prorated by the total bushels loaded out. The amount is calculated on Appendix C.

CLAIM OF HOME FEDERAL BANK

13. Home Federal Savings Bank (Home Federal) submitted evidence of a promissory note, executed by the principals of Freeman Fertilizer, in the amount of $1,000,000.00. Exhibit HF 1. The collection special assets manager for Home Federal, Mike Pierce, testified that an outstanding balance on the note remained in an amount of over $600,000.00. TR. at 87. Home Federal also submitted evidence of a Small Business Administration (SBA) note executed at Home Federal by the principals of Freeman Fertilizer with a current balance outstanding of $237,624.81. Exhibit HF 3. Home Federal submitted a blanket security agreement executed by Freeman Fertilizer granting a security interest to Home Federal in the inventory of Freeman Fertilizer. Exhibit HF 5. Home Federal submitted a security agreement concerning the SBA note executed by Freeman Fertilizer granting a security interest to Home Federal in the inventory of Freeman Fertilizer. Exhibit HF 6. Home Federal also provided certified state UCC financing statements. Exhibit HF 7.

14. The Commission finds that Home Federal has a perfected security interest in the proceeds of the grain that remains after the claims of open storage claimants and grain bank claimants are satisfied. Pursuant to SDCL 57A-2-403(1), "[a] purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value...." Under the express, written terms of both delayed price contracts and deferred payment contracts, title to the grain passes to the buyer even though payment is to be made to the seller at a later date. *See generally* exhibits 1J, 1Q. The definition of a purchase "includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property." SDCL 57A-1-201(32).

15. The Commission believes that Home Federal is a good faith purchaser for value and its perfected security interest attached to the grain when Freeman Fertilizer, db/a McCook, had voidable title in the goods. This security interest is superior to the unsecured security interests of the claimants who entered into deferred payment and delayed pricing contracts. After the open storage and grain bank claimants are paid out of the grain proceeds, the remaining proceeds total $98,707.84. Appendices E, F. After subtracting rent and load out charges, the remaining proceeds total $94,903.24. *Id.* Since the remainder of the grain proceeds is considerably less than what Home Federal is owed on its loan to Freeman Fertilizer, Home Federal should receive that amount plus the interest earned on the grain proceeds.

CASH SALES

16. Eight claims were submitted for cash sale corn. Gary Waltner claimed 1930.95 bushels for a total amount due of $2,462.59. Exhibit 1B. Commission Staff supported this amount. Richard Lauck claimed 430 bushels for a total amount due of $584.80. Exhibit 1C. Commission Staff supported this amount. Farmers National, Nagano, claimed 3700 bushels for a total amount due of $5,500.75. Exhibit 1S. Commission Staff supported this amount. Lake Preston Cooperative claimed 10,077.14 bushels for a total amount due of $17,640.39. Exhibit 1E. Commission Staff submitted documentation supporting 10,072.85 bushels for a total amount due of $17,487.37.

Exhibit 3A. Lester Kappenman claimed 829.99 bushels for a total amount due of $1,535.48. Exhibit 1F. Commission Staff submitted documentation supporting the same amount of bushels but for a total amount due of $1,527.20. Exhibit 3B. Farmers National, Paul, claimed 166.07 bushels for a total amount due of $244.12. Exhibit 1R. Commission Staff submitted documentation supporting the same amount of bushels but for a total amount due of $205.09. Exhibit 3C. Tim Jensen claimed 9258.51 bushels for a total amount due of $12,826.65. Exhibit 1H. Commission Staff supported this claim. William Perrenoud claimed 4455.72 for a total amount due of $6,327.12. Exhibit 1K. Commission Staff submitted documentation for the same amount of bushels but for a total amount due of $6,112.49. Exhibit 3F. These claims are summarized on Staff__Exhibit 2D. The Commission accepts Staff's recommendations. The Commission finds that each of these claimants should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. Individual amounts are calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amounts, on a prorated basis, at the time of disbursement.

17. Three claims were submitted for priced unpaid corn. Gilbert Buehner claimed 2791.07 bushels for a total amount due of $5,023.93. Exhibit 1I. Commission Staff supported this claim. Pat Kappenman claimed 6148.85 for a total amount due of $10,027.93. Exhibit 1J. Commission Staff submitted documentation for 6148.86 bushels with the same amount due. Exhibit 3E. Farmers National, Franz/Nagano claimed 1300 bushels for a total amount due of $2626.00. Exhibit 1S. Commission Staff supported this claim. These claims are summarized on Staff__Exhibit 2E. The Commission accepts Staff's recommendations. The Commission finds that each of these claimants should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. Individual amounts are calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amounts, on a prorated basis, at the time of disbursement.

18. One claim was submitted for cash sale soybeans. Richard Lauck claimed 1460.80 bushels for a total amount due of $6,119.22. Exhibit 1C. Commission Staff supported this claim. This claim is summarized on Staff__Exhibit 2I. The Commission accepts Staff's recommendation. The Commission finds that this claimant should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. The amount is calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amount, on a prorated basis, at the time of disbursement.

19. One claim was submitted for priced unpaid soybeans. Derald Klueber claimed 1743.48 bushels for a total amount due of $7,113.40. Exhibit 1X. Commission Staff supported this claim. This claim is summarized on Staff__Exhibit 2J. The Commission accepts Staff's recommendation. The Commission finds that this claimant should be paid out of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. The amount is calculated on Appendix G. In addition, since the money from the bond is accumulating interest, the accrued interest should be included in the overall proceeds. Accrued interest should be added to the amount, on a prorated basis, at the time of disbursement.

DELAYED PRICE AND DEFERRED PAYMENT CONTRACTS

20. Eight claims were submitted for delayed price contracts for corn. Farmers National, Graham, claimed 2200 bushels. Exhibit 1Q. Commission Staff verified this claim. Farmers National,

Ott/Jackson, claimed 4285.21 bushels. Exhibit 1P. Commission Staff verified this claim. Leroy Klockman claimed 1827.86 bushels. Exhibit 1D. Commission Staff verified this claim. Farmers National, Nagano, claimed 3730.36 bushels. Exhibit 1S. Commission Staff verified this claim. Helen Eide claimed 5817.87 bushels. Exhibit 1V. Commission Staff did not verify this claim. Commission Staff submitted documentation showing that this claim had been paid by check which had cleared the bank. Exhibit 3I. Lucille Helmbrecht claimed 2397.51 bushels. Exhibit 1T. Jeff Scott claimed 7172.15 bushels. Exhibit 1G. Rich Hoffman claimed 1957.15 bushels. Exhibit 1U. These claims are summarized on Staff__Exhibits 2F and 2N.

21. Seven claims were submitted for delayed price contracts for soybeans. Leonard Buehner claimed 408.14 bushels. Exhibit 1Y. Commission Staff verified this claim. Helen Eide claimed 1861.76 bushels. Exhibit 1V. Commission Staff submitted documentation verifying 973.87 bushels. Exhibit 3I. Farmers National, Ott/Jackson, claimed 719.06 bushels. Exhibit 1P. Commission Staff verified this claim. Farmers National, Graham, claimed 700 bushels. Commission Staff verified this claim. Tim Jensen claimed 5974.33 bushels. Exhibit 1H. Commission Staff submitted documentation verifying this claim. Exhibit 3D. Jeff Scott claimed 6835.60 bushels. Exhibit 1G. Alvin Scott claimed 5661.71 bushels. Exhibit 1Z. These claims are summarized on Staff__Exhibits 2L and 2O.

22. Four claims were submitted for deferred payment contracts for corn. Pat Kappenman claimed 1515.72 bushels for a total amount due of $2,178.43. Exhibit 1J. Commission Staff verified this claim. Larry Weber claimed 5257.15 bushels for a total amount due of $6,764.79. Exhibit 1N. Commission Staff verified this claim. Farmers National, Nichols, claimed 670 bushels for a total amount due of $1,162.90. Exhibit 1O. Commission Staff verified this claim. Farmers National, Ott/Jackson, claimed 600 bushels for a total amount due of $1,101.24. Exhibit 1P. Commission Staff verified this claim. These claims are summarized on Staff Exhibit 2G.

23. Three claims were submitted for deferred payment contracts for soybeans. Farmers National, Ott/Jackson, claimed 600 bushels for a total amount due of $2,610.88. Exhibit 1P. Commission Staff verified this amount. Farmers National Nichols claimed 293 bushels for a total amount due of $1,337.83. Exhibit 1O. Commission Staff verified this claim. Pat Kappenman claimed 1709.34 bushels for a total amount due of $7,296.40. Exhibit 1J. Commission Staff verified this claim. These claims are summarized on Staff__Exhibit 2K.

24. Although the deferred payment and delayed pricing claimants have demonstrated that they are owed money for the sale of their grain to McCook, there are no grain proceeds remaining due to Home Federal's perfected security interest. *See* Findings of Fact 13-15. In addition, pursuant to SDCL 49-45-9, a grain dealer's bond "may not benefit any person entering into a voluntary credit sale with a grain dealer." A voluntary credit sale is defined as "a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts and price-later contracts." SDCL 49-45-1.1(5). Thus, deferred payment and delayed pricing contracts are statutorily excluded from bond coverage and the claimants may not receive any of the bond proceeds.

25. Following the hearing, the Commission received a Notice and Motion to Reopen for Further Evidence from Commission Staff. Staff requested the record be reopened for the purpose of receiving into evidence affidavits from some of the claimants requesting rescission of their delayed price contracts and/or deferred price contracts entered into with McCook. Since there were no objections to the admission of the affidavits, the Commission received the affidavits into evidence.

26. Rescission is considered to be an extraordinary, equitable remedy that should be granted only if the evidence is clear and convincing. *Mattson v. Rachetto*, 1999 SD 51, P17, 591 N.W.2d 814, 818. The Commission does not believe that, as a receiver, it can consider requests to rescind or set aside contracts. Generally, if a party would like to rescind or set aside a contract, that party would bring an action against the other party to the contract. *See generally Vermilyea v. BDL Enterprises, Inc.*, 462 N.W.2d 885 (S.D. 1990) (plaintiff brought action against defendant for rescission of lease); *Mattson*, 1999 SD 51, 591 N.W.2d 814 (plaintiff filed suit against defendant for rescission of land contract); *Smith v. Hermsen*, 1997 SD 138, 572 N.W.2d 835 (plaintiff sued for rescission of land sale). The Commission's notice of hearing in this case stated that it would determine claims against the bonds and the grain inventory. The contracts were entered into among McCook and individual claimants. There was no notice to McCook that contracts that it had entered into with some of the claimants were possibly subject to rescission or setting aside as a result of the hearing. Moreover, in this case, the claimants requesting rescission did not do so until after the hearing.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this matter pursuant to SDCL 49-43-5.6, 49-45-16 and SDCL Chapter 21-21.

2. The Commission has jurisdiction over this matter as a receiver appointed by the Court pursuant to SDCL Chapter 21-21, and SDCL Chapters 49-42, 49-43, and 49-45, specifically 49-42-15.1, 49-43-5.6, 49-43-5.8, 49-45-13, 49-45-16, and 49-45-18.

3. All of the above claims found valid by the Commission in findings of fact 16-19 are legitimate claims on the proceeds of the $50,000.00 grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001. All such claims shall be paid out of the proceeds of the bond. All of the claims found valid by the Commission in findings of fact 9-15 are legitimate claims on the proceeds of the sale of the grain. All such claims shall be paid out of the proceeds of the grain.

4. Pursuant to SDCL 57A-2-403(1), "[a] purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value...." Under the express, written terms of both delayed price contracts and deferred payment contracts, title to the grain passes to the buyer even though payment is to be made to the seller at a later date. *See generally* exhibits 1J, 1Q. The definition of a purchase "includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property." SDCL 57A-1-201(32).

5. Home Federal is a good faith purchaser for value and its perfected security interest attached to the grain when Freeman Fertilizer had voidable title in the goods. This security interest is superior to the unsecured security interests of the claimants who entered into deferred payment and delayed pricing contracts.

6. Pursuant to SDCL 49-45-9, a grain dealer's bond "may not benefit any person entering into a voluntary credit sale with a grain dealer." A voluntary credit sale is defined as "a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts and price-later contracts." SDCL 49-45-1.1(5). Thus, deferred payment

and delayed pricing contracts are statutorily excluded from bond coverage and the claimants may not receive any of the bond proceeds.

7. As a receiver, the Commission cannot consider requests to rescind or set aside contracts. Rescission is considered to be an extraordinary, equitable remedy that should be granted only if the evidence is clear and convincing. *Mattson v. Rachetto*, 1999 SD 51, P17, 591 N.W.2d 814, 818. Generally, if a party would like to rescind or set aside a contract, that party would bring an action against the other party to the contract. *See generally Vermilyea v. BDL Enterprises, Inc.*, 462 N.W.2d 885 (S.D. 1990) (plaintiff brought action against defendant for rescission of lease); *Mattson*, 1999 SD 51, 591 N.W.2d 814 (plaintiff filed suit against defendant for rescission of land contract); *Smith v. Hermsen*, 1997 SD 138, 572 N.W.2d 835 (plaintiff sued for rescission of land sale). The Commission's notice of hearing in this case stated that it would determine claims against the bonds and the grain inventory. The contracts were entered into among McCook and individual claimants. There was no notice to McCook that contracts that it had entered into with some of the claimants were possibly subject to rescission or setting aside as a result of the hearing. Moreover, in this case, the claimants requesting rescission did not do so until after the hearing.

ORDERED:

1. The Commission's Proposed Findings of Fact, Conclusions of Law, and Decision is approved as it applies to claims submitted for the grain proceeds and grain dealer's bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001.

2. The Commission, as receiver, shall pay the above claims from the grain dealer's bond and the grain proceeds in the amounts as listed on Appendices A-G. Accumulated interest on the grain dealer's bond shall be distributed on a pro rata basis to the eligible claimants of the bond proceeds. Accumulated interest on the grain proceeds shall be distributed to Home Federal.

Dated this 15 day of August, 2001.

BY THE COURT:

Circuit Court Judge

ATTEST:

Clerk of Courts

(SEAL)

STATE OF SOUTH DAKOTA } ss
McCOOK COUNTY }
I hereby certify that I have carefully compared the within instrument with the record in my office and that it is a true and correct copy of the same and the whole thereof, and that the above is a true copy of the filing thereon.
Dated Aug 13, 2001
Clerk of Courts
By
Deputy

GD01-001 (CIV01-023)

APPENDIX A

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

Claims for the following categories:

		a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net (c-d-e)
Corn:							
Grain Bank -	Leroy Pullman	88.61	1.49	$132.03	$4.43	$4.01	$123.59
	Arlo Hofer	2,868.27	1.49	$4,273.72	$143.41	$129.65	$4,000.66
	James McGregor	1,931.09	1.49	$2,877.32	$96.55	$87.29	$2,693.48
	Maynard Yoder	3,036.68	1.49	$4,524.65	$151.83	$137.26	$4,235.56
	Jerry Herlyn	3,397.46	1.49	$5,062.22	$169.87	$153.57	$4,738.78
	Roger Waltner	915.64	1.49	$1,364.30	$45.78	$41.39	$1,277.13
	Charles Deckert	49.46	1.49	$73.70	$2.47	$2.24	$68.99
	Oren Stahl	904.69	1.49	$1,347.99	$45.23	$40.89	$1,261.86
Total Grain Bank Corn		13,191.90		$19,655.93	$659.60	$596.27	$18,400.06

Sources: Col. (a) June 8, 2001 Staff Brief and Knadle hearing Exhibits.

(b) - Corn sale proceeds of $70,141.44 / 47,066 bu. = $1.49

(d) - $.05 per bushel.

(e) - allocation of total $3,000 /66,361.45 = $.0452 bu.

APPENDIX B

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

Open Storage

	a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net
Jeff Weber	3,146.06	1.49	$4,687.63	$157.30	$142.20	$4,388.12
Dale Seubert	7,327.77	1.49	$10,918.38	$366.39	$331.22	$10,220.77
Farmers Nat'l -Nagano	704.80	1.49	$1,050.15	$35.24	$31.86	$983.06
	11,178.63		$16,656.16	$558.93	$505.27	$15,591.95

Sources: Column

a. Staff Exhibit 2C and Staff Brief
b. Sale amount of $70,141.44 / 47.066.78 bu. = $1.49
c. col. a x col. b
d. col. a. x $05
e. col. a. x proration ($.0452 bu.)
f. col. c less cols. d. and e.

APPENDIX C

OATS
GRAIN BANK -

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

	a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net
Charles Langle	400	$1.310	$524.00	$20.00	$18.08	$485.92

Sources: Column

a. Staff Exhibit 2M and Staff Brief
b. Sale amount of $736.06 / 561.88 bu. = $.776
c. col. a x col. b
d. col. a. x $05
e. col. a. x proration
f. col. c less cols. d. and e.

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

SOYBEANS

OPEN STORAGE -

	a. Bushels	b. Price	c. Proceeds	d. Load out	e. Storage	f. Net
Gene Hofer	1,626.67	$4.095	$6,661.21	$81.33	$73.53	$6,506.35

Sources: Column

a. Staff Exhibit 2H and Staff Brief
b. Sale amount of $$64,753.62 /15,811 bu. = $4.095
c. col. a x col. b
d. col. a. x $05
e. col. a. x proration
f. col. c less cols. d. and e.

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

Summary of Open Storage and Grain Bank

	a. Bushels	b. Price	c. Claims	d. Load out	e. Storage	f. Net (c-d-e)
Claims						
Corn - Grain Bank	13,191.90	$1.49	$19,655.93	$659.60	$596.27	$18,400.06
Corn - Storage	11,178.63	$1.49	$16,656.16	$558.93	$505.27	$15,591.96
Oats - Grain Bank	400.00	$1.31	$524.00	$20.00	$18.08	$485.92
Soybeans - Open Storage	1,626.67	$4.10	$6,661.21	$81.33	$73.53	$6,506.35
Total	26,397.20		$43,497.30	$1,319.86	$1,193.15	$40,984.29

Auction results	a. Bushels	b. Proceeds	c. Claims	d. Excess(b-c)	e. Load out	f. Storage
Corn	47,066.78	$70,141.44	$36,312.09	$33,829.35	$2,353.34	$2,127.42
Oats	561.88	$736.06	$524.00	$212.06	$28.09	$25.40
Soybeans	15,811.00	$64,753.62	$6,661.21	$58,092.41	$790.55	$714.66
Mixed grain	2,921.79	$6,574.02	$0.00	$6,574.02	$146.09	$132.06
	66,361.45	$142,205.14	$43,497.30	$98,707.84	$3,318.07	$2,999.54

Storage - $3,000 / 66,361.45 = $.0452 bu.

	a. Proceeds	b. Load out	c. Storage	d. Net proceeds
Total	$142,205.14	$3,318.07	$2,999.54	$135,887.53
Less: Claimant portion	$43,497.30	$1,319.86	$1,193.15	$40,984.29
Net to non-farm	$98,707.84	$1,998.21	$1,806.39	$94,903.24

Source: See other appendixes.

Summary

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

	a. Sold Bushels	b. Farmer Claims	c. Bushel Difference	d. Proceeds	e. Claims	f. Claim Difference
Corn	47,066.78	24,370.53	22,696.25	$70,141.44	$36,312.09	$33,829.35
Oats	561.88	400.00	161.88	$736.06	$524.00	$212.06
Soybeans	15,811.00	1,626.67	14,184.33	$64,753.62	$6,661.21	$58,092.41
Mixed grain	2,921.79	none	2,921.79	$6,574.02	none	$6,574.02
	66,361.45	26,397.20	39,964.25	$142,205.14	$43,497.30	$98,707.84

This doesn't include any interest on the proceeds which are invested in interim CDs.

Farm claimant load out and storage

	Load out	Storage
Grain Bank Corn	$659.60	$596.27
Open Storage Corn	$558.93	505.27
Oats	$20.00	18.08
Soybeans	81.33	73.53
Total Claimant	$1,319.86	$1,193.15

Source: See other Appendixes.

APPENDIX G

FREEMAN FERTILIZER /DBA/ McCOOK FEED & FERTILIZER

GRAIN DEALER BOND CLAIMS

	a. Claimants	b. Amount	c. Totals	d. $50,000 Bond prorate
Corn:				
1. Cash sale	1. Gary Waltner	$2,462.59		$1,586.36
	2. Rich Lauck	$584.80		$376.72
	3. Farmers Nat'l-Nagano	$5,500.75		$3,543.50
	4. Lake Preston Coop	$17,487.37		$11,265.10
	5. Lester Kappenman	$1,527.20		$983.80
	6. Farmers Nat'l -Paul	$205.09		$132.12
	7. Tim Jensen	$12,826.65		$8,262.74
	8. William Perrenoud	$6,112.49		$3,937.57
	Total cash sale corn		$46,706.94	
2. Priced-unpaid	1. Gilbert Buehner	$5,023.93		$3,236.34
	2. Pat Kappenman	$10,027.93		$6,459.84
	3. Farmers Nat'l -Franz/Nagano	$2,626.00		$1,691.63
	Total priced-unpaid		$17,677.86	
Total Corn			$64,384.80	
Soybeans:				
3. Cash sale	1. Rich Lauck	$6,119.22		$3,941.91
4. Priced-unpaid	1. Derald Klueber	$7,113.40		$4,582.35
Total Soybeans			$13,232.62	
TOTAL GRAIN DEALER BOND CLAIMS			$77,617.42	
TOTAL GRAIN DEALER BOND				$49,999.98

Source: Cols. a-c: Staff Exhibit 2

d: Column (c) x ($50,000/ $77,617.42). $50,000 is the total available bond before interest. $50,000/ $77,617.42 = 64.4185%.

EXHIBIT A

HELEN EIDE
615 S NICOLLET ST
BLUE EARTH MN 56013

FARMERS NATIONAL - PAUL
PO BOX 798
BRANDON SD 57005

FARMERS NATIONAL - NAGANO
PO BOX 798
BRANDON SD 57005

FARMERS NATIONAL - FRANCE
PO BOX 798
BRANDON SD 57005

FARMERS NATIONAL - GRAHAM
PO BOX 798
BRANDON SD 57005

FARMERS NATIONAL - NICHOLS
PO BOX 798
BRANDON SD 57005

FARMERS NATIONAL - OTT/JACKSON
PO BOX 798
BRANDON SD 57005

GENE HOFER
RT 2 BOX 186
BRIDGEWATER SD 57319

MIKE C FINK, ATTORNEY-AT-LAW
PO BOX 444
BRIDGEWATER SD 57319-0444

JEFF WEBER
26448 US HWY 81
BRIDGEWATER SD 57319

LEONARD BUEHNER
701 N 4TH AVE
CANISTOTA SD 57012

TIM JENSEN
44854 SD HWY 42
CANISTOTA SD 57012

LEROY KLOCKMAN
44432 261ST ST
CANISTOTA SD 57012

DERALD KLUEBER
44830 258TH ST
CANISTOTA SD 57012

WILLIAM PERRENOUD %DALE KNOX
BOX 7
CANISTOTA SD 57012

DALE SEUBERT
26380 450TH AVE
CANISTOTA SD 57012

ALVIN SCOTT
26033 449TH AVE
CANISTOTA SD 57012

JEFF SCOTT
26033 449TH AVE
CANISTOTA SD 57012

EMPLOYERS MUTUAL CASUALTY CO
717 MULBERRY ST
DES MOINES IA 50309

ARLO HOFER
26535 442ND AVE
DOLTON SD 57319

CHARLES DECKERT
26729 US HWY 81
DOLTON SD 57319

CHARLES LANGLE
42640 271ST ST
EMERY SD 57332

OREN STAHL
43539 282ND ST
FREEMAN SD 57029

JEFF MULDER
PO BOX 291
FREEMAN SD 57029

MAYNARD YODER
28152 US HWY 81
FREEMAN SD 57029

LEROY PULLMAN
43457 278 ST
FREEMAN SD 57029

LAKE PRESTON COOP
106 2ND ST NW
LAKE PRESTO SD 57249

LUCILLE HELMBRECHT
3691 230TH STREET
LYTTON IA 50561

ROGER WALTNER
27336 442ND AVE
MARION SD 57043

JERRY HERLYN
273 S WAGNER ST
MARION SD 57043

LESTER KAPPENMAN
45015 256TH ST
MONTROSE SD 57048

LARRY WEBER
25730 451ST AVE
MONTROSE SD 57048

PAT KAPPENMAN
45026 256TH ST
MONTROSE SD 57048

WILLIAM F ABELL-GENERAL COUNS.
11516 NICHOLAS ST #100-BOX 54201
OMAHA NE 68154-8016

RICHARD LAUCK
44352 256TH ST
SALEM SD 57058

JIM MCGREGOR
44291 255TH ST
SALEM SD 57058

RICHARD HOFFMAN
44530 257TH ST
SALEM SD 57058

CLINT SARGENT, ATTORNEY AT LAW
315 SOUTH PHILLIPS AVENUE
SIOUX FALLS SD 57104-6318

ROGER DAMGAARD, ESQ
PO BOX 5027
SIOUX FALLS SD 57117

STEVE DICK
PO BOX 1274
SIOUX FALLS SD 57101

GILBERT BUEHNER
217 N POPLAR
TEA SD 57064

RAYMOND AND RALPH MARQUARDT
PO BOX 6
UTICA SD 57067

MICHAELS D STEVENS
PO BOX 753
YANKTON SD 57078

RUSSELL WALTNER
517 MULBERRY
YANKTON SD 57078

Kelly Frazier,

I would like a copy of the last Inspection done by the P.U.C. on McCook Feed and Fertilizer.

I would like a copy of Jeff Mulders balance sheet and financial statement from the previous year. I have a current one.

I would like to know what type of qualifications a person has to have inorder to become a commissioner.

I would like to know what requirements a grain dealer has to meet to acquire a licence.

Thank You.

Tim Jensen
44854 SD Hwy 42
Canistota, S.D. 57012

RECEIVED
AUG 29 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

DANFORTH, MEIERHENRY & MEIERHENRY, LLP
315 SOUTH PHILLIPS AVENUE
SIOUX FALLS, SOUTH DAKOTA 57104
PHONE 605-336-3075
FAX 605-336-2593

FACSIMILE TRANSMITTAL SHEET

TO: Kelly Frazier	FROM: Clint Sargent
COMPANY:	DATE: 12/27/2001
FAX NUMBER: 773-3809	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

AUTHORIZATION FOR RELEASE OF INFORMATION

I, Jeff Mulder, personally and as president of Freeman Fertilizer Company, Inc., hereby authorize the Public Utilities Commission and its agents to release any and all information in its possession requested by Clint Sargent, Danforth, Meierhenry & Meierhenry, LLP, 315 South Phillips Avenue, Sioux Falls, South Dakota.

This authorization shall remain in effect until revoked by me in writing.

Dated this 27 day of December, 2001.

Jeff Mulder
Individually and as President of Freeman Fertilizer Company, Inc.

YD01-001

WELLS FARGO

Wells Fargo Bank South Dakota N.A.
333 East Sioux Avenue
P.O. Box 699
Pierre, SD 57501
605 224-6460
605 224-1530 Fax

2-4-02

To Whom it May Concern:

I closed out two accounts for the South Dakota Public Utilities commission. The date we agreed upon, and calculated the closing amounts for was January 23rd, 2002. Due to problems on my End, I did not physically close the accounts on our system until later dates.

To get the accounts to the agreed upon balance, we reversed the extra interest and closed the accoonts at zero.

Laurie A Jinschele

Wells Fargo Bank South Dakota, N.A.
Laurie Jinschele - S0200
MAC N9738-011
Tel: 605-224-8460
Pierre, SD

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                    STFD 3 THF TRANSACTION STMT FORMAT      02/02/04 10.31.23
CUPR        CO    83 OP                  MS 50852 ACTION COMPLETE
ACTION             COID    83             ACCT COND
PROD CODE DDA      ACCT     1922097132    SHORT NAME SDPUBLIUTC
CURR CODE                   PAGE     2    SEARCH FROM            THRU
ACTN   POST   EFFECTIVE   CHECK NUMBER     TRAN AMOUNT  D/C            BALANCE
         TRACE ID                    DESCRIPTION
_____ * 01/28                                   181.85   C                 5.24
         I-GEN102012800000001 INTEREST PAYMENT
_____ * 01/28                                     5.24   D                  .00
         SFLS7128              PAYOFF DEBIT, INTEREST WITHOUT FEE


PF: 1-HELP 3-PLVL 6-INQ 7-SB 8-SF 9-ASUM ..-STMT
      Online                                              02/04/02 10:31
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START

OF

RETAKE

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CUPR       CO    83 OP                  MS 50852 ACTION COMPLETE
ACTION            COID    83           ACCT COND
PROD CODE DDA     ACCT     1922097132   SHORT NAME SDPUBLIUTC
CURR CODE                  PAGE     2   SEARCH FROM            THRU
ACTN   POST   EFFECTIVE   CHECK NUMBER     TRAN AMOUNT  D/C          BALANCE
         TRACE ID                    DESCRIPTION
_____  * 01/28                                181.85    C                5.24
         I-GEN102012800000001 INTEREST PAYMENT
_____  * 01/28                                  5.24    D                 .00
         SFLS7128             PAYOFF DEBIT, INTEREST WITHOUT FEE


PF: 1-HELP 3-PLVL 6-INQ 7-SB 8-SF 9-ASUM ..-STMT
      Online                                              02/04/02 10:31
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STFD 3 THF TRANSACTION STMT FORMAT 02/02/04 10.31.15

CUPR CO 83 OP MS 50852 ACTION COMPLETE
ACTION COID 83 ACCT COND
PROD CODE DDA ACCT 1922097132 SHORT NAME SDPUBLIUTC
CURR CODE PAGE 1 SEARCH FROM THRU

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____	* 12/31			3.00	D	116,729.62
	I-GEN101123100035107		MONTHLY SERVICE FEE			
____	* 12/31			3.00	C	116,732.62
	I-GEN101123100035108		MONTHLY SERVICE FEE REVERSAL			
____	* 01/23			40,425.23	D	76,307.39
	A-N-0-00000--------		TRANSFER TO SAV # 000000841675689			
____	* 01/23			.12	C	76,307.51
	00170001001457733783		BANK ORIGINATED CREDIT			
____	* 01/24			76,484.12	D	176.61-
	00170001000556186194		BANK ORIGINATED DEBIT			
____	* 01/25			25.00	D	201.61-
			OVERDRAFT FEE			
____	* 01/25			25.00	C	176.61-
			OVERDRAFT FEE REVERSAL			

PF: 1-HELP 3-PLVL 6-INQ 7-SB 8-SF 9-ASUM ..-STMT
Online 02/04/02 10:31

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                    STFD 3 THF TRANSACTION STMT FORMAT      02/02/04 10.31.48
CUPR        CO    83 OP                  MS 50861 LAST PAGE OF TRANSACTIONS
ACTION             COID     83             ACCT COND
PROD CODE DDA     ACCT        841675689     SHORT NAME SDPUBLIUTC
CURR CODE                    PAGE     2     SEARCH FROM 101/12/31 THRU 102/01/25
ACTN   POST   EFFECTIVE   CHECK NUMBER     TRAN AMOUNT  D/C          BALANCE
         TRACE ID                  DESCRIPTION
_____ * 01/23                                      .00   C          144,241.73
         SFLS7128             CLOSE, INTEREST WITHOUT FEE REVERSAL
_____ * 01/23                                      .05   C          144,241.78
         00170001001457733785 BANK ORIGINATED CREDIT
_____ * 01/24                                144,241.78   D                .00
         00170001000556186210 BANK ORIGINATED DEBIT
_____ * 01/25                                      .59   C                .59
         I-GEN102012500000001 INTEREST PAYMENT
_____ * 01/25                                      .59   D                .00
         I-GEN102012500000002 INTEREST PAYMENT REVERSAL
_____ * 01/25                                      .00   D                .00
         SFLS7128             PAYOFF DEBIT, INTEREST WITHOUT FEE



PF: 1-HELP 3-PLVL 6-INQ 7-SB 8-SF 9-ASUM ..-STMT
       Online                                              02/04/02 10:31
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