

STATE OF NORTH DAKOTA  
COUNTY OF WELLS

IN DISTRICT COURT  
SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Earth Harvest Mills, Inc.

Respondent.

CIVIL NO. 52-2013-CV-00033

AFFIDAVIT OF SERVICE

PSC Case No. GE-13-193

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

)  
)ss  
)

Geralyn R. Schmaltz deposes and says that she is over the age of 18 years and not a party to this action and, on the **30th day of April, 2014**, she deposited in the United States Mail, Bismarck, North Dakota, 1 envelope with postage, fully prepaid, securely sealed and containing a photocopy of the following documents:

1. Notice of Motion and Notice of Hearing.
2. Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee.
3. Brief in Support of Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee.
4. Report and Recommendation of Trustee.
5. Exhibit A.
6. Exhibit B.
7. Affidavit of Service.

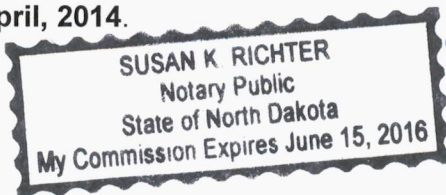
The envelope was addressed as follows:

Eric G. Hoberg, Registered Agent  
Earth Harvest Mills, Inc.  
7041 41<sup>st</sup> Avenue SE  
Wishek, ND 58495

The address shown is the addressee's last reasonably ascertainable address.

Subscribed and sworn to before me  
this **30<sup>th</sup> day of April, 2014**.

S E A L



*Geralyn R. Schmaltz*  
\_\_\_\_\_  
*Susan K Richter*  
\_\_\_\_\_  
Notary Public

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

CIVIL NO. 52-2013-CV-00033

Petitioner,

vs.

Earth Harvest Mills, Inc.

NOTICE OF MOTION AND  
NOTICE OF HEARING

Respondent.

PSC Case No. GE-13-193



1. **PLEASE TAKE NOTICE** that the Public Service Commission, as Trustee of the trust created by the insolvency of Earth Harvest Mills, Inc., respectfully moves the Court for an Order approving the Report and Recommendation of Trustee, Requiring Deposit of Bond Proceeds, Authorizing Payment and Discharging Trustee. The corresponding Motion and Brief in Support of Motion are being filed with the Court contemporaneously with this Notice.
2. **FURTHER, PLEASE TAKE NOTICE** that a copy of the Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee, as well as a copy of the Report and Recommendation of Trustee and a proposed order are herewith served upon you.

3. **FURTHER, PLEASE TAKE NOTICE** that the Court has scheduled a hearing on this matter for **May 14, 2014 at 3:30 p.m., CDT**, at the Wells County Courthouse, 700 Railway Street North, Fessenden, North Dakota 58438.
4. **FURTHER, PLEASE TAKE NOTICE** that under North Dakota Century Code section 60-04-09, any aggrieved person having an objection to the Report and Recommendation of Trustee shall file the objection with the Court and serve copies on the Public Service Commission, the warehouseman, and the surety at least ten (10) days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Respectfully submitted at Bismarck, North Dakota, this 28<sup>th</sup> day of March, 2014.



Ilona A. Jeffcoat-Sacco  
Special Assistant Attorney General  
State Bar ID No. 03315  
Public Service Commission  
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Attorney for the Public Service Commission, as Trustee

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

CIVIL NO. 52-2013-CV-00033

Petitioner,

vs.

MOTION TO APPROVE  
REPORT AND RECOMMENDATION  
OF TRUSTEE, REQUIRE DEPOSIT  
OF BOND PROCEEDS, APPROVE  
PAYMENT, AND DISCHARGE  
TRUSTEE

Earth Harvest Mills, Inc.

Respondent.

PSC Case No. GE-13-193



1. The undersigned respectfully moves the Court for an Order Approving the Report and Recommendation of Trustee, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee in the captioned matter.
2. This motion will be made on the attached brief of the Petitioner, all of the files, records and proceedings herein and on the statutes of the state of North Dakota.
3. Respectfully submitted at Bismarck, North Dakota, this 28<sup>th</sup> day of March, 2014.

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Attorney for the Public Service Commission, as Trustee

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

CIVIL NO. 52-2013-CV-00033

Petitioner,

BRIEF IN SUPPORT OF  
MOTION TO APPROVE

vs.

REPORT AND RECOMMENDATION  
OF TRUSTEE, REQUIRE DEPOSIT

Earth Harvest Mills, Inc.

OF BOND PROCEEDS, APPROVE

Respondent.

PAYMENT, AND DISCHARGE  
TRUSTEE

PSC Case No. GE-13-193



1. The Public Service Commission as Trustee of the Trust Fund provided by North Dakota Century Code section 60-04-03 for the purpose of marshalling all trust assets of Earth Harvest Mills, Inc., an insolvent grain warehouse, seeks an Order Approving the Report and Recommendation of Trustee, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee. The Trustee has the authority to bring this Motion and the Court has the power to grant the relief requested under North Dakota Century Code sections 60-04-03 and 60-04-07.
2. North Dakota Century Code section 60-02-09 requires that a bond must be filed with the Public Service Commission before any license can be issued to any public warehouseman in North Dakota. The bond is for the purpose of protecting holders of outstanding receipts and covering the costs incurred by the Trustee in the administration of the licensee's insolvency. The insolvent licensee, Earth Harvest Mills, Inc., had such a bond, issued by Washington International

Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois as surety.

3. By Motion filed March 7, 2014 and Notice of Motion served March 13 2014, the Trustee requested joinder of the surety, Washington International Insurance Company, as a Respondent. As of the date of the instant Motion which this Brief supports, Washington International insurance Company has not yet been joined as a Respondent in this action.
4. The Trustee has reviewed claims filed against the warehouseman. The Trustee's conclusions and recommendations regarding the validity of each claim are summarized in the Report and Recommendation of Trustee and detailed in Exhibit A, attached to the Report and Recommendation of Trustee.
5. The proceeds from the bond will be needed to redeem outstanding receipts issued by Earth Harvest Mills, Inc. as provided in North Dakota Century Code section 60-04-09. The Court has jurisdiction under North Dakota Century Code section 60-04-03.3 to order the deposit of bond proceeds.
6. The Trust Fund will be made up of bond proceeds only. As noted in the Report and Recommendation of Trustee, there were no grain assets in the warehouse at the time of the insolvency.
7. Under North Dakota Century Code section 60-04-03.1 the "trust fund shall be established for the benefit of noncredit-sale receiptholders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. . . ." The Credit-Sale Contract Indemnity Fund was created for the purpose of providing protection for persons selling grain to a

North Dakota licensed warehouse. North Dakota Century Code section 60-10-02. A person is eligible to receive payment from the Credit-Sale Contract Indemnity Fund if the warehouse licensed under North Dakota law to which the person sold grain becomes insolvent and has not fully compensated the person in accordance with the credit-sale contract. North Dakota Century Code section 60-10-04.

8. Proceeds from the Credit-Sale Contract Indemnity Fund will be needed to meet the licensee's obligations to holders of credit-sale contracts. North Dakota Century Code section 60-10-05 provides:

Upon the insolvency of a licensed warehouse or grain buyer and a declaration that the public service commission serve as the trustee, the public service commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

9. Under North Dakota Century Code section 60-10-06, the amount payable to any eligible person from the Credit-Sale Contract Indemnity Fund may not exceed the lesser of eighty percent (80%) of the amount owed to that eligible person under that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars (\$280,000).
10. North Dakota Century Code section 60-10-09 provides that expenses incurred in administering the Credit-Sale Contract Indemnity Fund are reimbursable from the fund. In its Report and Recommendation, the Trustee requests reimbursement for one-half of the expenses of administration of the insolvency from the Credit-Sale Contract Indemnity Fund. The total amount of expenses incurred to date is

\$272.51 and one-half is \$136.26, as identified in Exhibit B, attached to the Report and Recommendation. The final amount to be reimbursed will be determined once the Court approves the Report and Recommendation of Trustee and payments are complete.

11. North Dakota Century Code section 60-04-09 provides in part:

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

12. The Trustee respectfully requests that the Court approve the Report and Recommendation of Trustee, join the surety, Washington International Insurance Company, if not already joined when this matter is heard, require deposit of bond proceeds, authorize distribution of bond proceeds to valid noncredit-sale contract (cash) claimants and authorize Credit-Sale Contract Indemnity Fund payments to valid credit-sale contract claimants and for reimbursement of the expenses of administration, and following payment, discharge the Trustee.

13. Respectfully submitted at Bismarck, North Dakota, this 28<sup>th</sup> day of March, 2014.



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Attorney for the Public Service Commission as Trustee

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Earth Harvest Mills, Inc.

Respondent.

PSC Case No. GE-13-193

CIVIL NO. 52-2013-CV-00033

REPORT AND  
RECOMMENDATION  
OF TRUSTEE



1. The Public Service Commission, as Trustee, makes the following Report and Recommendation to the Court:
2. Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company (Earth Harvest Mills), a North Dakota business corporation, operated a grain warehouse at Harvey, North Dakota, licensed under North Dakota Century Code Chapter 60-02. Earth Harvest Mills, Inc. operated under license number 1155.
3. As part of the licensing process, Earth Harvest Mills filed a bond, as required by North Dakota Century Code section 60-02-09, in the amount of \$50,000.00 and identified as number 9145595, with Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois as surety.
4. On April 26, 2013, Delbert Cousins, Weirdale, Saskatchewan, Canada, filed with the Public Service Commission, a letter for collection of outstanding funds owed

Mr. Cousins by Earth Harvest Mills for grain delivered. Subsequently, twenty five others filed letters for collection of outstanding funds owed them for grain delivered to Earth Harvest Mills.

5. The week of April 29, 2013 Timothy Erdmann, Public Service Commission Grain Warehouse Inspector, confirmed there was no grain inventory at the Harvey, North Dakota facility.
6. On May 1, 2013, the Public Service Commission filed an Application under North Dakota Century Code Chapter 60-04 for Appointment as Trustee and for Ex Parte Order in District Court, County of Wells, Southeast Judicial District.
7. On May 2, 2013, the District Court issued an Order prohibiting Earth Harvest Mills from selling, transferring, removing, processing, or otherwise compromising potential assets of the Trust Fund until the Court issues its order granting or denying the application for appointment of the Public Service Commission as Trustee of the Trust Fund.
8. On May 10, 2013, a copy of the Notice of Entry of Order with attached copy of the executed Ex Parte Order to Preserve Trusts Assets was served by certified mail on Earth Harvest Mills and also sent by regular mail to the surety and twenty five potential claimants identified from the records of the Public Service Commission and Earth Harvest Mills.
9. On June 14, 2013, the District Court issued an Order appointing the Public Service Commission Trustee of the Trust Fund under North Dakota Century Code Chapter 60-04 for the purpose of marshaling all trust assets of the

- insolvent Earth Harvest Mills, Inc. doing business as Dakota Prairie Organic Flour Company and establishing the date of insolvency as April 26, 2013.
10. On June 25, 2013, a copy of the Notice of Order Appointing Trustee with attached copy of the executed Order Appointing Trustee, and a copy of the Notice of Appointment as Trustee and Notice to File Claims, was served on Earth Harvest Mills by certified mail and also sent by regular mail to the surety and twenty-six potential claimants in the insolvency proceeding. The notice required the filing of claims within forty-five days of the second publication of the notice.
  11. On June 29, 2013 and July 6, 2013, the Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in The Herald-Press, Harvey, North Dakota, as required by North Dakota Century Code section 60-04-03.3. The Herald-Press is located in Wells County and is the official county newspaper of the county in which the Harvey warehouse is located.
  12. On March 7, 2014, the Trustee filed a Motion to Join Surety asking the Court to order Washington International Insurance Company joined as a Respondent under North Dakota Century Code section 60-04-03.3. The Notice of Motion, Motion and Brief in Support of Motion, under Rule 3.2 of the North Dakota Rules of Court, were served on Earth Harvest Mills and Washington International Insurance Company by certified mail, and on others via the Odyssey Electronic Service and File System and regular mail.
  13. Twenty-six claims totaling \$4,351,571.30 were filed, and are identified below. Additional detail on each claim is provided in Exhibit A, attached to this report.

| <u>Claimant Name</u>            | <u>Claim Filed</u> |
|---------------------------------|--------------------|
| a. Lyle Busch                   | \$ 11,705.88       |
| b. Delbert Cousins              | \$ 25,949.00       |
| c. Donald Dufner                | \$ 48,310.84       |
| d. Farmers Direct Co-op LTD     | \$ 121,179.88      |
| e. Farmers Union Oil of Velva   | \$ 4,511.09        |
| f. Murray Foulston              | \$ 4,031.43        |
| g. Ron Gleim                    | \$ 5,842.08        |
| h. David Hager                  | \$ 4,029.26        |
| i. Roger Hasse                  | \$ 24,738.75       |
| j. Hesco, Inc.                  | \$ 1,743,192.40    |
| k. Phil Hooyer                  | \$ 20,713.10       |
| l. Curtis Kosowan               | \$ 17,260.51       |
| m. Jon & Amy Kvaalen            | \$ 36,396.50       |
| n. Lewis Ag                     | \$ 21,835.71       |
| o. Wendell Lund                 | \$ 12,000.00       |
| p. Jewell Mehlhoff              | \$ 4,311.50        |
| q. Ray L. Miller                | \$ 23,319.85       |
| r. Moshers Organic Grain        | \$ 9,368.26        |
| s. Ty O'Connor                  | \$ 37,055.20       |
| t. Robert Porch                 | \$ 10,261.92       |
| u. Rowland Seeds, Inc.          | \$ 1,973,124.43    |
| v. RW Organic Ltd.              | \$ 42,556.05       |
| w. Lewis Siebold                | \$ 4,031.65        |
| x. Lee Thomas                   | \$ 84,899.48       |
| y. Reed Zimmerman               | \$ 6,905.00        |
| z. Buesing Bulk Transport, Inc. | \$ 54,041.53       |
| Total                           | \$ 4,351,571.30    |

14. At the time of insolvency, there were no grain assets in the warehouse at Harvey, North Dakota.
15. The \$50,000 bond proceeds are needed to redeem outstanding claims for grain purchased by means other than by credit-sale contract by Earth Harvest Mills through its Harvey, North Dakota facility.
16. When the bond proceeds are paid over to the Trustee, there will be funds available from the Trust Fund to pay each valid noncredit-sale contract (cash) claimant approximately 62% of the respective valid claim.
17. The Trustee recommends that each noncredit-sale contract (cash) claimant be paid approximately 62% of the respective valid claim. The Trustee recommends that payment for each noncredit-sale contract (cash) claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued. The final amounts to be paid will be determined once Court approval is received.
18. The Trustee recommends finding seven noncredit-sale contract (cash) claims valid totaling \$80,973.26. Valid noncredit-sale contract claims are identified below and with additional detail in Exhibit A, attached.

| <u>Claimant Name</u>          | <u>Claim Filed</u> | <u>Valid Claim</u> |
|-------------------------------|--------------------|--------------------|
| a. Farmers Union Oil of Velva | \$ 4,511.09        | \$ 4,539.76        |
| b. Phil Hooyer                | \$ 20,713.10       | \$ 20,713.10       |
| c. Lewis Ag                   | \$ 21,835.71       | \$ 20,633.83       |
| d. Wendell Lund               | \$ 12,000.00       | \$ 12,150.85       |
| e. Jewell Mehlhoff            | \$ 4,311.50        | \$ 4,311.50        |

|                          |              |              |
|--------------------------|--------------|--------------|
| f. Moshers Organic Grain | \$ 9,368.26  | \$ 8,549.63  |
| g. Robert Porch          | \$ 10,261.92 | \$ 10,074.59 |
| Total                    | \$ 83,001.58 | \$ 80,973.26 |

19. The Trustee recommends that one noncredit-sale contract (cash) claim in the amount of \$54,041.53 be determined invalid because the claim is not for grain delivered to Earth Harvest Mills and is therefore nonjurisdictional, as shown with detail in Exhibit A, attached.
20. Proceeds from the Credit-Sale Contract Indemnity Fund will be needed to meet the insolvent licensee's obligations to valid credit-sale contract claimants.
21. The Trustee recommends that payments to each valid credit-sale contract claimant be made as specified in North Dakota Century Code section 60-10-06 in the amount of 80% of the claimant's valid credit-sale contract claim, up to a maximum of \$280,000. The Trustee recommends that payment for each credit-sale contract claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued.
22. The Trustee recommends payments on valid credit-sale contract claims totaling \$2,402,901.24. Valid credit-sale contract claims and amounts payable are identified below and with additional detail in Exhibit A, attached:

| <u>Claimant Name</u>        | <u>Claim Filed</u> | <u>Valid Claim</u> | <u>80% Amount</u> |
|-----------------------------|--------------------|--------------------|-------------------|
| a. Lyle Busch               | \$ 11,705.88       | \$ 11,691.89       | \$9,353.51        |
| b. Delbert Cousins          | \$ 25,949.00       | \$ 25,921.20       | \$20,736.96       |
| c. Donald Dufner            | \$ 48,310.84       | \$ 48,310.81       | \$38,648.65       |
| d. Farmers Direct Co-op Ltd | \$ 121,179.88      | \$ 120,027.58      | \$96,022.06       |
| e. Murray Foulston          | \$ 4,031.43        | \$ 4,026.78        | \$3,221.42        |

|                          |                 |                |              |
|--------------------------|-----------------|----------------|--------------|
| f. Ron Gleim             | \$ 5,842.08     | \$ 5,834.78    | \$4,667.82   |
| g. David Hager           | \$ 4,029.26     | \$ 4,029.26    | \$3,223.41   |
| h. Roger Hasse           | \$ 24,738.75    | \$ 24,738.75   | \$19,791.00  |
| i. Hesco, Inc.           | \$1,743,192.40  | \$1,330,287.38 | \$280,000.00 |
| j. Curtis Kosowan        | \$ 17,260.51    | \$ 17,233.89   | \$13,787.11  |
| k. Jon & Amy Kvaalen     | \$ 36,396.50    | \$ 34,407.69   | \$27,526.15  |
| l. Ray L. Miller         | \$ 23,319.85    | \$ 18,319.85   | \$14,655.88  |
| m. Ty O'Connor           | \$ 37,055.20    | \$ 37,055.20   | \$29,644.16  |
| n. Rowland Seeds, Inc.   | \$1,973,124.43  | \$ 586,422.98  | \$280,000.00 |
| o. RW Organic Ltd.       | \$ 42,556.05    | \$ 39,412.31   | \$31,529.85  |
| p. Lewis Siebold         | \$ 4,031.65     | \$ 4,031.65    | \$3,225.32   |
| q. Lee Thomas            | \$ 84,899.48    | \$ 85,022.10   | \$68,017.68  |
| r. <u>Reed Zimmerman</u> | \$ 6,905.00     | \$ 6,127.14    | \$4,901.71   |
| Total                    | \$ 4,214,528.19 | \$2,402,901.24 | \$948,952.69 |

23. North Dakota Century Code section 60-10-09 provides that expenses incurred in administering the Credit-Sale Contract Indemnity Fund are reimbursable from the fund. The Trustee requests reimbursement for one-half of the expenses of administration of the insolvency from the Credit-Sale Contract Indemnity Fund. The total amount of expenses incurred to date is \$272.51 and one-half is \$136.26, as identified in Exhibit B, attached. The final amount to be reimbursed will be determined once the Court approves the Report and Recommendation of Trustee and payments are complete.
24. Contemporaneously with the filing of this Report and Recommendation a motion to approve the Report and Recommendation of Trustee, require deposit of bond proceeds, approve payments, and discharge Trustee is being filed with the North Dakota District Court located in Wells County North Dakota. The Court has

scheduled a hearing on this matter for May 14, 2014 at 3:30 p.m. CDT. Any interested party may appear at the hearing to show cause why the Report and Recommendation should not be approved.

**WHEREFORE the Trustee asks the Court to:**

25. Approve the Report and Recommendation of Trustee.
26. Join the surety, Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois, as a Respondent, if not already joined when this matter is heard.
27. Order the surety, Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois, to deposit with the Trustee \$50,000, the total amount of the bond proceeds, within 10 days after service of Notice of Entry of Judgment.
28. Authorize the Public Service Commission, as Trustee, to make payments of Trust Fund proceeds consistent with this Report and Recommendation to persons with valid noncredit-sale contract (cash) claims for grain purchased for cash by Earth Harvest Mills, Inc., dba Dakota Prairie Organic Flour Company at Harvey, North Dakota.
29. Authorize the Public Service Commission, as Trustee, to make payments from the Credit-Sale Contract Indemnity Fund consistent with this Report and Recommendation to persons with valid credit-sale contract claims for grain purchased via credit-sale contract by Earth Harvest Mills, Inc., dba Dakota Prairie Organic Flour Company at Harvey, North Dakota.

30. Authorize the Public Service Commission, as Trustee, to make payments from the Credit-Sale Contract Indemnity Fund consistent with this Report and Recommendation to reimburse the Public Service Commission for one-half the expenses of administration of the insolvency.
31. Discharge the Public Service Commission, as Trustee, once all Trust Fund assets have been distributed and all Credit-Sale Contract Indemnity Fund payments have been made.
32. Respectfully submitted at Bismarck, North Dakota, this **28th day of March, 2014.**



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Attorney for the Public Service Commission, as Trustee

PSC vs Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company

CIVIL NO. 52-2013-CV-00033

PSC Case No. GE-13-193

DETAILED CLAIMS LIST

March 26, 2014



Exhibit A  
Page 1 of 6

| Claimant Name & Address   | Claim Category | Credit-sale Contract # | Grain        | Bushels or CWT     | Claim Amount  | Increase or Decrease | Cash Payable | Credit-Sale Payable | 80% Amount   |
|---|----------------|------------------------|--------------|--------------------|---------------|----------------------|--------------|---------------------|--------------|
| Lyle Busch<br>14641 514th Avenue<br>Bristol, SD 57219<br>Claim difference is deduction of wheat promotion.  | Credit-sale    | 124                    | HRWW         | 1170.94            | \$ 11,705.88  | \$ (13.99)           |              | \$ 11,691.89        | \$ 9,353.51  |
| Delbert Cousins<br>Box 38<br>Weirdale, SK CN SOJ 2Z0<br>Claim difference is deduction of wheat promotion.   | Credit-sale    | 139                    | HRSW         | 1853.5             | \$ 25,949.00  | \$ (27.80)           |              | \$ 25,921.20        | \$ 20,736.96 |
| Donald Dufner<br>1148 169th Avenue NE<br>Buxton, ND 58218<br>Claim difference is probably mathematical rounding up of numbers.  | Credit-sale    | 117                    | HRWW<br>HRSW | 5853.67<br>928.06  | \$ 48,310.84  | \$ (0.03)            |              | \$ 48,310.81        | \$ 38,648.65 |
| Farmers Direct Co-operative LTD<br>Jason Freeman, General Manager<br>1536 Victoria Avenue<br>Regina, SK CN S4P OP5<br>Claim difference is deduction of wheat promotion. | Credit-sale    | 142                    | HRSW<br>Rye  | 8519.83<br>1112.37 | \$ 121,179.88 | \$ (1,855.05)        |              | \$ 120,027.58       | \$ 96,022.06 |

| Claimant Name & Address  | Claim Category | Credit-sale Contract # | Grain | Bushels or CWT | Claim Amount | Increase or Decrease | Cash Payable | Credit-Sale Payable | 80% Amount   |
|--|----------------|------------------------|-------|----------------|--------------|----------------------|--------------|---------------------|--------------|
| Farmers Union Oil of Velva<br>PO Box 35<br>Martin, ND 58758<br>Claim difference is the claimant unpaid bushel amount of 503.47 bushels versus the scale ticket amount of 506.67 bushels. | Cash           |                        | HRSW  | 506.67         | \$ 4,511.09  | \$ 28.67             | \$ 4,539.76  |                     |              |
| Murray Foulston<br>PO Box 190<br>Tugaske, SK CN SOH 480<br>Claim difference is deduction of wheat promotion.   | Credit-sale    | 132                    | HWW   | 310.11         | \$ 4,031.43  | \$ (4.65)            |              | \$ 4,026.78         | \$ 3,221.42  |
| Ron Gleim<br>PO Box 298<br>Chaplin, SK CN SOH OVO<br>Claim difference is deduction of wheat promotion.   | Credit-sale    | 135                    | HRSW  | 486.84         | \$ 5,842.08  | \$ (7.30)            |              | \$ 5,834.78         | \$ 4,667.82  |
| David Hager<br>2775 Hwy 3 Northeast<br>Harvey, ND 58341<br>No difference, Claim amount is same as final net payable.   | Credit-sale    | 112                    | HRSW  | 466.62         | \$ 4,029.26  |                      |              | \$ 4,029.26         | \$ 3,223.41  |
| Roger Hasse<br>4433 41st Avenue SE<br>Tappen, ND 58487<br>No difference, Claim amount is same as final net payable.  | Credit-sale    | 108                    | HRSW  | 1707.89        | \$ 24,738.75 |                      |              | \$ 24,738.75        | \$ 19,791.00 |

| Claimant Name & Address   | Claim Category | Credit-sale Contract # | Grain                        | Bushels or CWT                                  | Claim Amount    | Increase or Decrease | Cash Payable | Credit-Sale Payable | 80% Payment   |
|---|----------------|------------------------|------------------------------|---|-----------------|----------------------|--------------|---------------------|---------------|
| HESCO, INC.<br>Brad Hennrich, President<br>500 19th Street SE<br>Watertown, SD 57201  | Credit-sale    | 101                    | HRSW<br>HRWW<br>SWW<br>Durum | 110,000.00<br>2,611.00<br>5,355.00<br>15,399.00 | \$ 1,743,192.40 | \$ (412,905.02)      |              | \$ 1,330,287.38     | \$ 280,000.00 |
| The claim indicated receipt of a significant amount of interest payments. These interest payments were deducted from the claim unpaid principal creating an unpaid of \$1,330,287.38. The maximum amount payable from the indemnity fund per claimant is 80% of \$350,000 or \$280,000. |                |                        |                              |   |                 |                      |              |                     |               |
| Phil Hooyer<br>3867 Cherry Avenue<br>Hudson, SD 57034   | Cash           |                        | HRWW                         | 1885.58   | \$ 20,713.10    |                      | \$ 20,713.10 |                     |               |
| No difference, Claim amount is same as final net payable.   |                |                        |                              |   |                 |                      |              |                     |               |
| Curtis Kosowan<br>PO Box 141<br>Mealth Park, SK CN SOJ 1TO  | Credit-sale    | 140                    | HRSW                         | 1398.22   | \$ 17,260.51    | \$ (26.62)           |              | \$ 17,233.89        | \$ 13,787.11  |
| Claim difference is deduction of wheat promotion.   |                |                        |                              |   |                 |                      |              |                     |               |
| Jon & Amy Kvaalen<br>PO Box 21<br>Lambert, MT 59234   | Credit-sale    | 120                    | HRSW                         | 2599.75   | \$ 36,396.50    | \$ (1,988.81)        |              | \$ 34,407.69        | \$ 27,526.15  |
| Claim difference is deduction of the wheat promotion totaling \$39 and deduction of a \$.75 per bushel freight charge totaling \$1949.81 as indicated in the claim documents.   |                |                        |                              |   |                 |                      |              |                     |               |
| Lewis AG<br>6820 30th Road<br>Thayer, KS 66776  | Cash           |                        | HRWW                         | 1589.05   | \$ 21,835.71    | \$ (1,201.88)        | \$ 20,633.83 |                     |               |
| Claim difference is deduction of the wheat promotion totaling \$60.59 and \$1141.29 because claimant erroneously used origination gross weight.   |                |                        |                              |   |                 |                      |              |                     |               |

| Claimant Name & Address  | Claim Category | Credit-sale Contract # | Grain | Bushels or CWT | Claim Amount | Increase or Decrease | Cash Payable | Credit-Sale Payable | 80% Payment  |
|--|----------------|------------------------|-------|----------------|--------------|----------------------|--------------|---------------------|--------------|
| Wendell Lund<br>1539 104th Street NE<br>Bottineau, ND 58318<br>Claim difference, claimant estimated the unpaid amount.   | Cash           |                        | HRWW  | 1293.62        | \$ 12,000.00 | \$ 150.85            | \$ 12,150.85 |                     |              |
| Jewell Mehlhoff<br>1821 Josephine Lane<br>Tuttle, ND 58488<br>No difference, Claim amount is same as final net payable.  | Cash           |                        | HRSW  | 327            | \$ 4,311.50  |                      | \$ 4,311.50  |                     |              |
| Ray L. Miller<br>R & S Organic Farm<br>1504 W 11th Road<br>Aurora, NE 68818-3920<br>Claim difference is the claimant error of not deducting a \$5000 payment received March 6, 2013.                           | Credit-sale    | 111                    | HRWW  | 1983.74        | \$ 23,319.85 | \$ (5,000.00)        |              | \$ 18,319.85        | \$ 14,655.88 |
| Moshers Organic Grain<br>PO Box 51<br>Bushnell, NE 69128<br>Claim difference is deduction of the wheat promotion totaling \$11.67 and \$806.97 because claimant erroneously used the origination gross weight. | Cash           |                        | HWW   | 778.3          | \$ 9,368.26  | \$ (818.63)          | \$ 8,549.63  |                     |              |
| Ty O,Connor<br>1 O'Connor Road<br>Broadus, MT 59317<br>No difference, Claim amount is same as final net payable.   | Credit-sale    | 116                    | HRWW  | 3435.81        | \$ 37,055.20 |                      |              | \$ 37,055.20        | \$ 29,644.16 |

| Claimant Name & Address   | Claim Category | Credit-sale Contract # | Grain         | Bushels or CWT | Claim Amount    | Cash Payable      | Credit-Sale Payable | 80% Amount    |
|---|----------------|------------------------|---------------|----------------|-----------------|-------------------|---------------------|---------------|
| Robert Porch<br>27403 Husie Road<br>Wanblee, SD 57577<br>Claim difference is deduction of the wheat promotion totaling \$40.06 and \$147.27 because the claimant erroneously used the origination gross weight.   | Cash           |                        |               | 840.6          | \$ 10,261.92    | \$ (187.33)       | \$ 10,074.59        |               |
| Rowland Seeds, Inc.<br>Roy Brewin<br>Box 4776<br>Taber, Alberta CN T1G 2E1<br>The claim included late fees, interest charges, and other complicated fees and charges not protected or covered by this proceeding. The calculated amount owed to Rowlands is \$586,422.98. The maximum amount payable per claimant from the indemnity fund is 80% of \$350,000 or \$280,000. | Credit-sale    | 137                    | HRSW<br>Spelt |                | \$ 1,973,124.43 | \$ (1,487,553.00) | \$ 586,422.98       | \$ 280,000.00 |
| RW Organic Ltd.<br>Box 232<br>Mossbank, SK CN S0H 3G0<br>Claim difference is deduction of the wheat promotion totaling \$49.33, excluded interest totaling \$2863.25, and \$231.16 because claimant erroneously used origination gross weight.  | Credit-sale    | 119                    | HRSW          | 3288.47        | \$ 42,556.05    | \$ (3,143.74)     | \$ 39,412.31        | \$ 31,529.85  |
| Lewis Siebold<br>1397 51st Avenue NE<br>Cathay, ND 58422<br>No difference, Claim amount is same as final net payable.   | Credit-sale    | 111                    | HRSW          | 269.04         | \$ 4,031.65     |                   | \$ 4,031.65         | \$ 3,225.32   |
| Lee Thomas<br>12506 20th Street North<br>Moorhead, MN 56560<br>Claim difference is the claimant pricing errors on scale ticket# 2264 increase of \$50 and scale ticket# 2279 increase of \$72.62.   | Credit-sale    | 115                    | HRSW          | 7341.45        | \$ 84,899.48    | \$ 122.62         | \$ 85,022.10        | \$ 68,017.68  |

| Claimant Name & Address  | Claim Category | Credit-sale Contract # | Grain | Bushels or CWT | Claim Amount    | Increase or Decrease | Cash Payable | Credit-Sale Payable | 80% Amount    |
|--|----------------|------------------------|-------|----------------|-----------------|----------------------|--------------|---------------------|---------------|
| Reed Zimmerman<br>6112 45th Avenue SE<br>Napoleon, ND 58561  | Credit-sale    | 106                    | HRSW  | 430.43         | \$ 6,905.00     | \$ (777.86)          |              | \$ 6,127.14         | \$ 4,901.71   |
| <p>Claim difference is an Earth Harvest Mills error on deferred payment contract #106 totaling \$22,951.71, the correct original amount payable is \$22,173.85.<br/>           Claim contract amount \$22,951.71 less payment of \$16,046.71 minus wheat promotion &amp; error totaling \$777.86 equal unpaid of \$6127.14</p> |                |                        |       |                |                 |                      |              |                     |               |
| Buesing Bulk Transport Inc.<br>Ottmar & Ottmar, P.C.<br>226 Second Avenue Southwest<br>Jamestown, ND 58402-1397  | Invalid cash   |                        |       |                | \$ 54,041.53    | \$ (54,041.53)       |              |                     |               |
| <p>Invalid claim, this claim is for goods or services provided by the claimant and not unpaid grain sold or delivered to Earth Harvest Mills.<br/>           Claim also was filed beyond the last day to file a claim.</p>   |                |                        |       |                |                 |                      |              |                     |               |
| TOTALS   |                |                        |       |                | \$ 4,351,571.30 | \$ (1,969,251.10)    | \$ 80,973.26 | \$ 2,402,901.24     | \$ 948,952.69 |



**EXPENSES**

Exhibit B

**PSC vs Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company**  
**CIVIL NO. 52-2013-CV-00033**  
**PSC Case No. GE-13-193**  
**March 26, 2014**

| <u>Account</u>                     | <u>Fund</u> |     | <u>Current Month</u> | <u>Biennium to Date</u> | <u>Inception to Date</u> |
|------------------------------------|-------------|-----|----------------------|-------------------------|--------------------------|
| 541015                             | 001         | ACT | 0.00                 | 6.95                    | 165.41                   |
| 621020                             | 001         | ACT | 0.00                 | 107.10                  | 107.10                   |
| <b>Total Operating Expenditure</b> |             |     | <b>0.00</b>          | <b>114.05</b>           | <b>272.51</b>            |
| <b>Total General Fund</b>          |             |     | <b>0.00</b>          | <b>114.05</b>           | <b>272.51</b>            |
| <b>Total Federal Fund</b>          |             |     | <b>0.00</b>          | <b>0.00</b>             | <b>0.00</b>              |
| <b>Total Special Fund</b>          |             |     | <b>0.00</b>          | <b>0.00</b>             | <b>0.00</b>              |
| <b>Total Direct Expenditure</b>    |             |     | <b>0.00</b>          | <b>114.05</b>           | <b>272.51</b>            |
| <b>Total Expenditures</b>          |             |     | <b>0.00</b>          | <b>114.05</b>           | <b>272.51</b>            |
| <b>Total General Fund</b>          |             |     | <b>0.00</b>          | <b>114.05</b>           | <b>272.51</b>            |
| <b>Total Federal Fund</b>          |             |     | <b>0.00</b>          | <b>0.00</b>             | <b>0.00</b>              |
| <b>Total Special Fund</b>          |             |     | <b>0.00</b>          | <b>0.00</b>             | <b>0.00</b>              |

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Earth Harvest Mills, Inc.

Respondent.

PSC Case No. GE-13-193

CIVIL NO. 52-2013-CV-00033

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

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)ss  
)

Geralyn R. Schmaltz deposes and says that she is over the age of 18 years and not a party to this action and, on the **1st day of April, 2014**, she deposited in the United States Mail, Bismarck, North Dakota, 3 envelopes with certified postage, fully prepaid, return receipt requested, securely sealed and containing a photocopy of the following documents:

1. Notice of Motion and Notice of Hearing.
2. Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee.
3. Brief in Support of Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee.
4. Report and Recommendation of Trustee.
5. Exhibit A.
6. Exhibit B.

The envelopes were addressed as follows:

Grayson Hoberg, CEO  
Earth Harvest Mills, Inc.  
1540 Vision Drive  
Platteville WI 53818-3838  
Certified Mail No. 7013 2630 0001 2317 1238

Eric G. Hoberg, Registered Agent  
Earth Harvest Mills, Inc.  
500 North Street West  
Harvey, ND 58341-1012  
Certified Mail No. 7013 2630 0001 2317 1139

Peter E. Karney, Esq.  
Corporate Solutions Claims  
Washington International Insurance Company  
475 North Martingale Road – Suite 850  
Schaumburg, IL 60173  
Certified Mail No. 7013 2630 0001 2317 1979

Geralyn R. Schmaltz further deposes and says that on the **1st day of April 2014**, she deposited in the United States Mail, Bismarck, North Dakota, 27 envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

The envelopes were addressed as follows:

Ray L. Miller  
R & S Organic Farm  
1504 W 11<sup>th</sup> Road  
Aurora, NE 68818-3920

Jason Freeman, General Manager  
Farmers Direct Co-Operative LTD  
1536 Victoria Avenue  
Regina, SK CN S4P 0P5

Lyle Busch  
14641 514<sup>th</sup> Ave.  
Bristol, SD 57219

Lewis Siebold  
1397 51<sup>st</sup> Ave. NE  
Cathay, ND 58422

Ty O'Connor  
1 O'Connor Road  
Broadus, MT 59317

Ron Gleim  
PO Box 298  
Chaplin, SK CN SOH OVO

Robert Porch  
27403 Husle Road  
Wanblee, SD 57577

Phil Hooyer  
3867 Cherry Ave.  
Hudson, SD 57034

Murray Foulston  
PO Box 190  
Tugaske, SK CN SOH 4B0

Jewell Mehlhoff  
1821 Josephine Lane  
Tuttle, ND 58488

Farmers Union Oil of Velva  
PO Box 35  
Martin, ND 58758

Delbert Cousins  
Box 38  
Weirdale, SK CN SOJ 2ZO

David Hager  
2775 Hwy 3 Northeast  
Harvey, ND 58341

Curtis Kosowan  
PO Box 141  
Mealth Park, SK CN SOJ 1TO

Roy Brewin  
Rowland Seeds, Inc.  
Box 4776  
Taber, Alberta CN T1G 2E1

RW Organic Ltd.  
Box 232  
Mossbank, SK CN SOH 3G0

Brad Hennrich, President-Hesco, Inc.  
500 19<sup>th</sup> Street SE  
Watertown, SD 57201

Wendell Lund  
1539 104<sup>th</sup> Street NE  
Bottineau, ND 58318

Jon & Amy Kvaalen  
PO Box 21  
Lambert, MT 59243

Lee Thomas  
12506 20<sup>th</sup> Street North  
Moorhead, MN 56560

Lewis Ag  
6820 30<sup>th</sup> Road  
Thayer, KS 66776

Mosher's Organic Grain  
PO Box 51  
Bushnell, NE 69128

Reed Zimmerman  
6112 45<sup>th</sup> Avenue SE  
Napoleon, ND 58561

Roger Hasse  
4433 41<sup>st</sup> Avenue SE  
Tappen, ND 58487

Donald Dufner  
1148 169<sup>th</sup> Avenue NE  
Buxton, ND 58218

Reva Held, Director of Revenue Recovery  
American Med Systems, Inc.  
1519 Boettler Road, Suite A  
Green, OH 44685

Emily Kaufman  
Emport, LLC  
4327 Butler Street - Floor No. 2  
Pittsburg, PA 15201

Each address shown is the respective addressee's last reasonably ascertainable address.

Subscribed and sworn to before me  
this 1<sup>st</sup> day of April, 2013.

  
Notary Public

SEAL

