

# STEVEN D. SANDVEN

L A W O F F I C E

PRINCIPAL  
Steven D. Sandven

*Admitted in South Dakota,  
Minnesota & Washington D.C.*

2010 OCT 25 PM 2:38

FILED  
EPA REGION VIII  
HEARING CLERK

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October 21, 2010

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 8  
1595 Wynkoop Street  
Denver CO 80202-1129

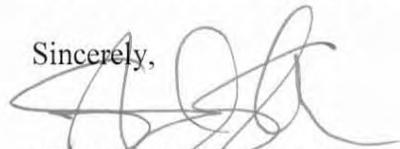
**RE: IN THE MATTER OF WENDY MEALER AND DENNIS STOKEBRAND  
DOCKET NO. FIFRA-08-2010-0017**

Dear Hearing Clerk:

Please find for filing the attached Answer, Hearing Request and Certificate of Service in the above-described matter.

Please contact me if there are any questions.

Sincerely,



STEVEN D. SANDVEN  
Attorney for Wendy Mealer and  
Dennis Stokebrand

Enclosures

Cc: RST TLE  
Client

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ATTORNEY FOR WENDY MEALER AND DENNIS STOKEBRAND

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

In the Matter of:

Wendy Mealer and Dennis Stokebrand,  
  
Respondents.

Docket No. FIFRA-08-2010-0017

**ANSWER**

COMES NOW, Respondents Wendy Mealer and Dennis Stokebrand, by and through Attorney Steven Sandven, and for their Answers and Affirmative Defenses, state and allege as follows:

**ANSWER**

**INTRODUCTION (JURISDICTION)**

1. Paragraph 1 states a conclusion of law as to which no Answer is required.

To the extent an Answer is required, the paragraph is denied.

2. Paragraph 2 states a conclusion of law as to which no Answer is required.

To the extent an Answer is required, the paragraph is denied.

3. Paragraph 3 states a conclusion of law as to which no Answer is required. To the extent an Answer is required, the paragraph is denied. The referenced provision of the Federal Insecticide, Fungicide and Rodenticide Act section 136l(a) speaks for itself and is the best evidence of its contents.

4. RESPONDENTS DEMAND A HEARING ON ALL ISSUES TRIABLE as described in paragraph 4.

5. Paragraph 5 states a conclusion of law as to which no Answer is required. To the extent an Answer is required, the paragraph is denied.

6. Paragraph 6 states a conclusion of law as to which no Answer is required. To the extent an Answer is required, the paragraph is denied. Section 22.18 of the Rules of Practice speaks for itself and is the best evidence of its contents.

#### **SETTLEMENT NEGOTIATIONS**

7. Paragraph 7 states a conclusion of law as to which no Answer is required. To the extent an Answer is required, the paragraph is denied.

#### **ALLEGATIONS**

8. Respondents admit the allegation in Paragraph 8.

9. Paragraph 9 states a conclusion of law as to which no Answer is required. To the extent an Answer is required, the paragraph is denied. Section 2(s) of the Federal Insecticide, Fungicide and Rodenticide Act speaks for itself and is the best evidence of its contents.

10. Respondents admit they were certified commercial pesticide applicators. The last sentence in Paragraph 10 states a conclusion of law as to which no Answer is required. To the extent an Answer is required, the paragraph is denied.

11. EPA Reg. No. 13808-6 speaks for itself and is the best evidence of its contents.
12. Section 12(a)(2)(G) and 7 U.S.C. § 136j(a)(2)(G) speak for themselves and are the best evidence of their contents.
13. Respondents lack sufficient information to admit or deny the allegations in Paragraph 13, and therefore, deny the allegations.
14. 68 Fed. Reg. 26498 (May 16, 2003) speaks for itself and is the best evidence of its contents.
15. Respondents admit that the Rosebud Sioux Tribe passed Resolution No. 03-81, as amended on December 2, 2003, that concludes: “THEREFORE BE IT RESOLVED, the Rosebud Sioux Tribal Council hereby adopts and approves the request to implement the Rosebud Prairie Management Plan which includes the reintroduction of the Black Footed Ferret and *that no changes may be made without approval the Director of Game, Fish and Parks, Land and Natural Committee, and the Tribal Council.* Additionally, the Rosebud Sioux Tribal Council requested the Fish and Wildlife complete the “nonessential experimental population” designation for the Rosebud Sioux Tribe black footed ferret reintroduction effort and cooperate with the RST Game, Fish and Parks Department on the implementation of the Rosebud Prairie Management Plan, including the black footed ferret reintroduction to the Iron Shell Flats area.” Emphasis added. The certification provides: “This is to certify that above Resolution No. 2003-81 was duly *reconsidered and amended* by the Rosebud Sioux Tribal Council in session on December 2, 2003, by a vote of Thirteen (13) in favor, Three (3) opposed and One (1) not

voting. The said resolution was adopted pursuant to authority vested in the Tribal Council. A quorum was present.” Emphasis added

16. Respondents deny the allegations stated in Paragraph 16.
17. Respondents deny the allegations stated in Paragraph 17.
18. Respondents deny the allegations stated in Paragraph 18.

#### **PROPOSED CIVIL PENALTY**

19. Paragraph 19 states a conclusion of law as to which no Answer is required.

To the extent an Answer is required, the paragraph is denied.

20. Paragraph 20 states a conclusion of law as to which no Answer is required.

To the extent an Answer is required, the paragraph is denied.

#### **AFFIRMATIVE DEFENSES**

1. The EPA fails to state a claim as there are approximately eight (8) conflicting maps designating the reintroduction area as follows:

2. Memorandum from Tribal Secretary (April 9, 2007) that provides: “The Rosebud Sioux Tribal Secretary’s office did research our records regarding the Black Footed Ferret reintroduction and maps. Resolution 03-81, which adopts and approves the request to implement the Rosebud Prairie Management Plan, is the only resolution that was submitted with an attached map. According to our records, this is the only approved resolution on record with and the attached map.”;

3. Map titled “Iron Shell Flats.ssf 1/7/2003” attached to Resolution No. 03-81 (December 2, 2003) that was created on GPS Pathfinder Office on January 7, 2003 that resulted in unclear identification. Scale 1:125,000 – Lat/Long WGS 1984. The map does not have the boundaries for the reintroduction area. The map includes a notation

“1,478 ac. Total”. Total of 709.60 acres out of 10,240 in the polygon provided after the fact were baited.

4. To the extent that any claim fails to state a claim on which relief can be granted, it should be dismissed.

5. The injuries or damages of which EPA complain were caused in whole or in part by non-parties whom the EPA has failed to join in this action.

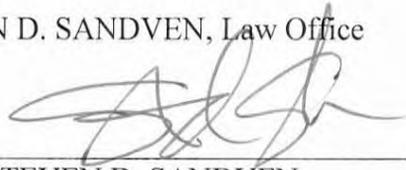
6. Respondents have insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Respondents therefore reserve the right to assert additional affirmative defenses in the event discovery indicates that they may be appropriate.

WHEREFORE, Respondents pray that the Court dismiss this claim or otherwise deny the relief sought by the EPA.

Dated this 21<sup>st</sup> day of October, 2010.

STEVEN D. SANDVEN, Law Office

By:



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**CERTIFICATE OF SERVICE**

I hereby certify that on October 21<sup>st</sup>, 2010, I caused a true and correct copy of the foregoing Answer to the EPA's Complaint to be served by first class mail, addressed to the following counsel:

Eduardo Quintana, Esq.  
United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice  
1595 Wynkoop Street (ENP-L)  
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Philip S. Strobel, Director  
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October 20<sup>th</sup>, 2010



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Steven D. Sandven