



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Kevin Cramer  
Tony Clark  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
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Phone 701-328-2400  
Toll Free 1-877-245-6685  
Fax 701-328-2410  
TDD 800-366-6888 or 711

April 14, 2011

Ms. Debra Simenson  
Clerk of the District Court  
Burleigh County Courthouse  
PO Box 1055  
Bismarck, ND 58102-1055

**RE: Public Service Commission vs. Mitchell Feeds, Inc.**  
**CIVIL NO. \_\_\_\_\_**  
**PSC Case No. GE-11-51**

Dear Ms. Simenson:

Enclosed for filing in the above proceeding please find the originals of:

1. Application for Appointment as Trustee and Motion to Join Surety as Party.
2. Affidavit of Susan K. Richter.
3. Brief in Support of Application for Appointment as Trustee and Motion to Join Surety as Party.
4. Notice of Application for Appointment as Trustee and Notice of Motion to Join Surety as Party Under Rule 3.2.
5. Affidavit of Service by Certified Mail.
6. Proposed Order Appointing Trustee and Joining Surety as Party.
7. Proposed Ex Parte Order to Preserve Trust Assets.

If the Judge finds the Ex Parte Order to Preserve Trust Assets satisfactory, please have the Judge sign it and return a copy of the signed Order to us and we will provide Notice of Entry of Order and serve the parties of record.

The notice period on the Application for Appointment as Trustee and Motion to Join Surety as Party will expire on May 2, 2011. After the notice period, if the Judge finds the Order Appointing Trustee and Joining Surety as Party satisfactory, please have the Judge sign it and return a copy of the signed Order to us and we will provide Notice of Entry of Order and serve the parties of record.

If you have any questions, please do not hesitate to contact us. Thank you for your assistance in this matter.

Sincerely,

Mark Gruman (#06019)

Special Assistant Attorney General

Enclosures

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Mitchell Feeds, Inc.

and

Western Surety Company

Respondents.

PSC Case No. GE-11-51

CIVIL NO. \_\_\_\_\_

APPLICATION FOR  
APPOINTMENT AS TRUSTEE  
AND MOTION TO  
JOIN SURETY AS PARTY

The North Dakota Public Service Commission (Commission) alleges as follows:

1.

Mitchell Feeds, Inc., a Minnesota business corporation authorized to do business in North Dakota, operates as a roving grain buyer in North Dakota and is licensed under North Dakota Century Code Chapter 60-02.1.

2.

Mitchell Feeds, Inc., PO Box 9112, Fargo, North Dakota 58106, operates as a roving grain buyer in North Dakota under license number 3159.

3.

A surety bond is on file with the Commission as required by North Dakota Century Code § 60-02.1-08. The surety bond is for \$70,000 and identified as number

15352088 with Western Surety Company, 101 South Phillips Avenue, Sioux Falls, South Dakota 57104-6703, as surety.

**4.**

On February 1, 2011, James and Cynthia Burckhard of Towner, North Dakota, filed a letter for collection of outstanding funds owed to them for grain sold to Mitchell Feeds, Inc. Subsequently, David Steeves of Sherwood, North Dakota, Gene W. Allen, attorney representing David Deslauriers of Sherwood, North Dakota, Paul A. Rohde of Halliday, North Dakota, Don Ackerson of Sherwood, North Dakota, Steven Neameyer of Mylo, North Dakota, Lana Anderson/Northland Farms of Sherwood, North Dakota, Greg Busch/Busch Farms, Inc. of Crosby, North Dakota, and Mitch Preskey of Glenburn, North Dakota, each filed letters for collection of outstanding funds owed to them for grain sold to Mitchell Feeds, Inc. Copies of the letters are attached as Exhibit A.

**5.**

The Commission was informed and believes that there are outstanding obligations for unpaid claims for grain sold to Mitchell Feeds, Inc. as a roving grain buyer under North Dakota Century Code Chapter 60-02.1 for which bond protection is available under the provisions of North Dakota Century Code § 60-02.1-08 and for any credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code §§ 60-10-04 and 60-10-05.

**6.**

Mitchell Feeds, Inc. is insolvent under North Dakota Century Code Chapter 60-02.1, in that it is unable upon proper demand to make payment for grain purchased or marketed or make redelivery for grain delivered.

7.

The Commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code Chapter 60-02.1.

8.

Bond proceeds will be needed to redeem outstanding receipts issued by Mitchell Feeds, Inc. North Dakota Century Code § 60-02.1-31 provides:

Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency proceedings. If it is in the best interests of the receiptholders, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

9.

If there are any credit-sale contract claims, proceeds from the credit-sale contract indemnity fund may be needed to meet the licensee's obligations to any holders of credit-sale contracts. North Dakota Century Code § 60-10-05 provides:

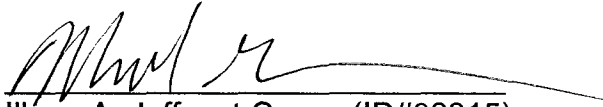
Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the Public Service Commission serve as the trustee, the Public Service Commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect 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.

**WHEREFORE** the Public Service Commission respectfully requests:

1. That the Court declare Mitchell Feeds, Inc. **INSOLVENT** within the meaning of North Dakota Century Code Chapter 60-02.1 and establish the date of insolvency as February 1, 2011, the date that the first claim for collection of outstanding funds owed for grain sold was filed.
2. That the Court **APPOINT** the Public Service Commission as trustee of the trust fund under North Dakota Century Code § 60-02.1-29.

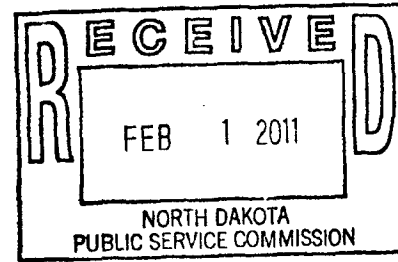
3. That the Court **JOIN** Western Surety Company, 101 South Phillips Avenue, Sioux Falls, South Dakota 57104-6703, as surety on the bond for Mitchell Feeds, Inc. as a respondent in this action.

Bismarck, North Dakota, this 14<sup>th</sup> day of April, 2011.



Illona A. Jeffcoat-Sacco (ID#03315)  
Mark Gruman (ID#06019)  
Special Assistant Attorneys General  
State Capitol – 12<sup>th</sup> Floor  
600 E Boulevard Ave – Dept 408  
Bismarck, North Dakota 58505-0480  
701-328-2400

Attorneys for the Public Service Commission



January 31, 2011

Dear Darrell Nitschke,

I sent a letter to the PSC in December regarding non payment of our sunflower seeds.

I noted in that letter that our final load was hauled out by Mitchell Feeds in May 2009 and we have not received any payment.

I have enclosed our only copy of proof they took our load but do not have the actual amount that was hauled as that was to be determined when they weighed it at the elevator. It was about a half of a semi load.

I have enclosed information regarding this matter and hope you can help us to find resolve.

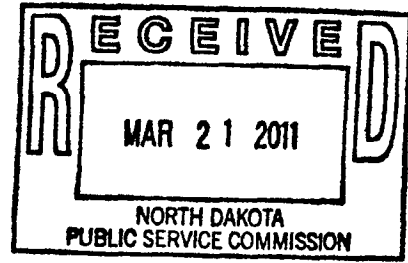
Sincerely,

James Burckhard  
5520 18<sup>th</sup> AVE. NE  
Towner, ND 58788

701-776-6773

March 17, 2011

Dear Darrell Nitschke,



On January 31, 2011 we sent you information regarding the nonpayment of a load of sunflower seeds sold to Mitchell Feeds.

We have not heard back from you regarding this matter.

In going over the current PSC website we now see that they have claimed insolvency so where does that leave us at this point?

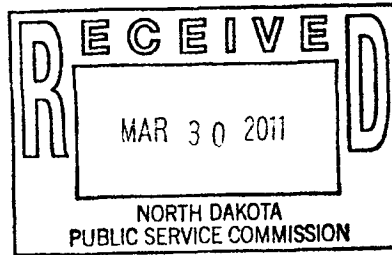
We see they were bonded but how will that help us? Can we file a claim against them to get our money?

Please take the time to answer this letter and let us know where we stand at this point.

Sincerely,

James & Cynthia Burckhard  
5520 18<sup>th</sup> Ave. NE  
Towner, ND 58788

3-28-11



David R. Steeves  
4690 County Road 2  
Sherwood, N.D. 58782  
701-459-2815  
701-263-7578

Public Service Comm.,

I have hauled several loads of Sunflowers to Robert Mitchell of Mitchell Feeds, Inc. of Fargo and have been paid for some and a partial payment on some and have made several attempts to collect with no success. I hope with your help maybe we can get this settled.

Thank You

David R. Steeves

MC GEE, HANKLA, BACKES & DOBROVOLNY  
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

ORLIN W. BACKES  
RICHARD H. MCGEE II  
BRIAN W. HANKLA  
COLLIN P. DOBROVOLNY  
JON W. BACKES\*  
PETER B. HANKLA\*\*  
JASON R. VENDSEL\*\*  
BRYAN L. VAN GRINSVEN\*\*  
KATY M. SCHAEFER  
SARA E. RULIFFSON

JERRY D. NELSON, CPA  
Business Manager

WALFRID B. HANKLA (Retired)  
ROBERT A. WHEELER (Retired)  
GEORGE A. MCGEE (1878-1953)  
RICHARD H. MCGEE (1918-1992)

ALSO LICENSED IN:  
\*Colorado  
\*\*Minnesota

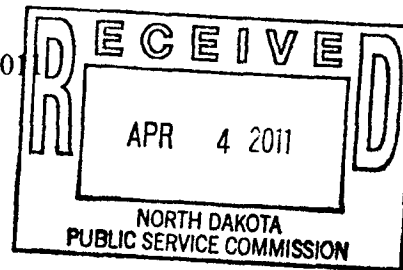
WELLS FARGO BANK CENTER  
SUITE 305  
15 SECOND AVENUE SW  
PO BOX 998  
MINOT, NORTH DAKOTA  
58702-0998

PHONE  
701.852.2544

FAX  
701.838.4724

WEB  
www.mcgeelaw.com

March 31, 2011



Susan K. Richter  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**RE: Request for Assistance in Collecting a Debt  
Roving Grain Buyer: Mitchell Feeds, Inc.  
Unpaid Balance on Purchase Contract Number MFI037  
Our File No: 19403.28977**

Dear Ms. Richter:

Thank you for taking time to speak with me this afternoon regarding this matter.

McGee, Hankla, Backes & Dobrovoly, P.C., represents David Deslauriers, who delivered Nusun Sunflowers to Mitchell Feeds, Inc., pursuant to the above-referenced contract dated April 5, 2008, (the "Agreement") a copy of which is included as Attachment A. As of this date, the unpaid balance on sunflowers Mr. Deslauriers delivered to Mitchell Feeds, Inc., is **\$157,346.99**, of which \$150,272.99 is for sunflowers and \$7,074.00 is for freight Mitchell Feeds, Inc., agreed to pay. We understand there is a \$70,000 surety bond for this roving grain dealer and that it may be possible for the North Dakota Public Service Commission to eventually take possession of other assets of Mitchell Feeds, Inc., and/or its affiliates or principals. We hereby request the assistance of the PSC in collecting amounts due and owing Mr. Deslauriers.

In addition to the unpaid balance noted above, Deslauriers suffered an additional \$27,048.00 in damages when he sold the remaining production at a price below that which Mitchell Feeds, Inc., was obligated to buy. If this component of damages is within the scope of the PSC's authority to assist in collection, we hereby include these damages, which would bring the total of Mr. Deslauriers' claim to \$184,394.99. Details of the damage calculation are discussed in the attached letter to Mitchell Feeds, Inc., and outlined in Attachment B.

Also included as Attachment C are copies of scale tickets and associated documents for each of the fourteen loads sold between January 29, 2009 and August 20, 2009. Mr. Deslauriers received payment in full for the first two loads, partial payment for four loads, and no payment for eight loads.

We are aware of the following addresses for Mitchell Feeds, Inc., and possible affiliates, agents and principals:

7 GE-11-51 Filed 04/04/2011 Pages: 56  
Unpaid grain claim  
David Deslauriers  
Gene Allen, Attorney

Mitchell Feeds, Inc.  
154 Hwy 75 S  
P.O. Box 128  
Hendrum, MN 56550

Mitchell Feeds, Inc.  
PO Box 9112  
Fargo ND 58106

Registered Agent:  
Jackie Mitchell  
4905 County Road 81 S  
Horace, ND 58047-9724

Mitchell Farms, Mitchell Farms, Inc.  
4905 County Road 81 S  
Horace, ND 58047-9724  
**Phone: (701) 588-9279**

Mr. Deslauriers is willing to cooperate with any investigation or action of the PSC regarding Mitchell Feeds, Inc., or Robert Mitchell. Please contact me if Mr. Deslauriers or I may be of service to you.

Thank you in advance for your cooperation.

Sincerely,  
McGEE, HANKLA, BACKES & DOBROVOLNY, P.C.



Gene W. Allen  
GWA:tmb:PSC-1  
Enclosures  
Cc: David Deslauriers

4-2-2011

To: Public Service Commission,

I have a growers contract with Mitchell Feeds Inc. 154 Hwy 75S P.O. Box 128 Hendrum, Mn 56550. (copy Included) for the 2009 growing season

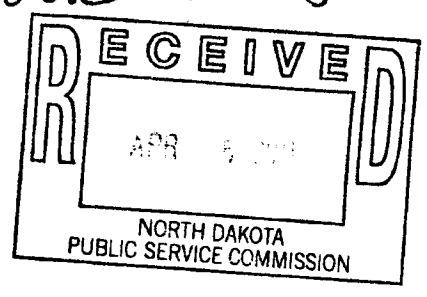
I delivered 456,800 lbs (scale Tickets included) of sunflowers under contract MFI 158 to Mitchell Feeds elevator in Hendrum, Mn. between 02/02/2010 and 04/13/2010.

As of 04-02-2011 I have not recieved and payment for these Sunflowers.

I would like the P.S.C. to look into this matter.

I have tried to contact Bob Mitchell by telephone concerning this matter but he hasn't returned any calls.

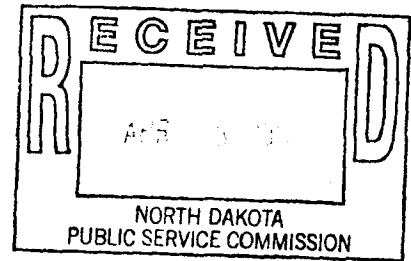
Your help in this matter to either recieve payment for the sunflowers or have them returned, if they are still in their inventories would be greatly appreciated.



Thank you  
Saul A Rohde

April 4, 2011

ND Public Service Commission  
600 E. Blvd Ave  
Dept 408  
Bismarck, ND 58505-0480



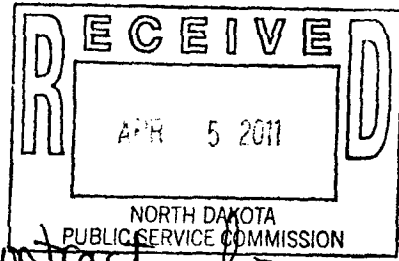
Gentlemen:

I am writing to file a complaint against Mitchell Feeds Inc. Hendrum, MN. who has failed to pay for 314,777.70 lbs of Nubun sunflower seeds. These 6 loads date back to August 4, 2009. Mr. Mitchell and his bank appear to be going through some reorganization of his financial situation and nothing has been stated as to whether or not I will be paid. Please see what can be done to address this complaint. Contract was for \$0.30/lb.

Sincerely

Don Ackerson

Public Service Comm.  
Attn. Sue



This is the document and contract for Mitchell Feeds - per phone conversation.

The four pink slips I have not received any money from.

The document from West Fargo - Cargill Incorporated was also a part of the contract but I handed it in when I knew Mitchell Feeds was not going to honor our contract. I had not received payment for the loads they did pick up so decided to bring this in.

This contract was done with Mitchell Feeds in good faith. We have waited over 2 yrs. for payment. We have been more than patient.

Thank you  
Steven Neameyer

4921 85<sup>th</sup> St.  
Myl0 ND 58353

701-656-3637-home  
701-739-7551-cell

April 7, 2011

To: ND Public Service Commission

RE: Mitchell Feeds Inc. and Bob Mitchell



I visited with Sue Richter on the phone last week about the case with Mitchell Feeds Inc. I am sending this letter and the attachments, because of what we discussed on the phone.

I am sending some information to your office, to be listed on the request for payment from defaulted contract price paid on previous loads and no payment has been made on the tickets that I am sending copies of. I have also sent copies of the contracts.

I have also joined other farmers in legal action with Vogel Law Partners. I hope that something comes from PSC and the law firm working on this issue.

Thanks,

A handwritten signature in cursive script that reads "Lana Anderson".

Lana Anderson/Northland Farms

10845 53<sup>rd</sup> AVE NW

Sherwood, ND 58782

Cell: 701-263-1467

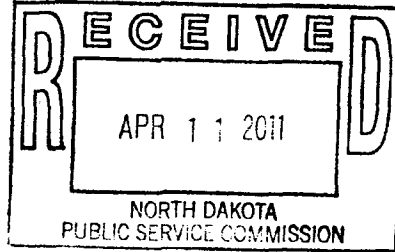
Email: landj@srt.com

April 7, 2011

Public Service Commission

600 E Blvd Ave

Bismarck ND 58505



Busch Farms, Inc.

Greg Busch

PO Box 584

Crosby ND 58730

To whom it may concern,

As per my phone conversation with Sue, I am sending you my information regarding the action against Mitchell Feeds, Inc. The bill of lading invoices represents the two remaining unpaid loads of sunflowers. Those two loads amount to 105,476 gross pounds. Please contact me if more information is required. My home phone is 701-965-6600 and my work phone is 701-702-6600.

Sincerely,

Greg Busch

President Busch Farms, Inc.



Sue:

Here are copies of Sunflower Contract and  
unpaid Load ticket delivered to Mitchell Seeds Inc.

Load ticket is Gross pounds.

*Mitch Preskey*

701-720-0752

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

\_\_\_\_\_ )  
Public Service Commission )  
) )  
Petitioner, )  
) )  
vs. )  
) )  
Mitchell Feeds, Inc. )  
) )  
and )  
) )  
Western Surety Company )  
) )  
Respondents. )  
\_\_\_\_\_ )  
) )  
PSC Case No. GE-11-51 )  
) )  
\_\_\_\_\_ )

CIVIL NO. \_\_\_\_\_

AFFIDAVIT OF  
SUSAN K. RICHTER

STATE OF NORTH DAKOTA )  
)ss  
COUNTY OF BURLEIGH )

Susan K. Richter being duly sworn states as follows:

1. That she is a citizen of the United States of America, of legal age, residing at Bismarck, North Dakota.
2. That she is the Director of the Licensing Division for the Public Service Commission and as such is charged with the duty of enforcing the provisions of North Dakota Century Code Chapter 60-02.1.
3. That Mitchell Feeds, Inc., a Minnesota business corporation, which is authorized to do business in North Dakota, operated as a roving grain buyer in North Dakota, and was licensed under North Dakota Century Code Chapter 60-02.1.

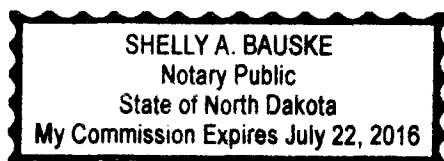
4. That Mitchell Feeds, Inc., PO Box 9122, Fargo, North Dakota 58106, operated as a roving grain buyer in North Dakota under license number 3159.
5. As part of the licensing process, Mitchell Feeds, Inc. filed a bond with the Commission as required by North Dakota Century Code § 60-02.1-08 in the amount of \$70,000 and identified as number 15352088 with Western Surety Company, 101 South Phillips Avenue, Sioux Falls, South Dakota 57104-6703, as surety.
6. On February 1, 2011, James and Cynthia Burckhard of Towner, North Dakota, filed a letter for collection of outstanding funds owed to them for grain sold to Mitchell Feeds, Inc. Subsequently, David Steeves of Sherwood, North Dakota, Gene W. Allen, attorney representing David Deslauriers of Sherwood, North Dakota, Paul A. Rohde of Halliday, North Dakota, Don Ackerson of Sherwood, North Dakota, Steven Neameyer of Mylo, North Dakota, Lana Anderson/Northland Farms of Sherwood, North Dakota, Greg Busch/Busch Farms, Inc. of Crosby, North Dakota, and Mitch Preskey, Glenburn, North Dakota, each filed letters for collection of outstanding funds owed to them for grain sold to Mitchell Feeds, Inc.
7. That affiant was informed and believes there are additional outstanding obligations for unpaid claims for grain sold to Mitchell Feeds, Inc. as a roving grain buyer under North Dakota Century Code Chapter 60-02.1 for which bond protection is available under the provisions of North Dakota Century Code § 60-02.1-08 and for any credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code §§ 60-10-04 and 60-10-05.

8. That Mitchell Feeds, Inc. is insolvent under North Dakota Century Code Chapter 60-02.1, as of February 1, 2011, the date the first claim for collection of outstanding funds owed for grain sold was filed, in that it is unable upon proper demand to make payment for grain purchased or make redelivery for grain delivered.
9. That the Commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code Chapter 60-02.1.
10. That bond proceeds will be needed to redeem outstanding receipts issued by Mitchell Feeds, Inc.
11. That proceeds from the credit-sale contract indemnity fund may be needed to meet the licensee's obligations to any holders of credit-sale contracts.
12. That affiant believes it is in the public interest to immediately appoint the Commission as trustee under North Dakota Century Code Chapter 60-02.1.
13. That the affidavit is made for the purpose of securing the appointment of the Commission as trustee of Mitchell Feeds, Inc. and preserving any assets of the trust under North Dakota Century Code Chapter 60-02.1.

Dated this 14<sup>th</sup> day of April, 2011.

By: *Susan K. Richter*  
Susan K. Richter

Subscribed and sworn to before me  
this 14<sup>th</sup> day of April, 2011.



*Shelly A Bauske*  
Notary Public

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Mitchell Feeds, Inc.

and

Western Surety Company

Respondents.

PSC Case No. GE-11-51

CIVIL NO. \_\_\_\_\_

BRIEF IN SUPPORT OF  
APPLICATION FOR  
APPOINTMENT AS  
TRUSTEE AND MOTION TO  
JOIN SURETY AS PARTY

The North Dakota Public Service Commission (Commission) has jurisdiction over roving grain buyers under North Dakota Century Code Chapter 60-02.1, which provides for the appointment of the Commission as trustee of the assets of a roving grain buyer upon the filing of a notice with the Commission that the roving grain buyer has defaulted in the payment for grain purchased by the buyer.

On February 1, 2011, James and Cynthia Burckhard of Towner, North Dakota, filed a letter for collection of outstanding funds owed to them for grain sold to Mitchell Feeds, Inc. Subsequently David Steeves of Sherwood, North Dakota, Gene W. Allen, attorney representing David Deslauriers of Sherwood, North Dakota, Paul A. Rohde of Halliday, North Dakota, Don Ackerson of Sherwood, North Dakota, Steven Neameyer of Mylo, North Dakota, Lana Anderson/Northland Farms of Sherwood, North Dakota, Greg Busch/Busch Farms, Inc. of Crosby, North Dakota, and Mitch Preskey of Glenburn,

North Dakota, each filed letters for collection of outstanding funds owed to them for grain sold to Mitchell Feeds, Inc. Mitchell Feeds, Inc. is unable, upon proper demand, to pay for grain purchased or make redelivery for grain delivered.

The Commission is informed and has reason to believe that there are outstanding obligations for unpaid claims for grain sold to Mitchell Feeds, Inc. as a roving grain buyer under North Dakota Century Code Chapter 60-02.1 for which bond protection is available under the provisions of North Dakota Century Code § 60-02.1-08 and for any credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code §§ 60-10-04 and 60-10-05.

It is in the best interest of all claimants that the Court declare Mitchell Feeds, Inc. insolvent and establish the date of insolvency as February 1, 2011, the date the first claim for collection of outstanding funds owed for grain sold was filed, and that the Commission be appointed Trustee, and be given the powers under North Dakota Century Code Chapter 60-02.1 so that all claimants will be treated fairly.

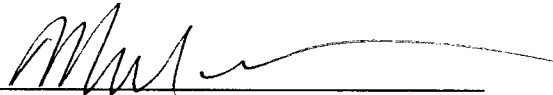
It is also in the best interest of all claimants that the surety be joined as a party as provided for under North Dakota Century Code § 60-02.1-31.

Upon the insolvency, the Commission has the authority under North Dakota Century Code § 60-10-05 to make payment to any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated under the contract.

The Court has jurisdiction under North Dakota Century Code § 60-02.1-29, which provides for the filing of this action in the District Court, South Central Judicial District.

Bismarck, North Dakota, this 14<sup>th</sup> day of April, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Illona A. Jeffcoat-Sacco', with a long horizontal flourish extending to the right.

Illona A. Jeffcoat-Sacco (ID#03315)  
Mark Gruman (ID#06019)  
Special Assistant Attorneys General  
State Capitol – 12<sup>th</sup> Floor  
600 E Boulevard Ave – Dept 408  
Bismarck, North Dakota 58505-0480  
701-328-2400

Attorneys for the Public Service Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission	)	CIVIL NO. _____
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Mitchell Feeds, Inc.	)	NOTICE OF APPLICATION
	)	FOR APPOINTMENT AS
and	)	TRUSTEE AND NOTICE OF
	)	MOTION TO JOIN SURETY
Western Surety Company	)	AS PARTY UNDER RULE 3.2
	)	
Respondents.	)	
	)	
_____	)	
PSC Case No. GE-11-51	)	
	)	
_____	)	

TO: **Robert Mitchell, President, Mitchell Feeds, Inc.**, PO Box 9112, Fargo, ND 58106

**Jackie Mitchell, Registered Agent for Mitchell Feeds, Inc.**, 4905 County Highway 81 South, Horace, ND 58047

**Sharon Sergeant, Claims Manager, Senior Claims Counsel, Claim Department, Western Surety Company**, 101 South Phillips Avenue, Sioux Falls, SD 57104-6703

**Adam W. Hamm, Insurance Commissioner**, State Capitol – 5<sup>th</sup> Floor, 600 East Boulevard Avenue, Bismarck, ND 58505-0320

**Steven Neameyer**, 4921 85<sup>th</sup> Street, Mylo, ND 58353

**Paul A. Rohde**, PO Box 251, Halliday, ND 58636

**David R. Steeves**, 4690 County Road 2, Sherwood, ND 58782

**James and Cynthia Burckhard**, 5520 18<sup>th</sup> Avenue NE, Towner, ND 58788

**Don Ackerson**, 10435 54<sup>th</sup> Avenue NW, Sherwood, ND 58782

**Gene W. Allen, Attorney for David Deslauriers**, PO Box 998, Minot, ND 58702-0998

**Lana Anderson/Northland Farms**, 10845 53<sup>rd</sup> Avenue NW, Sherwood, ND 58782

**Greg Busch/Busch Farms, Inc.**, PO Box 584, Crosby, ND 58730

**Mitch Preskey**, 2485 Glenburn Road, Glenburn, ND 58740

**PLEASE TAKE NOTICE** that the Public Service Commission, Movant in this proceeding, respectfully moves the Court for an order declaring Mitchell Feeds, Inc. insolvent and establishing the date of insolvency as February 1, 2011, the date the first claim for collection of outstanding funds owed for grain sold was filed, and appointing the Public Service Commission Trustee for Mitchell Feeds, Inc., and joining the surety as a party to the action. The application and motion, affidavit and brief in support of the application and motion are attached to this notice and by reference made a part hereof.

**YOU ARE HEREWITH NOTIFIED** that the Application for Appointment as Trustee and Motion to Join Surety as party has been submitted to the Court pursuant to Rule 3.2 of the North Dakota Rules of Court. The motion will be decided on briefs unless oral argument is timely requested. You have fourteen (14) days after the service of the Notice to file your response and other supporting papers.

Bismarck, North Dakota, this 14<sup>th</sup> day of April, 2011.



Illona A Jeffcoat-Sacco (ID#03315)  
Mark Gruman (ID#06019)  
Special Assistant Attorneys General  
State Capitol – 12<sup>th</sup> Floor  
600 E Boulevard Ave – Dept 408  
Bismarck, North Dakota 58505-0480  
701-328-2400

Attorneys for the Public Service Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Mitchell Feeds, Inc.

and

Western Surety Company

Respondents.

PSC Case No. GE-11-51

CIVIL NO. \_\_\_\_\_

AFFIDAVIT OF  
SERVICE BY CERTIFIED  
MAIL

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 **14<sup>th</sup> day of April, 2011**, she deposited in the United States Mail, Bismarck, North Dakota, **thirteen envelopes** with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

1. Application for Appointment as Trustee and Motion to Join Surety as Party.
2. Affidavit of Susan K. Richter.
3. Brief in Support of Application for Appointment as Trustee and Motion to Join Surety as Party.
4. Notice of Application for Appointment as Trustee and Notice of Motion to Join Surety as Party Under Rule 3.2.
5. Affidavit of Service by Certified Mail.

The envelopes were addressed as follows:

Robert Mitchell  
Mitchell Feeds, Inc.  
PO Box 9112  
Fargo, ND 58106  
**Cert. No. 7010 1060 0001 0643 5107**

Jackie Mitchell, Registered Agent for  
Mitchell Feeds, Inc.  
4905 County Highway 81 South  
Horace, ND 58047  
**Cert. No. 7010 1060 0001 0643 5114**

Robert Mitchell  
Mitchell Feeds, Inc.  
4905 County Highway 81 South  
Horace, ND 58047  
**Cert. No. 7010 1060 0001 0643 5121**

Sharon Sergeant, Claims Manager  
Senior Claims Counsel, Claim Dept.  
Western Surety Company  
101 South Phillips Avenue  
Sioux Falls, SD 57104-6703  
**Cert. No. 7010 1060 0001 0643 5138**

Steven Neameyer  
4921 85<sup>th</sup> Street  
Mylo, ND 58353  
**Cert. No. 7010 1060 0001 0643 5145**

Paul A. Rohde  
PO Box 251  
Halliday, ND 58636  
**Cert. No. 7010 1060 0001 0643 5152**

David R. Steeves  
4690 County Road 2  
Sherwood, ND 58782  
**Cert. No. 7010 1060 0001 0643 5169**

James and Cynthia Burckhard  
5520 18<sup>th</sup> Avenue NE  
Towner, ND 58788  
**Cert. No. 7010 1060 0001 0643 5176**

Don Ackerson  
10435 54<sup>th</sup> Avenue NW  
Sherwood, MN 58782  
**Cert. No. 7010 1060 0001 0643 5183**

Gene W. Allen  
Attorney for David Deslauriers  
PO Box 998  
Minot, ND 58702-0998  
**Cert. No. 7010 1060 0001 0643 5206**

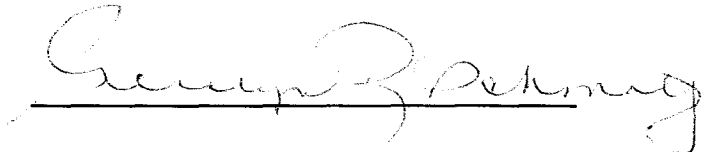
Lana Anderson/Northland Farms  
10845 53<sup>rd</sup> Avenue NW  
Sherwood, ND 58782  
**Cert. No. 7010 1060 0001 0643 5213**

Greg Busch  
Busch Farms, Inc.  
PO Box 584  
Crosby, ND 58730  
**Cert. No. 7010 1060 0001 0643 5220**

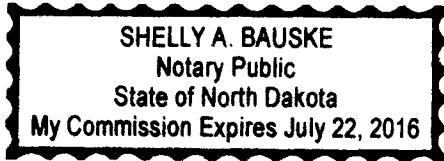
Mitch Preskey  
2485 Glenburn Road  
Glenburn, ND 58740  
**Cert. No. 7010 1060 0001 0643 5237**


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

Subscribed and sworn to before me  
this **14<sup>th</sup>** day of **April, 2011**.



SEAL



  
\_\_\_\_\_  
Notary Public

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

\_\_\_\_\_ )  
 Public Service Commission )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 Mitchell Feeds, Inc. )  
 )  
 and )  
 )  
 Western Surety Company )  
 )  
 Respondents. )  
 )  
 \_\_\_\_\_ )  
 PSC Case No. GE-11-51 )  
 )  
 \_\_\_\_\_ )

CIVIL NO. \_\_\_\_\_

ORDER APPOINTING TRUSTEE AND JOINING SURETY AS PARTY

The Public Service Commission (Commission) has moved the Court for appointment as trustee of Mitchell Feeds, Inc. under North Dakota Century Code Chapter 60-02.1 and to join Western Surety Company as a party to the action. Mitchell Feeds, Inc. operates as a roving grain buyer in the State of North Dakota.

It appears from the record that Mitchell Feeds, Inc. is insolvent under North Dakota Century Code Chapter 60-02.1 as of February 1, 2011, that it is in the best interest that a trustee be appointed and that the surety, Western Surety Company, be joined as a party to this proceeding.

**ORDER**

**THEREFORE**, on the Motion of the Commission by and through its attorney, the Commission is appointed trustee of the trust fund provided by North Dakota Century

Code § 60-02.1-29 for the purpose of marshalling all trust assets of the insolvent Mitchell Feeds, Inc. in the manner provided by law and that the date of insolvency be established as February 1, 2011.

**IT IS FURTHER ORDERED** that surety, Western Surety Company, 101 South Phillips Avenue, Sioux Falls, South Dakota 5704-6703, is joined as a respondent in this action.

Bismarck, North Dakota, this \_\_\_\_ day of \_\_\_\_\_, 2011.

BY THE COURT

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The Honorable  
Judge of the District Court

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Mitchell Feeds, Inc.

and

Western Surety Company

Respondents.

PSC Case No. GE-11-51

CIVIL NO. \_\_\_\_\_

EX PARTE ORDER  
TO PRESERVE TRUST  
ASSETS

The Public Service Commission (Commission) has petitioned the Court for appointment as trustee of Mitchell Feeds, Inc. under North Dakota Century Code Chapter 60-02.1. Mitchell Feeds, Inc., PO Box 9122, Fargo, North Dakota 58106, operates as a roving grain buyer in the State of North Dakota.

It appears from the record that Mitchell Feeds, Inc. is insolvent under North Dakota Century Code Chapter 60-02.1, and that it is in the best interest of the claimants and the parties to this proceeding that an ex parte order be issued by this Court to preserve and protect the potential assets of the trust fund until the court issues its order granting or denying the application. North Dakota Century Code § 60-02.1-30 provides that the trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.

2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds therefrom, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

### **ORDER**

**THEREFORE**, the Court orders that Mitchell Feeds, Inc. is prohibited from selling, transferring or removing potential assets of the trust fund as provided in North Dakota Century Code § 60-02.1-30, until the court issues its order granting or denying the application for appointment of the Public Service Commission as Trustee of the trust fund in this proceeding.

Bismarck, North Dakota, this \_\_\_\_ day of \_\_\_\_\_, 2011.

**BY THE COURT**

\_\_\_\_\_  
Honorable  
Judge of the District Court