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April 11, 2012



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Tracy A. Kennedy
ZIMNEY FOSTER P.C.
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Grand Forks, ND 58208-3417

Illona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Capitol – 12th Floor
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

Sharon Sargeant
Western Surety Company
101 South Phillips Avenue
Sioux Falls, SD 57041

**Re: Don Ackerson, et. al v. Mitchell Feeds, Inc. and Mitchell Farms, Inc.
Court File No.: 54-CV-11-112**

Dear Counsel:

Enclosed are the following documents for the above-referenced matter:

- Notice of Motion and Motion to Withdraw Motion for Declaratory Judgment;
- Memorandum in Support of Motion to Withdraw Motion for Declaratory Judgment;
- Certificate of Service;
- Stipulation for Extension of Time; and
- Certificate of Service.

Sincerely,



Debbie Miller
Legal Assistant

DM/dim

Enclosures

Copy: David Steeves
David DesLauriers

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission,)
)
Plaintiff,)
v.)
)
Mitchell Feeds, Inc. and Western Surety)
Company,)
)
Respondents,)
)
Micheal Aasen, Donald Ackerson, Sheldon)
Ackerson, Lana Anderson d/b/a Northland)
Farms, B & D Farms, Inc., Busch Farms, Inc.,)
David Deslauriers, Scott Lazorenko, Manna)
Farms, Inc., Nathan Neameyer, Steven)
Neameyer, Mitch Preskey, Paul Rohde, James)
Routledge, Bart Savelkoul d/b/a Savelkoul)
Farms, Mike Schollmeyer, David Steeves,)
Robert Steeves, Paul Trout, Wurgler Farms,)
and Kelly Wurgler,)
)
and)
)
American Federal Bank,)
)
Intervenors.)

Civil No. 08-2011-CV-917

PSC Case No. GE-11-051

**NOTICE OF MOTION AND MOTION
TO WITHDRAW MOTION FOR
DECLARATORY JUDGMENT**

NOTICE OF MOTION

PLEASE TAKE NOTICE that Intervenors and Claimants Micheal Aasen, Donald Ackerson, Sheldon Ackerson, Lana Anderson d/b/a Northland Farms, B & D Farms, Inc., Busch Farms, Inc., David Deslauriers, Scott Lazorenko, Manna Farms, Inc., Nathan Neameyer, Steven Neameyer, Mitch Preskey, Paul Rohde, James Routledge, Bart Savelkoul d/b/a Savelkoul Farms, Mike Schollmeyer, David Steeves, Robert Steeves, Paul Trout, Wurgler Farms, and Kelly

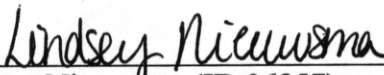
Wurgler (“Claimants”) hereby move to withdraw their Motion for Declaratory Judgment filed with the Court on March 7, 2012. Intervenor Claimants’ Motion to Withdraw shall be decided on the briefs filed by the parties to the above-captioned action unless oral argument is timely requested.

MOTION

For the reasons set forth in the supporting Memorandum, Intervenor Claimants hereby move the Court for an order withdrawing their previously filed Motion for Declaratory Judgment and stating that the granting of such order shall not constitute a decision on the merits of the issues addressed within the Motion for Declaratory Judgment and is without prejudice.

Signed this 11th day of April, 2012.

BAUMSTARK BRAATEN LAW PARTNERS
Attorneys for Intervenor Claimants
222 North 4th Street
Bismarck, ND 58501-4004
Phone: 701-221-2911
Fax: 701-221-5842



Lindsey Nieuwsma (ID 06857)
Derrick Braaten (ID 06394)

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission,)
)
Plaintiff,)
v.)
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Mitchell Feeds, Inc. and Western Surety)
Company,)
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Neameyer, Mitch Preskey, Paul Rohde, James)
Routledge, Bart Savelkoul d/b/a Savelkoul)
Farms, Mike Schollmeyer, David Steeves,)
Robert Steeves, Paul Trout, Wurgler Farms,)
and Kelly Wurgler,)
)
and)
)
American Federal Bank,)
)
Intervenors.)

Civil No. 08-2011-CV-917

PSC Case No. GE-11-051

**MEMORANDUM IN SUPPORT OF
MOTION TO WITHDRAW MOTION
FOR DECLARATORY JUDGMENT**

On March 7, 2012, Intervenor Claimants Micheal Aasen, Donald Ackerson, Sheldon Ackerson, Lana Anderson d/b/a Northland Farms, B & D Farms, Inc., Busch Farms, Inc., David Deslauriers, Scott Lazorenko, Manna Farms, Inc., Nathan Neameyer, Steven Neameyer, Mitch Preskey, Paul Rohde, James Routledge, Bart Savelkoul d/b/a Savelkoul Farms, Mike Schollmeyer, David Steeves, Robert Steeves, Paul Trout, Wurgler Farms, and Kelly Wurgler, filed a Motion for Declaratory Judgment asking the Court to determine Intervenor Claimants'

and Intervenor American Federal Bank's adverse claims to the sunflowers and sunflower proceeds held by Respondent Mitchell Feeds, Inc.

Shortly thereafter, it was brought to Intervenor Claimants' counsels' attention that a request for a determination on a declaratory judgment is more appropriately made within a pleading rather than by direct motion. Although the Court may construe the Motion for Declaratory Judgment as a motion for summary judgment, Intervenor Claimants seek to withdraw their Motion for Declaratory Judgment in the interest of judicial efficiency and so a more precise procedural groundwork may be set. See e.g. Int'l Broth. of Teamsters v. E. Conference of Teamsters, 160 F.R.D. 452 (S.D.N.Y. 1995) (Since plaintiffs' "motion for declaratory relief" was inconsistent with the federal rules, motion would be construed as motion for summary judgment in action for declaratory judgment.)

Additionally, Intervenor Claimants supplemented the brief statement of their claims contained within the Memorandum in Support of their Rule 24 Motion for Intervention of Right through a Complaint in Intervention setting out their specific claims and defenses. The Complaint in Intervention was filed with the Court and served on the parties on April 6, 2012. Intervenor Claimants believe it would be more appropriate to allow the other parties time to respond to the pleading before disposition of the motion. Intervenor Claimants intend to resubmit the issues addressed in the Motion for Declaratory Judgment to the Court through a Motion for Summary Judgment after the responses, if any, to the Complaint in Intervention have been served. For these reasons, Intervenor Claimants respectfully request that this Court issue an order withdrawing their Motion for Declaratory Judgment.

Signed this 11th day of April, 2012.

BAUMSTARK BRAATEN LAW PARTNERS

Attorneys for Intervenor Claimants

222 North 4th Street

Bismarck, ND 58501-4004

Phone: 701-221-2911

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Lindsey Nieuwsma

Lindsey Nieuwsma (ID 06857)

Derrick Braaten (ID 06394)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission,)

Plaintiff,)

v.)

Mitchell Feeds, Inc. and Western Surety)
Company,)

Respondents,)

Micheal Aasen, Donald Ackerson, Sheldon)
Ackerson, Lana Anderson d/b/a Northland)
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Routledge, Bart Savelkoul d/b/a Savelkoul)
Farms, Mike Schollmeyer, David Steeves,)
Robert Steeves, Paul Trout, Wurgler Farms,)
and Kelly Wurgler,)

and)

American Federal Bank,)

Intervenors.)

Civil No. 08-2011-CV-917

PSC Case No. GE-11-051

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing

- **Notice of Motion and Motion to Withdraw Motion for Declaratory Judgment**
- **Memorandum in Support of Motion to Withdraw Motion for Declaratory Judgment**

was on April 11, 2012, electronically filed with the court and delivered via email and US Mail to the following:

Illona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Capitol — 12th Floor
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

David L. Johnson
McNair, Larson & Carlson, Ltd
51 Broad Way, Ste 600
P.O. Box 2189
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Lindsey Nieuwsma
Lindsey Nieuwsma

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission,)	
)	
Plaintiff,)	Civil No. 08-2011-CV-917
)	
v.)	PSC Case No. GE-11-051
)	
Mitchell Feeds, Inc. and Western Surety)	
Company,)	
)	
Respondents,)	
)	
Micheal Aasen, Donald Ackerson, Sheldon)	STIPULATION FOR
Ackerson, Lana Anderson d/b/a Northland)	EXTENSION OF TIME
Farms, B & D Farms, Inc., Busch Farms, Inc.,)	
David Deslauriers, Scott Lazorenko, Manna)	
Farms, Inc., Nathan Neameyer, Steven)	
Neameyer, Mitch Preskey, Paul Rohde, James)	
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and Kelly Wurgler,)	
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American Federal Bank,)	
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Intervenors.)	
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)	

Intervenor Claimants Micheal Aasen, Donald Ackerson, Sheldon Ackerson, Lana Anderson d/b/a Northland Farms, B & D Farms, Inc., Busch Farms, Inc., David Deslauriers, Scott Lazorenko, Manna Farms, Inc., Nathan Neameyer, Steven Neameyer, Mitch Preskey, Paul Rohde, James Routledge, Bart Savelkoul d/b/a Savelkoul Farms, Mike Schollmeyer, David Steeves, Robert Steeves, Paul Trout, Wurgler Farms, and Kelly Wurgler filed and served a

Notice of Motion and Motion for Declaratory Judgment on March 7, 2012 and a Notice of Motion and Motion to Withdraw the Motion for Declaratory Judgment on April 11, 2012.

Counsel for the Public Service Commission, Trustee, Respondents Mitchell Feeds, Inc. and Western Surety Company, and Intervenor Claimants and American Federal Bank have been in communication as to the timing of any response to Intervenor Claimants' Motion for Declaratory Judgment in the event that Intervenor Claimants Motion to Withdraw the Motion for Declaratory Judgment is denied. All parties have agreed upon a filing deadline for responses to the Motion for Declaratory Judgment, if such response is necessary.

IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their attorneys, that:

1. Responses to Intervenor Claimants' Motion for Declaratory Judgment are suspended unless and until Intervenor Claimants' Motion to Withdraw the Motion for Declaratory Judgment is denied.

2. In the event that Intervenor Claimants' Motion to Withdraw the Motion for Declaratory Judgment is denied, the time allowed to respond to the Motion for Declaratory Judgment will be within seven (7) days of the entry of the Order denying the Motion to Withdraw.

3. The parties hereby respectfully make a joint request to the Court to accept this stipulation.

Signed this 11th day of April, 2012.

Lindsey Nieuwsma

Lindsey Nieuwsma (ID 0390964)

Derrick Braaten (ID 0388372)

BAUMSTARK BRAATEN LAW PARTNERS

Attorneys for Intervenors

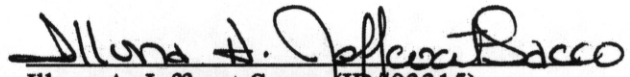
222 North 4th Street

Bismarck, ND 58501-4004

Phone: 701-221-2911

Fax: 701-221-5842

Signed this 11th day of April, 2012.



Ilona A. Jeffcoat-Sacco (ID#03315)

Special Assistant Attorney General

Attorney for the Public Service

Commission

State Capitol – 12th Floor

600 E Boulevard Ave – Dept 408

Bismarck, ND 58505-0480

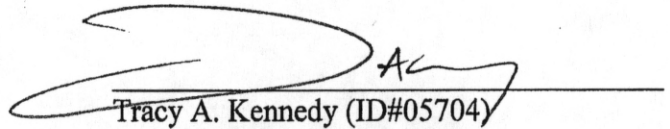
Phone: 701-328-2400

Signed this 11th day of April, 2012.



David Johnson (ID#03484)
McNair, Larson & Carlson, Ltd.
Attorneys for Mitchell Feeds, Inc.
51 Broadway, Suite 600
PO Box 2189
Fargo, ND 58108

Signed this 11 day of April, 2012.

A handwritten signature in black ink, appearing to read "Tracy A. Kennedy", is written over a horizontal line. The signature is stylized with a large, sweeping initial "T" and a distinct "A".

Tracy A. Kennedy (ID#05704)

ZIMNEY FOSTER P.C.

***Attorneys for Intervenor American Federal
Bank***

3100 South Columbia Road, Suite 200

PO Box 13417

Grand Forks, ND 58208-3417

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission,)

Civil No. 08-2011-CV-917

Plaintiff,)

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CERTIFICATE OF SERVICE

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American Federal Bank,)

Intervenors.)

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- **Stipulation for Extension of Time**


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