

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission,

Petitioner,

vs.

Mitchell Feeds, Inc.

and

Western Surety Company

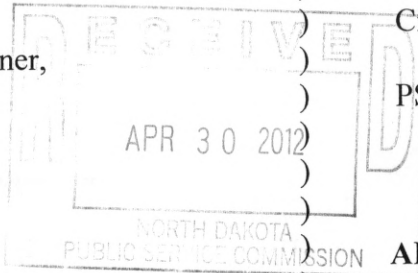
Respondents.

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, Kelly Wurgler,

and

American Federal Bank,

Intervenors.



Civil No. 08-2011-CV-917

PSC Case No. GE-11-51

**AMERICAN FEDERAL BANK'S ANSWER TO INTERVENOR FARMER'S COMPLAINT IN INTERVENTION**

**COMES NOW**, Intervenor, American Federal Bank, and for its Answer to Intervenor Farmer's Complaint in Intervention, denies, states and alleges as follows:

1. That the Complaint in Intervention fails to state a claim against Intervenor American Federal Bank upon which relief can be granted.

2. That Intervenor American Federal Bank denies each and every allegation, matter and thing contained in the Complaint in Intervention, except as may be hereinafter specifically admitted, qualified or explained.

3. Intervenor American Federal Bank preserves and reserves any and all defenses, affirmative defenses, claims, counterclaims, and third party claims available to it, including but not limited to waiver, estoppel, duress, failure of consideration, fraud, illegality, payment, release, and novation, pending further discovery and investigation.

4. To the extent that the opening introductory Section I of the Complaint in intervention is intended to be allegations made against Intervenor American Federal Bank, then Intervenor American Federal Bank denies each and every such allegation, matter and thing contained in Section I except as may be hereinafter specifically admitted, qualified, or explained:

- a. Intervenor American Federal Bank admits that this action involves the insolvency of a licensed roving grain buyer and that there is a dispute over the right to the grain or the proceeds of grain stored by the grain buyer.

5. With respect to Paragraph 1 through 48 of the Complaint in Intervention, Intervenor American Federal Bank avers, alleges, answers and denies as follows:

- a. With respect to Paragraphs 1 through 20 of the Complaint in Intervention, Intervenor American Federal Bank denies the allegations on the grounds of lack of sufficient information to form a belief as to the truth thereof.
- b. With respect to Paragraph 21 and 22 of the Complaint in Intervention, for purposes of this proceeding only, Intervenor American Federal Bank admits the allegations contained therein.

- c. With respect to Paragraph 23 of the Complaint in Intervention, for purposes of this proceeding only, Intervenor American Federal Bank admits the allegations contained therein that the North Dakota Public Service Commission is the trustee of the statutory trust fund established by this court. Intervenor American Federal Bank denies the allegation that the trust fund is for the benefit of unpaid receipt holders of Respondent Mitchell Feeds, Inc. on the grounds of lack of sufficient information to form a belief as to the truth thereof. Intervenor American Federal Bank denies any and all other allegations of Paragraph 23.
- d. With respect to Paragraphs 24 through 30 of the Complaint in Intervention, Intervenor American Federal Bank denies each and all allegations therein, denies each and all of the allegations for lack of sufficient knowledge to form a belief as to the truth thereof, and denies each and all of the allegations because the allegations are too broad and indefinite and lack the necessary specificity to permit a reasonable answer thereto.
- e. With respect to Paragraph 31 of the Complaint in Intervention, Intervenor American Federal Bank admits the allegations contained therein and alleges that the Norman County District Court has jurisdiction over the sunflowers and/or proceeds of the sunflowers at issue.
- f. With respect to Paragraph 32 through 33 of the Complaint in Intervention, Intervenor American Federal Bank denies each and all allegations therein, denies each and all of the allegations for lack of sufficient knowledge to form a belief as to the truth thereof, and denies each and all of the allegations because the allegations

are too broad and indefinite and lack the necessary specificity to permit a reasonable answer thereto.

- g. With respect to Paragraph 34 of the Complaint in Intervention, Intervenor American Federal Bank admits the allegations contained therein.
- h. With respect to Paragraph 35 through 38 of the Complaint in Intervention, Intervenor American Federal Bank denies each and all allegations therein, denies each and all of the allegations for lack of sufficient knowledge to form a belief as to the truth thereof, and denies each and all of the allegations because the allegations are too broad and indefinite and lack the necessary specificity to permit a reasonable answer thereto.
- i. With respect to Paragraph 39 of the Complaint in Intervention, Intervenor American Federal Bank admits the allegations contained therein and alleges that the same are true.
- j. With respect to Paragraph 40 of the Complaint in Intervention, Intervenor American Federal Bank admits the allegations contained therein and alleges that the same are true.
- k. With respect to Paragraph 41 of the Complaint in Intervention, Intervenor American Federal Bank admits that it claims a first priority lien on the grain inventory of Respondent Mitchell Feeds, Inc. by virtue of its security agreements with Respondent Mitchell Feeds and non-party BJM Land, Inc. Intervenor American Federal Bank alleges that the statutory trust provisions do not apply to the grain and/or proceeds thereof of Defendant Mitchell Feeds, Inc. due to the State of Minnesota's jurisdiction over them and through the Norman County District

Court, Ada, Minnesota case. Intervenor American Federal Bank denies any and all other allegations of Paragraph 41.

- l. With respect to Paragraphs 42 through 45, Intervenor American Federal Bank denies each and all allegations therein and puts Intervenor Farmers to strict proof.
  - m. With respect to Paragraphs 46 through 48, to the extent a response is required, Intervenor American Federal Bank denies each and all allegations therein and alleges that the relief sought is inappropriate in this matter.
6. The Complaint in Intervention in its entirety and/or claims for relief therein should be dismissed because the Complaint in Intervention fails to state, include, and/or properly state a claim upon which relief can be granted.
  7. The Complaint in Intervention in its entirety and/or claims for relief therein should be dismissed because the Intervenor Farmers lack standing to bring suit.
  8. The Complaint in Intervention in its entirety and/or claims for relief therein should be dismissed because the Court lacks subject matter jurisdiction.
  9. The Complaint in Intervention in its entirety and/or claims for relief therein should be dismissed because the Court lacks personal jurisdiction over Intervenor American Federal Bank in respect to the claims made in the Complaint in Intervention.
  10. The Complaint in Intervention has failed to name necessary and indispensable parties, including under Rule 19.
  11. Pending completion of discovery, Intervenor American Federal Bank asserts and preserve all defenses and affirmative defenses available to it pursuant to the Rules of Civil Procedure, including those set forth in Rules 8 and 12, including the defenses of res judicata, insufficiency of process, and service of process.

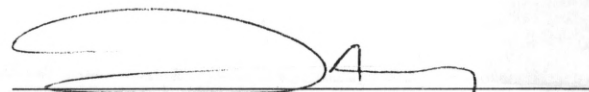
12. Pending completion of discovery and without relieving the Intervenor Farmers of their burden of proof in any respect, Intervenor American Federal Bank alleges in a separate and affirmative defense to each and every claim of the Complaint in Intervention against Intervenor American Federal Bank, that the Complaint in Intervention and each and every claim for relief contained therein against Intervenor American Federal Bank is barred by applicable statute of limitations and/or repose and/or by the equitable doctrines of laches and estoppel.

13. Without relieving the Intervenor Farmers of their burden of proof in any respect, it is alleged that the Intervenor Farmers are barred from recovery from Intervenor American Federal Bank, in total or in part, by the doctrines of waiver, estoppel, unclean hands, release and laches.

WHEREFORE, Intervenor American Federal Bank asks that the Court award it relief as follows:

1. That the Complaint be dismissed with prejudice;
2. It be awarded its costs and disbursements;
3. For such other and further relief the Court finds just and equitable.

Dated this 25 day of April, 2012.



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STATE OF NORTH DAKOTA

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Public Service Commission,  
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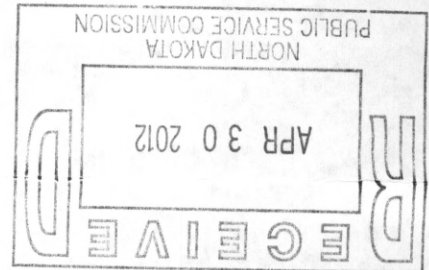
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**AFFIDAVIT OF SERVICE  
BY MAIL**

and

American Federal Bank,

Intervenors.

STATE OF NORTH DAKOTA )  
 )SS.  
COUNTY OF GRAND FORKS )

**BRENDA R. DIPERSIO**, being first duly sworn on oath deposes and says that she is a secretary in the office of Zimney Foster P.C., 3100 South Columbia Road, Ste. 200, PO Box 13417, Grand Forks, ND 58208-3417; that on the 25 day of April, 2012, she served:

**1. American Federal Bank's Answer to Intervenor Farmer's Complaint in Intervention**

by placing a true copy in a postage paid envelope addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Grand Forks, North Dakota.

Illona A. Jeffcoat-Sacco  
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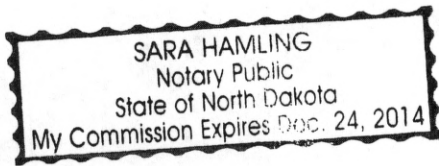
Sharon Sergeant, Claims Manager  
Senior Claims Counsel, Claim Dept.  
Western Surety Company  
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Minot, ND 58702-0998

Derrick Braaten  
Lindsey Nieuwsma  
222 North 4<sup>th</sup> Street  
Bismarck, ND 58501-4004

  
**BRENDA R. DIPERSIO**

Subscribed and sworn to before me this 25<sup>th</sup> day of April, 2012 by Brenda R. DiPersio.



Sara Hamling  
NOTARY PUBLIC, NORTH DAKOTA  
My commission expires: