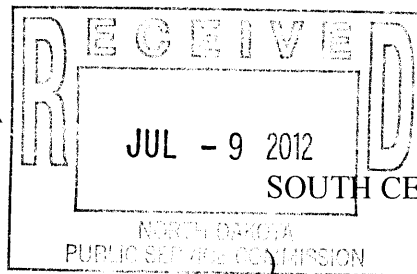


STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH
Public Service Commission,



DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

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
REPLY TO PUBLIC SERVICE
COMMISSION'S RESPONSE TO
INTERVENOR AMERICAN
FEDERAL BANK'S MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

The Public Service Commission ("PSC") argues that "of the parties involved in this case, it is the producers who should be protected at all costs." However, it is the PSC that has grossly failed to protect the producers by continually asking them to protect themselves, or, as a result of the PSC's failure to act, making the producers try to protect themselves.

The PSC has stated that this case “already has a convoluted history,” and that too is the fault of the PSC for failure to do its job. It is also the fault of the intervening Farmers who have taken it upon themselves to start two actions: (1) for replevin and delivery of grain proceeds in Minnesota and on their own behalf; and (2) in North Dakota, presumably on behalf of the PSC. Instead of the Intervenor Farmers suing American Federal, they should have pursued the PSC requiring it to do its job.

American Federal Bank (“American Federal”) does not deserve the label of wrongdoer in this case and in this current situation. American Federal has done nothing but respond to the lawsuits of the Intervening Farmers to protect its first priority security interest in the inventory of Mitchell Farms; a security interest that has been perfected in the public record since at least 2008. *See Aff. of Mark Vining*, ¶ 7.

American Federal won its Motion for Summary Judgment in the State of Minnesota claiming an interest in the Mitchell Feeds’ grain and proceeds thereof superior in right to Mitchell Feeds and the Intervening Farmers. The PSC sat back and watched the entire Minnesota proceeding without Intervention, all the while conferring with the Intervening Farmers. For whatever reason, the PSC again chose not to do its job in protecting the producers.

Several of the issues addressed by the PSC have already been briefed by American Federal in its Brief in Support of Motion for Summary Judgment, Docket # 72, and Reply to Farmers’ Response, Docket # 98. American Federal bases its Motion for Summary Judgment on its prior briefs, as supplemented by the law and arguments set forth below.

LAW AND ARGUMENT

I. THE FACTUAL ISSUES AS TO WHICH RECEIPHOLDERS HAVE VALID CLAIMS TO THE ALLEGED TRUST ASSETS IS IRRELEVANT IN THIS CASE

In its brief, the PSC attempts to argue that there are issues of fact pertaining to whether or not some of the receiptholders have valid claims, which may preclude summary judgment in favor of American Federal. That assertion is incorrect, and any issues the PSC still has regarding claimants is irrelevant to American Federal's Motion for Summary Judgment.

The fact of the matter is that a group of Farmers, the same group as those who intervened in this suit, sued in Norman County Minnesota trying to gain possession of Mitchell Feeds' sunflower inventory. They lost to American Federal in that case, and American Federal was awarded possession of the sunflowers and/or proceeds. Now the Farmers are again trying to gain possession of the same sunflowers.

“Summary judgment is a procedural device for promptly resolving a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or *if resolving factual disputes will not alter the result.*” *Tarnavsky v. Rankin*, 2009 ND 149, ¶¶ 7, 771 N.W.2d 578 (internal citations omitted). Whether or not some of the receiptholders are valid claimants to the trust is irrelevant to American Federal's Motion for Summary Judgment, as the determination will not alter the result.

The only issue currently before the Court is whether this Court can decide the Farmers' declaratory judgment action pertaining to whether or not the Minnesota grain and/or proceeds are part of Mitchell Feeds' North Dakota trust. Thus, any facts raised by the PSC in its brief pertaining to who are valid claimants to the trust (for the claimants and the PSC to duke out) are irrelevant to this case. Thus there is no question of material fact which can defeat American Federal's Motion for Summary Judgment. The fact that the PSC has not declared whether the

Intervening Farmers even have valid claims supports American Federal's Motion for Summary Judgment dismissing the Farmers' lawsuit against American Federal.

II. THE SUNFLOWERS THAT WERE IN MINNESOTA ARE NOT NOW AND NEVER WERE PART OF MITCHELL FEEDS' NORTH DAKOTA TRUST

First the Farmers, and now the PSC, are attempting to argue that the grain and/or proceeds of Mitchell Feeds, which were located in its Hendrum, Minnesota facility, are somehow a part of Mitchell Feeds' North Dakota trust. However, that assertion is incorrect for numerous reasons.

A. The PSC Never Attempted to Marshall the Sunflower Inventory into Mitchell Feeds' North Dakota Trust and the Proceeds of the Mitchell Feeds' Sunflower Inventory Is Now in the Possession of American Federal and Has Been Applied to the Mitchell Feeds, Inc. and/or BJM Land Indebtedness to American Federal

It was the Farmers who asked a Minnesota court to order an injunction and take jurisdiction over the seeds when they sued Mitchell Feed on April 6, 2011. After litigation, on May 1, 2012, the Minnesota court ordered that American Federal was "entitled to **immediate** possession of the sunflower inventory of Defendant Mitchell Feeds, Inc. and any proceeds from the sale of the sunflowers pursuant to the Court's previous orders authorizing the sale and deposit of proceeds." *See* Docket # 76. Judgment was entered on May 2, 2012. *Id.* Thereafter, on or about May 3, 2012, per the Court's Order and Judgment, American Federal took possession of the proceeds of the sunflowers located in Ada, MN. *See Aff. Mark Vining*, ¶ 5.

The PSC and Farmers now argue that the sunflowers were and are now somehow part of the North Dakota trust. Before the PSC was appointed a trustee in this case, the Farmers commenced suit in Minnesota asking a Minnesota court to take jurisdiction of the sunflowers with a restraining order. The PSC never went to the Minnesota court to ask for the sunflowers. The sunflowers were thereafter sold per order of the Minnesota court and the proceeds were

deposited in a Minnesota bank. Only the Farmers and American Federal argued to the Minnesota court for possession of the sunflowers and/or proceeds.

American Federal won the Minnesota case, and per the Minnesota court's order granting summary judgment, American Federal had the right to immediate possession of the proceeds. Thus, the Farmers and PSC cannot ask this Court to determine whether or not the proceeds are part of the North Dakota trust when they have already been awarded to American Federal, American Federal took actual possession of the proceeds and applied it to the outstanding indebtedness owed to American Federal. *See Aff. of Mark Vining*, ¶ 8.

B. The PSC, for Whatever Reason, Chose Not to Seek Intervention in Minnesota

The Farmers sued Mitchell Feeds in Minnesota attempting to gain possession of the grain and grain proceeds of Mitchell Feeds for themselves. A temporary restraining order was ordered by the Minnesota Court on April 7, 2011. A copy of the April 7, 2011 restraining order, Minnesota Case 54-CV-11-112, is attached hereto as "Exhibit A". The PSC initiated this suit on April 15, 2011, eight days after the Minnesota Court had already taken control of Mitchell Feeds' sunflower inventory located in Hendrum, Minnesota.

After its appointment, the PSC had the authority to marshal assets and maintain actions in other states, N.D.C.C. §§ 60-02.1-34 and 60-02.1-35, but the PSC did nothing. At that time, the PSC chose not to intervene in the Minnesota suit in an attempt to marshal the sunflower inventory. The PSC knew of the Minnesota Case, knew that the Minnesota court had jurisdiction over the grain located in Minnesota, and did NOTHING to try to gain possession or control over the grain. In fact, the PSC has taken no action whatsoever to marshal any of Mitchell Feeds' assets, except to sue on the bond.

1. The Intervening Farmers and All Other Claimed Receiptholders Should Be Pursuing the PSC for Failure to Do its Job as Required by This Court's Order Appointing the PSC as Trustee Under 60-02.1, Not American Federal.

a. Shane Sickler Example

In the PSC's *Affidavit of Susan Richter* ("*Aff. Richter*"), Ms. Richter testifies to the PSC's failure to take any initiative. *See* Docket # 97. As early as February 1, 2010, the PSC received a phone call from Shane Sickler pertaining to nonpayment by Mitchell Feeds. *Id.* at ¶ 7. Unsuccessful attempts were made to contact Mitchell Feeds, but Ms. Richter does not testify to any further follow-up to Mr. Sickler's complaint. *Id.*

b. Bart Savelkoul Example

In August 2010, Bart Savelkoul called the PSC alleging he was not paid for sunflower seeds delivered to Mitchell Feeds. *Id.* Mr. Savalkaul again asked the PSC for help on September 24, 2010. *Id.* On November 16, 2010, Mr. Savalkaul once more contacted the PSC due to Mitchell Feeds' slow payments. *Id.* at ¶¶ 10, 12. The PSC did not file its motion for appointment as trustee of Mitchell Feeds in this case until April 15, 2011. *See* Docket # 1.

c. James and Cynthia Burckhard Example

Ms. Richter also outlines in her affidavit the PSC's failure to act upon the request of James and Cynthia Burckhard. *Id.* at ¶ 14. On December 10, 2010, the Burckhards contacted the PSC for "insight" into nonpayment by Mitchell Feeds and on December 16, 2010, the PSC informed Burckhards how to file a claim against Mitchell Feeds' surety bond. *Id.* at 15. However, the Burckhards never had a private right of action against Mitchell Feeds' bond. *See* N.D.C.C. § 60-02.1-33 ("**No receiptholder has a separate claim for relief upon any insolvent licensee's bond . . . except through the trustee.**"). For the PSC to have told the Burckhards to file a claim against the bond was inappropriate.

On January 31, 2011, James Burckhard again sent a letter to the PSC requesting assistance. A copy of the January 31, 2011 letter is attached hereto as "Exhibit B." As a follow-up to that letter, James and Cynthia Burckhard sent a letter to the PSC on March 17, 2011 begging for assistance because they had not heard back from the PSC. A copy of the March 17, 2011 letter is attached hereto as "Exhibit C." The PSC finally responded to the Burckhards on April 8, 2011 informing them that their January 31, 2011 letter was docketed as an unpaid grain claim. A copy of the April 8, 2011 letter is attached hereto as "Exhibit D." However, that letter was sent to Burckhards before the PSC had initiated this case or been appointed as Mitchell Feeds trustee.

Not only did the PSC fail to intervene in the Farmers' Minnesota lawsuit, the PSC did not even answer the Farmers' Complaint in Intervention in this case, failing again to claim any right or interest in the grain sought by the Farmers. After doing nothing for over a year in this case, the PSC cannot now ask this Court to agree with the Farmers and take the sunflower inventory and/or proceeds thereof, which have already been awarded to American Federal in the Minnesota case, and somehow magically put them into Mitchell Feeds' North Dakota trust.

C. Only the PSC Can Marshall the Trust Fund Assets

The PSC has the authority to marshall the trust assets. N.D.C.C. § 60-02.1-34. The PSC is attempting to camouflage its failure to marshall assets by explaining the legislative history of North Dakota roving grain buyer statutes prior to the current statute. However, the legislative history is irrelevant to the issue at hand. In order for the Minnesota sunflowers and/or proceeds thereof to be in the North Dakota trust, the PSC was required to take some action, or assert a legal theory which would take the inventory out of the jurisdiction of Minnesota and put them into the trust. A change from an administrative complaint procedure to the current

administrative trust procedure governed by N.D.C.C. Chapter 60-02.1 did not somehow marshall the assets into the trust automatically. The PSC was still required to do something to get any potential assets into the trust. *Id.*

Rather than seeking a replevin action in Minnesota, the Farmers should have brought a complaint against the PSC. *See* N.D.C.C. § 60-02.1-32. The PSC may then have been ordered to bring an action in the name of State of North Dakota in order to marshall the assets into Mitchell Feeds' North Dakota trust. *See* N.D.C.C. §§ 60-02.1-34 and 60-02.1-35. However, that is not what happened in this case. Rather, the Farmers brought a replevin action in Minnesota attempting to gain possession of the Minnesota sunflowers. The sunflowers and/or proceeds were subject to the jurisdiction of Minnesota, and the PSC failed to intervene or assert any position in that suit, instead, allowing the Farmers' to represent the PSC's position. *See* Minnesota Case 54-CV-11-112, hearing transcript, p. 8, ll. 8-17 (a true and correct copy is attached hereto as "Exhibit E").

The Minnesota Court has already decided this issue between the Farmers and American Federal, and awarded possession of the sunflowers and/or proceeds thereof to American Federal which were under the jurisdiction of that court. (A walk down the memory lane of legislative history of roving grain buyer statutes, as proffered by the PSC, is useless, inapplicable, and only blurs the issues that are currently before this Court.)

C. The PSC, by Failing to Intervene in the Minnesota Case and Allowing the Farmers to Represent Its Interests, Is in Privity with the Farmers

The PSC is in privity with the Farmers, and in fact, acquiesced to the Farmers' actions in both this case and the Minnesota case. North Dakota defines "the same parties or their privies" as "a successor in interest to the party, one who controlled the earlier action, or one whose

interests were adequately represented.” *Missouri Breaks, LLC v. Burns*, 2010 ND 221, ¶ 13, 791 N.W.2d 33.

The PSC should have **enjoined** the Farmers’ suit in Minnesota when it knew that the Farmers wanted possession of the sunflowers. Yet, throughout the Minnesota case, the PSC was having conversations with Farmers’ counsel, Mr. Braaten, about that case and did nothing. In the March 16, 2012 hearing on American Federal’s motion for summary judgment in the Minnesota case, Mr. Braaten, counsel for Farmers, as an officer of the legal system and in open court, admitted that the PSC knew about the Minnesota case and that he was working with the PSC:

“I -- have to do it. I don’t think that we should all be speculating about what the Public Service Commission is thinking. But I have had conversations with them fairly frequently and I know what they’re thinking. I know for one that it’s a policy of the North Dakota Attorney General’s Office to not submit their state agencies to the jurisdiction of a non-forum state unless it’s absolutely necessary. And there are a number of claimants here making the same arguments that the Public Service Commission would be making. I -- I am confident that the PSC is going to respond to the declaratory judgment action in North Dakota and I am confident that they are going to be supporting us.”

See Minnesota Case 54-CV-11-112, hearing transcript, p. 8, ll. 8-17.

At the hearing, Mr. Braaten confirmed that he was working with the PSC and that it knew of the Minnesota case and chose not to intervene. In addition, the PSC was working so closely with Farmers’ counsel that it requested the Farmers’ make the motion for declaratory judgment that was thereafter withdrawn and replaced with the Complaint in Intervention that is the subject matter of this Motion for Summary Judgment:

“Now, we submitted a -- Motion for Declaratory Judgment And, indeed, I’ve consulted with the PSC and they were asking for this because they can’t administer the entire trust without getting a determination from the Court as to what’s in the trust corpus.”

Id. at p. 2, ll. 1, 5-8.

It is ridiculous for first the Farmers, and now the PSC, to argue that there is no privity, when, in fact, the Farmers and the PSC have been in close contact throughout this entire process. The PSC failed to intervene in the Minnesota suit and allowed the Farmers to “mak[e] the same arguments that the Public Service Commission would be making.” *Id.* at p. 8, ll. 13-15. The PSC thereafter asked the Farmers to bring the declaratory judgment action in North Dakota so this Court could make a determination as to whether the Minnesota sunflowers are part of the trust. *Id.* at p. 2, ll. 1, 5-8.

To relitigate the priority issue, which was already determined in the Minnesota case, and allow the Farmers and the PSC a second chance to attempt to take American Federal’s collateral and place it into Mitchell Feeds’ North Dakota trust, would be contradictory to the doctrines of res judicata and collateral estoppel which were created for the exact purpose of preventing relitigation of issues and/or claims which have already been resolved by another court.

D. There Is No Reason to Wait in Deciding American Federal’s Motion for Summary Judgment When There Is a Final Judgment in the Minnesota Case

The PSC states that it does not object to “hold [this] matter in abeyance and wait for the conclusion of the Minnesota case before deciding” this case. *See* Docket # 98, p. 16. The PSC also informs the Court that it may “wait to complete and file its Report and Recommendation.” *Id.*

The Farmers have not even filed a notice of appeal yet in the Minnesota case. However, if they do appeal, and, in the unlikely event were ultimately successful on their Minnesota replevin claim, the Farmers would be granted possession of the sunflowers and/or proceeds in the Minnesota case. That outcome would not put the sunflowers and/or proceeds into the trust corpus. In fact, it would be quite the opposite unless the Farmers who were awarded them handed them over to the PSC.

That argument defies logic. The PSC admitted that there are potentially Farmers in the Minnesota case who do not have valid claims to Mitchell Feeds' North Dakota trust. *See* Docket # 98, p. 16-17. The Minnesota sunflowers and/or proceeds thereof will not become assets of the trust if there is an appeal in the Minnesota case. Thus, the PSC is further attempting to delay doing its job and preparing its report and recommendation.

E. The PSC Improperly Argues that the Cases of *Sustainable Systems, LLC dba Montola* and *PSC v. Minnesota Grain* Do Not Support American Federal's Position

The PSC argues that *Public Service Commission v. Sustainable Systems*, Civ. No. 08-09-C-1034 (Burleigh County, ND 2009) and *PSC v. Minnesota Grain*, cited by American Federal in prior briefs, do not support the fact that the PSC does not have jurisdiction or control over the sunflowers and/or proceeds located in Minnesota. This argument is untimely because American Federal already has the proceeds, which have been applied to the indebtedness owed by Mitchell Feeds. *See Aff. of Vining*, ¶¶ 5-6.

Furthermore, those cases specifically dealt with other states' jurisdiction over grain in their states. Just because Mitchell did not hold a "Minnesota license" does not mean that North Dakota, or its agencies, had jurisdiction over the property of Mitchell Feeds, a Minnesota corporation, held in Minnesota, subject to the orders of a Minnesota court. American Federal stands by its position in its earlier briefs, and to save judicial resources, will not repeat its position in this brief. *See* Docket # 72, pp. 21-22; Docket # 88, pp. 14-15.

III. THERE IS NO LIEN IN FAVOR OF CLAIMANTS CREATED BY N.D.C.C. CHAPTER 60-02.1

Just as the Farmers did, the PSC is confusing the roving grain buyer statutes, codified in N.D.C.C. § 60-02.1, with the chapter governing warehouses, N.D.C.C. § 60-02. The PSC

attempts to have this Court create an “implied lien” in favor of claimants where the legislature chose not to create such a lien.

Once again, American Federal must explain why the holding in *North Dakota Public Service Commission v. Central Valley Farmers Bean Assoc.* is not applicable in this case. 365 n.W.2d 528 (N.D. 1985). In that case, the court found that there was a lien in favor of receiptholders of **warehouses**. *Id.* The legislature immediately thereafter adopted N.D.C.C. § 60-02-25.1, creating a first priority lien in favor of outstanding receiptholders of **warehouses**. When the legislature adopted the roving grain buyer statutes, which the PSC correctly asserts were based on the insolvent warehouse statutes, the legislature **did not adopt** such a lien in favor of receiptholders of roving grain buyers.

This is not a case involving a grain warehouse. This case is governed by N.D.C.C. § 60-02.1, and there is no lien in favor of receiptholders contained in that Chapter. If the legislature had intended to create such a lien, it would have adopted a lien similar to that created in N.D.C.C. § 60-02-25.1.

This is further evidenced by the fact that the legislature did adopt a first priority lien on insurance of the grain buyer in favor of the holders of unconverted scale tickets or other comparable receipts of **facility-based grain buyers**. N.D.C.C. § 60-02.1-23. Not even that lien protects receiptholders of roving grain buyers. The fact that the legislature adopted that lien is proof that the legislature was aware that receiptholders of roving grain buyers did not have any lien giving them priority over first priority secured creditors. The legislature chose not to adopt a first priority lien in favor of receiptholders of roving grain buyers such as that contained in N.D.C.C. § 60-02-25.1. Thus, this Court would be creating an “implied lien” with “implied

priority status” where the North Dakota Century Code does not give any receipt holder a lien in the grain of a roving grain buyer at all in Chapter 60-02.1.

IV. THE SUNFLOWER INVENTORY AND/OR PROCEEDS THEREOF CANNOT BE SUBJECT TO A DECLARATORY JUDGMENT ACTION BECAUSE THIS ACTION IS GOVERNED BY N.D.C.C. CHAPTER 60-02.1

“The duties imposed and the powers conferred by this chapter [60-02.1] devolve upon the commission.” N.D.C.C. § 60-02.1-02 (emphasis added). It is the PSC’s job to enforce Chapter 60-02.1, not a group of Farmers.

Not only is this case inappropriate because American Federal already has the proceeds and the Farmers are attempting to get a second kick at claim and delivery, but there are extreme procedural defects that prohibit a declaratory judgment action, including the fact that the PSC has not followed the statutory procedure outlined in Chapter 60-02.1: (1) No marshaling; (2) No report; (3) No opportunity to object.

In addition, declaratory judgment is inappropriate because this case is primarily an administrative proceeding, secondarily a court action. Nothing in the Chapter gives a group of farmers the right to seek the Court’s authority to make determinations prior to the PSC doing its duties imposed by Chapter 60-02.1.

(A) The PSC was appointed trustee pursuant to N.D.C.C. § 60-02.1-29

Upon the insolvency of any roving grain buyer, the commission shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30 If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receipt holders that the commission secure and execute the trust, the court shall issue an order granting the application, without bond, and the commission shall proceed to exercise its authority without further direction from the court.

N.D.C.C. § 60-02.1-29 (emphasis added).

(B) Pursuant to Chapter 60-02.1, the PSC, and only the PSC, was given the authority to establish a trust fund.

(C) It is the PSC's job to marshal the trust assets pursuant to N.D.C.C. §§ 60-02.1-34 and 60-02.1-35.

(D) Any funds the PSC obtains are to be deposited in the Bank of North Dakota. N.D.C.C. § 60-02.1-36.

(E) The PSC is to provide a report to the court. N.D.C.C. § 60-02.1-37.

N.D.C.C. Chapter 60-02.1 clearly describes an administrative proceeding administered by the PSC. The definition of an administrative proceeding relied upon by the PSC in its brief clearly applies to this case. *See* Docket # 98, pp. 18-19 (citing *Brown v. State Board of Higher Education*, 711 N.W.2d 194 (N.D. 2006)). The group of Farmers is now asking this Court to circumvent the administrative proceedings codified in N.D.C.C. § 60-02.1, which they try to cloak as a civil decision, and determine what assets are in the trust without the PSC doing any of its statutory duties under this chapter. Such a result is erroneous, and the PSC should be admonished for attempting to avoid its statutory trustee duties, required by statute and by this Court.

CONCLUSION

It was the PSC's duty to monitor licensees, protect producers, act on their complaints, bring an insolvency action when necessary, marshal assets, and lastly, to administer the trust proceeds according to law. The PSC has failed to do its job according to law. The Farmers and the PSC should not be making American Federal out to be the villain in this case. It is evident from the affidavit of Susan Richter, it is clear that the PSC knew of potential problems with

Mitchell Feeds as early as February 2010. *See Affidavit of Susan Richter*, Docket # 97, ¶ 7. Yet, the PSC did even not seek to be appointed trustee of Mitchell Feeds until April 2011.

American Federal had no other remedy than to intervene in the Minnesota case, and the Minnesota court ordered that American Federal had a lien superior to any interest of the Farmers in the sunflower inventory and/or proceeds of Mitchell Feeds located in Minnesota. The PSC knew of the Minnesota case, was in close contact with the Farmers throughout the entire process, and failed to do anything to attempt to marshal the assets. Moreover, when the Farmers filed their Complaint in Intervention in this case, the PSC failed to even file an answer. It should not now be able to confiscate the proceeds, awarded to American Federal by the Minnesota court, and put them into Mitchell Feeds' North Dakota trust. Such a result would be in violation of the statutes of the state, in violation of the jurisdiction of the Minnesota court, and in violation of the rights of American Federal.

Dated this 6th day of July, 2012.



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Attorneys for American Federal Bank

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FILED

STATE OF MINNESOTA

APR 07 2011

IN DISTRICT COURT

COUNTY OF NORMAN

NORMAN COUNTY
DISTRICT COURT

NINTH JUDICIAL DISTRICT

Court File No.: CV-11-112

Don Ackerson, Lana Anderson d/b/a
Northland Farms, Mike Aasen, David
Deslauriers, JcIT Kling, Sook Lazorenko,
Nathan Neameyer, Steven Neameyer, Ron
Pelton, Mitch Preskey, James Routledge, Bart
Savelkoul, Mike Schollmeyer, Shane Sickler,
David Stooche, Paul Trout, Wurgler Farms,
and Kelly Wurgler.

Plaintiffs,

v.

Mitchell Foods, Inc. and Mitchell Farms, Inc.,

Defendant.

TEMPORARY
RESTRAINING ORDER

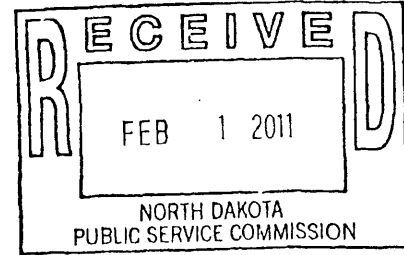
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This matter having come before this court on Plaintiffs' Motion, Memorandum and supporting affidavits.

IT IS HEREBY ORDERED that pursuant to Minn.R.Civ.P. 65.01 Defendants are enjoined from selling, transferring, bargaining, conveying, encumbering, disposing, or secreting from Plaintiffs any sunflowers in the possession of Defendants or Defendants' agents. Defendants are also hereby ordered to show cause as to why a temporary injunction should not be issued following a hearing to be scheduled by the court.

DATED: 4-7-2011


JUDGE OF DISTRICT COURT



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.

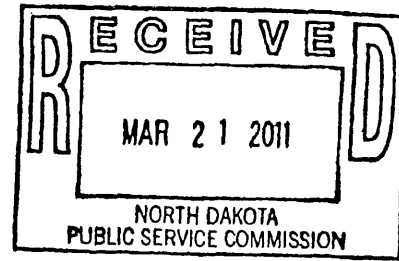
Sincerely,

James Burckhard
5520 18th 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 18th Ave. NE
Towner, ND 58788



Public Service Commission
State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

April 8, 2011

James and Cynthia Burckhard
5520 18th Avenue NE
Towner, ND 58788

RE: Mitchell Feeds, Inc.
Roving Grain Buyer
Insolvency
Case No. GE-11-51

Dear James and Cynthia Burckhard:

Thank you for your January 31, 2011 and March 17, 2011 letters to the Public Service Commission, asking for assistance "regarding the nonpayment of sunflower seeds sold to Mitchell Feeds." This is to inform you that your January 31, 2011 letter was docketed as an unpaid grain claim in Case No. GE-11-51.

Your claim will be evaluated and if additional information is needed, we will contact you. Once all claims have been received and evaluated, the Commission will file a report with district court that shows the amount and validity of each claim.

Insolvency is a lengthy process and we ask for your patience. If you have questions, feel free to contact me. I can be reached at 701-328-4097.

Sincerely,

Susan K. Richter, Director
Licensing Division

COPY

1 STATE OF MINNESOTA

IN DISTRICT COURT

2 COUNTY OF NORMAN

NINTH JUDICIAL DISTRICT

3

FILE NO.: 54-CV-11-112

4 Don Ackerson, et al.,

5 Plaintiffs,

PARTIAL TRANSCRIPT OF PROCEEDINGS

6 vs.

Motion Hearing

7 Mitchell Feeds, Inc. and Mitchell Farms, Inc.,

8 Defendant,

9 vs.

10 American Federal Bank,

11 Intervenor.

12

13 The above-entitled matter came on before the Honorable Michael J.
14 Kraker, a Judge of the District Court, on the 16th day of March, 2012, in the District
15 Courtrooms at the Norman County Courthouse, Ada, Minnesota.

16 Mr. Derrick L. Braaten, Attorney at Law, Bismarck, North Dakota,
17 appeared on behalf of the Plaintiffs.

18 Mr. David L. Johnson, Attorney at Law, Fargo, North Dakota,
19 appeared on behalf of the Defendants.

20 Ms. Tracy A. Kennedy, Attorney at Law, Grand Forks, North Dakota,
21 appeared on behalf of the Intervenor.

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1 MR. BRAATEN: I'd like to start by addressing the assertion
2 that we have no claim. I did attach a brief that we submitted to the North
3 Dakota Public Service Commission. I didn't go into a lot of detail. We did
4 allege that we had a priority claim on the sunflowers in our Answer to the
5 Complaint in Intervention. And -- and we base that on the North Dakota
6 insolvency laws. And I cited one Minnesota case in my brief here, but I'd
7 like to just cover that a little -- in a little bit more detail.

8 There's -- the Valley Farmers Bean case, and the citation is
9 365 N.W.2d 528, a 1985 case. In this case, they talked about a
10 warehousemen who has grain being stored as a bailment, essentially. And
11 there was no question there that that goes back to the farmers; because it's a
12 bailment, there's nothing they can pass as far as attaching it to collateral.
13 But the -- the Court in that case went through that analysis and then they said
14 a much closer question arises with regard to the competing interests of the
15 banks and the unpaid sellers of beans and the remaining inventory of Valley
16 Farmers Bean Association. And they proceed to discuss and state that upon
17 the insolvency of a grain warehousemen, a trust fund consisting of all of the
18 grain in said warehouse is established for redemption of outstanding receipts.

19 Now, the point is, is this is a roving grain buyer. If you look at
20 the trust fund provisions for a roving grain buyer, they -- they're almost
21 identical. They say, "Upon the insolvency of any licensee, Mitchell Feeds, a
22 trust fund must be established for the benefit of noncredit sale receipt
23 holders, Plaintiffs, and to pay the costs incurred by the commission. The
24 trust fund must consist of the following: Non-warehouse receipt grain of the
25 insolvent licensee held in storage."

1 Now, we submitted a -- Motion for Declaratory Judgment. I --
2 I covered the analysis of the Declaratory Judgment Act in North Dakota. It's
3 not a request for an advisory opinion. There are standards set up for asking
4 for a declaratory judgment. And it's not the case that all declaratory
5 judgments are advisory opinions. And, indeed, I've consulted with the PSC
6 and they were asking for this because they can't administer the entire trust
7 without getting a determination from the Court as to what's in the trust
8 corpus.

9 So, I -- I bring that up because I do think that, you know, we
10 disagree, obviously, on the replevin claim. I think we, obviously, have a
11 breach of contract claim that -- the claim we're making also, as a first
12 priority lienholder, is based on a statutory lien being traded under North
13 Dakota law.

14 There are also provisions within these grain buyer laws that
15 discuss insolvency. And under those provisions Mitchell Feeds was
16 insolvent back in September of 2009. That insolvency provision also
17 anticipates a demand for redelivery of the grain. And we have, in the past,
18 submitted affidavits. I believe one would be a supplemental affidavit from
19 David Steeves, one of the Plaintiffs, stating that he had had communications
20 with Mitchell demanding to take his seeds back and Mitchell was telling him
21 where the seeds were located. That is, again, another statutory claim for
22 redelivery of these seeds and a claim on the seeds or the proceeds of them.
23 And I would point that out. I think the bank in its brief said that they were
24 not -- Mitchell Feeds was not insolvent until 2011. I pointed out the law
25 from the Fraudulent Transfer Act and from the North Dakota Grain Buyer

1 Laws. And, under both of those standards, he would have been insolvent
2 back sometime in September of 2009 when he was unable to pay the farmers
3 for the seeds delivered.

4 I want to talk, though, a little bit about -- about pleading fraud
5 and about the evidence. And despite the conclusory statements from the
6 bank, I believe that we have submitted evidence, number one, that Mitchell
7 Feeds was insolvent before the time that he pledged the unpaid for grain as
8 collateral to the bank for a \$950,000.00 loan, none of which was used to pay
9 these farmers for the collateral he had pledged for the grain they had given to
10 him. And you look at the Fraudulent Transfer Act this covers several
11 elements of that. What we don't have is information on what the
12 consideration was back and forth; who received the benefit of those? And
13 we have sent discovery previously to Mitchell Feeds, requesting information
14 on BJM Land, Inc., who is another party that's a part of that security
15 agreement. We still know nothing about them; who they are, other than
16 Mitchell -- Robert Mitchell and, I believe, Jacqueline Mitchell are principals
17 within that corporation, as well.

18 And in -- in my brief I set up a couple hypotheticals to
19 illustrate what we're -- what we're trying to say as far as this is the facts we
20 have and this is what we're missing. And that discovery has gone out
21 previously and we did recently send discovery to the bank. Now, we plead,
22 in response to -- it is relevant discovery -- we plead in response to the bank
23 that we don't believe they have first priority interest. And one of the
24 defenses to that, of course, is that there was a fraudulent transfer. I -- Ms.
25 Kennedy just noted that if we bring any kind of a fraud action that she would

1 ask for Rule 11 sanctions. And I don't know if that's appropriate, but I
2 would say that I don't believe you make allegations of fraud lightly. And so
3 my intent, at least, was that we were going to conduct some discovery and
4 get some factual information together so that when we're pleading a
5 particularity, we're relying on specific facts we received from the other
6 parties.

7 I would make an oral motion right now for leave to amend the
8 pleadings and follow that up with a written Motion for Leave to Amend the
9 Pleadings to add that claim that as I said my intent was to conduct the
10 discovery first and then make a motion to amend. We don't have a schedule
11 in place yet, but typically there's some discovery done before you have a
12 deadline for a motion to amend pleadings.

13 I -- I just briefly want to comment on the service of our brief.
14 It certainly wasn't intentional. I -- I agree with Ms. Kennedy, it probably
15 wasn't very polite and I didn't intend to deprive her of time to respond, I
16 simply told the secretary to just put it in the mail to the other parties thinking
17 that that would be service on that day. I did follow-up after receiving her
18 reply brief and asked her if she wanted time to file a supplemental brief, or if
19 she wanted to extend the hearing date to file supplemental briefs. It certainly
20 wasn't intended to prejudice her in any way or not give her enough time to --
21 to reply. And you've already stated that you're going to allow that, and I
22 have absolutely no objection to that, of course.

23 I would also point out that when we discussed this last time we
24 didn't make a specific allegation of a fraudulent conveyance. Since that
25 time, I have been consulting with an attorney in Minneapolis, who is an

1 expert on creditor/debtor law and has dealt with fraudulent conveyances, et
2 cetera, in an attempt to develop this theory of the case. We did, though, as
3 the discovery shows, back last fall, send a number of requests to the
4 defendants in the case. And there were quite a few of those questions were
5 directly specifically at this theory, without using that word. And we've
6 spoken to Mr. Johnson several times. We've sent a detailed letter on what
7 we thought was missing from the discovery and we've exchanged some e-
8 mails and phone calls. And even up to last week, we had a discussion and he
9 said that he was going to make it a priority to work with us on getting that
10 discovery to us. So, as I mentioned in my motion, I don't know that a
11 Motion to Compel is necessary, we're still talking, we're still working on it,
12 and we hope that we can resolve those issues and get that discovery dispute
13 resolved.

14 And I'd like to talk about the PSC action as well. I don't know
15 what it means that we're not solidified claimants, but our -- our clients have
16 all gone through the required process of submitting a claim to the Public
17 Service Commission. The Public Service Commission is -- moves slowly
18 and it's in the process of administering that trust. We don't have control
19 over that, but we do have the ability within that action, we are Intervenors in
20 the District Court action, as is the bank, and the PSC is involved in that and
21 is often involved with these insolvency actions when there's disputes with
22 secured creditors, etcetera. And we've asked that Court to make a
23 determination who will get the input of the Public Service Commission, on
24 whether or not these are part of that trust corpus; we believe they are and I've
25 stated that somewhat in my brief here and I also attached the brief that was

1 submitted to the Court in North Dakota regarding the trust corpus.

2 Briefly, the -- Rule 56.06, I think, technically, you can make
3 the argument that it wasn't timely. But it's a unique motion that is
4 anticipated to be submitted in response to a Motion for Summary Judgment.
5 And it didn't make sense to me to schedule an additional hearing several
6 weeks out when, in practical terms, the Motion for Extension of Time is just
7 a response to a Motion for Summary Judgment. It -- it just didn't make
8 sense that we would schedule another hearing a few weeks out and come
9 back and make the same arguments.

10 I -- I also disagree that the bank can make an assertion that it's
11 provided all of the relevant documentation to this Court that the Court needs
12 and that, therefore, we are not entitled to take a look at the documents.
13 Plaintiffs have not even seen any documentation of the sale of the sunflower
14 seeds at this point. We have no scale tickets. We have very little
15 information based on -- we know that there was a certain amount sold and a
16 certain price received. And then at that point there was still some more
17 sunflowers to be sold. And that's about the extent of what we know about it.
18 We don't have the testing results, the scale tickets, the assembly sheets. We
19 don't know how much has been deposited with the bank in Ada.

20 But I -- I would go back to the fact that there's very strong case
21 law on the insolvency laws in North Dakota. And the Courts in North
22 Dakota, and in Minnesota, have looked at these laws before and determined
23 that the statutory lien has trumped secured creditors, particularly when it's a
24 situation where the farmers have given grain to an elevator or a grain buyer
25 and it's that grain that's pledged as collateral to a bank when it hasn't been

1 paid for.

2 Beyond that, I think the -- as I set forth in my brief, there are --

3 there are factual questions here regarding the fraudulent conveyance and

4 we're not required to prove our entire case. I cited to a case that stated

5 clearly that the issues with respect to a fraudulent conveyance are issues of

6 fact and that means they are for the trier of fact. And contrary to what the

7 bank is asserting, we have, through the affidavits and as I've highlighted in

8 my brief through various affidavits and other documents, we have submitted

9 factual evidence to support this claim and that creates an issue of material

10 fact. And so, based on that alone, but also the fact that I think we have a

11 superior lien on this, we would ask that summary judgment be denied. If

12 not, we would ask for time to receive discovery responses from both parties

13 to gather this information. And I would point out that if -- if there were

14 information that, you know, proved conclusively that there was no fraudulent

15 transfer such that the bank can show, well, these proceeds went here, this

16 was a consideration given, the easiest thing to do would have been to submit

17 that to the Court with a brief and show that we have no basis for the claim.

18 But, from what the information we do have, establishes certain elements of

19 the claim for fraudulent transfer and we're asking for further information to

20 finish that process and establish the final element of that claim. And I think

21 that's all I have right now.

22 *****

23 THE COURT: And you get our last oar in the water, Mr.

24 Braaten, go ahead.

25 MR. BRAATEN: Both parties here are stating that the

1 discovery is irrelevant because of the claims made or not made. I explained
2 why we had not explicitly set those out. And I would just repeat I am orally
3 moving for leave to amend to add those claims in right now and I'll follow it
4 up with a written motion. I don't think it's appropriate to dismiss a case
5 when there's clearly evidence pertinent to the subject areas out there and
6 discovery requests out there. I think that a fair determination of the case is
7 more important.

8 I -- have to do it. I don't think that we should all be
9 speculating about what the Public Service Commission is thinking. But I
10 have had conversations with them fairly frequently and I know what they're
11 thinking. I know for one that it's a policy of the North Dakota Attorney
12 General's Office to not submit their state agencies to the jurisdiction of a
13 non-state forum unless it's absolutely necessary. And there are a number of
14 claimants here making the same arguments that the Public Service
15 Commission would be making. I -- I am confident that the PSC is going to
16 respond to the declaratory judgment action in North Dakota and I am
17 confident that they are going to be supporting us.

18 It -- you know, the issue of supervision really quick. I don't
19 think that what I anticipated supervision to be would be watching trucks go
20 by at the Hendrum facility. I've asked repeatedly for scale tickets, things of
21 that nature and not received them. I don't think that's a significant issue, but
22 it was part of my discovery request since I haven't seen it.

23 Putting that aside, you know we're talking about the fact that
24 interest is accruing, for example, and we need to get this done, but the
25 sunflowers have been sold, the proceeds are sitting in an account. The action

1 -- the insolvency action is moving forward; there's a motion pending there. I
 2 do not see what the immense rush is at this point. These insolvency cases
 3 sometimes take much longer than this one has taken. And our firm has
 4 handled quite a few and we've never seen such a rush in these cases. My
 5 thought is that let's get all the information on the table and let's make a fair
 6 decision for everyone.

7 (Whereupon, this concluded the above (partial) proceedings
 8 herein)

9 *****

10 I, Pamela Stall, District Court Reporter for the Ninth Judicial
 11 District, State of Minnesota, certify that as such I transcribed the foregoing
 12 transcript from digital sound recording to the best of my ability, and that the
 13 same constitutes a true and correct transcription of the proceedings held in
 14 this matter.

15 Dated: June 26, 2012.

16 _____

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4. That on or about September 27, 2011, the Norman County Minnesota court, Case No. 54-CV-11-112, ordered that Mitchell Feeds, Inc.'s sunflower inventory located at Hendrum, MN be sold and the proceeds deposited at Frandsen Bank & Trust, 410 2nd Street West, PO Box 187, Ada, Minnesota 56510. A true and correct of the September 27, 2011 order is attached hereto as Exhibit A.

5. On or about May 3, 2012, per the Minnesota court's order in Case No. 54-CV-11-112, American Federal Bank took possession of the sunflower proceeds located at Frandsen Bank & Trust, 410 2nd Street West, PO Box 187, Ada, Minnesota 56510. *See Docket See Docket # 76.*

6. That on or about May 16, 2012, the proceeds of the sunflowers in the amount of \$588,282.29 was applied to the Mitchell Feeds, Inc. indebtedness owed to American Federal.

7. That a true and correct copy of the UCC Financing Statement, filed February 15, 2008 as Filing No. 200810597171 with American Federal Bank as secured party and Mitchell Feeds, Inc. as debtor is attached hereto as Exhibit B.


Further your Affiant says not.

DATED this 5 day of July, 2012.


MARK VINING

SUBSCRIBED AND SWORN TO before me this 5th day of July, 2012 by Mark Vining.

DEBRA BECKER
(SEAL) Notary Public
State of North Dakota
My Commission Expires Mar. 14, 2014


Notary Public
My Commission expires: March 14, 2014

STATE OF MINNESOTA
COUNTY OF NORMAN

DISTRICT COURT
NINTH JUDICIAL DISTRICT

Don Ackerson, Lana Anderson d/b/a)
Northland Farms, Mike Aasen, David)
Deslauriers, Jeff Kling, Scott Lazorenko,)
Nathan Neameyer, Steven Neameyer, Ron)
Pelton, Mitch Preskey, James Routledge, Bart)
Savelkoul, Mike Schollmeyer, Shane Sickler,)
David Steeves, Paul Trout, Wurgler Farms,)
and Kelly Wurgler,)

Plaintiffs,)

vs.)

Mitchell Feeds, Inc. and Mitchell Farms, Inc.,)

Defendants.)

vs.)

American Federal Bank,)

Intervenor,)

FILED

SEP 27 2011

NORMAN COUNTY
DISTRICT COURT

Civil No. CV 11-112

**ORDER TO SELL SUNFLOWER
INVENTORY**

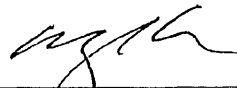
PURSUANT TO THE hearing held on September 19, 2011 at 10 o'clock a.m. on Intervenor's motion for partial summary judgment, and request of the Intervenor that the sunflower inventory of the Defendants be sold to preserve the value of the sunflower inventory,

IT IS HEREBY ORDERED that the sunflower inventory held in the possession of the Defendants be sold by American Federal Bank, with the assistance of the Defendants and the supervision of the Plaintiffs, in a commercially reasonable manner, and the entire proceeds of said sale shall be deposited in an interest bearing account at Frandsen Bank & Trust located at

410 2nd Street West, P.O. Box 187, Ada, Minnesota 56510 . The sale proceeds shall remain in the interest bearing account until further order by this Court.

DATED THIS 27th day of September, 2011.

BY THE DISTRICT COURT



Michael J. Kraker
Judge of the District Court

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
Jan Cummings 701-235-9906

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

American Federal Bank
Fargo South Bank
1301 30th Ave South
Fargo, ND 58103

Filing NO: 200810597171
Filing Date: 2008/02/15
Filing Time: 9:05 AM
State of Minnesota
Processing Office: Secretary of State
Filed by: tukam01

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
Mitchells Feeds, Inc.

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
PO Box 9112 Fargo ND 58860 USA

1d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION Corporation 1f. JURISDICTION OF ORGANIZATION MN 1g. ORGANIZATIONAL ID #, if any NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
American Federal Bank

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
1301 30th Ave South Fargo ND 58103 USA

4. This FINANCING STATEMENT covers the following collateral:
All inventory, Chattel Paper, Accounts, Equipment, General Intangibles and Farm Products; whether any of the foregoing is owned now or acquired later; whether any of the foregoing is now existing or hereafter grown; all accessions, additions, replacements, and substitutions relating to any of the foregoing (including all entitlements, rights to payment, and payments, in whatever form received, including but not limited to, payments under any governmental agricultural diversion programs, governmental agricultural assistance programs, the Farm Services Agency Wheat Feed Grain Program, and any other such program of the United States Department of Agriculture, or any other general intangibles or programs); all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds).

5. ALTERNATIVE DESIGNATION (if applicable): LESSOR/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOB SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (or record) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

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

**AFFIDAVIT OF SERVICE
BY U.S. MAIL and
Courtesy Copy Email**

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 6th day of July, 2012, she served:

1. **AMERICAN FEDERAL BANK'S REPLY TO PUBLIC SERVICE COMMISSION'S RESPONSE TO INTERVENOR AMERICAN FEDERAL BANK'S MOTION FOR SUMMARY JUDGMENT
With Exhibits A, B, C, D and E**

2. **AFFIDAVIT OF MARK VINING with Exhibits A and B**

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. A courtesy copy of said document was also emailed to each person at their email addresses listed.

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

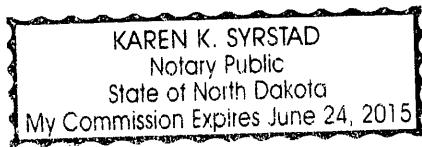
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51 Broad Way, Ste 600
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David.johnson@mlcfargolaw.com

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Lindsey Nieuwsma
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Bismarck, ND 58501-4004
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lindsey@baumstarkbraaten.com

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


BRENDA R. DIPERSIO

Subscribed and sworn to before me this 6th day of July, 2012, by Brenda R. DiPersio.



Karen K. Syrstad
NOTARY PUBLIC, NORTH DAKOTA
My commission expires: