

Richter, Susan K.

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Subject: Courtesy Notification of filing for Case No. 08-2011-CV-00917 (Public Service Commission vs. Mitchell Feeds, Inc., et al.).

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Filing Code: Brief

Filing Description: Brief in Support of Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Plaintiff,

vs.

Mitchell Feeds, Inc. and Western Surety
Company,

Respondents.

Michael Aasen, Donald Ackerson, Sheldon
Ackerson, Lana Anderson d/b/a Northland
Farms, B & D Farms, Inc., Busch Farms, Inc.,
David Deslauriers, Scott Lazorenko, Mana
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

American Federal Bank

Intervenors.

PSC Case No. GE-11-051

CIVIL NO. 08-2011-CV-917

BRIEF IN SUPPORT OF
MOTION TO APPROVE
REPORT AND
RECOMMENDATION OF
TRUSTEE, REQUIRE
DEPOSIT OF BOND
PROCEEDS, APPROVE
PAYMENT, AND
DISCHARGE TRUSTEE

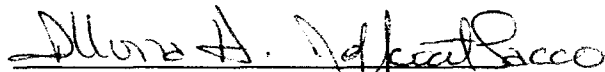
1. The North Dakota Public Service Commission (Commission), as trustee of the trust fund provided by North Dakota Century Code section 60-02.1-30 for the purpose of marshalling all trust assets of Mitchell Feeds, Inc., an insolvent roving grain buyer, seeks an Order Approving the Report and Recommendation of

Trustee, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee. The Commission has the authority to bring this Motion and the Court has the power to grant the relief requested under North Dakota Century Code section 60-02.1-37.

2. North Dakota Century Code section 60-02.1-08 requires that a bond must be filed with the commission before any license can be issued to any roving grain buyer operating in North Dakota. The bond is for the purpose of protecting sellers of grain and covering the costs incurred by the commission in the administration of the licensee's insolvency. The insolvent licensee, Mitchell Feeds, Inc., had such a bond, issued by Western Surety Company, 101 South Phillips Avenue, P.O. Box 5077, Sioux Falls, South Dakota 58104-6703 as surety.
3. Under North Dakota Century Code section 60-02.1-30 the "trust fund shall be established for the benefit of noncredit-sale receipt holders and to pay the costs incurred by the commission in the administration of this chapter. . . ."
4. The Commission has reviewed claims filed against the roving grain buyer and a detailed determination regarding the validity of each claim is attached to and summarized in the Report and Recommendation of Trustee. The proceeds from the bond will be needed to pay noncredit-sale receipt holders of Mitchell Feeds, Inc., as provided in North Dakota Century Code section 60-02.1-30.
5. North Dakota Century Code section 60-02.1-01(8) defines "receipt" as a scale ticket, check, or other memoranda given by a grain buyer for, or as evidence, of

the receipt or sale of grain. All claims that the Commission recommends be paid were filed by persons holding a receipt under the statutory definition of receipt. Further, all such claimants are also sellers of grain to Mitchell Feeds, Inc., and therefore all such claims meet the statutory purpose of the mandatory bond.

6. The Court has jurisdiction under North Dakota Century Code section 60-02.1-31 to order the deposit of bond proceeds. North Dakota Century Code section 60-02.1-37 provides in part that "following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust."
7. Respectfully submitted at Bismarck, North Dakota, this 30th day of January, 2014.



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