

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

CIVIL NO. 08-2011-CV-917

Plaintiff,

vs.

AFFIDAVIT OF  
SERVICE BY CERTIFIED  
MAIL

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 Kelly Wurgler,

and

American Federal Bank

Intervenors.

PSC Case No. GE-11-051

STATE OF NORTH DAKOTA

)

)ss

COUNTY OF BURLEIGH

)

Geralyn R. Schmaltz being duly sworn, deposes and says that she is over the age of 18 years and not a party to this action and that on the **14th day of February, 2014** she deposited in the United States Mail, Bismarck, North Dakota, 1 envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of the following documents:

1. Notice of Motion and Notice of Hearing;
2. Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee;
3. Brief in Support of Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee;

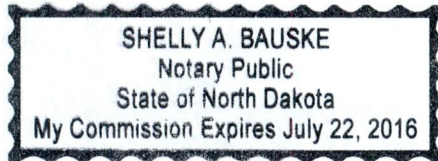
4. Report and Recommendation of Trustee with Exhibit A;
5. Proposed Order Approving Trustee's Report, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee;
6. Affidavit of Electronic Service and Service by Certified and Regular Mail;
7. Affidavit of Service by Certified Mail.


The envelope was addressed as follows:

Sharon Sergeant, Claims Manager  
Senior Claims Counsel, Claim Dept.  
Western Surety Company  
101 South Reid St. Suite 300  
Sioux Falls, SD 57103-7046  
**Certified Mail No. 7013 2630 0001 2317 1559**

Subscribed and sworn to before me  
this **14<sup>th</sup>** day of **February, 2014**.

SEAL



  
\_\_\_\_\_  
*Shelly A Bauske*  
\_\_\_\_\_  
Notary Public

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission	)	
	)	CIVIL NO. 08-2011-CV-917
	)	
Plaintiff,	)	
vs.	)	
	)	
Mitchell Feeds, Inc. and Western Surety	)	
Company,	)	
	)	NOTICE OF MOTION
Respondents.	)	AND NOTICE OF HEARING
	)	
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 Kelly Wurgler,	)	
	)	
and	)	
	)	
American Federal Bank	)	
	)	
Intervenors.	)	
	)	
PSC Case No. GE-11-051	)	

1. PLEASE TAKE NOTICE that the North Dakota Public Service Commission as Trustee of the trust created by the insolvency of Mitchell Feeds, Inc., respectfully moves the court for an order approving the Report and Recommendation of Trustee, requiring deposit of bond proceeds, approving payment, and discharging

Trustee. The motion is being filed with the court contemporaneously with this notice.

2. **FURTHER PLEASE TAKE NOTICE** that a copy of the Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment and Discharge Trustee, as well as a copy of the Report and Recommendation of Trustee and a Proposed Order are herewith served upon you.
3. **FURTHER PLEASE TAKE NOTICE** that the Court has scheduled a hearing on this matter for March 17, 2014, at 9:00 a.m., CST at the Morton County Courthouse, 210 2<sup>nd</sup> Avenue Northwest in Mandan, North Dakota.
4. **FURTHER PLEASE TAKE NOTICE** that under North Dakota Century Code section 60-02.1-37, any aggrieved person having an objection to the Report and Recommendation of Trustee shall file the objection with the Court and serve copies on the Commission, the roving grain buyer, and the surety at least ten (10) days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Bismarck, North Dakota, this 30<sup>th</sup> day of January, 2014.



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Special Assistant Attorney General  
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Attorney for the Public Service Commission

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 Kelly Wurgler,

and

American Federal Bank

Intervenors.

PSC Case No. GE-11-051

CIVIL NO. 08-2011-CV-917

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

1. The undersigned respectfully moves the Court for an Order Approving Trustee's Report and Recommendation, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee in the above matter.

2. Bismarck, North Dakota, this 30<sup>th</sup> day of January, 2014.



Ilona A. Jeffcoat-Sacco (ID#03315)  
Special Assistant Attorney General  
Public Service Commission  
State Capitol – 12<sup>th</sup> Floor  
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Attorney for the Public Service Commission

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 Kelly Wurgler,

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

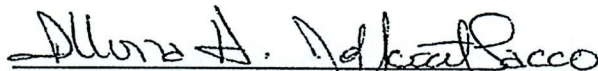
1. The North Dakota Public Service Commission (Commission), as trustee of the trust fund provided by North Dakota Century Code section 60-02.1-30 for the purpose of marshalling all trust assets of Mitchell Feeds, Inc., an insolvent roving grain buyer, seeks an Order Approving the Report and Recommendation 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 30<sup>th</sup> day of January, 2014.



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Attorney for Public Service Commission

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 Kelly Wurgler,

and

American Federal Bank

Intervenors.

PSC Case No. GE-11-51

CIVIL NO. 08-2011-CV-917

REPORT AND RECOMMENDATION OF TRUSTEE

1. The North Dakota Public Service Commission (Commission) as Trustee, makes the following Report and Recommendation to the Court:
2. Mitchell Feeds, Inc., a Minnesota business corporation, 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.

3. Mitchell Feeds, Inc., PO Box 9122, Fargo, North Dakota 58106, operated as a roving grain buyer in North Dakota under license number 3159, issued on October 28, 2009.
4. As part of the licensing process, Mitchell Feeds, Inc., filed a surety bond with the Commission as required by North Dakota Century Code section 60-02.1-08, in the amount of \$70,000 and identified as number 15352088 with Western Surety Company, 101 South Phillips Avenue, P.O. Box 5077, Sioux Falls, South Dakota 58104-6703, as surety. The bond was filed with the application on October 21, 2009.
5. 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, 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.
6. On April 14, 2011, the Commission filed an Application for Appointment as Trustee and Motion to Join Surety as Party in District Court, County of Burleigh, South Central Judicial District. When filing its application, in addition to filing a proposed Order Appointing Trustee and Joining Surety as Party, the Commission also filed an Ex Parte Order to Preserve Trust Assets.

7. On May 5, 2011, the District Court issued an Ex Parte Order to Preserve Trust Assets prohibiting Mitchel Feeds, Inc. from selling, transferring or removing potential assets of the trust fund. On May 10, 2011, the Commission served Notice of Entry of Ex Parte Order on the parties by certified mail, and also sent the notice by regular mail to potential claimants identified by the Commission.
8. On May 10, 2011, the District Court issued an order appointing the Commission trustee of the trust fund provided by North Dakota Century Code section 60-02.1-29 for the purpose of marshalling all trust assets of Mitchell Feeds, Inc. and joining the surety, Western Surety Company. On May 20, 2011, the Commission served Notice of Entry of Order Appointing Trustee and Joining Surety as Party and Notice of Appointment as Trustee and Notice to File Claims on the parties by certified mail, and also sent the notices by regular mail to potential claimants identified by the Commission.
9. The Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in the daily newspapers of The Bismarck Tribune, The Devils Lake Daily Journal, The Dickinson Press, The Jamestown Sun, The Minot Daily News, The Valley City Times-Record, The Daily News-Wahpeton, The Williston Daily Herald and The Grand Forks Herald all on May 26 and June 2, 2011. It was also published in The Fargo Forum on May 30 and June 6, 2011.
10. On July 20, 2011, the Court issued an Order Granting Rule 24 Intervention of Right for Michael 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.

11. On November 21, 2011, the Court issued its Order Granting Rule 24 Intervention for American Federal Bank.
12. On April 27, 2012, after Intervenor Claimants filed a Motion for Declaratory Judgment and subsequently a Motion to Withdraw that motion, the Court granted Intervenor Claimants' Motion to Withdraw Motion for Declaratory Judgment. Intervenor Claimants followed by filing a Complaint requesting Declaratory Judgment and Intervenor Bank responded by filing a Motion for Summary Judgment of Dismissal of the complaint.
13. On July 27, 2012, the Court issued an Order Granting Motion for Summary Judgment of Dismissal of Intervenor Farmers' Complaint.
14. On August 14, 2013, the Court issued an Order Granting Motion for Leave to Withdraw permitting the withdrawal of Derrick Braaten, Lindsey Nieuwsma, and Baumstark Braaten Law Partners as counsel for Intervenor Claimants, Michael Aasen *et al.*
15. Twenty-six claims totaling \$1,478,729.09 were filed with the Commission, as shown below and with additional detail on Exhibit A, attached to this report.

<b>Claimant Name</b>	<b>Filed Claim Amount</b>
a. Donald Ackerson	\$101,366.85
b. Sheldon Ackerson	\$ 7,405.51
c. Mike Aasen	\$ 13,663.24
d. B & D Farms, Inc./Manna Farms, Inc./Brent Keith	\$150,751.22
e. James & Cynthia Burckhard	\$ 6,087.00
f. Busch Farms, Inc./Greg Busch	\$ 23,732.23
g. David & Marsha Deslauriers	\$184,394.99

h.	Jeff Kling	\$ 10,548.33
i.	Landsverk Dairy, Inc.	\$ 6,161.40
j.	Scott Lazarenko	\$ 13,408.74
k.	Leonard Lodoen	\$ 47,085.28
l.	Steven Neameyer	\$109,143.58
m.	Nathan Neameyer	\$106,533.27
n.	Mitch & Cory Presky	\$ 10,038.10
o.	Northland Farms/Lana Anderson	\$ 63,385.04
p.	Paul Rhode	\$ 85,193.20
q.	Jamie Routledge	\$ 70,218.60
r.	Rodney Rusch	\$ 16,600.00
s.	Savelkoul Farms	\$ 41,589.55
t.	Mike Schollmeyer	\$ 63,905.17
u.	David Steeves	\$ 47,777.59
v.	Robert Steeves	\$ 26,713.66
w.	Paul D. Trout	\$ 14,706.90
x.	James Wallace	\$ 14,300.00
y.	Wurgler Farms/Kelly Wurgler	\$212,323.52
z.	Kelly Wurgler	\$ 31,696.12

16. The \$70,000 bond proceeds are the only assets available to pay valid cash claimants.
17. A bond is required to obtain a roving grain buyer license in North Dakota. North Dakota Century Code provides:

**60-02.1-08. Bond filed by grain buyer.** Before any license is issued to any grain buyer under this chapter, the applicant for such license shall file a bond with the commission which must:

1. Be in a sum not less than five thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
  - a. For the faithful performance of the licensee's duties as a grain buyer.
  - b. For compliance with the provisions of law and the rules of the commission relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by such bond.
6. Be for the specific purpose of:

- a. Protecting the sellers of grain.
  - b. Covering the costs incurred by the commission in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain buyer.
  8. In no event shall the aggregate liability of the surety under a bond accumulate for each successive annual license renewal period during which such bond is in force but, for losses during any annual license renewal period, shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commission may require an increase in the amount of any bond, from time to time, as it deems necessary to accomplish the purposes of this section. The surety on such a bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, such cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and such bond must be construed to cover such facilities as a whole and not a specific amount for each.

18. When the bond proceeds are paid over to the Commission as Trustee, there will be funds available from the trust fund to pay each valid cash claimant approximately 7% of the claimant's valid cash claim.
19. The Commission recommends that the cash claimants be paid approximately 7% of the claimants' valid cash claims. The Commission recommends that payment for each cash claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued. The final amounts to be paid will be determined once Court approval is received.
20. The valid cash claim amounts recommended for payment by the Commission total \$1,009,355.61. Invalid amounts include claims for breach of contract, the erroneous use of gross weight rather than net weight, failure to deduct the

sunflower promotion fee, etc., or a combination of these reasons. The valid claims are shown below and with additional detail on Exhibit A attached to this report:

	<b>Claimant Name</b>	<b>Filed Claim Amount</b>	<b>Valid Claim Amount</b>
a.	Donald Ackerson	\$101,366.85	\$101,240.94
b.	Sheldon Ackerson	\$ 7,405.51	\$ 7,383.81
c.	Mike Aasen	\$ 13,663.24	\$ 13,643.00
d.	B & D Farms, Inc./Manna Farms, Inc./Brent Keith	\$150,751.22	\$ 18,029.22
e.	James & Cynthia Burckhard	\$ 6,087.00	\$ 6,087.00
f.	Busch Farms, Inc./Greg Busch	\$ 23,732.23	\$ 23,690.04
g.	David & Marsha Deslauriers	\$184,394.99	\$149,333.02
h.	Jeff Kling	\$ 10,548.33	\$ 10,532.40
i.	Scott Lazarenko	\$ 13,408.74	\$ 13,391.44
j.	Leonard Lodoen	\$ 47,085.28	\$ 13,947.35
k.	Steven Neameyer	\$109,143.58	\$ 45,526.99
	Don Neameyer, shareholder		\$ 14,460.78
	Walter Welander, shareholder		\$ 14,460.78
l.	Nathan Neameyer	\$106,533.27	\$ 14,483.42
m.	Mitch & Cory Presky	\$10,038.10	\$ 9,165.00
n.	Northland Farms/Lana Anderson	\$ 63,385.04	\$ 60,643.98
o.	Paul Rhode	\$ 85,193.20	\$ 43,213.69
	John Rhode, shareholder		\$ 9,299.49
	Schleppenbach, shareholder		\$ 12,492.22
	Peggy Schetter, shareholder		\$ 16,196.95
p.	Jamie Routledge	\$ 70,218.60	\$ 67,795.03
q.	Rodney Rusch	\$ 16,600.00	\$ 17,933.75
r.	Savelkoul Farms	\$ 41,589.55	\$ 38,536.47
s.	Mike Schollmeyer	\$ 63,905.17	\$ 59,333.98
t.	David Steeves	\$ 47,777.59	\$ 47,736.80
u.	Robert Steeves	\$ 26,713.66	\$ 26,694.40
v.	Paul D. Trout	\$ 14,706.90	\$ 14,687.29
w.	James Wallace	\$ 14,300.00	\$ 14,296.07
x.	Wurgler Farms/Kelly Wurgler	\$212,323.52	\$ 96,219.85
y.	Kelly Wurgler	\$ 31,696.12	\$ 28,900.45

21. The Commission recommends that one nonjurisdictional cash claim filed by Landsverk Dairy, Inc. in the amount of \$6,161.40 be denied as shown with detail on Exhibit A attached to this report.

22. The Court has scheduled a hearing on this matter for March 17, 2014 at 9:00 a.m. CST at the Morton County Courthouse in Mandan, North Dakota, for interested parties to show cause why the Report and Recommendation of Trustee should not be approved.
23. Wherefore the Commission asks the Court to:
24. Approve the Report and Recommendation of Trustee.
25. Order the surety, Western Surety Company, 101 South Phillips Avenue, P.O. Box 5077, Sioux Falls, South Dakota 58104-6703, to deposit \$70,000, the total amount of the bond proceeds, with the Trustee for payment of the approved valid cash claims in this proceeding.
26. Authorize the Commission to make payments of trust fund proceeds consistent with this Report and Recommendation to persons with valid claims for grain purchased for cash by Mitchell Feeds, Inc., in North Dakota, and relevant valid lien holders at the time checks are issued.
27. Discharge the Public Service Commission, as Trustee, once trust fund assets have been distributed.
28. Respectfully submitted at Bismarck, North Dakota, this 30<sup>th</sup> day of January, 2014.



Illona A. Jeffcoat-Sacco (ID#03315)  
Special Assistant Attorney General  
Public Service Commission  
State Capitol – 12<sup>th</sup> Floor  
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Bismarck, North Dakota 58505-0480  
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Attorney for the Public Service Commission

# Exhibit A

MITCHELL FEEDS INC

Civil NO. 08-2011-CV-917

PSC Case No. GE-11-051

Sunflower Obligations

29-Jan-14

EXHIBIT A

page 1 of 6

Claimant Name	Contract # contract \$	CWT	Filed Claim Amount	CWT	Valid Claim Amount	Difference	Prorate of \$70,000 Bond
Ackerson, Donald 10435 54th Avenue NW Sherwood, ND 58782	MFI 018 \$30/CWT	3,657.22	\$ 101,366.85	3657.22	\$ 101,240.94	\$ (125.91)	\$ 7,021.06
Claim; 314,777.7 lbs sunflower not paid at \$.30/lb plus underpayment on one load. Claim difference is the sunflower promotion.							
Ackerson, Sheldon 10435 54th Avenue NW Sherwood, ND 58782	MFI 018 \$30/CWT	542.53	\$ 7,405.51	542.53	\$ 7,383.81	\$ (21.70)	\$ 512.07
Claim; One load was not paid at the contract price. Other flowers were sold at significant discount to the contract price. No dollar amount indicated in the claim for contract losses. Claim difference is the sunflower promotion.							
Aasen, Mike 4465 County Road 2 Sherwood, ND 58782	MFI 038 \$27/CWT	506.05	\$ 13,663.24	506.05	\$ 13,643.00	\$ (20.24)	\$ 946.14
Claim; One load was not paid and claim difference is the sunflower promotion.							
B&D Farms, Inc. Manna Farms Inc. Brent Keith 3551 County Road 2 Sherwood, ND 58782	003\ \$23/cwt 010\ \$27/cwt 012\ \$30/cwt average\ \$26/cwt 154\ \$18.5/cwt	18,748.11	\$ 150,751.22	2384.82	\$ 18,029.22	\$ (132,722.00)	\$ 1,250.33
Claim included unpaid partial payments on 5 loads totaling \$18,726.93 and breach of contract loss of \$132,024.29. The valid claim amount results from deducting \$697.71 because claimant erroneously using gross weight, and the breach of contract loss of \$132,024.29 is excluded.							

Claimant Name	Contract # contract \$	CWT	Filed Claim Amount	CWT	Valid Claim Amount	Difference	Prorate of Bond
Burckhard, James&Cynthia 5520 18th Avenue NE Towner, ND 58788 Claim; Approximately a half load of sunflowers not paid, with no dollar amount indicated.	MFI 048 \$29.6/CWT	205.92 \$	6,087.00	205.92 \$	6,087.00		\$ 423.32
Busch Farms Inc. Greg Busch P.O. Box 584 Crosby, ND 58730 Claim difference is the deduction of the sunflower promotion fee.	MFI 004 \$22.5/CWT	1054.76 \$	23,732.23	1054.77 \$	23,690.04	\$ (42.19)	\$ 1,642.90
Deslauriers, David&Marsha 4915 County Road 2 Sherwood, ND 58782 Claim included unpaid balance on sunflowers totaling \$150,272.99, unpaid freight totaling \$7,074.00, and breach of contract loss of \$27,048.00. The valid claim amount results from deducting the sunflower promotion of \$242.26, deducting \$697.71 because claimant erroneously used gross weight. The freight and breach of contract loss totaling \$34,122.00 is excluded.	MFI037 \$30/CWT	8587.87 \$	184,394.99	1986.36 \$	149,333.02	\$ (35,061.97)	\$ 10,356.24
Kling, Jeff 9440 7th Street SW Halliday, ND 58636 Claim difference is the deduction of the sunflower promotion.	MFI 023 \$26,50/CWT	398.05 \$	10,548.33	398.05 \$	10,532.40	\$ (15.93)	\$ 730.42
Landsverk Dairy, Inc. Robert Landsverk 31812 385th Street SE Fosston, MN 56542 Invalid claim, no evidence in claim to support North Dakota roving grain buyer activity, appears to be a Minnesota solicitation.	\$16.90/CWT	364.58 \$	6,161.40			\$ (6,161.40)	

Claimant Name	Contract # contract \$	CWT	Filed Claim Amount	CWT	Valid Claim Amount	Difference	Prorate of Bond
Lazorenko, Scott 899 Brew Street Killdeer, ND 58640 Claim difference is the deduction of the sunflower promotion.	MFI 033 \$31/CWT	432.54	\$ 13,408.74	432.54	\$ 13,391.44	\$ (17.30)	\$ 928.70
Lodoen, Leonard 10411 Hwy 83 West Hope, ND 58793 Claim included nonpayment on one load totaling \$13,968.04 and breach of contract loss of \$33,117.24. The valid claim amount results from deducting sunflower promotion of \$20.69 and the breach of contract loss of \$33,117.24 is excluded.	MFI 043 \$27/CWT	530.60	\$ 47,085.28	517.34	\$ 13,947.35	\$ (33,137.93)	\$ 967.25
Neameyer, Steven 4921 85th Street Mylo, ND 58353 Claim included 4 loads not paid totaling \$74,541.73 plus breach of contract loss of \$34,601.85. The valid claim amount results from deducting the sunflower promotion of \$93.18 and the breach of contract loss of \$34,601.85 is excluded. Don Neameyer is a share holder at 19.42% of the total unpaid. Walter Welander is a share holder at 19.42% of the total unpaid.	MFI 047 \$32/CWT	4,420.26	\$ 109,143.58	2329.43	\$ 45,526.99	\$ (34,695.03)	\$ 3,157.30
					\$ 14,460.78		\$ 1,002.86
					\$ 14,460.78		\$ 1,002.86
Neameyer, Nathan 614 9th Avenue NE Rolla, ND 58367 Claim included 2 loads not paid totaling \$24,340.99 plus breach of contract loss of \$82,192.28. The Mitchell records indicate lading #7971 was paid in the amount totaling \$13,224.70 leaving a claimant unpaid balance on 1 load of \$11,166.29. The actual unpaid balance according to the Mitchell records is \$14,483.42. The breach of contract loss of \$82,192.28 is excluded.	MFI 040 \$27/CWT	8,712.76	\$ 106,533.27	537.22	\$ 14,483.42	\$ (92,049.85)	\$ 1,004.43
Presky, Mitch & Cory 2485 Glenburn Road Glenburn, ND 58740 The valid claim amount results from deducting the sunflower promotion of \$19.86 and deducting \$853.24 because the claimant erroneously used gross weight.	MFI 151 \$18.5/CWT	542.60	\$ 10,038.10	496.48	\$ 9,165.00	\$ (873.10)	\$ 635.59

Claimant Name	Contract # contract \$	CWT	Filed Claim Amount	CWT	Valid Claim Amount	Difference	Prorate of Bond
Northland Farms Anderson, Lana 10845 53rd Avenue NW Sherwood, ND 58782	MFI 005 \$23/CWT MFI 006 \$30/CWT averaged at \$26/cwt	4,209.43	\$ 63,385.04	4170.81	\$ 60,643.98	\$ (2,741.06)	\$ 4,205.66
<p>Claim included 2 loads not paid totaling \$28,657.20 plus unpaid partial payment on 6 loads totaling \$34,727.84. The valid claim amount results from deducting the sunflower promotion totaling \$166.83 and deducting \$2574.23 because the claimant erroneously used the gross weight.</p>							

Rhode,Paul P.O. Box 251 Halliday ND 58636	MFI 158 18.65/CWT	4,568.00	\$ 85,193.20	4363.37	\$ 43,213.69	\$ (3,990.85)	\$ 2,996.87
<p>The valid claim amount results from deducting the sunflower promotion totaling \$174.53 and deducting \$3816.32 because the claimant erroneously used the gross weight.</p>							
John Rhode share holder at 11.45% of total unpaid.					\$ 9,299.49		\$ 644.92
Ryan & Shila Schleppenbach share holder at 15.38% of total unpaid.					\$ 12,492.22		\$ 866.34
Peggy Schetter share holder at 19.95% of total unpaid.					\$ 16,196.95		\$ 1,123.26

Routledge, Jamie 603 Barvaria Drive Minot, ND 58703	MFI 153 \$18.50/CWT	3,795.60	\$ 70,218.60	3672.54	\$ 67,795.03	\$ (2,423.57)	\$ 4,701.59
<p>The valid claim amount results from deducting the sunflower promotion totaling \$146.90 and deducting \$2276.67 because the claimant erroneously used the gross weight.</p>							

Rusch, Rodney 3105 44th Avenue New Salem, ND 58563	MFI 163 \$16.75/ cwt	1,239.60	\$ 16,600.00	1239.6	\$ 17,933.75	\$ 1,333.75	\$ 1,243.71
<p>Claim indicated a payable of \$16,600, unknown how this amount was determined. Mitchell's records indicated a accounts receivable from Rusch of \$2780 for sunflower hulls. This amount was offset from the total claimant payable. The sunflower promotion fee totaling \$49.58 was deducted.</p>							

Claimant Name	Contract # contract \$	CWT	Filed Claim Amount	CWT	Valid Claim Amount	Difference	Prorate of Bond
Savelkoul Farms 8221 30th Avenue NW Lansford, ND 58750	MFI 155 \$18.50/cwt	2,084.96	\$ 41,589.55	2087.6	\$ 38,536.47	\$ (3,053.08)	\$ 2,672.50
<p>The claim included unpaid sunflowers totaling \$38,619.97 and freight totaling \$2969.58.                      The valid claim amount results from the deduction of the sunflower promotion totaling \$83.50 and the freight of \$2969.58 is excluded.</p>							
Schollmeyer, Mike 549 101st Avenue SW Dunn Center, ND 58626	MFI 027 \$26.50/cwt	3,063.10	\$ 63,905.17	3056.99	\$ 59,333.98	\$ (4,571.19)	\$ 4,114.81
<p>Claim; 208,332.5 pounds unpaid totaling \$55,208.12 plus unpaid partial payment totaling \$4,408.78 plus freight of \$4288.27                      The valid claim amount results from deduction of sunflower promotion totaling \$122.28, deducting \$160.64 because claimant used gross weight, and freight of \$4288.27 is excluded.</p>							
Steeves, David 4690 County Road 2 Sherwood, ND 58782	MFI 014 \$30/cwt MFI 161-\$14/cwt	4,909.54	\$ 47,777.59	4909.54	\$ 47,736.80	\$ (40.79)	\$ 3,310.55
<p>Claim difference is the deduction of the sunflower promotion fee.</p>							
Steeves, Robert 227 3rd Avenue E Sherwood, ND 58782	MFI 013 \$30/cwt MFI 161-\$14/cwt	2,420.95	\$ 26,713.66	2420.95	\$ 26,694.40	\$ (19.26)	\$ 1,851.26
<p>Claim difference is the deduction of the sunflower promotion fee.</p>							
Trout, Paul D. 1300 8th Street NW Minot, ND 58703-1319	MFI 016 \$30/cwt	490.23	\$ 14,706.90	490.23	\$ 14,687.29	\$ (19.61)	\$ 1,018.56
<p>Claim difference is the deduction of the sunflower promotion fee.</p>							

Claimant Name	Contract # contract \$	CWT	Filed Claim Amount	CWT	Valid Claim Amount	Difference'	Prorate of Bond
Wallace, James 315 Tuhor Drive Killdeer, ND 58640	MFI 029 \$26.50/cwt	550	\$ 14,300.00	540.29	\$ 14,296.07	\$ (3.93)	\$ 991.43
Claim difference, claimant estimated the net sunflower payable and deduction of the sunflower promotion.							

Wurgler Farms Wurgler, Kelly 1600 Parkside Drive Minot, ND 58701-6836	MFI 042 \$28/cwt MFI 162 \$16/CWT	12410.29	\$ 212,323.52	5848.93	\$ 96,219.85	\$ (116,103.67)	\$ 6,672.85
Claim; 4 unpaid loads totaling \$69,963.32, unpaid partial payments totaling \$38,267.68, breach of contract at \$95,552.52, and freight of \$8540. The valid claim amount results from the deducting the sunflower promotion totaling \$213.24, deducting \$11,797.91 because the claimant erroneously used the gross weight, and the freight and breach of contract totaling \$104,092.52 is excluded.							

Wurgler, Kelly 1600 Parkside Drive Minot, ND 58701-6836	MFI 042 \$28/cwt MFI162-\$16/cwt	2033.3	\$ 31,696.12	1750.73	\$ 28,900.45	\$ (2,795.67)	\$ 2,004.25
Claim included 1 unpaid load totaling \$14,079.80, unpaid partial payments totaling \$15,037.32, and freight at \$2579. The valid claim amount results from deducting the sunflower promotion totaling \$70.02, deducting \$146.65 because the claimant erroneously used the gross weight, and the freight of \$2579 is excluded.							

		CWT	Filed Claim Amount	CWT	Valid Claim Amount	Difference	Prorate of Bond
TOTALS		90,478.85	\$ 1,478,729.09	49,600.31	\$ 1,009,355.61	\$ (469,373.48)	\$ 70,000.00

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 Kelly Wurgler,

and

American Federal Bank

Intervenors.

PSC Case No. GE-11-051

CIVIL NO. 08-2011-CV-917

ORDER APPROVING TRUSTEE'S REPORT, REQUIRING DEPOSIT OF BOND PROCEEDS, APPROVING PAYMENT, AND DISCHARGING TRUSTEE

1. This matter came before the Court on the motion of the North Dakota Public Service Commission (Commission) seeking approval of its Report and Recommendation as Trustee of Mitchell Feeds, Inc., deposit of bond proceeds, approval of payment and discharge as Trustee. This motion was scheduled for hearing before this Court on **March 17, 2014 at 9:00 a.m. CST** at the Morton County Courthouse in Mandan, North Dakota, with proper notice having been given the claimants, as evidenced by the affidavit of service on file. The

Commission appeared through Illona A. Jeffcoat-Sacco, Special Assistant Attorney General. No other parties or claimants appeared.

2. The Court reviewed the Report and Recommendation, and other documents of record, and finds grounds for approving the Report and Recommendation, requiring deposit of bond proceeds, approving payment and discharging Trustee. There were no objections to the report, the Trustee's recommendation, the request for deposit of bond proceeds, or the Trustee's requests for approval of payment and discharge.

### ORDER

3. **IT IS THEREFORE ORDERED:**

4. The Report and Recommendation of Trustee, dated January 28, 2014, which recommends deposit of bond proceeds and distribution of bond proceeds to valid cash claimants, is approved.
5. The surety, Western Surety Company, 101 South Phillips Avenue, P.O. Box 5077, Sioux Falls, South Dakota 58104-6703, within ten (10) days of the date of this Order, shall deposit \$70,000, the total amount of the bond proceeds, with the Trustee for payment of valid cash claims.
6. The Commission, as Trustee, is authorized to make payments from the trust fund to claimants with valid cash claims for grain purchased for cash by Mitchell Feeds, Inc., in North Dakota, as specified in the Report and Recommendation of Trustee. The payments for each cash claim shall be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued.
7. Upon distribution of the trust fund proceeds to the cash claimants, as provided for in the Trustee's report, the Trustee is discharged.
8. Bismarck, North Dakota, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

BY THE COURT

\_\_\_\_\_  
Honorable Judge Donald L. Jorgensen  
Judge of the District Court



5. Proposed Order Approving Trustee's Report, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee;

Were served, via the Odyssey Electronic Service and File System using the email addresses provided on the Odyssey Electronic Service and File System, upon the following:

David J. Johnson	<a href="mailto:navin@cableone.net">navin@cableone.net</a> and <a href="mailto:david.johnson@micfargolaw.com">david.johnson@micfargolaw.com</a>
Michael J. Maus	<a href="mailto:maus@mnattys.com">maus@mnattys.com</a>
Sandra West	<a href="mailto:west@mnattys.com">west@mnattys.com</a>
Tracy A. Kennedy	<a href="mailto:tracykennedy@northdakotalaw.com">tracykennedy@northdakotalaw.com</a>

Shelly A. Bauske further deposes and says that on the **31<sup>st</sup> day of January, 2014**, she deposited in the United States Mail, Bismarck, North Dakota, **4 envelopes** with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of the following documents:

1. Notice of Motion and Notice of Hearing;
2. Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee;
3. Brief in Support of Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee;
4. Report and Recommendation of Trustee with Exhibit A;
5. Proposed Order Approving Trustee's Report, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee;
6. Affidavit of Electronic Service and Service by Certified and Regular Mail.

The envelopes were addressed as follows:

Robert Mitchell  
Mitchell Feeds, Inc.  
PO Box 9112  
Fargo, ND 58106  
Cert. Mail No. 7012 2210 0001 5060 9781

Vicki Johnson, Registered Agent for  
Mitchell Feeds, Inc.  
1522 Robertson Ct  
Grand Forks, ND 58201-7304  
Cert. Mail No. 7012 2210 0001 5060 9798

Robert Mitchell  
Mitchell Feeds, Inc.  
4905 County Highway 81 South  
Horace, ND 58047  
Cert. Mail No. 7012 2210 0001 5060 9804

Sharon Sergeant, Claims Manager  
Senior Claims Counsel, Claim Dept.  
Western Surety Company  
101 South Phillips Avenue  
Sioux Falls, SD 57104-6703  
Cert. Mail No. 7012 2210 0001 5060 9811

Shelly A. Bauske further deposes and says that on the **31<sup>st</sup> day of January, 2014**, she deposited in the United States Mail, Bismarck, North Dakota, **30 envelopes** with postage, fully prepaid, securely sealed and each containing a photocopy of the following documents:

1. Notice of Motion and Notice of Hearing;
2. Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee;

3. Brief in Support of Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee;
4. Report and Recommendation of Trustee with Exhibit A;
5. Proposed Order Approving Trustee's Report, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee;
6. Affidavit of Electronic Service and Service by Certified and Regular Mail.

The envelopes were addressed as follows:

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

James A. Lodoen on behalf of  
Leonard Lodoen  
4200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2274

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

Robert Steeves  
227 3<sup>rd</sup> Avenue East  
Sherwood, ND 58782

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

Brent Keith  
3551 County Road 2  
Sherwood, ND 58782

Scott Lazorenko  
899 Brew Street  
Killdeer, ND 58640

Robert Landsverk  
Landsverk Dairy Inc.  
31812 385<sup>th</sup> Street SE  
Fosston, MN 59542-7475

Mike Assen  
4465 Co. Rd 2  
Sherwood, ND 58782

Matt Graber  
P. O. Box 282  
Rolette, ND 58366

Howard Farms  
9479 Main Street  
Dunn Center, ND 58626

Jeff Kling  
9440 7<sup>th</sup> St. SW  
Halliday, ND 58636

John Mahoney  
Mahoney & Mahoney  
Attorney for Rodney Rusch  
PO Box 355  
Center, ND 58530

Rodney Rusch  
3105 44<sup>th</sup> Ave  
New Salem, ND 58563

Ron Pelton  
140<sup>th</sup> 92<sup>nd</sup> Ave NW  
Halliday, ND 58636

James Routledge  
603 Bavaria Dr.  
Minot, ND 58703

Mike Schollmeyer  
549 101<sup>st</sup> Ave SW  
Dunn Center, ND 58626

Paul Trout  
10285 Hwy. 28  
Sherwood, ND 58782

Wurgler Farms  
1600 Parkside Dr.  
Minot, ND 58701

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

David Deslauriers  
4915 Co Rd 2  
Sherwood, ND 58782

Bart Savelkoul  
Savelkoul Farms  
8221 30<sup>th</sup> Ave. NW  
Lansford, ND 58750

Shane Sicklèr  
2410 98<sup>th</sup> Ave. SW  
Gladstone, ND 58630

James Wallace  
315 Tuhor Dr.  
Killdeer, ND 58640

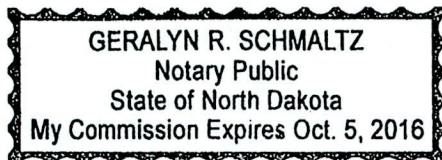
Kelly Wurgler  
1600 Parkside Dr.  
Minot, ND 58701

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

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

Subscribed and sworn to before me  
this 31<sup>st</sup> day of January, 2014.

SEAL



*Shelly A Baush*  
\_\_\_\_\_  
*Geraldine R. Schmalz*  
\_\_\_\_\_  
Notary Public