

Richter, Susan K.

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Case:()

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18-2015-CV-00240

Exhibit B

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Grand Forks Bean Company, Inc.
Grain Warehouse
Annual Activity

Case No. GE-14-595

Public Service Commission
Grand Forks Bean Company, Inc.
Ex Parte Cease & Desist

Case No. GE-15-30

**STIPULATION FOR THE SALE OF INVENTORY
AND DEPOSIT OF PROCEEDS**

RECITALS

1. Grand Forks Bean Company, Inc., ("Grand Forks Bean") is a North Dakota corporation, authorized to do business in North Dakota as a licensed public grain warehouse under North Dakota Century Code Chapters 60-02 and 60-04.
2. Grand Forks Bean operates a warehouse at 2010 N. Washington St., Grand Forks, Grand Forks County, ND, under license no. 1164, issued by the North Dakota Public Service Commission ("Commission") in 2005.
3. Grand Forks Bean and the Commission entered into a stipulation dated December 23, 2014, which is on file with the Commission.
4. On January 16, 2015 the Commission issued an *Ex Parte* Cease and Desist Order against Grand Forks Bean and issued a Notice of Opportunity for Hearing. The provisions of the Order are incorporated into this Stipulation and a copy is attached.
5. Certain persons who sold or delivered dry edible pinto beans to Grand Forks Bean ("Growers") have not been paid for said beans. Exhibit A annexed hereto is a nonexclusive list of Growers who assert they sold or delivered beans to Grand Forks Bean and have not been paid for the amounts on the list. The Growers assert, as

outstanding receipt holders under N.D.C.C. Section 60-02-25.1, they have a statutory first priority lien giving them rights to all beans held at Grand Forks Bean (the "Beans") to satisfy their claims for Beans they sold or delivered to Grand Forks Bean. The Growers assert their lien is statutorily preferred to any lien of other creditors. Alternatively, it has been asserted that with respect to the Beans sold or delivered, the Growers hold "credit-sale contracts," as defined under N.D.C.C. §§ 60-02-01(2), 60-02-19.1, 60-02.1-01(2), 60-02.1-14, 60-04-01(2), which then permits the Growers to seek payment for their claims under N.D.C.C. Chapter 60-10. Nothing in this Stipulation is intended to establish or otherwise determines whether any of the Growers have a first priority lien under N.D.C.C. § 60-02-25.1 or alternatively hold "credit-sale contracts" with respect to the Beans.

6. Based on the claims of the Growers, and any other receipt holders, the Commission asserts an interest in the Beans and other assets of Grand Forks Bean, arising by statute, its December 23, 2014 stipulation with Grand Forks Bean and/or its January 16, 2015 cease and desist order, with respect to the claims of the Growers and, any other receipt holders, if any.
7. Bremer Bank, National Association ("Bremer") provided financing to Grand Forks Bean, and asserts a first priority perfected security interest in the Beans, which asserted security interest does not arise under N.D.C.C. Section 60-02-25.1, and all other collateral covered by any security agreement executed by Grand Forks Bean and financing statement of public record. Nothing in this Stipulation is intended to establish or otherwise determines whether Bremer has any interest in the Beans or other assets of Grand Forks Bean.

8. This Stipulation is not intended to, and does not, resolve the assertions of the Growers, Bremer, or the Commission to the Beans or any remedy available to the Growers, Bremer or the Commission regarding the Beans and/or Grand Forks Bean.
9. In order to maximize the amount to be realized from the Beans, the parties agree that the proper course of action is to arrange for the immediate sale of the Beans with all parties preserving and retaining any and all rights they currently hold in the Beans and all proceeds. To this end, bids were entertained. Central Valley Bean Cooperative, American Bean LLC, SRS Commodities Limited, Star of the West Milling Company, Forest River Bean Co. Inc., Johnstown Bean Company, and Walhalla Bean Company were provided an opportunity to inspect samples and submit bids.
10. Central Valley Bean Cooperative submitted a bid of \$23.50/cwt delivered to Buxton or \$22.75/cwt based off a #1 pinto, normal discounts to apply with assurance of clean title to beans, including loading and hauling. American Bean LLC submitted a bid of \$22.25/cwt for three bins and \$16.25/cwt for one bin including loading and hauling. SRS Commodities Limited submitted a bid of \$20.00/cwt based on US #1 grade (discounts to be applied as necessary), US#2 - \$1/cwt discount and US#3 - \$2/cwt discount and will furnish equipment, labor and transportation.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION ACKNOWLEDGED AS HAVING BEEN EXCHANGED BY THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

1. The above Recitals are hereby restated and incorporated into and made a part of the Stipulation.
2. The parties recognize the *Ex Parte* Cease and Desist Order issued against Grand Forks Bean and agree not to take any action that would result in a violation of that order.

3. Based on information currently known, the bid from Central Valley Bean Cooperative is the most reasonable bid. The Beans shall be sold to Central Valley Bean Co-op, PO Box 162, 401 Broadway, Buxton, ND 58218 ("Buyer") on the following terms: price to be \$22.75/cwt based off a #1 pinto, normal discounts to apply with assurance of clean title to beans and Buyer would supply letter of credit or equivalent for purchase price. Buyer will provide all handling and transportation of the Beans and have the Beans removed from the Grand Forks Bean facility as soon as possible. Bremer, Growers, and the Commission, to the extent allowed by law, shall sign any waiver or agreement for the sale of the Beans reasonably requested by the Buyer to ensure clean title to the Beans.
4. An irrevocable letter of credit or equivalent guaranteeing the purchase price on behalf of Central Valley Bean Cooperative must be provided to the Commission, prior to any beans being removed from the facility.
5. A Grand Forks Bean outbound scale ticket will be issued for each load of beans moved from the Grand Forks Bean warehouse indicating the Buyer, Public Service Commission and trucking company. The Buyer shall issue an inbound scale ticket for each load of beans received with grading information and Grand Forks Bean, Public Service Commission, and the trucking company indicated as the person from whom the grain is received.
6. Grand Forks Bean shall retain the warehouse's copy of each outbound scale ticket and provide a copy of each outbound scale ticket to the Commission. The Buyer shall provide a copy of each inbound scale ticket issued for each load of grain received to the Commission.
7. Commission Staff will create a shipment report recording each load of beans moved from

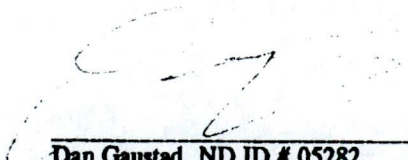
the Grand Forks Bean warehouse. The Buyer shall create an assembly report recording each load of beans received and provide a copy to Grand Forks Bean and the Commission.

8. Once all grain has been removed from the Grain Forks Bean warehouse and delivered to the Buyer, the Buyer shall provide a final assembly report to the Commission, and shall pay to the Commission the full amount due no later than three business days thereafter.
9. The proceeds from sale of the Beans shall be deposited in an interest bearing escrow account at the Bank of North Dakota under the name Grand Forks Bean Company, Inc. but held in escrow pursuant to the terms hereof. Said monies shall remain on deposit until the Commission is appointed trustee at which time the monies will be transferred into the Public Service Commission's Grand Forks Bean Company, Inc. trust account at the Bank of North Dakota. The parties' rights and interests shall attach to the proceeds with the same dignity, merits and priority as they attached to the Beans and sale of the Beans pursuant to this Stipulation will not impair, limit or restrict the rights of any of the parties as said rights exist or existed with respect to the Beans, and/or any rights or remedies of any of the parties that exist or existed. Without in any manner limiting any other term of this Stipulation but in addition thereto, that regardless of whether the transfer of funds to the Public Service Commission's Grand Forks Bean Company, Inc. trust account occurs or does not occur, no party is waiving, releasing or otherwise relinquishing any rights, titles, interests or claims in any respect, including without limit the Growers or any other receiptholders' payment from the funds held in escrow or in the trust through the insolvency proceeding, the Growers' payment under Chapter N.D.C.C. Chapter 60-10, the Growers or any other receiptholders' right to payment from Grand

Forks Bean Company, Inc., and/or other assets of Grand Forks Bean Company, Inc. and/or Bremer's claim to such funds and any right to payment from Grand Forks Bean Company, Inc. and/or other assets of Grand Forks Bean Company, Inc.

10. The undersigned represent and warrant each has the authority to bind the party designated under each person's signature. This Stipulation sets forth all of the terms of the agreement reached between the parties with respect to the subject matter of this Stipulation and supersedes any and all prior negotiations and understandings except for the January 16, 2015 *Ex Parte* Cease and Desist Order and the December 23, 2014 Stipulation. This Stipulation may not be amended except by a subsequent stipulation executed by all the parties hereto or by court order after notice and opportunity to be heard has been given to all parties. No party will be deemed to have waived any rights under this Stipulation absent a written statement of waiver signed by the party alleged to have waived any rights. Signatures to the Stipulation may be provided by facsimile or other electronic means and will be as binding on the party so providing them as an original signature. This Stipulation and any efforts to market and sell the Beans as provided hereunder does not, nor shall it be deemed, to create any partnership, agency, or employment relationship by or among the parties hereto. This Stipulation will be construed and interpreted under the laws of the State of North Dakota.
11. This Stipulation is effective as of the date executed by the final party and will remain in effect to the extent the provisions are not inconsistent with the Commission's appointment as trustee.

DATED THIS 30th day of January, 2015.



Dan Gaustad, ND ID # 05282
Attorney for the following Growers:

- Brent Baldwin
- Baldwin Farms, Inc.
- Duane Altendorf

DATED THIS ____ day of January, 2015.

Russ Melland, ND ID # 04896
Attorney for the following Growers:

- Ronald A. Adams
- Nickolas Adams
- Chuck B. Nelson
- WJS Nelson (Jon Nelson & Steve Nelson)

DATED THIS ____ day of January, 2015.

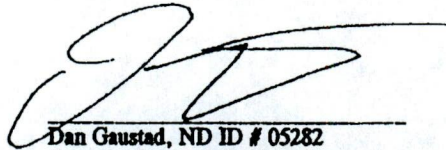
Jon Brakke, ND ID # _____
Attorney for the following Growers:

- Curt Amundson, _____, ND
- The Estate of Brad Nelson, _____, MN

DATED THIS ____ day of January, 2015.

Tracy A. Kennedy, ND ID # _____
Attorney for Bremer Bank, National Association

DATED THIS ____ day of January, 2015.

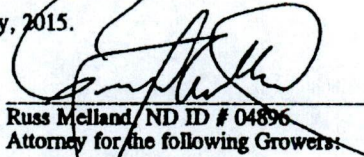


Dan Gaustad, ND ID # 05282
Attorney for the following Growers:

Brent Baldwin
Baldwin Farms, Inc.

Duane Altendorf

DATED THIS 30th day of January, 2015.



Russ Melland, ND ID # 04896
Attorney for the following Growers:

Ronald A. Adams

Nickolas Adams

Chuck B. Nelson

WJS Nelson (Jon Nelson & Steve Nelson)

DATED THIS _____ day of January, 2015.

Jon Brakke, ND ID # _____
Attorney for the following Growers:

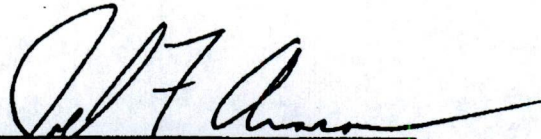
Curt Amundson, _____, ND

The Estate of Brad Nelson, _____, MN

DATED THIS _____ day of January, 2015.

Tracy A. Kennedy, ND ID # _____
Attorney for Bremer Bank, National Association

DATED THIS _____ day of January, 2015.


Joel Arneson, ND ID # 03743
Attorney for Grand Forks Bean Company, Inc.

DATED THIS 29th day of January, 2015.


Ilona A. Jeffcoat-Sacco, ND ID #03315
Attorney for Public Service Commission

Grand Forks Bean Co,

Exhibit A

Stipulation for the Sale of Beans

<u>Grower</u>	<u>Net Outstanding Receipts</u>
Ronald E. Adams	7,778.24 cwt
Nicholas Adams	908.55 cwt
Curt Amundson	12,128.28 cwt
Chuck B. Nelson	1,316.08 cwt
Brent Baldwin	2,220.36 cwt
Baldwin Farms, Inc.	1,005.71 cwt
Brad Nelson Estate	1,810.44 cwt
Duane Altendorf	2,408.22 cwt
WJS Nelson (Jon & Steve Nelson)	1,600.91 cwt

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Grand Forks Bean, Co., Inc.
Ex Parte Cease & Desist**

Case No. GE-15-30

Ex Parte Cease and Desist Order

January 16, 2015

On January 16, 2015, Licensing Division Staff (Staff) filed an Affidavit providing the Commission with information sufficient to support issuance of an *Ex Parte Cease and Desist Order* against Grand Forks Bean Company, Inc. (Grand Forks Bean) as authorized by North Dakota Century Code section 60-02-42.

The Affidavit indicated the following:

On November 18, 2014, the Licensing Division received a phone call from a producer inquiring about redelivery of dry edible beans that the producer had delivered to Grand Forks Bean Company, Inc. (Grand Forks Bean) at its licensed grain warehouse in Grand Forks, North Dakota. The producer alleged Grand Forks Bean had not been able to market his dry edible beans. The producer further informed the Affiant that he had contacted Grand Forks Bean staff about taking redelivery of beans because Grand Forks Bean was not able to market the dry edible beans.

Between November 18, 2014 and December 19, 2014, the Licensing Division received additional phone calls from producers who delivered dry edible beans to the licensed grain warehouse in Grand Forks.

On December 1, 2014 Commission Staff measured the dry edible bean inventory and it appears there is sufficient inventory to meet redelivery obligations.

Between December 19, 2014 and December 23, 2014, the Commission received information, via electronic mail or facsimile, from eight producers alleging Grand Forks Bean had not been able to market their dry edible beans or had not paid the producers for the dry edible beans delivered to Grand Forks Bean at their licensed grain warehouse in Grand Forks, North Dakota.

On December 23, 2014, Grand Forks Bean Company, Inc. and Public Service Commission Staff executed a Stipulation in which Grand Forks Bean agreed that the dry edible bean inventory in the Grand Forks Bean facility will not be sold, redelivered, or moved from the Grand Forks facility without prior Commission approval, that Grand Forks Bean will not receive additional grain, that the beans will continue to be stored in suitable facilities and in a suitable fashion to maintain the quality of the dry bean inventory, and that Grand Forks Bean will continue to maintain insurance on the dry edible bean inventory. A copy of this Stipulation is attached to and made a part of the Affidavit.

Commission Staff has reason to believe, after discussions with counsel for producers, that it is unlikely this matter can be resolved outside a formal insolvency proceeding.

The Stipulation entered into by Staff provides that a violation of the Stipulation may result in further formal Commission proceedings, including the issuance of an *Ex Parte* Cease and Desist order against Grand Forks Bean Company, Inc. Staff indicated staff is not aware of any violation of the Stipulation. However, because Staff now has reason to believe that it is unlikely the matter can be resolved informally, staff indicated it is recommending that the Commission apply to district court for appointment as trustee and also that an *Ex Parte* Cease and Desist Order against Grand Forks Bean is appropriate. Commission staff contacted Grand Forks Bean regarding the matter.

North Dakota Century Code section 60-02-42 provides the Commission with authority to issue an *Ex Parte* Cease and Desist Order without prior notice against an entity that engages in an activity or practice that is contrary to the provisions of North Dakota law or rules. A Cease and Desist Order must be accompanied by a Notice of Opportunity to be Heard on the order within fifteen (15) days of the issuance of the Order.

Affiant stated she believes that good cause exists requiring *ex parte* action by the Commission because sellers of grain may suffer immediate economic loss, damage, or injury if Grand Forks Bean Company, Inc. receives or purchases any grain, moves any grain out of the Grand Forks facility that may be an asset of the trust, or fails to maintain

control of potential trust assets in a manner consistent with the Stipulation attached to the Affidavit.

Affiant has informed the Commission that it is her opinion that based on the written information filed with the Commission for the nonpayment for dry edible beans delivered or sold to Grand Forks Bean Company, Inc., Grand Forks Bean Company, Inc. is insolvent under North Dakota Century Code Chapter 60-04.

The Commission has considered the information provided by Staff and finds that unless an *Ex Parte* Cease and Desist Order is issued, producers may suffer economic loss, damage, or injury as a result of the actions of Grand Forks Bean Company, Inc.

Therefore, the Commission issues the following:

Order

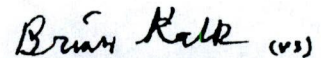
The Commission orders:

1. Grand Forks Bean Company, Inc. to Cease and Desist from receiving or purchasing any grain, moving any grain out of the Grand Forks facility without prior Commission permission that may be an asset of the trust, or failing to maintain control of potential trust assets in a manner consistent with the Stipulation attached to the Affidavit.
2. Contemporaneously with this Order, the Commission is issuing to Grand Forks Bean Company, Inc. a notice of opportunity to be heard within fifteen days of the service of this Order.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak (890)
Chairman


Brian P. Kalk (v.s.)
Commissioner

had not paid the producers for the dry edible beans delivered to Grand Forks Bean Company, Inc. at their licensed grain warehouse in Grand Forks, North Dakota.

That on December 23, 2014, Grand Forks Bean Company, Inc. and Public Service Commission Staff executed a Stipulation agreeing that the dry edible bean inventory in the Grand Forks Bean facility will not be sold, redelivered, or moved from the Grand Forks facility without prior Commission approval, that Grand Forks Bean Company, Inc. will not receive additional grain, that the beans will continue to be stored in suitable facilities and in a suitable fashion to maintain the quality of the dry bean inventory, and that Grand Forks Bean Company, Inc. will continue to maintain insurance on the dry edible bean inventory.

That Commission Staff believes after discussions with counsel for producers, attempts to resolve this matter outside an insolvency are not possible.

That although the Stipulation provided that a violation of the Stipulation may result in further formal Commission proceedings, including the issuance of an *ex parte* cease and desist order against Grand Forks Bean Company, Inc., Staff is not aware of any violation, however, due to the fact that Staff will be recommending that the Commission apply to district court for appointment as trustee, Staff believes an *ex parte* cease and desit order against Grand Forks Bean Company, Inc. is appropriate.

That Grand Forks Bean Company, Inc., operates a licensed public grain warehouse in North Dakota at Grand Forks, North Dakota since 2005. As required by North Dakota Century Code section 60-02-09 and North Dakota Administrative Code section 69-07-02-02 Grand Forks Bean Company, Inc. has a \$100,000 bond on file with the Public Service Commission.

That the Licensing Division is preparing and will be asking the Commission to file documents with Grand Forks County District Court, asking that Grand Forks Bean Company, Inc. be declared insolvent under North Dakota Century Code Chapter 60-04, and the Commission be appointed trustee in the insolvency proceeding.

That it appears the bond on file with the Public Service Commission will not be sufficient to cover the total amount owed to producers for the dry edible beans delivered to Grand Forks Bean Company, Inc.

North Dakota Century Code section 60-02-42 provides the Commission with authority to issue a cease and desist order without prior notice against an entity that engages in an activity or practice that is contrary to the provisions of North Dakota Century Code Chapter 60-02 or related rules.

Affiant has reason to believe Grand Forks Bean Company, Inc. has violated North Dakota Century Code section 60-02-09 (4)(a) by failing to faithfully perform the licensee's duties as a public warehouseman and North Dakota Century Code section 60-04-02 by refusing, neglecting, or being unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

Affiant believes that good cause exists requiring *ex parte* action by the Commission because sellers may suffer economic loss, damage or injury if Grand Forks Bean Company, Inc. were to receive or purchase grain as a licensed public warehouseman in North Dakota or if Grand Forks Bean Company, Inc. is permitted to move any more grain out of North Dakota that may be an asset of the insolvency trust.

It is Affiant's opinion that based on the written information filed with the Commission for the inability to market or pay for dry edible pinto beans delivered to

Grand Forks Bean Company, Inc. at Grand Forks, North Dakota, Grand Forks Bean Company, Inc. is insolvent under North Dakota Century Code Chapter 60-04.

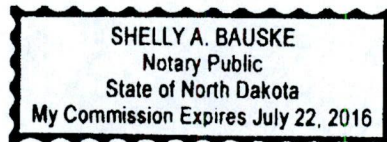
Further, it is Affiant's opinion that in order to preserve the potential trust, Grand Forks Bean Company, Inc. should not be allowed to receive or purchase any grain, move any grain out of the Grand Forks facility that may be an asset of the trust, or fail to maintain control of potential trust assets in a manner consist with the attached Stipulation.

Affiant requests that the Commission issue an *Ex Parte* Cease and Desist Order against Grand Forks Bean Company, Inc. as authorized by North Dakota Century Code section 60-02-42, ordering that Grand Forks Bean Company, Inc. cease and desist from receiving or purchasing grain, moving any grain out of the Grand Forks facility that may be an asset of the trust, or failing to maintain control of potential trust assets in a manner consistent with the attached Stipulation.

Susan K. Richter

Subscribed and sworn to before me this 16 day of January, 2015.

Shelly A Bauske
Notary Public



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Grand Forks Bean Company, Inc.
Grain Warehouse
Annual Activity

Case No. GE-14-595

STIPULATION

1. Whereas, Grand Forks Bean Company, Inc., (Grand Forks Bean) a North Dakota business corporation, authorized to do business in North Dakota operates a licensed public grain warehouse at Grand Forks, North Dakota and is licensed under North Dakota Century Code Chapters 60-02 and 60-04.
2. Whereas, Grand Forks Bean operates its grain warehouse at Grand Forks, North Dakota, under license no. 1164, issued by the Commission in 2005.
3. Whereas, Grand Forks Bean has a \$100,000 surety bond on file with the Commission, as required by North Dakota Century Code section 60-02-09 and North Dakota Administrative Code section 69-07-02-02.
4. Whereas, since November 18, 2014, Commission staff received a number of calls from producers who delivered dry edible beans to Grand Forks Bean, indicating that Grand Forks Bean has not made payment for or redelivery of the beans.
5. Whereas, Commission staff contacted Grand Forks Bean regarding resolution of the matter. On December 1, 2014 Commission Staff measured the dry edible bean inventory and it appears there is sufficient inventory to meet redelivery obligations.
6. Whereas, to date, six claims have been filed electronically or via facsimile, of which three claims included support documents.
7. Commission staff has considered recommending that the Commission issue an ex parte cease and desist order for the purpose of protecting Grand Forks Bean's dry edible bean inventory.

Now, therefore, the parties to this Stipulation, Grand Forks Bean Company, Inc., and Public Service Commission Staff, agree that Grand Forks Bean Company, Inc. will:

1. Not sell any portion of the dry edible bean inventory in the Grand Forks Bean facility without prior Commission approval.
2. Not move or permit the movement of dry edible beans from the Grand Forks Bean facility without prior Commission approval.
3. Not make redelivery of any portion of the dry edible beans to any producer without prior Commission approval.
4. Not receive additional grain.
5. Continue storing the beans in suitable facilities and in a suitable fashion to maintain the quality of the dry bean inventory.
6. Continue to maintain insurance on the dry edible bean inventory.

Further, Grand Forks Bean Company, Inc. acknowledges that a violation of Stipulation may result in further formal Commission proceedings, including the filing of a formal complaint against Grand Forks Bean Company, Inc., the issuance of an *ex parte* cease and desist order against Grand Forks Bean, and the assessment of penalties against Grand Forks Bean Company, Inc. Grand Forks Bean Company, Inc. further certifies that TAD Mc GURK, as personal representative of Grand Forks Bean, has authority to sign the Stipulation and bind Grand Forks Bean Company, Inc. to the provisions of this Stipulation

This Stipulation is effective the date executed by Grand Forks Bean Company, Inc.

Dated this 23RD day of December, 2014.

Grand Forks Bean Company, Inc.

By

TAD Mc GURK

Its

PRESIDENT

(Title)

Dated this 23rd day of December, 2014.

North Dakota Public Service Commission
Licensing Division

By Susan K. Richter
Its Division Director
(Title)

Richter, Susan K.

From: Dee <dee@ralawfirms.com>
Sent: Tuesday, December 23, 2014 4:00 PM
To: Richter, Susan K.
Cc: rmelland@camrudlaw.com; allenflaten@northdakotalaw.net
Subject: Grand Forks Bean Company, Inc.
Attachments: Stipulation.pdf

Dear Ms. Richter,

Attached please find the stipulation executed by Mr. McGurk. Please be advised that he has the authority to sign the stipulation by virtue of the fact that he is the personal representative of the Todd McGurk Estate and the fact that a corporate resolution has been executed naming him President of the Corporation since Todd McGurk's death.

You may note that I am copying both Mr. Melland representing the farmers, and Mr. Flaten, representing Bremer Bank, and would encourage counsel to speak the each other regarding their client's respective interests prior to proceeding further in this matter.

Sending this on behalf of Joel F. Arnason, Attorney at law.

Dee Hillhouse

Rosenquist & Arnason, PLLP
301 North Third Street, Suite 300
Grand Forks, ND 58203
Telephone: 701-775-0654
Fax: 701-772-0855