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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. 18-2015-CV-00240
)	
Petitioner,)	
)	
vs.)	
)	REPORT AND
Grand Forks Bean Company, Inc.)	RECOMMENDATION
)	OF TRUSTEE
and)	
)	
Auto-Owners Insurance Company)	
)	
Respondents.)	
_____)	
PSC Case No. GE-15-36)	
_____)	

I. PROCEEDINGS AND BACKGROUND INFORMATION

1. The North Dakota Public Service Commission (Commission) as Trustee. makes the following Report and Recommendation to the Court:
2. Grand Forks Bean Company, Inc., (“Grand Forks Bean”) a North Dakota Corporation. operated a licensed grain warehouse at Grand Forks, North Dakota, licensed under North Dakota Century Code Chapters 60-02 and 60-04. *Supplemental Affidavit of Susan Richter* at ¶ 3 & Ex. 2 (September 30, 2015) (“*Richter Supp. Aff.*”).
3. Grand Forks Bean operated its grain warehouse at Grand Forks, North Dakota under license number 1164. Id.
4. As part of the licensing process, Grand Forks Bean filed a bond with the Commission as required by North Dakota Century Code section 60-02-09, in the amount of \$100.000 and

identified as number 077708 66024305, with Auto-Owners Insurance Company, 6101 Anacapri Boulevard, Lansing, Michigan, 48917, as surety. Id. at Ex. 3.

5. 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 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 according to his price later marketing agreement with Grand Forks Bean. The producer also stated he was contacting Licensing Division Staff about taking redelivery of beans because Grand Forks Bean was not able to market the dry edible beans. *Affidavit of Susan K. Richter in Support of Application* at ¶ 6 (Feb. 13, 2015) (Doc ID # 4) (“*Richter Aff.*”).
6. On November 19, 2014, Licensing Division Staff contacted Grand Forks Bean to discuss the producer’s request for redelivery of dry edible beans. Staff asked Grand Forks Bean about its current dry edible bean inventory and if the inventory was sufficient to make redelivery to each producer who had delivered dry edible beans to the licensed grain warehouse in Grand Forks. Staff asked Grand Forks Bean to fax a copy of all price later marketing agreements it had issued and related assembly sheets. Staff also asked Grand Forks Bean to fax a copy of all documents for any producer who delivered beans after a February 2014 grain warehouse examination. Id. at ¶ 7.
7. On November 19 and November 20, 2014, Grand Forks Bean faxed Staff copies of the requested price later marketing agreements and assembly sheets. Id. at ¶ 8.
8. Between November 25 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. Id. at ¶ 9.

9. On December 1, 2014, a Commission Grain Warehouse Inspector visited Grand Forks Bean and measured the grain inventory, concluding the inventory consisted of approximately 40,000 hundredweight of pinto beans. Id. at ¶ 10
10. Between December 19, 2014, and December 23, 2014, the Commission received claims from eight producers. The claims were filed via electronic mail or facsimile. Each producer alleged Grand Forks Bean had not been able to market the producer's beans or pay for the beans delivered to Grand Forks Bean's facility in Grand Forks, North Dakota. Id. at ¶ 11.
11. On December 23, 2014, Grand Forks Bean Company, Inc. and Public Service Commission Staff executed a Stipulation in which Grand Forks Bean agreed that it would not receive additional grain, that the dry edible bean inventory in the Grand Forks Bean facility would not be sold, redelivered, or moved from the Grand Forks facility without prior Commission approval, 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. Id. at ¶ 12.
12. 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. Although Staff was not aware of any violation, Staff concluded, as a result of several discussions with growers, the warehouse and the bank, that the matter could not be resolved outside an insolvency proceeding. As a result, on January 16, 2015, Staff recommended the Commission issue an *Ex Parte* Cease and Desist Order against Grand Forks Bean Company, Inc. Id. at ¶ 13

13. On January 16, 2015, the Commission issued an *Ex Parte* Cease and Desist Order against Grand Forks Bean Company, Inc. 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 Stipulation. Id. at ¶ 14.
14. The Commission, eight growers who had filed claims, and Bremer Bank continued to discuss the pending insolvency filing, the interests of the parties in the beans, and the need to sell the bean inventory in the Grand Forks Bean facility to maximize proceeds. All parties agreed the beans should be sold as quickly as possible, before deterioration and during acceptable weather for this commodity. The parties engaged in negotiations on a second Stipulation in order to provide a means to liquidate the inventory and preserve its value, to protect the proceeds, and also to preserve any interest the parties assert in those proceeds for resolution through the insolvency proceeding or via another means. Id. at ¶ 15.
15. The growers assert, under North Dakota Century Code section 60-02-25.1, as outstanding receipt holders, they have a statutory first priority lien giving them rights to all beans held at the Grand Forks facility to satisfy their claims for the beans they sold or delivered to Grand Forks Bean. The bank asserts it has a perfected security interest in the grain inventory and other assets of Grand Forks Bean that may become a part of the trust in any insolvency proceeding and filed a claim to this effect on January 28, 2015. The Commission asserts an interest in the beans and other assets of Grand Forks Bean, arising by statute, with respect to the claims of the growers and other receipt holders, if any. Id. at ¶ 16

16. To move toward liquidation, bids were entertained for purchase of the beans. 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 of the pinto beans and submit bids. Id. at ¶ 17.
17. Central Valley Bean Cooperative (Central Valley Bean) 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 would furnish equipment, labor and transportation. Id. at ¶ 18.
18. All parties agreed the bid from Central Valley Bean was the most reasonable bid. Id. at ¶ 19.
19. On January 30, 2015, a Stipulation for the Sale of Inventory and Deposit of Proceeds was executed by attorneys for the Commission, Grand Forks Bean Company, eight growers, and Bremer Bank, National Association. (Subsequently all parties agreed via electronic mail that the Letter of Credit from Central Valley Bean need not be irrevocable.) Id. at ¶ 20.
20. Commission Staff informed Central Valley Bean that its bid was accepted, based on the terms submitted, with a price of \$22.75/cwt based off a #1 pinto, normal discounts to apply, including loading and hauling. Id. at ¶ 21.

21. On February 3, 2015, Central Valley Bean began transporting the beans to its licensed grain warehouse in Buxton, North Dakota. The final load of beans was transported on February 11, 2015. A Grand Forks Bean outbound scale ticket was issued for each load of beans moved from the Grand Forks Bean warehouse and a copy of each outbound scale ticket was provided to the Commission. Commission Staff created an assembly report that included a record for each load of beans moved from the Grand Forks Bean warehouse. Id. at ¶ 22.
22. Central Valley Bean issued an inbound scale ticket for each load of beans received with grading information and Grand Forks Bean, the Public Service Commission, and the trucking company indicated as the persons from whom the grain was received. Central Valley Bean provided a copy of each inbound scale ticket to the Commission. Central Valley Bean created a daily assembly report that included a record for each load of beans received and provided a copy of each daily assembly report to the Commission. Id. at ¶ 23.
23. Once all beans were removed from the Grand Forks Bean warehouse and delivered to Central Valley Bean, Central Valley Bean provided a final assembly report to the Commission. Central Valley Bean paid the Commission the full amount due, with a final payment made on February 11, 2015. Id. at ¶ 24.
24. The proceeds from the sale of the beans have been received and deposited in an interest bearing escrow account at the Bank of North Dakota under the name Grand Forks Bean Company, Inc., and the Stipulation for the Sale of Inventory and Deposit of Proceeds was provided to the bank to evidence the conditions of the escrow. The funds remain on

deposit in the Public Service Commission's Grand Forks Bean Company, Inc. escrow account at the Bank of North Dakota. Id. at ¶ 25.

25. On February 13, 2015, the Commission filed an Application for Appointment as Trustee and for Ex Parte Order in District Court, County of Grand Forks, Northeast Central Judicial District. Doc ID # 1.
26. On February 18, 2015, the District Court ordered that Grand Forks Bean must preserve and protect any trust assets as provided in N.D.C.C. ch. 60-04 until the court issues its order granting or denying the application for appointment of the Commission as Trustee of the trust fund. Doc ID # 11. On February 25, 2015, a copy of the Notice of Entry of Ex Parte Order with attached copy of the executed Ex Parte Order to Preserve Trust Assets was served on the parties and also sent by regular mail to fourteen persons the Commission identified from the records of Grand Forks Bean as potential claimants in the insolvency proceeding. Doc ID ## 12-13.
27. Brent Baldwin, Baldwin Farms, Inc., Duane Altendorf, Ron Adams, Nicholas Adams, Chuck B. Nelson and WJS Nelson (John Nelson & Steve Nelson), Curt Amundson, and the Estate of Brad Nelson conditionally objected to the Commission's Application for Appointment as Trustee, asserting that Grand Forks Bean was insolvent substantially before December 19, 2014. Doc ID ## 14-15. The Commission responded, asserting that, if appointed Trustee, the Commission would request a specific insolvency date when it files its Report and Recommendations. Doc ID # 17.
28. On March 25, 2015, the District Court ordered that the Commission is appointed Trustee of the trust fund provided by North Dakota Century Code Chapter 60-04 for the purpose of marshaling all trust assets of the insolvent Grand Forks Bean, Inc. and further ordered

that the date of insolvency be established as on or before December 19, 2014. Doc ID # 26. On March 27, 2015, a copy of the Notice of Entry of Order and a copy of the Notice of Appointment as Trustee and Notice to File Claims was served on the parties through Odyssey or certified mail, as applicable, and also sent by regular mail to ten persons or their attorneys that the Commission identified as potential claimants in the insolvency proceeding. Doc ID ## 27-30. The notice required the filing of claims with the Commission within forty-five days of the final publication of the notice. Doc ID # 28.

29. The Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in the Grand Forks Herald on April 2 and April 9, 2015, as provided by law. The Grand Forks Herald is located in Grand Forks County and is the official county newspaper of the county in which the Grand Forks Bean warehouse is located.
30. Eleven claims were filed either with the District Court through Odyssey, directly to the Commission, or both. Not all of the claims provided a specific dollar amount claimed. The claims of Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf were presented in the form of the hundredweight (cwt) of beans for the market price of the beans prevailing on the date of the insolvency of Grand Forks Bean. The following is a summary of the filed claims:

	Claimant Name	Claim Filed*
a.	Bremer Bank, National Association	\$ 893,614.54
b.	Estate of Brad Nelson	\$ 54,313.20
c.	Brent Baldwin	2,220.36 cwt
d.	Baldwin Farms, Inc.	1,005.71 cwt
e.	Duane Altendorf	2,408.22 cwt
f.	Curt Amundson	\$ 363,848.40
g.	Chuck Nelson	\$ 39,452.40
h.	WJS Nelson	\$ 50,250.00
i.	Nicholas E. Adams	\$ 29,982.15
j.	Ronald E. Adams	\$ 357,847.73

k. Fessenden Cooperative Association \$ 270,000.00

* All claims allege interest at varying rates and from varying dates.

31. The balance of the trust fund as of September 1, 2015, is \$767,861.78. *Richter Supp. Aff.* at ¶ 2.

II. APPLICABLE LAW

32. Chapters 60-02 and 60-04, N.D.C.C., address the issues in this case. Pursuant to N.D.C.C. § 60-02-03, the PSC has general supervision powers over public warehouses. Public warehouses include “any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation.” N.D.C.C. § 60-02-01(5). “Grain” includes “beans” and as discussed in this report the two will be considered synonymous. N.D.C.C. § 60-02-01(3). Upon receiving grain into a warehouse, a uniform scale ticket must be issued. N.D.C.C. § 60-02-11. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within forty-five days after grain is delivered to the warehouse. *Id.*

33. Grain contained in a warehouse is subject to a first priority lien in favor of outstanding receiptholders storing, selling, or depositing grain in the warehouse. N.D.C.C. § 60-02-25.1. “Receipts” are “grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit sale contract.” N.D.C.C. §§ 60-02-01(7); 60-04-01(6). The lien is “preferred to any lien or security interest in favor of any creditor of the warehouseman regardless of the time when

the creditor's lien or security interest attached to the grain." N.D.C.C. § 60-02-25.1.

There is no notice needed to perfect this lien. Id.

34. A licensee is insolvent when it refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed or to make redelivery or payment for grain stored. N.D.C.C. § 60-04-02. Upon insolvency, the PSC, once appointed trustee, shall take all action necessary and appropriate to secure and act as trustee of the trust fund. N.D.C.C. § 60-04-03. The trust fund is established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the commission in the administration of N.D.C.C. ch. 60-04. N.D.C.C. § 60-04-03.1. The trust fund consists of the items enumerated in N.D.C.C. § 60-04-03.1, including the grain in the warehouse or the proceeds as obtained through the sale of such grain and claims for relief (or proceeds from) any bond given to ensure faithful performance of the warehouseman's duties.
35. Upon appointment as trustee, the PSC shall cause notice of its appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record outstanding receipts as shown in the warehouseman's records. N.D.C.C. § 60-04-04. The notice requires outstanding receiptholders to file claims against the warehouseman with the PSC along with the receipts or such other evidence of the claims. Id. If a claim is not submitted within forty-five days of the last publication or such longer time as prescribed by the PSC, the PSC is relieved of any further duty or action on behalf of the receiptholder and the receiptholder may be barred from participation in the trust fund. Id.
36. Proper notice has been published and the time for filing claims has passed. After receipt and evaluation of the claims filed, the Commission must file a report containing the

proposed distribution of the trust (less expenses incurred by the PSC), showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges thereon.
2. Assignments thereof.
3. Deductions therefrom by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount thereof, with interest at the weighted average prime rate charged by the bank of North Dakota since the date of the insolvency.
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date of the insolvency, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of insolvency.

N.D.C.C. § 60-04-09. If the trust fund is insufficient to redeem all claims in full, the fund must be shown prorated in the report in the manner the commission deems fair and equitable. Id.

37. The law provides only two classifications for contracts between a grain warehouse and a seller—credit-sale contracts and noncredit-sale contracts. There is no alternative form of contract. As set out in N.D.C.C. § 60-02-01(2):

“Credit-sale contract” means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.

Any contract that does not meet the above criteria is a noncredit-sale contract. N.D.C.C. § 60-02-01(4).

38. Section 60-02-19.1 sets out several conditions required of a credit-sale contract. These conditions include that all credit-sale contracts must be in writing and be consecutively numbered at the time of printing the contract, and must provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09. However, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of coverage.

A credit-sale contract must also be signed by both parties and executed in duplicate (with one copy retained by the warehouseman and the other delivered to the seller). N.D.C.C. § 60-02-19.1. In order to be a credit-sale contract, the foregoing conditions must be strictly followed. See Findings of Fact, Conclusions of Law, and Order, Public Service Comm'n v. Grabanski Grain, LLC, and Platte River Ins. Co., Northeast Judicial District Case No. 50-2011-CV-00029, at pp. 5-6 (copy attached as Exhibit A).

39. When there is a valid credit-sale contract, a person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if the warehouse becomes insolvent, the seller is not fully compensated, and the sale was after August 2, 2003. N.D.C.C. § 60-10-04; see also N.D.C.C. § 60-10-05 (providing that upon insolvency, the

credit-sale indemnity fund is available for meeting the licensee's obligation when the PSC is trustee). The amount payable from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars. N.D.C.C. § 60-10-06.

III. RECOMMENDATIONS

A. Status of Claims

40. There are essentially three types of claims filed in this case: 1. Claims by individual growers; 2. A claim by Bremer Bank; and 3. A contract claim by Fessenden Cooperative Association. The Estate of Brad Nelson, Brent Baldwin, Baldwin Farms, Inc., Duane Altendorf, Curt Amundson, Chuck Nelson, WJS Nelson, Nicholas E. Adams, and Ronald Adams have all provided sufficient documentation establishing the amount of grain each respectively delivered to Grand Forks Bean. The first step is to determine whether and which of their respective claims are credit-sale or noncredit-sale contracts. The Commission recommends all of these claims be considered noncredit-sale contracts.

41. There are specific statutory requirements in order for a contract to be considered a credit-sale contract. N.D.C.C. § 60-02-19.1. For various reasons, the individual grower claims do not meet all of the requirements necessary to be considered credit-sale contracts.

i. Estate of Brad Nelson

42. The Estate of Brad Nelson submitted a claim for \$54,313.20 plus interest from July 1, 2014. This claim is based on a quantity of 1,810.44 cwt of beans priced at \$30.00 per cwt. The Estate's claim includes a *Dry Bean Contract* dated October 16, 2012, signed by Grand Forks Bean. The signature for Brad Nelson is noted as "phone w/ Brad". The *Dry*

Bean Contract indicates Nelson agrees to deliver #1 pinto beans to Grand Forks Bean at the time of harvest. Grand Forks Bean agreed to pay “\$33.00 per cwt, clean basis, #1’s.” Payment was to be made 100% on December 31, 2013. Documentation submitted along with the claim supports the 1,810.44 cwt of beans were received by Grand Forks Bean on September 14, 2013, for which Brad Nelson has not been paid. Brad Nelson’s claim information was filed with the Court as Doc ID ## 43-44.

43. In addition to the information submitted by Brad Nelson, the Commission’s investigation disclosed a *Price Later Marketing Agreement* in the files of Grand Forks Bean. The *Price Later Marketing Agreement* appears to be dated September 6, 2013. There is a signature on the *Agreement* purporting to be by Brad Nelson. The *Agreement* contains the following terms:

1. The company [Grand Forks Bean Co., Inc.] will accept, to the extent of its plant capacity to handle them, U.S. No. 1 and U.S. No. 2 Pinto Beans with a moisture content not over 15% grown and delivered to it by grower. Upon delivery of the pinto beans to the company plant, a receiving ticket will be issued to the grower and the issuing of the ticket will thereupon transfer title of the pinto beans to the company.
2. The beans delivered will be priced before July 1, 2014. On those pintos on which to Grower Prices, the price will be the posted market price on the date of pricing.
3. The company reserves the right to withdraw from the market due to slow market conditions from time to time.
4. Checks for the pinto beans will be issued only on growers request.
5. Signing this agreement does not automatically put your beans under this Marketing agreement. It is necessary for you to notify the company at the time each truck is delivered.
6. [title warranty]
7. [non-assignability]

8. Service fee of \$.00329 per cwt applies.

There is a handwritten note on the *Agreement* stating "1,810.44 cwt". *Affidavit of Timothy Erdmann* ("Erdmann Aff.") at ¶ 6(a) & Ex. 1 (September 30, 2015).

44. The Commission recognizes there may be some dispute for this claim, as well as the others that will be discussed later, whether the agreements were actually signed or agreed to by the claimants. Regardless, the Commission recommends that neither the *Price Later Marketing Agreement* nor the *Dry Bean Contract* be considered a credit-sale contract because they do not meet all of the statutory requirements for a credit-sale contract. While there may be additional reasons not necessarily specified, the *Price Later Marketing Agreement* should not be considered a credit-sale contract because it does not indicate the date on which payment is to be made or a duration. N.D.C.C. § 60-02-19.1(4). Further, the *Price Later Marketing Agreement* does not provide a price per unit or basis of value. *Id.* at (4).
45. The *Dry Bean Contract* also does not include a duration of the agreement and does not include notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09. N.D.C.C. § 60-02-19.1(6), (7).
46. Further, N.D.C.C. § 60-02-19.1 requires credit-sale contracts to be "signed by both parties and executed in duplicate."

From the language of NDCC 60-02-19.1, the absence of a signature by both of the parties to the contract precludes it from otherwise constituting a credit-sale contract. The statutory language requires that a credit-sale contract be manifested by not only written form but by the signature of both parties. To conclude otherwise requires the Court to disregard what the legislature set out as the requirements to create an enforceable credit-sale contract. So, any claim manifested by a document not signed by both parties can never constitute a credit-sale contract regardless of the language in the unsigned document.

Grabanski Grain, at ¶ 19 (filed herewith). These requirements are not met for either the *Dry Bean Contract* or the *Price Later Marketing Agreement*.

47. Without all information satisfying the requirements of a credit-sale contract, it is not possible to administer indemnity payments from the credit-sale contract fund under the applicable law as the amount of payments are based on the actual amount owed to a person in accordance with the specific, required terms of the credit-sale contract.
48. Accordingly, the Commission recommends the claim by the estate of Brad Nelson be considered a valid noncredit-sale claim for 1,810.44 cwt.

ii. **Brent Baldwin**

49. Brent Baldwin has submitted a claim based upon a quantity of 2,220.36 cwt of beans for the market price prevailing on the date of insolvency with interest since date of insolvency. Brent Baldwin's claim includes two *Dry Bean Contracts* dated September 6, 2013, along with documentation supporting 2,220.35 cwt claimed. The relevant terms of the *Dry Bean Contracts* are all the same as discussed above with the Estate of Brad Nelson's claim. There are differences in the price, and the *Dry Bean Contract* no. 1002 indicates the payment shall be made "at time of sale." The *Dry Bean Contracts* are signed by Grand Forks Bean and "per phone with Brent". Brent Baldwin's claim information was filed with the Court as Doc ID ## 46-49.
50. Baldwin also provided a copy of a *Price Later Marketing Agreement* which he asserts was never signed or agreed to by him, but was obtained by him from the Commission during its investigation. The *Price Later Marketing Agreement* contains the same terms described above except it is noted to have a \$.00493 service charge. Id.

51. For the reasons explained in the claim of the Estate of Brad Nelson, the Commission recommends the claim by Brent Baldwin be considered a valid noncredit-sale claim for 2,220.35 cwt.

iii. Baldwin Farms, Inc.

52. Baldwin Farms, Inc. has submitted a claim based upon a quantity of 1,005.71 cwt of beans for the market price prevailing on the date of insolvency with interest since date of insolvency. Baldwin Farms' claim includes documentations supporting 1,005.72 cwt. Baldwin Farms' claim information was filed with the Court as Doc ID ## 50-53.

53. Baldwin Farms also provided a copy of a *Price Later Marketing Agreement* which it asserts was never signed or agreed to, but was obtained by him from the Commission during its investigation. The *Price Later Marketing Agreement* contains the same terms described above with a \$.00493 service charge. Id.

54. For the same reasons explained above with respect to the *Price Later Marketing Agreement*, the Commission recommends the claim by Baldwin Farms be considered a valid noncredit-sale claim for 1,005.72 cwt.

iv. Duane Altendorf

55. Duane Altendorf has submitted a claim based upon a quantity of 2,408.22 cwt of beans for the market price prevailing on the date of insolvency with interest since date of insolvency. Altendorf's claim includes documentations supporting the cwt claimed. Duane Altendorf's claim information was filed with the Court as Doc ID ## 54-57.

56. Altendorf also provided a copy of a *Price Later Marketing Agreement* which he asserts was never signed or agreed to, but was obtained by him from the Commission during its

investigation. The *Price Later Marketing Agreement* contains the same terms described above with a \$.00329 service charge.

57. For the same reasons explained above with respect to the *Price Later Marketing Agreement*, the Commission recommends the claim by Altendorf be considered a valid noncredit-sale claim for 2,408.22 cwt.

v. **Curt Amundson**

58. Curt Amundson has submitted a claim for \$363,848.40 with interest after July 1, 2014, based upon a quantity of 12,128.28 cwt of beans at \$30.00 per cwt. Amundson acknowledges an offset should be applied in the amount of \$42,753.00 arising from a purchase of seed by him from Grand Forks Bean. Amundson's claim includes documentation supporting the cwt claimed. Amundson's claim information was filed with the Court as Doc ID ## 59-60.
59. Amundson also provided a copy of a *Price Later Marketing Agreement* dated September 5, 2013. The *Price Later Marketing Agreement* contains the same terms described above with a \$.00493 service charge. Id.
60. For the same reasons explained above with respect to the *Price Later Marketing Agreement*, the Commission recommends the claim by Amundson be considered a valid noncredit-sale claim for 12,128.28 cwt less the identified offset for the seed purchase.
61. The Commission recommends the amount of the offset applied to Amundson's claim be \$51,312.15. In a search of Grand Forks Bean's records, an invoice (No. 1221) was found indicating the purchase of seed resulting in the offset. The amount of the invoice is \$55,160.56, which includes \$51,312.15 for Pinto Seed and \$3,848.41 for interest. No additional documentation regarding the offset has been provided by Amundson or located

in Grand Forks Bean's records. Absent any documentation showing the difference between what Amundson asserts is the correct amount of the offset and what is reflected in Grand Forks Bean's records, the Commission recommends the amount of the offset approved be \$51,312.15 as reflected as the amount of seed sold to Amundson in Grand Forks Bean's records. See Erdmann Aff. at ¶ 6(e) & Ex. 2.

vi. **Chuck Nelson**

62. Chuck Nelson has submitted a claim in the amount of \$39,452.40 with interest after July 1, 2014, based upon a quantity of 1,315.08 cwt of beans based on \$30.00 per cwt. Chuck Nelson's claim includes a *Dry Bean Contract* dated October 16, 2012, along with a scale ticket summary supporting the 1,315.08 cwt claimed. The relevant terms of the *Dry Bean Contract* are all the same as discussed above. The price listed is \$33.00 per cwt. The *Dry Bean Contract* is signed by Grand Forks Bean and "phone w/ Chuck" as well as "Nelson Farms by Charles B. Nelson." Chuck Nelson's claim information was filed with the Court as Doc ID ## 64-66.
63. Chuck Nelson also submitted a *Price Later Marketing Agreement*. The *Price Later Marketing Agreement* contains the same terms described above except it is noted to have a \$.00493 service charge.
64. For the reasons explained above with respect to the *Dry Bean Contract* and the *Price Later Marketing Agreement*, the Commission recommends the claim by Chuck Nelson be considered a valid noncredit-sale claim for 1,315.08 cwt.

vii. **WJS Nelson**

65. WJS Nelson has submitted a claim in the amount of \$50,250.00 with interest after April, 2015, based upon a quantity of 1,675 cwt of beans based on \$30.00 per cwt. WJS

Nelson's claim includes three scale tickets supporting a net of 1,600.91 cwt. The price listed is \$30.00 per cwt.

66. There were no contracts provided by WJS Nelson, and none were found in the Commission's investigation. Accordingly, Commission recommends the claim by WJS Nelson be considered a valid noncredit-sale claim for 1,600.91 cwt. WJS Nelson's claim information was filed with the Court as Doc ID ## 62-63.

viii. Nicholas E. Adams

67. Nicholas E. Adams has submitted a claim in the amount of \$29,982.15 with interest after September 15, 2012, based upon a quantity of 908.55 cwt of beans based on \$33.00 per cwt. Nicholas E. Adams' claim includes a *Price Later Marketing Agreement* dated November 27, 2013, along with a scale ticket summary supporting the 908.55 cwt claimed. Nicholas E. Adams asserts the *Price Later Marketing Agreement* was not signed or authorized to be signed by him, but was obtained from the Commission. Nicholas Adams's claim information was filed with the Court as Doc ID ## 67-68. Scale tickets were located in Grand Forks Bean's files supporting the 908.55 cwt claimed. *Erdmann Aff.* at ¶ 6(h) & Ex. 4.
68. The *Price Later Marketing Agreement* contains the same terms described above with a \$.00493 service charge.
69. For the reasons explained above with respect to the *Price Later Marketing Agreement*, the Commission recommends the claim by Nicholas E. Adams be considered a valid noncredit-sale claim for 908.55 cwt.

ix. **Ronald E. Adams**

70. Ronald E. Adams has submitted a claim in the total amount of \$357,847.73 plus interest after March 29, 2012 on 6,232.33 cwt and after December 31, 2012 on 1,545.91 cwt. Ronald E. Adams submitted scale ticket summaries and scale tickets to support his claim. The Commission's investigation revealed two *Price Later Marketing Agreements*, each dated November 27, 2013. Ronald E. Adams asserts he did not sign or authorize his signature on the *Agreements*. Ronald Adams's claim information was filed with the Court as Doc ID ## 69-73. Scale tickets were located in Grand Forks Bean's files supporting the 7,778.24 cwt claimed. *Erdmann Aff.* at ¶ 6(h) & Ex. 5.
71. The *Price Later Marketing Agreements* contain the same terms in the other agreements discussed and have a \$.00493 service charge.
72. For the reasons explained previously regarding the *Price Later Marketing Agreement*, the Commission recommends the claim by Ronald E. Adams be considered a valid noncredit-sale claim for 7,778.24 cwt.

x. **Bremer Bank, National Association**

73. Bremer Bank National Association submitted a claim in the amount of \$893,614.54 plus interest based upon security interests arising from *Commercial Security Agreements*, *UCC Financing Statements*, and a *Loan Workout Agreement*. Bremer Bank asserts it is entitled to the first distribution, prior to distribution to any other claimant, from the trust assets. Alternatively, it asserts it is entitled to second distribution, following distribution to valid receipt holders. Bremer Bank's claim information was filed with the Court as Doc ID ## 31-41.

74. The Commission recommends the valid receiptholders have priority over Bremer Bank's claim. Bremer Bank's claim is not as a valid receiptholder because it did not deliver grain to Grand Forks Bean. Further, any security interest the bank may have in Grand Forks Bean's inventory is secondary to the valid receiptholders. See N.D.C.C. § 60-02-25.1 (grain contained in a warehouse is subject to a first priority lien in favor of outstanding receiptholders storing, selling, or depositing grain in the warehouse); Public Service Comm. v. Valley Bean Farmers BeanAss'n., 365 N.W.2d 528, 536-37 (N.D. 1985). The lien is "preferred to any lien or security interest in favor of any creditor of the warehouseman regardless of the time when the creditor's lien or security interest attached to the grain." N.D.C.C. § 60-02-25.1. Further, the Bank's asserted interest does not constitute a "receipt" as that term is defined in N.D.C.C. §§ 60-02-01(7) or 60-04-01(6). The Commission recommends the Court determine the Bank does not have a valid claim under N.D.C.C. ch. 60-02 or 60-04.

xi. Fessenden Cooperative Association

75. Fessenden Cooperative Association ("FCA") submitted a claim in the amount of \$270,000 plus interest from date payment was to be made based upon alleged breach of two contracts for Grand Forks Bean to purchase pinto beans from FCA. FCA's claim information was filed with the Court as Doc ID ## 82-85.

76. The Commission recommends FCA's claim be denied in this proceeding. Its asserted claim does not constitute a "receipt" as that term is defined in N.D.C.C. §§ 60-02-01(7) or 60-04-01(6). The Commission recommends the Court determine FCA does not have a valid claim under N.D.C.C. ch. 60-02 or 60-04.

B. Insolvency Date

77. Pursuant to N.D.C.C. § 60-04-02, a licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored. Establishing the date of insolvency is important to determine the price to be paid for outstanding claims and the interest. The Commission recommends the date of insolvency be established as December 19, 2014. There is no documentation in the claims filed or other information received and reviewed by the Commission that Grand Forks Bean refused, neglected, or was unable upon proper demand to make payment for grain purchased or marketed for redelivery or payment for grain stored before this date. On December 19, 2014, Nick Adams and Ron Adams communicated to the PSC, both indicating Grand Forks Bean has “not been able to market our beans or pays us for them.” *Richter Aff.* at ¶ 11 (Doc ID # 4). The amount of the claims in this case involves a total cwt of 31,175.79. When the beans were sold to Central Valley Coop., there was 36,022.80 gross and 33,439.68 net cwt, along with pinto bean splits of 834.20 gross and 651.07 net cwt. Accordingly, it appears Grand Forks Bean had enough beans to make redelivery of the beans stored, but refused, neglected or was unable to do so as of December 19, 2014. Prior to that date, there is no documentation that would allow the PSC to provide a basis for any other “date of insolvency.” As a result, the PSC recommends December 19, 2014, be considered the date of insolvency. Having recommended a date of insolvency, the next consideration is the price to be applied.

C. Price

78. As the valid claims in this case all arise from scale tickets, the amount of each claim is “based upon the market price prevailing on the date of the insolvency, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.” N.D.C.C. § 60-04-09. As indicated above, the recommended date of insolvency is December 19, 2014. The Commission recommends the Court order that the market price prevailing on the date of insolvency is \$23.00 per cwt. This amount is based on the United States Department of Agriculture – Colorado Department of Ag Market News as of December 16, 2014 (the closest pricing date to December 19). This is not a daily market and there were no prices listed during the holiday week, which included December 19. The bean price was also \$23.00 at the next market report on January 6, 2015. *Erdmann Aff.* at ¶ 7 & Ex. 6.
79. Grain asset proceeds are sufficient to pay each valid claimant 100% of each claim. The Commission recommends that the valid noncredit-sale claimants be paid 100% of the claims, plus interest from the date of insolvency. The Commission recommends that payment for each claim be made jointly payable to the claimant and any relevant valid lien holders at the time checks are issued. The final amounts to be paid will be determined once Court approval is received.
80. Under North Dakota Century Code section 60-04-09(5) interest may be paid in the case of scale tickets to claimants at the weighted average prime rate charged by the Bank of North Dakota since the date of insolvency. The Bank of North Dakota’s weighted average prime rate is 3.25% which has been in place since December 17, 2008. *Erdmann Aff.* at ¶ 8 & Ex. 7. When trust proceeds are distributed there will be funds available to

pay interest from the date of insolvency. Therefore, we propose to pay the claimant's interest on each respective valid claim from the date of insolvency.

81. Grand Forks Bean had a Storage, Handling, and Delivery Policy posted at its facility indicating a Storage Rate and Service Rate of \$0.15/cwt/month. *Erdmann Aff.* at ¶ 9 & Ex. 8. There are legal requirements for assessing storage in a case involving warehouse receipts. See N.D.C.C. §§ 60-02-11, 13, 16, 17. These sections address the requirements for storage charges in situations involving a warehouse receipt. There are no true warehouse receipts in this case and the Commission recommends the storage provisions relating to warehouse receipts be considered not applicable. Commission Staff has found no information or documentation other than the posted policy regarding storage. Pursuant to N.D.C.C. § 60-02-30, all storage contracts terminate for dry edible beans on April 30 of each year. If a public warehouseman does not notify a receipt holder by mail of an intention to terminate a storage contract as required, storage charges for the preceding twelve months are forfeited. N.D.C.C. § 60-02-30(4). Accordingly, the Commission recommends applying a storage rate of \$0.15/cwt/month from May 1, 2014, through December 18, 2014, for a total amount of storage charges on the 31,175.79 cwt of beans at issue of \$35,540.40.

82. An assessment at the rate of ten cents per cwt must be imposed upon all dry beans grown in this state, delivered into this state, or sold to a designated handler. N.D.C.C. § 4.1-06-12 ("edible bean promotion"). Therefore, this assessment totaling \$3,117.58 should be applied to the beans in this case as it would have applied upon the sale of the beans by Grand Forks Bean. *Erdmann Aff.* at ¶ 10.

83. As a result, the valid claim amounts total \$717,043.17 minus \$3,117.58 for the edible bean promotion, minus \$35,540.40 for storage charges, minus \$51,312.15 for the Amundson seed offset, for a value of \$627,073.04 plus interest of \$16,017.33 (interest through October 1, but which will continue to accumulate) as shown below and with additional detail in Exhibit 9 to the *Affidavit of Timothy Erdmann*.

	Claimant Name	CWT verified	Claim Amount Based on Prevailing Market Price on 12/19/14**
a.	Estate of Brad Nelson	1,810.44 cwt	\$ 39,395.17
b.	Brent Baldwin	2,220.35 cwt	\$ 48,314.82
c.	Baldwin Farms, Inc.	1,005.72 cwt	\$ 21,884.47
d.	Duane Altendorf	2,408.22 cwt	\$ 52,402.87
e.	Curt Amundson	12,128.28 cwt	\$ 212,599.22
f.	Chuck Nelson	1,315.08 cwt	\$ 28,616.14
g.	WJS Nelson	1,600.91 cwt	\$ 34,835.80
h.	Nicholas E. Adams	908.55 cwt	\$ 19,770.05
i.	Ronald E. Adams	7,778.24 cwt	\$ 169,254.50

**Claim amount after bean promotion and storage charges (and Amundson's seed offset in the amount of \$51,312.15) are deducted and before any interest is added as interest will continue to accumulate.

84. No proceeds from the credit-sale contract indemnity fund will be needed to meet the insolvent licensee's obligations because there are no holders of valid credit-sale contracts.

85. North Dakota Century Code section 60-04-09 provides that expenses incurred in administering the insolvency are reimbursable from the trust fund. The Commission recommends reimbursement for the expenses incurred for postage, publication, legal and miscellaneous expenses. The total amount incurred as of September 1 is \$6,912.30. *Richter Supp. Aff.* at ¶ 4 & Ex. 4. The Commission requests the final amount to be paid

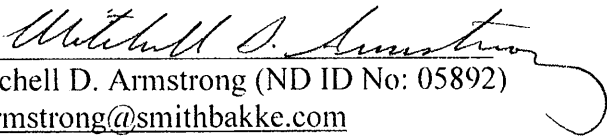
for expenses incurred administering the insolvency be determined following any hearing and final proceedings once Court approval is received.

86. Contemporaneously with the filing of this Report and Recommendation a motion to approve the Report and Recommendation, approve payments, and discharge Trustee has been filed with the North Dakota District Court located in Grand Forks County North Dakota. Any interested party may appear at the hearing to show cause why the Report and Recommendation should not be approved. The Court has scheduled a hearing on this matter for March 14-16, 2016, at 9:00 a.m., before the Honorable Jon J. Jensen, at the Grand Forks County Courthouse, 124 South 4th Street, Grand Forks, North Dakota 58201.

Wherefore the Commission asks the Court to:

87. Approve the Report and Recommendation of the Trustee.
88. Authorize the Commission to make payments of trust fund proceeds consistent with this Report and Recommendation to persons with valid claims for grain purchased via a noncredit-sale by Grand Forks Bean Company, Inc. at Grand Forks, North Dakota.
89. Authorize the Commission to make payment for fees, expenses, etc. in administering the insolvency in a final amount to be established upon Court approval.
90. Discharge the Public Service Commission, as Trustee, once trust fund assets have been distributed and all payments have been made.

Dated this 30th day of September, 2015.

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