

**15-1580**

SHELDON PETERS WOLFCHILD, ET AL

VS

REDWOOD COUNTY, ET AL

**AMICUS CURIAE BRIEF**

**RECEIVED**

**NOV 18 2015**

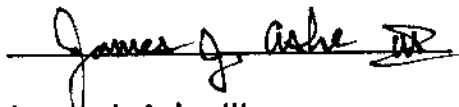
**U.S. COURT OF APPEALS  
EIGHTH CIRCUIT**

## TABLE OF CONTENTS

|  |       |
|--|-------|
| Motion for leave to file Out-of-Time Amicus Brief..... | i, ii |
| Table of Contents .....                                | iii   |
| Certificate of Compliance .....                        | iv    |
| Table of Authorities .....                             | v, vi |
| Brief, Exhibit A .....                                 | 1     |
| A. HISTORICAL BACKGROUND .....                         | 1     |
| B. ARGUMENT .....                                      | 6     |
| C. THE FEBRUARY ACT.....                               | 8     |
| D. THE MARCH ACT .....                                 | 9     |
| E. SUMMARY .....                                       | 16    |
| F. CONCLUSION .....                                    | 17    |

**CERTIFICATE OF COMPLIANCE**  
**WITH FED. R. APP. P. 32 (a)(7)**

The undersigned certifies that the Brief submitted herein contains 3,649 words and complies with the type and volume limitations of the Federal Rules of Appellate Procedure 32(a)(7). This Brief was prepared using a proportionally spaced typeface of 14-point. The word count is stated in reliance on Microsoft Word 2007, the word processing system used to prepare this Brief.

  
James J. Ashe III

## TABLE OF AUTHORITIES

### CASES

|   |     |
|---|-----|
| <i>Francis v. Francis</i> , 136 Mich., 288 .....                                    | 7   |
| <i>Golz v. Shinseki</i> , 590 F. 3d 1317, 1321 (Fed. Cir 2010).....                 | 8   |
| <i>Johnson v. McGehee</i> , 1 Ala., 186.....  | 7   |
| <i>Kennedy v. McCartney</i> , 4 Port., 141 .....                                    | 7   |
| <i>Stockton v. Williams</i> , 1 Dougl., 546 .....                                   | 7   |
| <i>U. S. v. Choctaw Nation</i> , 179 U.S., 494; 21 S. Ct., 149; 45 L. Ed., 291..... | 17  |
| <i>Wolfchild v. United States</i> , 559 F. 3d 1228 (Fed Cir. 2009) .....            | 4,5 |

### OTHER AUTHORITIES

|  |            |
|--|------------|
| <i>Act of February 16, 1863</i> .....                                | 1, passim  |
| <i>Act of March 3, 1863</i> .....                                    | 2, passim  |
| <i>Act of July 15, 1870 (41 Congress, Session II, Ch. 296)</i> ..... | 15, 16     |
| <i>Act of July 4, 1884</i> .....                                     | 10, passim |
| <i>Act of March 3, 1885</i> .....                                    | 10, passim |
| <i>Act of May 15, 1886</i> .....                                     | 11, passim |
| <i>Act of June 29, 1888</i> .....                                    | 4, passim  |
| <i>Act of March 2, 1889</i> .....                                    | 4, passim  |
| <i>Act of August 19, 1890</i> .....                                  | 4, passim  |

## **PUBLICATIONS**

|  |       |
|--|-------|
| <i>Kappler's Indian Affairs: Laws and Treaties. Vol 3, Laws. Indians .....</i> | 15    |
| <i>Censuses of 1886 and 1889 of Mdewakanton Sioux living in Minnesota..</i>    | 4, 15 |

## EXHIBIT A

### HISTORICAL BACKGROUND

One of my ancestors came from one of the original four bands of Sioux or Dakota Indians peacefully living along with white settlers during the 1800's in the territory of what later became the State of Minnesota. Because of promises unfulfilled by the treaty obligations with the United States, a conflict between the four bands of Sioux and white settlers erupted in 1862. A conflict, which saw several hundred white settlers and numerous Sioux and or Dakota Indians, killed. This conflict led to the largest mass hanging in the history of the United States. The citizens of Minnesota were so enraged with the Sioux that their wrath included bounties for the lives of any Sioux that remained in Minnesota. Their anger against the Sioux was such that Congress, in the public's interest, reacted in February of 1863 by banishing all bands of Sioux or any of them from occupying lands in the State of Minnesota ever again. The Act of Feb 1863 also resulted in the forfeiture of all monies and annuities owed the Sioux for lands ceded by them to the United States. The Feb Act of 1863 became historically known as the "Forfeiture" Act and has never been repealed.

The outrage of the public in the State of Minnesota towards all the Sioux was tempered towards a few. Some of the Sioux were found to have acted "meritoriously" on behalf of many of the white settlers. Some of the Sioux risked their very own lives and actively rescued and protected many of the white settlers during the 1862 conflict. Because of their actions they were hated by their own brethren and for some, that hatred still exists today. Because they could not live with their own brethren, Congress recognized that those few "meritorious" individuals should be rewarded for their actions. So in the public's interest a promise was made to provide for them. In that same Feb "Forfeiture" Act of 1863, a promise was made to reward those certain Sioux individuals with lands.

The 1862 Dakota conflict resulted in Congress passing two bills concerning the Sioux Bands of Indians in Minnesota. The first was in Feb of 1863 and it has been called the "Forfeiture Act" for it dealt with banning all Sioux from the State of Minnesota. The second bill in March of 1863 occurred two weeks later and dealt with the removal and relocation of all Sioux to areas outside the State of Minnesota. Both bills describe a promise of land to those Sioux found to have acted "meritoriously" towards the whites during the 1862 Conflict.

While banishing the four Bands of Sioux from the State of Minnesota, Congress also sought to address their needs and subsistence in the new lands outside the State of Minnesota. In March of 1863, Congress authorized and directed the President of the United States to relocate them to territories outside the limits of any State. The monies from the sale of their former reservation lands, which were forfeited by the Feb Act, were to be used to relocate them and provide for their subsistence. This was accomplished by the March Act of 1863.

While the March Act directed the Secretary of Interior to invest in lands for the four bands of Sioux and provide for their subsistence outside the State of Minnesota, it also included a proviso he do the same for those Sioux found to be "meritorious." Using the monies derived from the sale of the former Sioux reservation lands the March Act of 1863 made it legal for the Secretary to provide lands for those "meritorious" Sioux in the State of Minnesota. The March Act of 1863, thus effectively made an exception to the language of the Feb Act of 1863 that forfeited all rights of occupancy in that state to any of the Sioux. The March Act of 1863 made it lawful for the Secretary of the Interior to place those Sioux individuals, found to be "meritorious", on lands located in the State of Minnesota. No other group or band of Sioux had been given that right. That Act has not been



repealed.

For 12 years, in *Wolfchild I*, Mr. Erick Kaardal and his Law firm in representing those Plaintiffs, argued that the language in Section 9 of the Feb 1863 Act was "the" enabling statute which gave the Secretary of the Interior the authority to purchase certain lands in Minnesota for those individual Mdewakanton. For 12 years, Plaintiffs argued that those lands, the so-called 1886 lands, granted to the individuals from the two Mdewakanton Censuses of 1886 and 1889 in Minnesota, passed an inheritable and beneficial right for their use to the lineal descendants of those originally granted the lands. The Court of Appeals for the Federal Circuit, on appeal, stated that any land that might have been conveyed under the Feb statute would have created an inheritable and beneficial interest for those individuals and their heirs identified under that act; and thus on Appeal, the Appropriations of 1888-90 used to purchase those 1886 lands, became the focal point of the discussion in the first appeal of whether they by themselves CONVEYED AN INHERITABLE INTEREST to any lineal descendant of the original recipients of those particular appropriations.

The Feb and March Acts of 1863 are the two legislative policy acts passed

by Congress which are at the heart of this 12 year quest for justice in a case involving promises made almost 155 years ago. There are hundreds upon thousands of pages of court documents expressing legal theory, arguments, citations, past and present case law, etc., that has been introduced, studied, and discussed. The Wolfchild I Plaintiffs had nine rulings, two appeals, and a denied writ of certiorari in 12 years of litigation.

After 12 years of litigation, those plaintiffs failed to convince the Courts that there was an inheritable nexus between the Promise of the Feb Act of 1863 and the 1886 lands purchased with the appropriations of 1888-90. On appeal, to the Court of Appeals for the Federal Circuit (CAFC), those 1888-1890 Appropriations were found to be "*simply gratuitous*" appropriations; creating no money mandating duty on the part of the Secretary of Interior towards the individuals that those appropriations were to benefit. The Plaintiffs were left with the CAFC's opinion that the language in the Feb Act "authorizing" the Secretary of Interior to set apart lands, for those found to be meritorious, was too discretionary and insufficient to warrant a Trust relationship. On a petition by those plaintiffs to the United States Supreme Court for a writ of certiorari of the Court of Appeals for the Federal Circuit's ruling that the discretionary language in

the Feb 1863 Act imposed no money mandating duties or Trust responsibilities on the part of the Secretary of Interior over lands purchased from the “simple and gratuitous” general appropriations of 1888, 1889, and 1890, then United States Attorney General Elena Kagan, now an honorable justice of the U.S. Supreme Court, noted in her response to the petition that the March Act of 1863 was not at issue in that case. The U.S. Supreme Court subsequently denied the petition for writ. Because of the legal findings in the Feb Act of 1863 determining the Secretary of Interior’s discretionary authority, the promises of lands by Congress to a certain group of meritorious individuals have quite literally gone up in smoke.

The parties in this suit now find themselves before this Court on multiple issues prior to addressing a simple question: Were the promises of land made almost 155 years ago to a certain group of “meritorious” individuals and their heirs realized?

## ARGUMENT

In 1865, land was identified in Minnesota and arguably set apart for a certain group of Sioux Indians. Because of hostilities at the time, those Sioux were unable to occupy those lands. These lands are now at issue on appeal before

this court.

Plaintiffs in this suit are attempting to convince this court that there is an inheritable connection between the language of the Feb Act of 1863 in section 9 and the land, which was "identified" and thus set apart in 1865. Plaintiffs make an excellent argument in their appeal that the 1865 lands were "identified and acknowledged" by the Secretary of Interior; thus setting them apart and completing the conveyance of those lands and satisfying the promise of Section 9 of the Feb 1863 Act; fulfilling the Court of Appeals for the Federal Circuit's statement that any lands conveyed under that statute would have created an inheritable and beneficial interest to those for whom the land was conveyed and their heirs. If one is to believe that it was the Feb Act of 1863 authorizing the Secretary of Interior to set apart lands in Minnesota for those individual Indians found to have been "meritorious," then one would have to acknowledge that the...  
***" title is complete when the location is made and relates back to the date of the treaty."*** [(Johnson v. McGehee, 1 Ala., 186; Kennedy v. McCartney, 4 Port., 141; Francis v. Francis, 136 Mich., 288; Stockton v. Williams, 1 Dougl., 546) ; INDIAN AFFAIRS: LAWS AND TREATIES. Vol. 3, Laws]

Although, I believe the language in the Feb Act of 1863 would clearly establish a beneficial and inheritable right to the individuals and their descendants in whom lands were to be conveyed under that act, as the CAFC itself admits and Plaintiffs have argued, I see a flaw in that Act and two valid reasons why Plaintiffs in this lawsuit cannot claim the 1865 lands at issue.

### **THE FEBRUARY ACT**

The 1865 Lands are located in the State of Minnesota. The Feb 1863 Act was a "Forfeiture" Act. Whether intentionally or not Congress' promise of land for those individual Sioux in Section 9 of the Feb Act of 1863 is silent as to whether any land promised by that act could or would be LOCATED IN THE STATE OF MINNESOTA. Why? How can an act of Congress removing all the Bands of Sioux or any of them and forfeiting all their rights of occupancy within the State of Minnesota, without language to the contrary, authorize in that same act a award of land in that State to any of the Sioux? *"It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant."* Golz v.Shinseki, 590 F.3d 1317, 1321 (Fed. Cir 2010).

Incredible or not, or too obvious to be believable, that oversight in language or lack of it, seems to offer no authority for the Secretary to set apart any lands to any of the Sioux in the State of Minnesota under that Act, and seems to be a valid reason to deny a claim to land under the Feb Act.

### **THE MARCH ACT**

The Mdewakanton that remained in Minnesota suffered after the 1862 Dakota conflict and the passage of the Feb 1863 "Forfeiture" Act. Many were destitute and hunted, with bounties being paid for their deaths. The promise of land in Section 9 of the Feb 1863 Act never happened. The land set aside for them in 1865 never materialized. Meanwhile, the March Act of 1863 instructing the President to relocate the four Sioux Bands outside the limits of any State--progressed. Through several treaties all four Bands of Sioux, including the Mdewakanton Band, were relocated to territories outside the limits of the then existing States.

By the late 1870's all four Bands of Sioux had reservations on lands in the States of Nebraska, South and North Dakota. None of the four Bands of Sioux remained in Minnesota. Only a few individuals from the Mdewakanton Band

were recognized as having remained in Minnesota.

The government's attorneys noted in "Wolfchild I" that beginning in 1884 Congress passed several omnibus appropriations to aid in the subsistence and needs of the Mdewakanton band of Sioux living in Minnesota. Even the Court of Appeals for the Federal Circuit recognized that several "simple gratuitous" appropriations authorized by Congress through the annual general appropriation bills entitled: APPROPRIATIONS FOR THE CURRENT AND CONTIGENT EXPENSES OF THE INDIAN DEPARTMENT was used to aid the Mdewakanton band living in Minnesota for their subsistence.

The 1885 general appropriation bill for the Mdewakanton living in Minnesota included legislative language authorizing the Secretary of Interior to disburse CASH to the Mdewakanton for their subsistence. This legislative language in a general appropriations bill although unusual was necessary because the March Act of 1863 in Section 5 strictly prohibited the SOI from dispensing cash:

***Sec. 5 (March Act 1863) "...but no portion of said appropriations shall be paid in money to said Indians."***

The 1885 and 1886 general appropriations authorize someone to teach and instruct the Mdewakanton living in Minnesota, agriculture and farming. They too were authorized by the March Act:

***Section 4 (March Act 1863) "And be it further enacted, That the money arising from said sale shall be invested by the Secretary of Interior for the benefit of said Indians..., in the establishing them in agricultural pursuits: ..."***

Monies from these early appropriations of 1884, 1885, and 1886 were used for the purchase of lands in Minnesota and given to the Mdewakanton in fee simple. These lands were sold by some of the Mdewakanton prompting the Secretary of the Interior to change his policy on the distribution of lands to the loyal Mdewakanton. Because of the intentions of Congress to reward them and their heirs forever, as described by the language found in the Feb Act, the Secretary found it necessary to hold and then assign lands to the Mdewakanton as required and directed by Congress in the March Act. Quoting both acts respectively:

***Section 9 (Feb Act 1863) "... The land so set apart ..., but shall be an inheritance to said Indians and their heirs forever."***



***Section 4 (March Act 1863) "... : Provided, That it shall be lawful for said Secretary to locate any meritorious individual Indian of said bands, ...upon said lands ... , to be held by such tenure as is or may be provided by law: ... "***

The legislative policy act authorizing these annual appropriations was the March 1863 Act. Additionally, the March Act of 1863 instructed the President of the United States to relocate all the Sioux Bands, including the Mdewakanton Band, to areas outside the limits of any existing State:

***March Act 1863) "..., That the President is authorized and hereby directed to assign to and set apart for the Sisseton, Wahpaton, Medawakanton, and Wahpakoota bands of Sioux Indians a tract of unoccupied land outside the limits of any state, ..."*** He did.

The March Act of 1863 in Section 4, instructed the Secretary of Interior to purchase lands for the said Indians: the four Sioux Bands; provided he did so as well for those found to be "meritorious", assigning to them lands in Minnesota:

***Section 4 (March Act 1863) "..., That the money arising from said sale shall be invested by the Secretary of the Interior for the benefit of said Indians in their new homes, ...: Provided, That it shall be lawful for said Secretary to locate any meritorious individual Indian of said bands, who exerted himself to save the lives of the whites in the late massacre, upon said lands on which the improvements are situated, assigning the same to him ..."*** He did.

The March Act of 1863 instructed the Secretary to assist the said Indians in advancing themselves in agricultural and mechanical pursuits:

*March Act 1863) "And be it further enacted, That the money to be annually appropriated for the benefit of the said Indians shall be expended in such manner as will, in the judgment of the Secretary of the Interior, best advance the said Indians in agricultural and mechanical pursuits, and enable them to sustain themselves without the aid of the government;..."* He did.

The March Act of 1863 in Section 5 describes the "fiduciary and ministerial" duties of the SOI and his use of the annual appropriations for the benefit of the said Indians; the four Bands of Sioux and their "meritorious" individuals:

*Section 5 (March Act 1863) "..., That the money to be annually appropriated for the benefit of the said Indians shall be expended in such manner as will, in the judgment of the Secretary of the Interior, best advance the said Indians in agricultural and mechanical pursuits, and enable them to sustain themselves without the aid of the government..."* It was expended, and:

*"They shall also be subject to such Rules and regulations for their government as the Secretary may prescribe; ..."* They were.

The March Act of 1863 in Section 5 required the Secretary to make provisions for the education of the said Indians and the money provided by the annual appropriation of 1888 directed that a schoolhouse be erected:

*The Secretary of the Interior shall also make reasonable provision for the education of said Indians, according to their capacity and the means at his command.*” He did.

Additionally, the March Act of 1863 subjected the four bands of Sioux AND those found to be “meritorious” to federal and state laws:

*Section 5 (March Act 1863) “...Said Indians shall be subject to the laws of the United States, and to the criminal laws of the “STATE” or territory in which they may happen to reside.”* They were.

Because of the language in the same act with instructions to the President to assign to and set apart for the four bands of Sioux Indians *lands outside the limits of any state* subject to the *criminal laws of the territory*, one can infer that Congress implies that those found to be meritorious are the said Indians subject to the criminal laws of the “STATE”. Only those Indians found to be meritorious were authorized to be placed upon any lands within a state. We now know them to be the former members of the Mdewakanton band identified by the censuses of 1886 & 1889 as living in Minnesota.

Clearly, it was the intent of Congress to reward and provide for those

individuals found to be “meritorious” as described by both the Feb and March Acts of 1863 and each act promised lands for them. Yet, only the March Act made it lawful for the Secretary to place them on lands in Minnesota.

In 1870 Congress passed an Act, which amended Section 4 of the March Act of 1863 instructing that monies from the sale of the former Sioux Lands in Minnesota were to be spent in a more equitable fashion for each of the bands of Sioux, including any of their former members found to be “meritorious”:

***Section 7 (Act of July 15, 1870); (41 Congress, Session II, Ch. 296) “And be it further enacted, That the act approved March 3, 1863, entitled “An act for the removal of the Sisseton, Wahpeton, Medawakanton, and Wapakoota bands of Sioux or Dakota Indians, and for the disposition of their lands in Minnesota and Dakota,” be so amended as to make the proceeds of the sale of the reservations in said act ordered to be sold applicable alike to all the reservations upon which Medawakanton, and Wapakoota and Sisseton and Wahpeton have been or may hereafter be located.***

The March Act of 1863, a Legislative Policy Act, created reservations for the four Bands of Sioux. It also created a Reserve for the former members of the Mdewakanton Band; those Mdewakanton Sioux living in Minnesota and identified by the censuses of 1886 and 1889:

Kappler's Compilation of INDIAN AFFAIRS: LAWS AND TREATIES, VOL. I, LAWS, PART III *Executive Orders Relative to Indian Reserves on page 852 show an Mdewakanton Reserve, in Minnesota, established by purchase. [In Leech Lake Agency; occupied by Mdewakanton Sioux; area 1 1/4 miles; established by purchase; see acts of July 4, 1884, March 3, 1885, May 15, 1886, June 29, 1888, March 2, 1889, and August 19, 1890].*

## SUMMARY

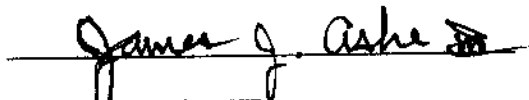
The intent to comply with the promises of the Feb Act of 1863 and the resulting failure to occupy the 1865 lands due to the historical events of the time lead the Secretary of Interior to offer alternative lands under the Congressional language and direction of the March Act of 1863, albeit some twenty years later. The 1886 lands were purchased, then offered, then accepted and occupied; administered under and with the authority of the March Act of Congress, 1863. The lands were called the 1886 lands and the individuals occupying them were individuals from two censuses: the 1886 and the 1889, Censuses of Mdewakanton Sioux Indians living in the State of Minnesota. The Secretary of Interior, as authorized by Congress, lawfully purchased and administered those lands according to the March Act of 1863.

## CONCLUSION

This lawsuit should be dismissed against the defendants: the private landowners, the cities and municipalities, the Lower Sioux Indian Community, and the Church, for those 1865 lands because: 1) the February Act of 1863 gave no authority to the Secretary to purchase lands in Minnesota to any of the Sioux and even if it did, 2) alternative lands were offered and accepted by the individuals of the Mdewakanton band, the 1886 lands.

Plaintiffs are estopped from claiming any other lands:

*(A tribe is estopped to claim any lands ceded to them by a treaty which describes boundaries including lands not then within the limits of the United States, where by a subsequent treaty and grant, accepted by them without objection, they have received lands identical with those ceded by the earlier treaty, so far as such lands lay within the limits of the United States. U.S. v Choctaw Nation, 179 U.S., 494; 21 S. Ct., 149; 45 L. Ed., 291.)*

  
James J. Ashe III  
1819 Shepherd Dr.  
Paso Robles, CA. 93446  
jasheiii@sbcglobal.net

## **CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2015, I filed via e-Mail, the foregoing Motion for Leave to file an Out-of-Time Amicus Curiae Brief (with the proposed Amicus Brief as an attached exhibit) to the following counsels of record:

### **Attorneys for Plaintiffs**

#### **MOHRMAN & KAARKAL, P.A.**

Erick G. Kaardal (A.R.#0229647)  
James V.F. Dickey (A.R.#393613)  
150 South 5<sup>th</sup> Street, Suite 3100  
Minneapolis, MN 55402  
Phone: 612-341-1074  
Fax: 612-341-1076  
[kaardal@mklaw.com](mailto:kaardal@mklaw.com)

### **Attorneys for Defendants Redwood County, Renville County, Sibley County, Paxton Township, Sherman Township, Honner Township, Birch Cooley Township and Moltke Township**

#### **JARDINE LOGAN AND O'BRIEN, PLLP**

Jessica E. Schwie (A.R.#296880)  
Nicholas Matchen (A.R.#396280)  
8519 Eagle Point Boulevard, Suite 100  
Lake Elmo, MN 55042  
Phone: 651-290-6500  
Fax: 651-223-5070  
[jschwie@jlolaw.com](mailto:jschwie@jlolaw.com)  
[Nmatchen@jlolaw.com](mailto:Nmatchen@jlolaw.com)

### **Co-counsel for Defendant Renville County**

Glen Jacobsen (A.R.#186004)  
105 5<sup>th</sup> St.  
Olivia, MN 56277  
Phone: 320-523-2661  
Fax: 320-523-2382  
[Glen\\_J@co.renville.mn.us](mailto:Glen_J@co.renville.mn.us)

Attorney for Edward Gaasch

**RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP**

Zach Peterson  
One Court Street  
P.O. Box 1030  
605-225-2743  
Aberdeen, SD 57401  
[zpeterson@rwwsh.com](mailto:zpeterson@rwwsh.com)

Attorneys for Defendant Lower Sioux Indian Community

**THE JACOBSON LAW GROUP**

JOSEPH F. HALLORAN (Minn. 244132)  
MARY B. MAGNUSON (Minn. 160106)  
MICHAEL L. MURPHY (Minn. 0394879)  
180 East Fifth Street, Suite 940  
Saint Paul, Minnesota 55101  
Phone: 651-644-4710  
Fax: 651-644-5904  
[jhalloran@thejacobsonlawgroup.com](mailto:jhalloran@thejacobsonlawgroup.com)

Attorneys for Defendant Episcopal Diocese of Minnesota

**MCGRANN SHEA CARNIVAL STRAUGHN & LAMB, CHTD.**

COERY J. AYLING (A.R.#157466)  
800 Nicollet Mall; Suite 2600  
Minneapolis, MN 55402  
Phone: 612-338-2525  
Fax: 612-339-2386  
[cja@mcgrannshea.com](mailto:cja@mcgrannshea.com)

Attorneys for Landowner Defendants Janie K. Crooks, Rockford L. Crooks,  
Eugene A. Engstrom, Alice Goeltz, Francis Goeltz, John Goeltz, John  
Goeltz III, Nancy S. Hansen, Patrick T. Hansen, Dawn R. Helmer, Steven R.  
Helmer, Cynthia Johnson, Allen J. Kokesch, Jacalyn S. Kokesch, Kelly M.  
Lipinski, Amy M. Lund, Chad M. Lund, Larry Lussenhop, Michael R.



Rasmussen

**HKM, P.A.**

MICHELLE D. CHRISTENSEN (A.R.#023476X)

30 East 7<sup>th</sup> Street, Suite 3200

St. Paul, MN 55101

Phone: 651-227-9411

Fax: 651-223-5199

[christensen@hkmlawgroup.com](mailto:christensen@hkmlawgroup.com)

Attorneys for Landowner Defendants Julie Anna Guggisberg, Dale R. Hanna, Nancy Hanna, Jon Lussenhop, Lori A. Rebstock, Robert D. Rebstock, John C. Simmons, and Mary J. Simmons

**DUNLAP & SEEGER, P.A.**

KEN D. SCHUELER (A.R.#190378)

JENNIFER PETERSON (A.R.#0392956)

ROBERT G BENNER (#227420)

30 3<sup>rd</sup> Street SE, Suite 400

P.O. Box 549

Rochester, MN 55903

Phone: 507-288-9111

Fax: 507-288-9342

[kschueler@dunlaplaw.com](mailto:kschueler@dunlaplaw.com)

Co-Attorneys for Landowner Defendants Dennis A. Ausland and Michelle D. Ausland, Lyle Black Living Trust, Kim M. Cunningham, Scott A. Olafson and Kimberly A. Olafson, John H. Reynolds and Jeanne A. Reynolds, Allen J. Kokesch and Jacalyn S. Kokesch, Elmer C. Dahms and Barbara L. Dahms, Prouty Properties, LLC, Thomas J. Heiling, Paul W. Schroeder and Karen J. Schroeder, John Hogan, Bruce Robert Black, Lila L. Black, Douglas Scherer and Brenda Scherer, Charles Case, Enid Guggisberg, et. al., Marlene A. Platt Revocable Living Trust, William Schmidt and Norma Schmidt, Simmons Valley Trust, Willard Scherer and Eugenie Scherer, Henry G. O'Neil and Judith A. O'Neil, Lee H. Guggisberg Trust, Harold Guggisberg, Julie Anna Guggisberg and Kenneth Larsen

**BEISEL & DUNLEVY, P.A.**

BRADLEY N. BEISEL (A.R.#6191)

DAVID J. KRCO (A.R.#0389382)

730 2<sup>nd</sup> Avenue South, Suite 282

Minneapolis, MN 55402

Phone: 612-436-2222

[bradb@bdmnlaw.com](mailto:bradb@bdmnlaw.com)

**STEFFENS & RASMUSSEN**

LEIF E. RASMUSSEN (A.R.#204006)

465 Southdale Office Centre

6600 France Avenue South

Edina, MN 55435

Phone: 952-920-2209

[leif@steffensandrasmussen.com](mailto:leif@steffensandrasmussen.com)

Attorneys for Landowner Defendants Barb and Al Dahms, Mel and Kerry Maddock, Charles Case, Tim and Therese Kerkhoff, and Brent Prouty.

**FAEGRE BAKER DANIELS, LLP**

RICHARD A. DUNCAN (A.R.#192983)

MICHELLE E. WEINBERG (A.R.#0388771)

CHRISTIANA M. MARTENSON (A.R.#0395513)

90 South Seventh Street

Minneapolis, MN

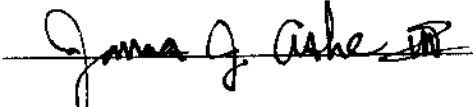
Phone: 612-766-7729

Fax: 612-766-1600

[Richard.Duncan@faegrebd.com](mailto:Richard.Duncan@faegrebd.com)

I further certify that on November 16<sup>th</sup>, 2015, I caused the above Motion for Leave to File Amicus Curiae Brief (with the proposed Amicus Brief as an attached exhibit) to be mailed by first class mail, postage paid, to the following participant party:

Allan Dean Eller  
33991 Noble Avenue  
Redwood Falls, MN 56283



James J. Ashe III  
1819 Shepherd Dr.  
Paso Robles, CA. 93446  
e-mail: [jasheiii@sbcglobal.net](mailto:jasheiii@sbcglobal.net)