

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) [AO]  
 ) Docket No. 15-0071  
 )  
Milk in California )  
 )

VOLUME V

TRANSCRIPT OF PROCEEDINGS

September 28, 2015

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Milk in California )  
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE  
JILL S. CLIFTON

Monday, September 28, 2015  
9:03 a.m.

Clovis Veterans Memorial District  
808 4th Street  
Clovis, California 93613

TRANSCRIPT OF PROCEEDINGS  
VOLUME 5

Reported by:  
Shelly A. Davis, CSR, RPR  
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MONDAY, SEPTEMBER 28, 2015, 9:03 A.M.

CLOVIS, CALIFORNIA

P R O C E E D I N G S

JUDGE CLIFTON: We're back on record. It is September 28, 2015. It's a Monday. It's 9:03 in the morning. We're in Clovis, California. My name is Jill Clifton. I'm the United States Administrative Law Judge who is assigned to this hearing to take in evidence. There are two kinds of evidence, testimony and exhibits. We've already made good progress.

Last week we had four days of work, and we heard USDA employees' testimony, there were six of those, and then we began with the first witness for the proponents of Proposal Number 1. We also last week took opening statements, and one of the things we'll do today is resume that process for opening statement for the last two proposals.

I'd like, before we go any further, to take appearances of those who are participating. I'd like to begin, please, with those representatives of the United States Department of Agriculture. I am one of those, and I'd like the others now to line up at the podium to introduce themselves and spell their name. We're in the

1 new week here. I assume there are people perhaps  
2 listening in on the audio feed who were not  
3 participating last week. So begin anew, if you will.

4 MS. MAY: Good morning. Laurel May.  
5 L-A-U-R-E-L. M-A-Y. I'm a Marketing Specialist with  
6 USDA Dairy Programs.

7 MR. RICHMOND: Good morning. William Richmond  
8 also with USDA AMS. W-I-L-L-I-A-M. R-I-C-H-M-O-N-D.  
9 Thanks.

10 MR. CARMAN: Good morning. Clifford Carman.  
11 C-A-R-M-A-N. Assistant to the Deputy Administrator,  
12 Dairy Programs, USDA.

13 MS. FRISIUS: Good morning. Meredith Frisius.  
14 M-E-R-E-D-I-T-H. F-R-I-S-I-U-S. And I am a Dairy  
15 Products Marketing Specialist with the USDA Dairy  
16 Programs.

17 MR. NIERAN: Good morning. Jason Nieran.  
18 J-A-S-O-N. N-I-E-R-A-N. I'm Assistant Market  
19 Administrator for Federal Order 5, and I'm on detail  
20 with AMS Dairy Programs.

21 MR. SCHAEFER: Henry Schaefer. H-E-N-R-Y.  
22 S-C-H-A-E-F-E-R. Agricultural Economist for the Upper  
23 Midwest Marketing Area, Federal Order 30, on detail to  
24 AMS Dairy Programs.

25 MS. BECKER: Good morning. Lauren Becker.

1 L-A-U-R-E-N. B-E-C-K-E-R. USDA Office of the General  
2 Counsel.

3 MR. HILL: Good morning. I'm Brian Hill.  
4 B-R-I-A-N. H-I-L-L. Attorney with the Office of the  
5 General Counsel.

6 JUDGE CLIFTON: Now I'd like to have those  
7 teams associated with proposals identify themselves.

8 MR. BESHORE: Marvin Beshore. M-A-R-V-I-N.  
9 B-E-S-H-O-R-E. Attorney for the proponents of Proposal  
10 Number 1, California Dairies, Land O'Lakes, and Dairy  
11 Farmers of America.

12 MR. HOLLON: Elvin Hollon. E-L-V-I-N.  
13 H-O-L-L-O-N. I'm one of the proponents of Proposal 1,  
14 and I'm -- work for Dairy Farmers of America.

15 MR. WEGNER: Good morning. Thomas Wegner.  
16 T-H-O-M-A-S. Wegner, W-E-G-N-E-R. With Land O'Lakes.

17 MR. SCHAD: Good morning. Dennis Schad.  
18 D-E-N-N-I-S. S-C-H-A-D. I work for Land O'Lakes.

19 MR. ERBA: Good morning. Eric Erba. E-R-I-C.  
20 E-R-B-A. I'm with California Dairies, Inc.

21 MR. ENGLISH: Good morning. My name is Chip  
22 English. C-H-I-P. E-N-G-L-I-S-H. And I'm here as  
23 counsel for the Dairy Institute of California,  
24 proponents of Proposal 2.

25 MS. VULIN: Good morning. My name is Ashley



1 Vulin. A-S-H-L-E-Y. Last name is V, as in Victor,  
2 U-L-I-N. I am also counsel for the Dairy Institute of  
3 California.

4 MR. SCHIEK: Good morning. William Schiek.  
5 S-C-H-I-E-K. Economist with the Dairy Institute of  
6 California.

7 MS. KALDOR: Good morning. Rachel Kaldor.  
8 R-A-C-H-E-L. K-A-L-D-O-R. Executive Director of Dairy  
9 Institute of California.

10 MR. TAYLOR: Good morning. Sue Taylor,  
11 standard spell -- standard spelling. Leprino Foods.  
12 L-E-P-R-I-N-O. Vice-president of Dairy Policy and  
13 Procurement.

14 MR. BLAUFUSS: Good morning. I'm Rob  
15 Blaufuss. Blaufuss is B-L-A-U-F-U-S-S. I'm with the  
16 Dean Foods Company.

17 MR. DEJONG: James Dejong. J-A-M-E-S.  
18 D-E-J-O-N-G. Dairy Policy/Economic Analyst for Hilmar  
19 Cheese.

20 MR. VETNE: I'm John Vetne. V-E-T-N-E.  
21 Representative for Hilmar cheese.

22 MS. HANCOCK: Good morning. I'm Nicole  
23 Hancock representing the California Producer Handler  
24 Association. H-A-N-C-O-C-K.

25 MR. LEE: Victor Lee. V-I-C-T-O-R. Last name

1 L-A-I. General Counsel with Producer Dairy Foods, one  
2 of the members of California Producer Handler  
3 Association.

4 MS. HANCOCK: And Nicole Hancock, Stoel Rives  
5 representing Ponderosa Dairy as well.

6 JUDGE CLIFTON: Now I'd like those who are  
7 here who expect to participate but may not be a part of  
8 a team representing a particular proposal to come from  
9 and identify yourself.

10 MS. REED: Good morning. Kristine Reed.  
11 K-R-I-S-T-I-N-E. R-E-E-D. Counsel for Select Milk  
12 Producers.

13 MS. ACMOODY: Andy AcMoody. A-C-M-O-O-D-Y.  
14 Economist with Western United Dairymen.

15 JUDGE CLIFTON: Are there any dairy farmers  
16 here with us this morning? Would you come forward and  
17 identify yourself as well? Welcome.

18 MR. MERTENS: George Mertens. I ship to DFA.  
19 I'm chairman of the Western Area Counsel of DFA and I  
20 dairy in Sonoma, California.

21 JUDGE CLIFTON: Thank you. And would you  
22 spell both your first and last name?

23 MR. MERTENS: Oh. George, G-E-O-R-G-E.  
24 Mertens, M-E-R-T-E-N-S.

25 JUDGE CLIFTON: And do you anticipate

1 questioning witnesses perhaps?

2 MR. MERTENS: Perhaps.

3 JUDGE CLIFTON: All right. And the way we do  
4 that is I open the floor to questions when a witness has  
5 completed testimony. Very often the first people to  
6 question are those who have propose -- proposals on the  
7 table, but they don't necessarily have to go first. But  
8 anyone in the room is welcome to stand and ask  
9 questions.

10 MR. MERTENS: Okay.

11 JUDGE CLIFTON: Do you anticipate also  
12 presenting a statement?

13 MR. MERTENS: Yes. Tomorrow.

14 JUDGE CLIFTON: Good.

15 MR. MERTENS: I'm told tomorrow.

16 JUDGE CLIFTON: Tomorrow? You'd like to do it  
17 tomorrow? Great. We want to work you in when it's  
18 convenient for you, so you'll need to let us know. The  
19 best person to let know that is Ms. Frisius, so if you  
20 stay in touch with her. She has two very important  
21 functions. One is helping make sure that every witness  
22 has an opportunity and to help us schedule when that  
23 will come, and also, if you have a statement that you  
24 would like also to be entered as an exhibit, even if  
25 you're reading from it you can do that.

1 MR. MERTENS: Okay.

2 JUDGE CLIFTON: You go to her, not until it's  
3 time for you to testify so we know what number yours  
4 will be given because we're just going in numerical  
5 order. We have 20 exhibits so far, but we don't know  
6 how many we'll have by the time you're testifying, so  
7 you don't mark it ahead of time. But when you  
8 coordinate with her, she'll tell you what number your  
9 exhibit would be. She won't be able to tell you that  
10 until just before you testify.

11 She gets two copies, which are the record  
12 copies. I get a copy so I can follow along. The court  
13 reporter gets a copy. And then everyone here should be  
14 able to pick up a copy and see what it is you're saying.  
15 There's a copy machine in the back and you can make your  
16 own copies, no expense.

17 MS. FRISIUS: This is Meredith Frisius, and  
18 just as a request, can we actually get three copies of  
19 anything, any exhibit, for our records? Or -- so it  
20 would be in total you would receive one, the court  
21 reporter, and then three to me?

22 JUDGE CLIFTON: Sure.

23 MS. FRISIUS: Thank you.

24 JUDGE CLIFTON: Excellent.

25 Do you have any questions so far?

1 MR. MERTENS: No.

2 JUDGE CLIFTON: Welcome.

3 MR. MERTENS: Thank you.

4 JUDGE CLIFTON: Welcome.

5 Is there anyone else who you'd like to  
6 introduce themself at this time?

7 All right. Let's talk about -- well, I have a  
8 few preliminary matters. Let me begin with mine.

9 The pages of this volume of the transcript  
10 will be in sequence to those of last week. The docket  
11 number for this case is, in brackets, capital A capital  
12 O, close brackets. That stands for Agreements and  
13 Orders. That's a hearing clerk designation. And then  
14 the docket number itself, docket number 15 hyphen 0071.  
15 It's particularly important to remember that number when  
16 you will be filing things directly with the hearing  
17 clerk after we've all left the hearing, I'm thinking of  
18 briefs and that sort of thing.

19 I would like to read my formal statement into  
20 the record as I did in the first two days of the  
21 hearing. I'm doing this again simply because we're  
22 beginning a new week.

23 This public hearing is being held to consider  
24 and take evidence on the proposed establishment of a  
25 Federal Milk Marketing Order to regulate the handling of

1 milk in California. The proposed marketing area would  
2 incorporate the entire State of California.

3           USDA received four proposals from interested  
4 parties, some that include certain milk pricing and  
5 pooling provisions not found in current Federal Milk  
6 Marketing Orders. The proposals incorporate the same  
7 dairy product classification system used throughout the  
8 Federal Milk Marketing Order system. Additional  
9 features would recognize California quota premium and  
10 fluid milk fortification values.

11           And as we know from last week, we've added a  
12 particular alternate method with regard to whey,  
13 W-H-E-Y, as part of the proposal.

14           This hearing will consider the four proposals  
15 as contained in the Federal Register Hearing Notice  
16 published on August 6th, 2015. And I add that that  
17 proposal regarding whey is being considered as if it had  
18 been published in the Federal Register Hearing Notice.

19           Now, I'd like to address preliminary issues,  
20 and I'd like the Agricultural Marketing Service to  
21 please go forward with their announcements, again as if  
22 we were here on the first day.

23           MS. MAY: Good morning. I'm Laurel May with  
24 USDA. As you know, we are here to hear about a proposal  
25 for a Federal Milk Marketing Order for the State of

1 California. Anybody that would like to may testify at  
2 this hearing. If you would like to testify, as Judge  
3 Clifton told us, you should contact Meredith Frisius,  
4 and she will make sure that the judge knows that you  
5 would like to testify.

6 In addition to the copies that were mentioned,  
7 we've -- it would also be handy if you had a business  
8 card that you could give to the court reporter so she  
9 can keep track of you.

10 As we go through this hearing, USDA will be  
11 asking questions sometimes, too, and we just want you to  
12 know that our job is not to intimidate or to confuse,  
13 but merely to try to develop a full record, and so --  
14 and we hope that you will feel comfortable here and --  
15 and be willing to participant. As well, the audience  
16 may question a witness that goes on the stand, and so if  
17 you'd like to do that, come up here to this microphone  
18 so the Judge can recognize you and allow you to do that.

19 We are broadcasting the -- this session of the  
20 hearing live, and you can listen to that online at  
21 [tinyurl/ -- how -- dot com slash camilkhearing](http://tinyurl.com/howdotcomslashcamlkhearing). We are  
22 not recording this hearing -- this session, however.

23 The court reporter is recording and making  
24 official transcripts, which will be available  
25 approximately two weeks after the end of each hearing

1 week.

2 Exhibits are numbered in the order of  
3 presentation. Copies of the exhibits are available over  
4 here on the table, if you'd like to take any of those.

5 And, finally, we have refreshments in the back  
6 of the room that you are welcome to help yourselves to.

7 And as Judge Clifton mentioned, we do have a  
8 copier in the back that you can use if you need to make  
9 a minimum amount of copies.

10 At the end of Friday, we were listening to  
11 Mr. Hollon on the stand; however, I think we're going to  
12 begin today by hearing Ms. Hancock's opening statement.

13 JUDGE CLIFTON: Thank you, Ms. May.

14 Does anyone else from the Agricultural  
15 Marketing Service have any other preliminary matters?

16 Then I'd ask if anyone else has preliminary  
17 matters.

18 Ms. Hancock, do you find this to be a good  
19 time to begin with your opening statement?

20 MS. HANCOCK: Yes, Your Honor. I'd be pleased  
21 to go. And I thank everyone, again, for letting me go a  
22 little bit out of order.

23 JUDGE CLIFTON: Now, you're -- you're welcome  
24 to stand right there if you're comfortable there. If  
25 you'd prefer to be seated, you may. Take your choice.



1 MS. HANCOCK: Well, I listened to the others,  
2 but I didn't get a chance to see them. Did they stand  
3 or sit?

4 JUDGE CLIFTON: They stood right where you  
5 are.

6 MS. HANCOCK: Okay. Well, we'll make it look  
7 the same then.

8 JUDGE CLIFTON: All right.

9 MS. HANCOCK: Have the same impact.

10 Again, I'm Nicole Hancock. I'm going to break  
11 this up into two segments because I represent two  
12 different parties in this Federal Milk Marketing Order.  
13 I'm going to begin my opening statement with the  
14 position of the California Producer Handlers  
15 Association, who is the first client that I represent in  
16 this matter. The California Producer Handlers  
17 Association is made up of four producer-handlers:  
18 Producers Dairy, Hollandia, Rockview, and Foster Dairy,  
19 which also is known as Crystal Creamery for their  
20 branded milk products.

21 These four producer-handlers are a little bit  
22 untraditional when you look at them in the context or  
23 through the lens of a general Federal Milk Marketing  
24 Order. Producer-handlers in Federal Milk Marketing  
25 Orders have traditionally been smaller producer-handlers

1 producing under the three-million-pounds-a-month mark,  
2 and these producer-handlers are different in California,  
3 and they have a long history under the State order  
4 system in California.

5           They're -- they're vertically -- they're  
6 vertically integrated just like the producer-handlers  
7 under the Federal orders in other areas in that they  
8 produce their own milk, they process it, they brand it,  
9 and they distribute it, but there really -- the changes  
10 or the similarities in the systems really stops there in  
11 how they're treated.

12           Each one of these producer-handlers has been  
13 in business for more than 50 years, and for the past 50  
14 years, they've been part of the California's Pooling  
15 Act. That Pooling Act was originally enacted in 1967,  
16 and it went into effect in 1969. And since 1969,  
17 they've operated under their California quota exemptions  
18 as a -- as a -- as a systemic and major part of their  
19 business operations.

20           And what that means is only a portion of their  
21 milk quota is exempt. They hold several different  
22 layers of milk processing rights under the California  
23 quota system. They have exempt quota, they have regular  
24 quota, and then they're also assigned a base production  
25 amount, just like all of the other producers in the

1 system. And then anything that they produce beyond that  
2 is part of their overbase production.

3 Now, this differs markedly from what -- how it  
4 operates in other Federal order systems for the  
5 producer-handlers that have small lines that produces  
6 less than three million pounds a month in that those  
7 small producer-handlers enjoy an exemption only if they  
8 produce under the three-million-pound mark and meet the  
9 other criteria of their Federal orders.

10 In our situation, it's not an all-or-nothing  
11 approach. There is a portion of their milk that is  
12 treated as exempt quota, but then there's also a portion  
13 of their milk that's treated as regular quota, and then  
14 there's a portion of their milk that's treated under the  
15 rest of the quota system for the base and overbase  
16 calculations.

17 Our goal in this Federal Milk Marketing Order  
18 is that while there are parties in this -- and I think  
19 both -- both of the major parties who have proposed  
20 Federal order language, the Cooperatives and the Dairy  
21 Institute, they've both proposed quota language, but our  
22 goal in this is simply to make sure that we're  
23 preserving the exempt quota treatment along with the  
24 preservation of the rest of the quota system so that not  
25 only one aspect of the quota system is preserved, but

1 that all aspects of the quota system are preserved in  
2 its entirety, and that would include the treatment for  
3 the exempt quota as well.

4 In order for -- under the California State  
5 order system, in order for our producer-handlers to have  
6 been able to preserve their exemption, they have more  
7 requirements than what is normally seen under the  
8 traditional Federal order systems. They have  
9 restrictions on the ownership structures, meaning, yes,  
10 they have to be vertically integrated just like all of  
11 the other Federal order requirements for maintaining the  
12 producer-handler exemptions, but on top of that, they  
13 have some pretty severe restrictions on their structures  
14 of their ownership.

15 It has to -- back when the State order system  
16 was implemented in 1967, or enacted in 1967, that froze  
17 in time what the ownership structure was. And then  
18 it -- again, it was modified later, and so there were  
19 some other windows that were looked at, but those family  
20 units that were in place at the time under that quota  
21 system, they had to be preserved.

22 They couldn't transfer the business outside of  
23 their family, they couldn't sell it to another entity,  
24 and so these families that are operating the  
25 producer-handlers under our system, under the California

1 order system, the quota system that operates under the  
2 State order program, they have to maintain their family  
3 lineage. These are legacy family companies that have  
4 been running these entities, and that's been required in  
5 order to -- in order to preserve and maintain the exempt  
6 quota that they hold. If for some reason they lost or  
7 transferred the business outside of that, that exempt  
8 quota was then converted into regular quota. But the  
9 only way to maintain your exempt quota treatment was to  
10 keep the business within the family lineage.

11 Now, we've heard already that that's a marked  
12 difference from how the Federal order producer-handlers  
13 operate because in those systems, as long as you're  
14 transferring the entirety of the -- of vertically  
15 integrated entities, you can maintain those  
16 producer-handler exemptions by meeting that same  
17 criteria.

18 In addition, they can't sell or transfer their  
19 exemptions. They can't -- the exemption itself, while  
20 it might be an asset booked on their -- in their  
21 accounting system, that's not a transferable item for  
22 them. If they transfer that quota, again, it would be  
23 converted to regular quota.

24 Now, the quota exemptions that were originally  
25 assigned in -- through the 1967 Act, or that went in

1 effect in 1969, those assignments that were made for the  
2 exempt quota were based on the historical numbers that  
3 these producer-handlers had manufactured, produced, and  
4 distributed in their own system. They were based on  
5 their actual historical operations at the time.

6 Now, through two subsequent amendments, they  
7 were allowed to purchase additional quota. They were  
8 allowed to purchase additional exempt quota. These  
9 business, again, have invested almost \$10 million in  
10 order to acquire exempt quota. Again, that is a marked  
11 difference from how exempt producer-handlers acquire  
12 their rights in the Federal order system. There's no  
13 pay-to-play option. Under our system, our -- our  
14 producer-handlers have invested significant amount of  
15 sums in order to have the right to hold their exempt  
16 quota as part of their overall quota system.

17 In -- in our request to preserve the  
18 producer-handlers exempt quota, we're not at all asking  
19 to expand the exempt quota, we're not asking to expand  
20 from the restrictions. Our goal is simply to preserve  
21 the status quo of how the exempt quota is treated under  
22 the California system into any treatment of the -- of  
23 the quota system in a future Federal order, if one is to  
24 be enacted.

25 And we believe that it's consistent with --

1 with the delegation of duties to the USDA in evaluating  
2 whether a Federal order should be enacted here in  
3 California. The 1996 Farm Bill had language that said  
4 "California shall have the right to reblend and  
5 distribute order receipts to recognize quota value."  
6 Now, that didn't say just regular quota, it's to  
7 recognize the entirety of the quota system, which in our  
8 view -- and we'll put on evidence to show this --  
9 includes the entire quota system, not just the regular  
10 quota but the entirety of -- of how the quota system  
11 operates that would necessarily include the exempt  
12 quota.

13 Under the 2000 Farm Bill with the extension of  
14 the deadlines that allowed to evaluate the Federal order  
15 in California, the Joint Explanatory Statement of the  
16 committee of the conference reflected the intent of the  
17 drafters, and again, they reiterated that same message,  
18 that they believed that if California enters into a  
19 Federal Milk Marketing Order, that we should have the  
20 ability to recognize the longstanding California quota  
21 system. Again, to me it means -- and we'll present  
22 evidence to this effect -- the entirety of the  
23 California system, the quota system, not just one aspect  
24 of it.

25 And that quota system, as we'll put on

1 evidence through our witnesses that will show you that  
2 since it was originally enacted in 1967 through  
3 subsequent amendments in 1978 and 1994, and then even  
4 through some additional attempts to modify the  
5 California Act even further, throughout every one of  
6 those events, the exempt quota was part of the program  
7 and one of the main targets for a compromise position in  
8 enacting and amending the legislation.

9           Originally, the -- the enact -- the Pooling  
10 Act in California that was put in place, it was known as  
11 the Gonzalves Milk Pooling Act, we have the son of the  
12 original legislator who put in record or proposed the  
13 bill initially, we have his son who still does work  
14 at -- with -- with the legislative session here in  
15 California. He'll testify about the legislative  
16 history, the treatment for the exempt quota, and how it  
17 was always integrated into the program.

18           You'll also hear testimony from our  
19 producer-handlers who will talk about how they invested  
20 in their exempt quota, how they received the exempt  
21 quota treatment based on their historical production,  
22 and how they've had to make strategic business decisions  
23 all along the way in order to preserve and maintain  
24 those exempted quota programs.

25           We've also seen, and will see more of this



1 that the economic impact in preserving the exempt quota  
2 treatment against the baseline or against the -- against  
3 the current situation is almost zero, that there's no  
4 additional economic impact to anyone if the exempt quota  
5 treatment is preserved as compared to the biggest line  
6 today.

7 At the end of the day, I think our position is  
8 simple, and I hope that -- that we're able to have a --  
9 a minimal part in the rest of the hearing in that we  
10 just want to preserve the status quo, and we want to  
11 give the information that we think the USDA would be  
12 assisted by in making their evaluation and ultimate  
13 determination and recommendation, but we think that  
14 preservation of the entire quota system, if you're going  
15 to preserve any part of the quota system, would be  
16 appropriate.

17 JUDGE CLIFTON: Ms. Hancock you mentioned the  
18 Pooling Act. Did you say Gonsaga?

19 MS. HANCOCK: Gonzalves.

20 JUDGE CLIFTON: Oh. Would you spell it?

21 MS. HANCOCK: G-O-N-S-A-L-V-E-Z.

22 JUDGE CLIFTON: Gonsalves.

23 MS. HANCOCK: Or S, it ends with an S.

24 G-O-N-S-A-L-V-E-S. I was doing it phonetically in my  
25 head. I was so worried about the V in there that I --

1 JUDGE CLIFTON: And so the name of that act is  
2 the Gonzalves Pooling Act?

3 MS. HANCOCK: It was referred to as the  
4 Gonzalves Pooling Act.

5 JUDGE CLIFTON: And in -- what date was that  
6 passed?

7 MS. HANCOCK: It was originally enacted in  
8 1967.

9 JUDGE CLIFTON: Oh, okay. When you said that  
10 the quota system was a target in the amendments, what  
11 happened? It was a target?

12 MS. HANCOCK: There were challenges that were  
13 made to amend, or modified, reduce, or eliminate  
14 portions or aspects of it, and it was ultimately  
15 preserved in the structure that was originally enacted  
16 in 1967 that included regular quota, exempt quota, base  
17 and overbase production.

18 JUDGE CLIFTON: Thank you.

19 Now, does that opening statement suffice for  
20 both of the proposals that you sponsored or only  
21 Proposal Number 3?

22 MS. HANCOCK: That -- that was only for  
23 Proposal Number 3 for the California Producer Handlers  
24 Association, and I'll have a separate opening for  
25 Ponderosa Dairy.

1 JUDGE CLIFTON: I'd like to invite any  
2 questions that anyone might have of Ms. Hancock with  
3 regard to the opening statement for Proposal Number 3.  
4 There are none.

5 You may proceed, Ms. Hancock.

6 MS. HANCOCK: So I'd like to move on now to  
7 provide an overview of our position for Ponderosa Dairy.  
8 I represent Ponderosa Dairy which, is a Nevada producer,  
9 that has historical sent almost all of its milk to  
10 Rockview Dairy, which is a plant in California.

11 Now, under the California Pooling Act, milk  
12 coming from outside of the state is not regulated in  
13 that it doesn't participate in the pool. Our proposal  
14 is to allow Rockview to elect to be partially regulated  
15 on that portion of the plant volume that's from outside  
16 the State of California. And we've seen some of the  
17 comparisons in some of the discussions already when the  
18 USDA presented evidence of their economic analysis that  
19 talked about the -- how the payments would be structured  
20 coming out of plant -- or coming out of the pool.

21 So if -- in a normal Federal order system, we  
22 don't have the quota system, you have one entire pool  
23 blend price that the payments would come out of. In our  
24 situation with the -- as the proposals stand right now,  
25 the proposal would allow Ponderosa Dairy to only receive

1 the non-quota plant blend, which would be a reduced  
2 amount of -- of -- of payment as compared to the total  
3 plant blend. We believe that that proposal would --  
4 would not be fair for the out-of-state producers because  
5 it's a doubled-edged sword for them. They have the  
6 inability to participate in the pool, but they also  
7 receive a smaller blend price because it already removes  
8 the quota payments from that system. Allowing a partial  
9 regulation would allow them to protect their interests  
10 on both sides of -- of the calculations.

11 We believe that without allowing the partial  
12 regulation, it would have a discriminatory effect  
13 similar to what we heard from Dairy Institute for the  
14 out-of-state producers. The out-of-state producers,  
15 especially the ones that are in Southern Nevada, we'll  
16 hear more from, they're in a somewhat more of a  
17 disadvantaged position in that they don't have the same  
18 alternative opportunities for placement of their milk  
19 in -- in other locations.

20 So our position for Ponderosa would be to  
21 preserve the California system in a way now that will --  
22 in a Federal order system that almost allow them to be  
23 partially regulated and preserve the treatment that they  
24 receive under the state Pooling Act in this situation.

25 JUDGE CLIFTON: Is Ponderosa Dairy one of the

1 producers located in Southern Nevada or are they in a  
2 different location in Nevada?

3 MS. HANCOCK: They are located in Southern  
4 Nevada.

5 JUDGE CLIFTON: All right.

6 And so would you spell for us the Rockview  
7 Dairy?

8 MS. HANCOCK: Rockview is R-O-C-K-V-I-E-W.

9 JUDGE CLIFTON: And in what location in  
10 California is it? If you know?

11 MS. HANCOCK: They're in Downey. They're in  
12 Downey. I have to look to the Dairy Institute to tell  
13 me.

14 JUDGE CLIFTON: Downey, Downey, California --

15 MS. HANCOCK: Downey, California.

16 JUDGE CLIFTON: -- is that fairly near Los  
17 Angeles?

18 MS. HANCOCK: Yes.

19 JUDGE CLIFTON: All right. All right. So I  
20 have it in my head.

21 Does anyone have any questions for Ms. Hancock  
22 with regard to her opening statement for Proposal Number  
23 4?

24 Mr. Richmond. Oh, yes. I'm glad you're  
25 moving that towards you. You notice we gave Mr. Hill a

1 long handle on his --

2 MR. RICHMOND: A special one.

3 JUDGE CLIFTON: -- microphone, but if you keep  
4 behaving the way you are, we won't have to for you.

5 MR. RICHMOND: I appreciate that.

6 Thank you, Ms. Hancock. Just one clarifying  
7 question. William Richmond, USDA.

8 You said that your proposal would only apply  
9 to Rockview Dairy. Did you mean that your proposal  
10 would, in fact, apply to any handler having the ability  
11 to elect partially regulated status for the out-of-state  
12 milk?

13 MS. HANCOCK: It -- it would, and I -- I -- I  
14 don't remember saying that, so it might be that I  
15 misspoke.

16 MR. RICHMOND: Got it. Okay.

17 MS. HANCOCK: But it's not unique to just  
18 Rockview.

19 MR. RICHMOND: Just wanted to clarify. I  
20 appreciate it. That's all. Thank you.

21 MS. HANCOCK: Thank you.

22 JUDGE CLIFTON: Does anyone else have any  
23 questions about the opening statement? There are none.

24 Thank you, Ms. Hancock.

25 MS. HANCOCK: Thank you.

1 JUDGE CLIFTON: Are there any other  
2 preliminary matters before Elvin Hollon retakes the  
3 witness stand?

4 I -- I should have said, and I forgot, at the  
5 beginning, that anyone in this room is welcome to record  
6 the proceedings for your own use. Well, not just your  
7 own use, for the use of you and anybody that you care to  
8 share it with. It's not the official record, but it may  
9 assist you in preparing for what you'll do next in the  
10 hearing, so you're welcomed to do that. I ask that it  
11 be unobtrusive, and I prefer that you record just the  
12 audio, not video. But you're -- you're welcome to do  
13 that with whatever recording devices you might have.

14 All right. Good. Then let's have Mr. Hollon  
15 come back to the witness stand.

16 Mr. Hollon, you remain sworn. I would like  
17 for you, again, to state and spell your name.

18 THE WITNESS: E-L-V-I-N. H-O-L-L-O-N.

19 JUDGE CLIFTON: Thank you.

20 Mr. Beshore, you may proceed.

21 MR. BESHORE: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. BESHORE:

24 Q. And good morning, Mr. Hollon.

25 In your direct testimony on -- on Friday, you

1 described for us your educational and -- and employment  
2 background, basically indicating by whom you had been  
3 employed, what years, and in what capacity. Now I'd  
4 like you to further describe for us for the record  
5 what's involved in your -- in your day-to-day activities  
6 in your capacity with Dairy Farmers of America, and for  
7 the most, let's just focus on -- on the years that  
8 you've been employed by -- by Dairy Farmers of America,  
9 which is since its formation in what year?

10 A. 1998.

11 Q. 1998. Okay. And during those, what,  
12 approaching 17 years, have you been employed at the  
13 national headquarters of Dairy Farmers of America?

14 A. Yes, I have.

15 Q. Okay. And have you had a role, you know, in  
16 the -- in the corporate staff at -- at national  
17 headquarters?

18 A. I'm a part of the corporate staff, yes.

19 Q. And does that give you a relationship with all  
20 of the regions and counsels as they're known within  
21 Dairy Farmers of American with respect to their -- their  
22 marketing activities?

23 A. That's correct. I routinely and regularly  
24 talk to members of those staffs in all of the offices  
25 across the country about day-to-day marketing



1 activities, week-to-week, seasonal activities, pricing  
2 challenges. That's a regular occurrence.

3 Q. Okay. Now, let's describe that, the scope of  
4 Dairy Farmers of America's activities geographically and  
5 in terms of its Federal orders so that we have a, you  
6 know, full understanding of the -- the scope of your  
7 responsibilities and interactions.

8 A. DFA members are located in nearly every state,  
9 I think it's 48 out of the 50 states. We operate  
10 wholly-owned 33 plants, and jointly manufacture or  
11 operate with quite a few other entities around the  
12 country. The day-to-day operating areas, Northeast part  
13 of the country, the Southeast, the Lake states,  
14 Southwest, the Central area of DFA stretches from  
15 Oklahoma to Canada, the Mountain area is from the  
16 Pacific Northwest over to Colorado, and the Western area  
17 where we are today, marketing activities in Nevada and  
18 California.

19 Q. On which Federal orders does Dairy Farmers of  
20 America market, market milk?

21 A. We have milk marketed and pooled in every  
22 order except the Arizona order.

23 Q. And has that generally been the case since  
24 Federal Order Reform went in and the number of orders  
25 was reduced to ten or 11?

1           A.     That is true.

2           Q.     Now, with that period of time, that scope of  
3 responsibility, have you been required to become  
4 familiar with marketing conditions, milk marketing  
5 conditions in all of the regions of Dairy Farmers of  
6 America's operations?

7           A.     That would be true. I spend time each week  
8 talking with milk marketing staff, with plant operating  
9 staff, not -- not necessarily on costs or components or,  
10 you know, the intricacies of what they make, although  
11 I'm generally familiar with what they make, but with the  
12 marketing and supply of milk to their plants to our  
13 customer make up, whether that be a Class I, II, III, or  
14 IV operation. I discuss with them pricing. Activities  
15 as -- as those are handled primarily at the local level.  
16 And certainly we review marketing and balancing supply  
17 and demand conditions weekly with all of those  
18 operational areas, including the Western area here in  
19 California.

20          Q.     And has that -- that weekly involvement with  
21 the marketing conditions in all of those areas of Dairy  
22 Farmers of America's operations including California,  
23 for how long have -- has that been a part of your  
24 everyday job responsibilities?

25          A.     That was one of the very first things I did in

1 1998 when we started, so it's been every week since  
2 then.

3 Q. Okay. Let's -- let's turn, then, to Exhibit  
4 20 in the Tables 1.A through 1. K, which you referred to  
5 in your -- in your statement, but I'd like to just  
6 review them with you now and discuss them a bit further.

7 JUDGE CLIFTON: Mr. Beshore, pause just a  
8 moment.

9 If there's anyone who wants to obtain a copy  
10 of Exhibit 20 and Exhibit 19, please go to the table and  
11 get those.

12 MR. BESHORE: We ran out of copies on Friday,  
13 and we may have a limited number available this morning  
14 hopefully.

15 JUDGE CLIFTON: Let -- let's take just a  
16 minute. In fact, let's take a five-minute stretch break  
17 while people get those copies. That's important trying  
18 to follow the testimony here. Five-minutes stretch  
19 break.

20 (Whereupon a break was taken.)

21 JUDGE CLIFTON: We're back on record. It's  
22 9:52.

23 Mr. Beshore.

24 MR. BESHORE: Thank you, Your Honor.

25 Q. Marvin Beshore.

1           Okay. Mr. Hollon, let's turn to Cooperatives  
2 Table 1.A, first table in Exhibit 20. Did you prepare  
3 that?

4           A. I did.

5           Q. Could you, before we get into the details of  
6 the preparation, just describe it and its purpose?

7           A. The Table 1.A is a compilation of USDA Mailbox  
8 Milk Prices for certain markets, the California market,  
9 the Wisconsin, Minnesota, Illinois, and Northwest States  
10 markets. Those markets are defined by USDA in the Dairy  
11 Market News, and the Mailbox Milk Prices, they are  
12 published. As noted in Dairy Market News, those are  
13 at-test all-in prices, so in order to get some type of  
14 reasonable standardized comparison, those prices were  
15 adjusted down to the Federal order standard of 3.5  
16 butterfat, 2.9915 protein, and 5.6935 other solids, and  
17 the standard calculation of if there was more of the  
18 component, you adjusted it down to 3.5, if there was  
19 less of a component, you adjusted it up to the 3.5  
20 level.

21          Q. And did you personally make those adjustments?

22          A. I did.

23          Q. So that the numbers that show on -- in each  
24 month for each of the areas, they're not -- they're  
25 different than the numbers -- may be different than the

1 numbers published in the USDA Mailbox Milk Price?

2 A. They would be different than the numbers  
3 published. They started out as the numbers published  
4 and then adjusted to a standardized basis for a -- a  
5 fair and equal comparison of their level.

6 Q. Is it your -- was it your judgment in your  
7 testimony that for the best possible comparison, those  
8 numbers should be standardized in the manner that you  
9 have standardized them?

10 A. Yes. It would -- it would be hard to draw a  
11 conclusion if you knew that they weren't at the same  
12 test level.

13 Q. Now, you've labeled the different series as --  
14 the exhibits, I'm sorry, indicates they are markets. In  
15 fact, these are not marketing order areas represented by  
16 these mailbox price series, correct?

17 A. That is correct. The -- again, the Dairy  
18 Market News footnotes describe if there's another  
19 description, the California data is representative of  
20 California, and --

21 Q. Of farms in California?

22 A. Of farms in California, yes. And the witness  
23 on Monday or Tuesday indicated that the calculations for  
24 the California Mailbox Price was done according to the  
25 USDA methodology, so USDA will collect data on farms in

1 Wisconsin, Minnesota, Illinois, and what they deem is  
2 Northwest States, which would be the states of Oregon  
3 and Washington. That data is collected from what we  
4 would term producer payroll tapes, so it has adequate  
5 information about pricing, components, base prices, just  
6 pricing information that's -- that's provided to the  
7 Federal orders every month.

8 Q. Okay. So while the label -- while the exhibit  
9 identifies these are markets, they're actually  
10 geographic areas of farm locations?

11 A. That would be accurate.

12 Q. And the Northwest States takes it two states,  
13 the others are the individual state involved?

14 A. Correct.

15 Q. Okay. So what does the table show?

16 A. The table shows that once -- again, once  
17 standardized, that the -- the broad conclusion is that  
18 prices, mailbox milk prices in California are well below  
19 those in the selected states. Those states were  
20 selected because they have similar market conditions.  
21 They are -- none -- none are exact. And it might be  
22 first easiest to describe a, you know, very obvious.

23 If you were to use Florida as an example,  
24 Florida has no manufacturing, or I'm not aware of any  
25 Class III or Class IV operations in the state of

1 Florida, so to compare that with a California situation  
2 would be, you know, unreasonable.

3 But in Wisconsin, Minnesota, Illinois, those  
4 prices in those states are greatly influenced by  
5 production of Class III and IV items just like in  
6 California.

7 In the Northwest States, those states are also  
8 greatly influenced by manufacturing prices. There are  
9 high utilizations of Class III and Class IV, so we chose  
10 those states as -- as areas that had reasonable market  
11 comparisons.

12 There -- there were other areas that you might  
13 consider that had some of the same utilizations. For  
14 example, there is a mailbox milk price published for New  
15 Mexico. However, in New Mexico, there's a couple of  
16 market conditions that are pretty different from  
17 California, and the two chief ones would be that a  
18 significant amount of the milk produced in New Mexico is  
19 marketed long distances away, so transportation costs  
20 figure into that, as well as there's not adequate plant  
21 capacity in New Mexico to market all of the milk that's  
22 produced there. And so a significant amount of time,  
23 there is milk in New Mexico that's marketed out of the  
24 area, so I felt like that was an unreasonable comparison  
25 because that's not the situation in California.

1 Q. So in your judgment on the basis of all your  
2 experience with milk marketing from Maine to California,  
3 Florida, and throughout the country, you felt these were  
4 the most comparable areas of mailbox milk prices  
5 published to California?

6 A. Correct.

7 Q. And the comparison is -- is quite -- quite  
8 negative in terms of relationship in terms of  
9 California's prices versus those in these other  
10 comparable areas in the country; is that correct?

11 A. That would be true. Just as an example, if  
12 you looked on Table 1.A.1, that would be the first page,  
13 looked at the August comparison for the state of  
14 California was \$16.05, for Wisconsin the -- the  
15 standardized comparison was \$18.60. If you ran your  
16 finger down the Wisconsin line, or column, until you got  
17 to -- to the table below it, and you saw a negative  
18 \$2.55 per hundredweight, that would represent that  
19 subtraction. And so if did you that type of calculation  
20 and comparison on each page, that would represent those  
21 differences.

22 Q. So is the table set up so that the bottom  
23 segment on each page is the subtraction or the  
24 comparison of the California price versus the respective  
25 Wisconsin, Minnesota, Illinois, and Northwest States



1 prices for each of the months depicted as well as the  
2 average for the year?

3 A. Yes.

4 Q. Okay. Anything else on Table 1.A?

5 A. I would say that, you know, in -- in my  
6 opinion, mailbox milk prices give a broad comparison of  
7 the market. That all-in price includes a number of  
8 factors that are present in the marketplace to give,  
9 again, a broad look of what -- what's able to be  
10 returned to producers in those marketplaces.

11 Q. And therefore it's a -- it's a good price  
12 comparison to evaluate whether the markets are in  
13 reasonable alignment?

14 A. Yes.

15 Q. Let's go then to Table 1.B.

16 JUDGE CLIFTON: Before you move, I just want a  
17 little help from Mr. Hollon. Would you turn,  
18 Mr. Hollon, to Exhibit 19, page 7. Do you have that in  
19 front of you?

20 THE WITNESS: I'm not what it -- is that the  
21 testimony?

22 JUDGE CLIFTON: Yes.

23 THE WITNESS: Okay. I have it in front of me.

24 JUDGE CLIFTON: Now, if I didn't write very  
25 fast in order to capture the adjustments you made, do

1 you find them on this page?

2 THE WITNESS: That would be true in the middle  
3 photograph of this page. There is some -- some  
4 description of those adjustments and those standardized  
5 values that I wrote, that I spoke of, that the  
6 adjustments were made to, so that is correct. That was  
7 pretty good, you wrote fast and looked it up.

8 JUDGE CLIFTON: You are extremely organized,  
9 and it is extremely helpful.

10 I notice here also in this middle paragraph  
11 you -- you say that the 2015 data was what you had  
12 available prior to July 2015.

13 THE WITNESS: The sentence, "We measured the  
14 period August 2012 to the most recent data available,"  
15 true, "prior to July 2015," and we included July 2015.

16 JUDGE CLIFTON: All right. Very good.

17 THE WITNESS: I would say as you're preparing,  
18 there's a lot of information to prepare, and sometimes  
19 it gets difficult to remember where you stopped at. I  
20 suspect that there will be other cases where the months  
21 will be back or forth a month or two.

22 JUDGE CLIFTON: Very good.

23 So in any event, all the data we have here so  
24 far is prior to California's recent adjustment?

25 THE WITNESS: Yes. There are probably some

1 tables that may show -- for example, Class I prices are  
2 announced in advance of the month, and so we're already  
3 in a scenario where October prices have been announced,  
4 and September prices may have been announced when I was  
5 preparing something, so I may have included that price,  
6 but for any comparison purposes, I stopped with July  
7 prices because the situation you referred to,  
8 California's most recently hearing adjustment is clearly  
9 a -- defined as temporary. It goes into effect August 1  
10 of 2015, it expires July 31, 2016, and in order --  
11 should either or both parties want to do it again, it  
12 would require a hearing again. In -- following the  
13 California process. So it is temporary.

14 JUDGE CLIFTON: Thank you, Mr. Beshore.

15 MR. BESHORE: Thank you, Your Honor.

16 BY MR. BESHORE:

17 Q. Let's turn, then, to Cooperatives Table 1.B in  
18 Exhibit 20, Mr. Hollon. Could you describe first  
19 generally that exhibit and what it is intended it show?

20 A. The data in Table 1.B is intended to show some  
21 type of comparison between the Federal Milk Marketing  
22 Order Class I price that would be announced inside the  
23 proposed California marketing area, and the California  
24 State order price as announced in their defined  
25 marketing areas. And this data runs from calendar year

1 2000 through July 2015, and it takes those announced  
2 prices and makes a -- a subtraction or comparison to  
3 determine against how they with align.

4           So Column A is the month in question. Column  
5 B is the Federal Order Class I mover that has -- goes by  
6 a number of different names. Class I mover is one name,  
7 class I base price is another term, but all Class I  
8 markets in the Federal order system start each month  
9 with that particular price, and then they add a Class I  
10 differential to that price. There's a Class I  
11 differential located in -- or established for every  
12 county in the United States.

13           Q. Including Cali -- counties in the State of  
14 California?

15           A. Including counties in the State of California.  
16 So Column B it was the announced Class I mover for each  
17 month. Columns C, D, E, F, and G would be that Class I  
18 mover with the appropriate Federal Milk Marketing Order  
19 differential added to it. So as an example, Column G  
20 would be Column B, \$10.90, plus the \$1.60 to get 12.50.

21           Q. Okay. So why don't you use -- why do you have  
22 columns 2.10, \$2, 1.80, 1.70, 1.60, C, D, E, F, G?

23           A. Those represent the Class I differential  
24 assigned to certain counties by the Federal order  
25 pricing grid. There's a map later in the table set that

1 shows those counties and the pricing grids.

2 Q. Okay. So those are the actual Federal order  
3 prices applicable, for instance, when a plant in  
4 California has distribution into a Federal order area,  
5 as described by Mr. Mykrantz or Mr. Schaefer or one or  
6 the other or Mr. Wise, I'm not sure, if a plant in the  
7 State of California has distribution in -- into a  
8 Federal order area, that's the Class I value that is  
9 used to determine whether they have an obligation to the  
10 Federal order pool?

11 A. The -- the location values are attached to the  
12 county and to the plant, so no matter where the plant  
13 has distribution, if it's regulated in the order, that's  
14 its's milk price at that location.

15 Q. Or partially regulated?

16 A. Or partially regulated, that's the basis for  
17 its milk price.

18 Q. Okay. So these are -- these are actual  
19 Federal order values in California for those areas?

20 A. Yes.

21 Q. Okay. So you were up through Column G. Go on  
22 from there.

23 A. Column H would be the Southern California  
24 State order Class I price for that particular month, so  
25 in January of 2000, that would be \$12.19. Column I

1 would represent the difference between the Federal order  
2 announced price for counties that would be comparable to  
3 the Southern California pricing zone. And in January of  
4 2000, the California price compared to the Federal order  
5 price was a negative \$.81, or the California price was  
6 lower. Column J would be a similar comparison if the  
7 plant were located instead of the Federal order \$2.10  
8 zone, located in the \$2 zone. And if you were to look  
9 at the map, you will find county overlaps between those  
10 two zones and the Southern California pricing zone.

11 The State order has a Class I price identified  
12 as Southern California and Northern California, and  
13 those prices are announced each month. And Column K is  
14 the Class I price announced for Northern California.  
15 And so in January of 2000, it would have been \$11.92.

16 Columns L, M, and N would be the corresponding  
17 comparisons between the Northern California prices and  
18 the Southern -- and the Federal order prices in the  
19 appropriate location areas.

20 Q. And when -- when the number in Column L, M, N,  
21 or Column I, Column J, when those numbers are in  
22 parentheses or negative numbers, does that represent  
23 that Federal order price was that number of cents  
24 higher, greater than the California State order price?

25 A. Yes, that would -- that would be true.

1 Q. Okay.

2 A. And the -- I -- I would point out that the  
3 California prices are announced at a slightly different  
4 solids-not-fat level, and so I did not take that into  
5 account, but the -- the difference is two or three cents  
6 per hundredweight of difference in it. A later table in  
7 testimony will have some information with a statewide  
8 comparison of that difference, but they're not evident  
9 in this table.

10 Q. Okay. Before we go further on Table 1.B, why  
11 don't we just go back and look at the -- at the maps,  
12 which are 1.D and 1.E because you've -- you've described  
13 and referred to the pricing zones, federal and state  
14 within California. And tell us what 1.D is?

15 A. Well, 1.D would be an overlay of the proposed  
16 marking area in the State of California and with the  
17 Federal Milk Marketing Order Class I differentials that  
18 had been assigned to each county highlighted, so in  
19 different colors. And then the heavy black lines would  
20 be the Southern and Northern California boundaries as  
21 close as we could draw them. Some of those boundaries  
22 are less than a county line so we may have missed a part  
23 of the geography, but the -- it's close enough to be  
24 accurate.

25 Q. Okay. So there's one heavy black line that

1 ends up going from the Eastern border of California just  
2 directly east of Sacramento going south and winding  
3 around to the Western border of California at a point  
4 about halfway between San Francisco and Los Angeles. Is  
5 that the dividing line for the -- the state pricing  
6 zones?

7 A. That is correct. So the Southern California  
8 pricing zone would be to the south of that line, and the  
9 Northern California pricing zone would apply to the  
10 north of that line.

11 Q. And these Federal zones were adopted in the  
12 Federal order system and applicable with the Federal  
13 Order Reform Order -- Federal Order Reform Decision and  
14 Orders in January of 2000; is that correct?

15 A. That's correct. They were -- they were  
16 instituted at that point in time as a part of the reform  
17 process, and they made note of the fact that it would  
18 provide for a coordinated system for the first time of  
19 all class milk markets across the country, and did.

20 Q. Okay. So turn -- turn, then, to Map 1.E.

21 A. Map 1.E is the -- a more clear delineation of  
22 just the California pricing system with shades of blue,  
23 darker blue outlining the Southern California marketing  
24 area, slightly lighter, Northern California marketing  
25 area, with some, not all, but some principle cities



1 located in each one.

2 And the reference on the bottom of this table  
3 would define where in the California, I think it's the  
4 Food and Ag Code that actual definitions, counties, and  
5 set counties are. I can provide a copy of that  
6 reference if needed.

7 Q. Okay. Thank you.

8 Let's go back to Table 1.B then, and -- since  
9 we've -- you've explained each Column and related them  
10 to the -- to the maps which show the applicable Federal  
11 or -- Federal order prices and the applicable state  
12 prices. Tell us what the five pages, then, of  
13 Cooperatives Table 1.B shows and what you conclude from  
14 it.

15 A. On Table 1.B.5 is a summary document.

16 Q. The fifth page of the table?

17 A. The fifth page of the table.

18 Q. Okay.

19 A. And various time periods are summarized, so  
20 for purposes of comparison, we chose the periods where  
21 the whey factor in the State order had been adjusted,  
22 knowing full well that that has little, if any, impact  
23 on the Class I price, but it nonetheless for the -- for  
24 some of the other classes has a significant impact, so  
25 those were the levels that we suggested for comparison.

1           Those would be looking at Column A, January of  
2 2000 to November of 2007, there's an average and a  
3 median calculation. December of 2007 to August of 2011.  
4 August of 2011 -- no, September of 2011 to July of 2012.  
5 And August of 2012 to current, which would be through  
6 July of 2015.

7           So, for example, Column B would be averages  
8 and medians of Class I movers for each of those four  
9 respective periods.

10          Q.    Okay. Now, could you just be precise about  
11 how you calculated -- what you mean by median and how  
12 you calculated that?

13          A.    A median --

14          Q.    Is the average a simple -- simple average of  
15 the months involved, right?

16          A.    Average is simple average of the months  
17 involved. And median is a term that's half of the  
18 values are above adjust, half of the values are below.  
19 And Excel did those calculations.

20          Q.    And you instructed it to do it?

21          A.    I instructed it.

22          Q.    Yes.

23          A.    So Column I would be an average for those four  
24 periods of -- for the four periods of the Southern  
25 California market and the Federal order market at 2.10

1 zone. And, for example, the average in the very first  
2 measure, January 2000 to November 2007, was a negative  
3 \$.23, so the -- the Federal order price would have been  
4 \$.23 higher than the announced State order price, or in  
5 the most current period measured, it would be \$.37  
6 higher, or the California price would have been \$.37  
7 lower. Column J is the same type of calculation, only  
8 if the handler plant would have been in the \$2 zone.  
9 Columns L, M, N are simply calculations using the  
10 Northern California price and specific to each of the  
11 pricing zones.

12 So in a comparison for the in-state area,  
13 again, looking to go if prices are uniform to all  
14 handlers, you can say that, no, prices are not uniform  
15 to all handlers between the two systems. And so if  
16 we're going to have a national pricing grid with uniform  
17 prices to all handlers, this demonstrates that within  
18 the state, there would be a misalignment of those  
19 prices.

20 Q. Now, in your opinion and based on your  
21 experience and involvement with milk marketing  
22 throughout the country, country in Class I, and focusing  
23 on Class I now, are these differences in prices -- this  
24 misalignment of prices and these differences, are --  
25 what significance do they have?

1           A.     Well, any time you have transactions between  
2 buyers and sellers, there's always question about the --  
3 the amount, and I would say without any hesitation that  
4 any of these numbers would cause a concern between a  
5 Class I buyer and those that we sell to and suppliers.  
6 I would -- and that there -- that whether it's \$.23 in  
7 case of the first comparison or \$.37 in the case of the  
8 most recent comparison, we would and routinely do get  
9 questions from folks that we sell milk to about  
10 differences in prices.

11                 As we sitting here last week, in one of the  
12 regions of the country where we have a large -- a large  
13 presence market fluid milk, there were some rather  
14 substantial adjustments in premium price level, not  
15 regulated minimums because we can't adjust those, but  
16 adjustments in premium price levels that were driven by  
17 differences from a buyer saying someone had offered them  
18 milk at a different price, and those prices were well  
19 within these limits, and it resulted in several  
20 suppliers and operators in a common marketing agency to  
21 have to respond to that difference.

22           Q.     In the vernacular that is popular, are those  
23 differences in Class I prices, do they represent a  
24 disorderly marketing condition between those plants?

25           A.     Yes, they would.

1 Q. Let's turn, then, to Table 1.C.

2 A. Table 1.C does a similar comparison at the  
3 Class I level, but in this case, you know, I looked to  
4 see how about if the two locations, one were in the  
5 state and one was outside the state.

6 Q. Why would you look to that kind of comparison?

7 A. Well, again, you have buyers and sellers, and  
8 again you have a national grid of prices that has been  
9 determined to be the reasonable base minimum, and so in  
10 order to get that -- to get a comparison, I wanted to --  
11 I want to show two comparisons -- the one, again, was in  
12 area and one was out of area -- and I wanted to try to  
13 compare where there might -- well, where there might be  
14 a natural competition to see how those prices align.

15 And in doing so, I chose three areas, so on  
16 this table, which the print is also tiny for me to read,  
17 but each of the boxes, large boxes represent three  
18 different marketing area comparisons. The first box  
19 would be if the California processor was in the Los  
20 Angeles or San Diego market and their natural competitor  
21 might be a processor in the Phoenix market.

22 The second group of boxes might be if the Los  
23 Angeles and San Diego located processor, its competitor  
24 would be in the Las Vegas market.

25 And then the third box would be if the -- the

1 local handler, local -- local Class 1 processor would be  
2 in the Sacramento market and the out-of-area competitor  
3 would be in the Reno market.

4 So Column O is, again, the month in question.  
5 Column P is the Federal order differential located in --  
6 in the county of which the Phoenix market, its major  
7 county there. The Column Q is the Federal order  
8 location differential for Southern California, which  
9 would encompass the majority of Los Angeles and San  
10 Diego. And that difference is a negative \$.25, or the  
11 Federal order pricing grid would say a handler in  
12 California might have a \$.25 lower price than a handler  
13 in Phoenix. Column S then tries to take and compute the  
14 Federal order price in Phoenix, and that's the  
15 differential plus the mover that we referred to on the  
16 earlier table. Column T takes the California price and  
17 from -- and Column U is the comparison of the two.

18 And so if those prices were in alignment at  
19 the basic minimum level with the announced grid, you  
20 would expect there to be a 25 -- negative \$.25  
21 difference there, but that's not the -- the conclusion.  
22 The difference is wider than negative \$.25.

23 Q. And what -- what's the -- how much wider is it  
24 in January of 2000?

25 A. January of 2000, it's a negative \$1.06.

1 Q. So that's an additional \$.81?

2 A. \$.81, correct.

3 Q. Okay.

4 JUDGE CLIFTON: I don't see January of 2000.

5 MR. BESHORE: That is the first line on Table  
6 1.C.1.

7 JUDGE CLIFTON: Oh, okay.

8 MR. BESHORE: January.

9 JUDGE CLIFTON: Good. Thank you.

10 BY MR. BESHORE:

11 Q. Okay. So in the second set of -- that second  
12 bracketed set which compares, what, Las Vegas and points  
13 in California?

14 A. Los Angeles and San Diego.

15 Q. Los Angeles. Okay. You did a similar  
16 comparison?

17 A. Column X would say that that grid spread would  
18 be a plus \$.10.

19 Q. Under the Federal order alignment?

20 A. Yes.

21 Q. Okay.

22 A. And this column is not labeled, so it's the  
23 column that says Z minus Y, so it might be appropriate  
24 to pencil in double A as a label for that column in case  
25 there are future questions.

1 Q. So the column between -- so the column  
2 between -- between Column Z and Column AB should be  
3 labeled AA?

4 A. Correct.

5 Q. Thank you.

6 A. And the result of that calculation for January  
7 of 2000, instead of being a plus \$.10, it was a minus  
8 \$.71.

9 Q. Okay.

10 A. And the last box comparing Reno and  
11 Sacramento, Column AD would suggest that the Federal  
12 order grid spread would be zero, or they would have the  
13 same price, and the January of 2000 comparison there is  
14 a negative \$.68.

15 Q. Okay.

16 A. That's in Column AG.

17 Q. Okay. So that comparison, then, was -- is --  
18 was run for the full array of months from January 2000  
19 through July 2015 on pages one through four of Table  
20 1.C; is that correct?

21 A. That is correct. Table 1.C.5 is then a  
22 summary using the same periods that we have discussed  
23 for these market-to-market comparisons with an  
24 in-state-of-California handler and then out-of-state  
25 handler where there might be a natural competitive



1 relationship. So Column U is that comparison for the  
2 Phoenix/Los Angeles/San Diego markets, and instead of a  
3 minus \$.25 relationship, that average for the first  
4 period, \$.48; second period, minus 42; third period  
5 minus 49; final period, minus 62. So the competitive  
6 position of those two handlers would not reflect the  
7 national grid.

8 In the middle -- in the middle set of boxes,  
9 comparing Las Vegas and Los Angeles and San Diego,  
10 looking to what would be Column double A again, instead  
11 of looking at -- for a positive \$.10, you would see  
12 minus 13, minus 7, minus 14, minus 27.

13 And in the third box in comparison, the Reno  
14 and Sacramento area, expecting that the base level price  
15 would be the same, again, minus ten, minus a nickel,  
16 minus 12, minus 23.

17 Q. So then taking the entire results of this  
18 comparison in Table 1.C, what is your opinion with  
19 respect to the appropriateness of the alignment of these  
20 prices and their orderliness for milk marketing  
21 purposes?

22 A. They are by math clearly not aligned, and in  
23 meeting the definition of uniform prices to handlers  
24 based on the national price service, they are out of  
25 alignment.

1 Q. And is that an orderly marking condition?

2 A. That would not be an orderly marketing  
3 condition. And, again, the -- the range of alignments  
4 would be well within -- or the range of misalignments  
5 would be well within the range of where as a supplier I  
6 would anticipate if that were the case, the buyer would  
7 ask questions about the differences.

8 Q. In other words, it's in a range that makes a  
9 difference in -- in the Class I marketplace?

10 A. Yes, it's in a range that would make a  
11 difference in a Class I marketplace.

12 Q. Okay. We did -- we looked at the maps which  
13 are 1.D and 1.E. Let's look at the time Table 1 -- 1.F.

14 JUDGE CLIFTON: Before you go there, I have a  
15 question, if I may.

16 With regard to your chosen period of time to  
17 calculate the average and the median, was it attempting  
18 to use the more recent data rather than covering the  
19 years between 2000 and middle of 2015?

20 THE WITNESS: The periods were chosen as -- as  
21 they have more impact on the Class III and 4B  
22 comparison, and so I simply kept them the same rather  
23 than having one table that would have these couple of  
24 months, and another table that might have this period,  
25 and another table that would have that period. There

1 will be enough questions about the periods without  
2 having to say why they're different ones.

3           And so, as I said before, the -- the issues  
4 with the Class III price are not necessarily bearing on  
5 the Class I price, the calculations much the two  
6 don't -- don't move as much in lockstep, but nonetheless  
7 there are differences, and they are differences that  
8 would be questioned in the marketplace. They are  
9 differences that buyers and sellers would be concerned  
10 about.

11           JUDGE CLIFTON: Thank you.

12           THE WITNESS: And certainly all the data is on  
13 the page. If you wanted to know the difference between  
14 your birthday between your 29th year and your 30th year,  
15 we could probably find it on the table.

16           JUDGE CLIFTON: Yes. And because you've given  
17 us the data and we know how to calculate the average and  
18 median --

19           THE WITNESS: Yes, ma'am.

20           JUDGE CLIFTON: -- we can do it for any period  
21 we choose.

22           THE WITNESS: Correct.

23           JUDGE CLIFTON: Thank you.

24           MR. BESHORE: Thank you, Your Honor.

25           ///

1 BY MR. BESHORE:

2 Q. So Table 1.F.0.

3 A. Table 1.F is the comparison calculations for  
4 the Federal Order Class II price and the California  
5 State Order Class 2 and Class 3 price. As has -- as  
6 have been mentioned earlier, the California State Order  
7 Class 2 and Class 3, the products in that classification  
8 are similar, if not identical to the Federal Order Class  
9 II products, so the goal here was to have some  
10 comparison of those announced prices.

11 So Column A is, again, the month. Column B is  
12 the Federal Order Class II price.

13 Q. Now, I notice you're only -- there's only one  
14 Federal order price on this table.

15 A. That is correct. There is only one Federal  
16 Order Class II price announced each month applicable to  
17 the entire county.

18 Q. So that -- that Federal Order Class II price  
19 applies everywhere from -- from coast to coast in the  
20 particular month indicated?

21 A. Everywhere from coast to coast in the  
22 particular month indicated, yes.

23 Q. Okay. Thank you. Go on.

24 A. Columns -- Column C is the Class 2 price  
25 announced by the State order for Southern California.

1 And Column D is the difference between the two. Column  
2 E is the Class 2 price for Northern California. And  
3 Column F the difference between that and the Federal  
4 order announced price. Column G is the weighted average  
5 of the two, and it was not used in any of these  
6 calculations but will be used in a future calculation.  
7 Column H and I are the Class 3 prices as announced by  
8 the State order. For a number of years, they did  
9 announce separate price for Northern and Southern  
10 California, but that is no longer true, they now  
11 announce the same price. Column J is the difference  
12 between the Federal order announced price and the two  
13 State order prices. And Column K is the weighted  
14 average of the Class 3 prices between Northern and  
15 Southern California. And, again, not used in this  
16 portion of the testimony but will be used later.

17 Q. Now, the -- as opposed to the Class I price  
18 comparisons, which were generally of one direction,  
19 just -- just going and up and down eyeballing these  
20 comparison columns, such as B, first comparison column,  
21 there seems to be a -- you know, an array, a swing of  
22 values from negative to positive in this table; is  
23 that -- that --

24 A. That's correct.

25 Q. -- a correct observation and can you explain

1 that?

2 A. There is quite a bit of variation in these  
3 tables and these comparisons. As noted in the  
4 testimony, the California State order calculations are  
5 made and announced for two months at a time, and so --  
6 and the prices for -- that go into those product price  
7 formulas are the prior two months. So the March and  
8 April price would be announced some time in February,  
9 but based on data in January and February. So you  
10 would -- can get just the timing, first of all, two  
11 months at a time. And, secondly, the lag in the data  
12 can present some quite -- quite a lot of swings in the  
13 prices as evidenced by these tables.

14 Federal Order Class II prices are announced  
15 monthly, so I think one of the examples that I used was  
16 August and September are traditionally months where milk  
17 supplies are tighter relative to market needs, but  
18 the -- in the state system, those prices are announced  
19 using June and July data, which are months where milk is  
20 normally more plentiful relative to need, and that can  
21 cause these variations that you see. Plus the props of  
22 the formulas are not identical in nature.

23 Q. Okay. So did you, then, summarize this  
24 comparison of Class II prices, State order versus  
25 Federal system on page five of Table 1.F?

1           A.     Table 1.F.5 compares for the periods that we  
2 have previously discussed the average differences  
3 between the two systems. And in Column D, that would be  
4 the State order and the Federal order using the Southern  
5 California price.

6                     Column F, State order and the Federal order  
7 using the Northern California price.

8                     Columns J and K would be the differences --  
9 I'm sorry, Column J would be the difference using the  
10 Northern California price.

11                    And running your eyeball down Column D, you  
12 can see that in the averages, they are three out of four  
13 periods well below, and the one period, September of  
14 2011 to July of 2012, the averages are higher. I do not  
15 have an explanation for the higher number.

16                    Looking at the box below in this particular  
17 case, you can see the minimums and maximums, and there's  
18 quite a swing in some of those time periods. The  
19 highest difference is the negative \$5.21 over the entire  
20 2000 to 2015, and the highest difference in the other  
21 direction was a plus \$4.30.

22           Q.     Can you just stop there a moment? Let's talk  
23 about that for a minute. You're saying that during, you  
24 know, the period from 2000 through July 2015, there was  
25 a -- there was at least one month when the Federal order

1 price exceeded the California State order price by  
2 \$5.21?

3 A. Right. Correct.

4 Q. And there was at least one other month when  
5 the State order price exceeded the Federal price by  
6 \$4.30?

7 A. No, that went the other way, the Federal order  
8 price exceeded the California price by \$4.30. I think  
9 that's what that says.

10 Q. Okay. So the minimum -- minus 5.21 on the  
11 minimum means which one is higher?

12 A. Just a second. If there's a negative  
13 number -- \$4.30 would be an example from January of  
14 2015, so backing up a table, I see that the Federal  
15 Order Class II price was \$16.18, and the State order  
16 price was \$20.48.

17 Q. Okay. State order was higher that month?

18 A. That month, correct.

19 Q. Okay.

20 A. And the minus 5.21 was in July of 2007, and  
21 the Federal order price that month was \$21.40, and the  
22 California price was \$16.19.

23 Q. Okay. So in -- in the -- in the bottom here  
24 of Table 1.F.5, the Columns B and C, those -- those  
25 numbers are not directly comparable to the Column D



1 comparison?

2 A. No, they're not.

3 Q. They're like --

4 A. No.

5 Q. -- the minimum or maximum price for the  
6 Federal order price over California price during that  
7 period?

8 A. Correct.

9 Q. Okay. Okay. So -- so my question is when  
10 you -- when you've got two prices -- by the way, can  
11 Class 2 handlers, processors, packagers, manufacturers  
12 of Class 2 products in California compete with Class II  
13 manufacturers in the Federal order system?

14 A. Absolutely. Primary products such as cream,  
15 condensed milk, sweetened condensed milk, those products  
16 travel hundreds if not thousands of miles, not every  
17 day, but they do travel those distances for competition.

18 We have -- DFA owns a sweetened condensed  
19 manufacturing -- a sweetened condensed milk  
20 manufacturing plant in Winthrop, Minnesota, and that  
21 plant regularly faces competitive factors, competitive  
22 marketplace issues with product produced in California.  
23 That -- that difference has resulted in buyers  
24 questioning prices as far east as Kentucky and  
25 indicating to us that they can source product -- now,

1 they didn't say they can source it every day.

2           But as you've move from Kentucky to Denver,  
3 that geography, we get a tremendous number of questions  
4 about the competitiveness of Class II prices across the  
5 country based -- and based primarily on this regulatory  
6 difference. And in the -- the example I gave of  
7 Kentucky, that particular case, the price difference was  
8 enough to absorb the freight costs all the way to there.  
9 So that would be an example, perhaps an extreme example,  
10 but an example where the lack of uniformity in prices,  
11 the regulatory differences causes marketing activity to  
12 happen, not "I have a better product, I have a better  
13 plant, my product fits your needs better."

14           Q. In other words, the transactions are generated  
15 strictly by the regulatory differences in price?

16           A. Yes.

17           Q. Is that, in your opinion, Mr. Hollon, a -- an  
18 orderly, aligned -- an orderly marketing situation?

19           A. It is not.

20           Q. Okay. Do you have anything else to add on  
21 that Table 1.F?

22           A. I would say Table 1.F.6 does have some  
23 additional period comparison.

24           Q. Yes, thank you.

25           A. I didn't speak to them, but they're -- they --

1 they follow a slightly different period, but the --  
2 the -- the comparisons are the same, they're still  
3 negative in the places I mentioned before.

4 Q. So just for clarification, then, what are the  
5 periods that are on 1.F.6?

6 A. 2008 through 2010 average and median, and 2010  
7 through 2015 average and median.

8 Q. Okay. So just for precision, then, the 2008  
9 would be January 2008 through July 2015 --

10 A. Yes.

11 Q. -- period?

12 And the -- it would be January 2010 through  
13 July 2015?

14 A. Correct.

15 Q. Okay. Okay. Thank you. Anything else on  
16 1.F?

17 A. No.

18 Q. Okay. Let's turn, then, to 1.G. And describe  
19 the comparison on 1.G, which -- which you prepared as  
20 you did all of these, correct?

21 A. Correct.

22 Q. Go ahead.

23 A. Table 1.G is a comparison like we have made  
24 thus far with Federal Milk Marketing Order Class III  
25 prices compared to the California State Order 4b price,

1 and the Federal Order Class IV and the California  
2 Class -- State Order class 4a price.

3 So Column A is the month.

4 Column B is the Federal Order Class III price  
5 for that month.

6 Column C is the 4b price for that month.

7 And Column D is the difference between the  
8 two, 4b minus Class III.

9 Column E is the Federal Order Class IV.

10 Column F is the Class 4a price, California  
11 State order.

12 And Column G, the difference between the two  
13 California minus the Federal order.

14 So looking at those differences, the -- they  
15 do vary from time -- from -- in some months back and  
16 forth from Federal order higher to Federal order lower,  
17 but the overwhelming number is that the Federal order  
18 prices are lower -- sorry, the California State order  
19 prices are lower than the Federal order prices.

20 And looking to -- to Table 1.G.5 where there  
21 is summary, Column D summarizes for the periods that  
22 we've discussed the differences in the 4b and Class III  
23 price. So from January of 2000 to November of 2007,  
24 that was a negative \$.39, or the 4b price averaged \$.39  
25 lower than the Federal Order Class III price.

1           For the period December 2007 to August 2011,  
2 average \$.91 lower.

3           For the period September 9, '11 --  
4 September of '11 to July 2012, \$2.22 lower.

5           And for the period August of 2012 to  
6 July 2015, \$1.89 lower.

7           Q.   Now, staying right on that Class III just for  
8 a moment.  What portion of the -- of production in  
9 California in the California State Pool is priced at  
10 Class III?

11          A.   I don't have the exact number off my head, but  
12 in the lower 40 percent.

13          Q.   Okay.  Go on, then, to Class IV.

14          A.   Okay.  In Class IV, Column G, those  
15 differences would be a -- a minus \$.38, California 4a  
16 price is below the Federal Order Class IV price by \$.38.  
17 And the January 2000 to November 2007, minus 19, minus  
18 26, minus 20 in the periods -- similar periods that  
19 we've discussed.

20          Q.   Now, Mr. Hollon, are the products manufactured  
21 by California Class III and IV -- let me back up.

22                What -- what percentage of the California pool  
23 is Class IV utilization approximately?

24          A.   Again, I don't have that off of top of my  
25 head, but I would say in the lower 30 percents.

1 Q. Okay. So -- and those precise numbers will be  
2 in the record if they're not already.

3 Do California Class 3 processors, this is  
4 primarily -- this is cheese plants, right?

5 A. Yes, primarily cheese plants.

6 Q. Okay.

7 A. Cheese plants.

8 Q. Okay. Do they compete with cheese  
9 manufacturers in the rest of the country?

10 A. That would be correct. We have that  
11 competitive situation not only with our own businesses,  
12 but we also supply many cheese plants with milk all over  
13 the country, from here in California to the Northeast  
14 markets, and we regularly sit down with those customers,  
15 talk about marketing conditions.

16 And I guess, again, another anecdotal scenario  
17 is if I wasn't here today, I would be in one of our  
18 customers in the Lake states, a very large cheese maker,  
19 they routinely request their suppliers to come in and  
20 sit down and discuss marketing conditions with them.  
21 They are by no means naive buyers, and they ask about  
22 market conditions in California, differences in the  
23 prices, how they impact, you know, what they're paying  
24 for milk, how they impact what they're able to sell  
25 cheese for, and that's not -- not an occasional

1 occurrence.

2           Also, I routinely furnish information to our  
3 marketing staffs in, for example, the Northeast area,  
4 there's a large amount of cheese produced in the  
5 Northeastern states, and they are always asking  
6 questions about this price difference and how to relate  
7 that to their customers, what some of these differences  
8 are.

9           And I guess the last point that I would make  
10 is that DFA owns a Hispanic cheese manufacturing  
11 operation in Houston, Texas. We've owned that facility  
12 for about five years. I just finished over the weekend  
13 putting together some information for the sales staff as  
14 they go out and visit some of their customers, and in  
15 their markets in Houston, Dallas, San Antonio, major  
16 markets for Hispanic cheese, they very routinely ask  
17 questions about the difference between the 4b price and  
18 the Class III price, and the competitiveness that  
19 extends into their market there.

20           Q.    Okay. Just on that -- that one product, I  
21 think your testimony indicated that USDA data shows that  
22 California plants produce 52 percent of the Hispanic  
23 cheeses in the country. Do you recall that? It's on  
24 page four.

25           A.    Yes.

1 Q. Okay. So what -- with a majority of the  
2 Hispanic cheese for the entire country being produced in  
3 California under these State order prices, is that a  
4 serious competitive issues for would be manufacturers  
5 and sellers of Hispanic cheese elsewhere in the country?

6 A. Yes, it would.

7 Q. Now -- so just taking Class III, then, by  
8 itself, the customers that you referred to in the -- DFA  
9 customers in the Lake States and Northeast, do they  
10 regularly encounter competition of California  
11 manufacturers of cheese products?

12 A. I'm sorry, would you repeat?

13 Q. I'm sorry. The DFA customers that you  
14 referred to in the Lake States or in the Northeast, do  
15 they regularly encounter competition from  
16 California-manufactured cheese products in the national  
17 market for cheese?

18 A. That's their indication when we're talking  
19 with them, that -- the reason I'm asking these questions  
20 is competitive factors they face in that -- that vein.

21 Q. Okay. Do these differences in prices between  
22 Class III now and Class -- let's talk about Class IV for  
23 a minute. What -- what -- what observations do you have  
24 about the differences in the Class IV prices that you've  
25 calculated on Table 1.G.



1           A.     Well, as in the other prices, there's a  
2 definite negative bias. The 4a prices are consistently  
3 below the Class IV prices in the Federal order, the  
4 Federal Order Class IV prices. And those would -- would  
5 also be different enough to cause some amount of a  
6 market question and concern.

7           Class IV prices primarily is -- are butter  
8 powder products. Butter is more -- those prices are  
9 more heavily influenced by domestic market conditions,  
10 so I would say we don't encounter quite as much of  
11 concern or question on the butter markets, but the  
12 powder markets are both internationally competitive, and  
13 there's quite a bit of concern about level of price,  
14 level of base price, level of minimum price in the Class  
15 IV markets.

16          Q.     Do these price differences in your opinion  
17 between California State Order Class 3 and Class 4  
18 prices versus the markets -- versus the prices for those  
19 products in the Federal milk order system in the rest of  
20 the country represent a properly aligned and orderly  
21 marketing situation?

22          A.     No, they would not.

23                 JUDGE CLIFTON: For the transcript,  
24 Mr. Hollon, you've talked a lot about 4a and 4b with  
25 regard to this exhibit, and in both cases, the numbers

1 shown in the transcript would be an Arabic numeral; is  
2 that correct?

3 THE WITNESS: Yes.

4 JUDGE CLIFTON: And if you referred to a State  
5 Class 3, or rather a State Class 4, would that also be  
6 the Arabic?

7 THE WITNESS: Yes.

8 JUDGE CLIFTON: Now, if you were referring to  
9 a Federal Order Class III, would it be a Roman numeral?

10 THE WITNESS: Yes.

11 JUDGE CLIFTON: And if you referred to a  
12 Federal Class IV, would it be a Roman numeral?

13 THE WITNESS: Yes.

14 JUDGE CLIFTON: And I know it doesn't matter  
15 tremendously if the transcript doesn't get it exactly  
16 right, but it's helpful to the reader of the transcript  
17 because when we see the Roman numeral, our brains say  
18 Federal.

19 THE WITNESS: That is correct.

20 JUDGE CLIFTON: Now, the Lake States are which  
21 ones?

22 THE WITNESS: Depending on your map, Michigan,  
23 Indiana, Ohio.

24 JUDGE CLIFTON: Thank you.

25

1 BY MR. BESHORE:

2 Q. Mr. Hollon, let's turn, then, to chart 1.H and  
3 1.I, Charts 1.H and 1.I in Exhibit 20. Did you prepare  
4 those and would you describe them, please?

5 A. I did prepare them. Chart 1.H is an annual  
6 comparison from 2000 to 2014 of the annual average  
7 California State Order Class 4a price less the Federal  
8 Milk Marketing Order Class IV price. And in every  
9 month, the chart indicates that that comparison is  
10 negative, the Class IV price minus the Federal order  
11 price is a negative number. Class 4 -- the California  
12 4a price is below the Federal Order Class IV price in  
13 every month. And -- I'm sorry, every year. And that  
14 average, while I don't have it on the page, and I don't  
15 have it on the top of my head, but that average is  
16 reasonably consistent, it would be about \$.25 below with  
17 the exception of 2007.

18 And Chart 1.I is the same time period,  
19 calendar year 2000 through 2014. It is the California  
20 State Order 4b price less the Federal Milk Marketing  
21 Order Class III price. In every instance, the annual  
22 average displays the negative relationship.  
23 California -- meaning the California State order price  
24 is below. However, as opposed to the 4a price where the  
25 trend was reasonably consistent, there was a marked

1 deviation in the trend beginning in 2010 as indicated by  
2 the negative numbers grew quite a bit, got much larger  
3 for 2010, '11, '12, '13, and '14. And those -- that  
4 deviation in 2010 marked a combination of the rapid  
5 increase in whey values in the marketplace and changes  
6 in the methods that California -- California State order  
7 valued whey in its pricing formulas.

8 Q. Okay. Turn then --

9 JUDGE CLIFTON: I'm sorry. I need you to  
10 explain, Mr. Hollon, why you used the phrase "less" in  
11 the title of both Charts 1.H and 1.I.

12 THE WITNESS: The word "less" could mean minus  
13 as in a addition/subtraction mode.

14 BY MR. BESHORE:

15 Q. Is that what you meant by it?

16 A. Yes.

17 JUDGE CLIFTON: So if -- if I start with the  
18 California price and I subtract the Federal order  
19 price --

20 THE WITNESS: Correct. In January of 2000, if  
21 you did that, you would get a number that would be  
22 approximately negative \$.12.

23 BY MR. BESHORE:

24 Q. For the year 2000?

25 A. For the year 2000.

1 JUDGE CLIFTON: All right. And that's because  
2 the number I start with, the California number, is  
3 smaller than the Federal number?

4 THE WITNESS: Yes.

5 JUDGE CLIFTON: And has how I get a negative?

6 THE WITNESS: Yes.

7 JUDGE CLIFTON: Okay. Thanks.

8 MR. BESHORE: Thank you, Your Honor.

9 BY MR. BESHORE:

10 Q. Turn to Table 1, 1.J, then, Mr. Hollon. Can  
11 you describe that?

12 A. Table 1.J is, as I mentioned before,  
13 differences in whey valuations, so I wanted to try to  
14 demonstrate those differences. In Table 1.J, I  
15 neglected to give each column an alpha label, so I'm  
16 going to do that now.

17 So Column A titled "Month" -- I'm sorry.

18 The column titled "Month" would be Column A.

19 The column titled "NDPSR Whey" would be Column  
20 B.

21 The Column "DMN Western Whey Mostly 26 slash  
22 25th" would be Column C.

23 The column labeled "Annual Average NDPSR"  
24 would be Column D.

25 The column labeled "Annual Average DMN" would

1 be Column E.

2 The column "Whey Price Contribution FMO" would  
3 be Column F.

4 The column labeled "Whey Price Contribution  
5 CSO" would be Column G.

6 And the column "FMO less COS" would be Column  
7 H.

8 So "Column A, Month" is the month.

9 Column B is the Published National Dairy  
10 Products Sale Report Price for Whey.

11 Column C is the Dairy Market News Western Whey  
12 mostly 26 through 25th price as published by the  
13 California Department of Food and Agriculture. And  
14 since we haven't had any data or exhibits yet submitted  
15 for the Department, I did get that data off of their  
16 website.

17 Column D is the annual average of Column B.  
18 So for example, the first number down, \$.1863 or 18  
19 dollar -- 18 -- 18.63 cents be the annual average for  
20 calendar year 2000.

21 Column E is the annual average for the Dairy  
22 Market News Whey Price.

23 Column C -- Column F is the contribution to  
24 total dollars of contribution made available by the  
25 Federal order formula, which I will detail in just a

1 moment.

2 Column G is the total contribution dollars  
3 available to the Class 4b price.

4 And Column H would be the difference between  
5 those two.

6 For purposes of comparison, the Federal order  
7 calculation is the same as it is currently, and so all  
8 of the calculations from January of 2000 to date use the  
9 formula that's outlined and defined in Table 1.K. And  
10 the Whey Price Contribution CSO in Column G is used as  
11 the bracket system for every period of 2000 to most  
12 recent, that is in -- in -- in place -- how do I say it  
13 right? It's not the temporary adjustment, it is the  
14 period -- it's the adjustment just prior to that.

15 So stopping for a moment and looking over to  
16 Table 1.K, the Federal Order -- Federal Milk Marketing  
17 Order Price Formula Constants, that formula has a Whey  
18 Make Allowance of .1191. A formula factor of 1.03. A  
19 yield factor of 5.9.

20 So the box below on that page, if you had a  
21 month where whey was .5352 cents, sort of -- that makes  
22 dollars. 53.52 price per pound, you subtract the make  
23 allowance of 1991 from that, you get .3361. You  
24 multiply that as the formula does times 1.03, and you  
25 get .3462. You multiply that by 5.9, you get 2.0425, so

1 that's the dollars that are available to the milk price.

2 And if you were to -- if you were to follow  
3 through the formula and actually calculate the Class III  
4 price, you would multiply that figure by .965. Again,  
5 my goal was to show the total dollars available to the  
6 milk price, so -- and if you made that calculation over  
7 the entire period, you would reduce that Class III price  
8 by about \$.08 per hundredweight.

9 To the right on this page is the whey graphic  
10 and used in the California 4b price formula. That's the  
11 most recent formula.

12 Q. Ending in July 2015?

13 A. Ending in July 2015. And if you had whey  
14 price of -- this is supposed to be the same, Excel  
15 didn't round them when they first printed them, but if  
16 you had the same .5352, in this case .5355 price, and  
17 you used the bracket system, it would return .625 to the  
18 4b price.

19 Q. Okay. Those are the formulas that you've used  
20 in the comparison that is in Table 1.J?

21 A. Correct. So --

22 Q. So why are the columns to the right, G and H,  
23 blank through August 2012?

24 A. That was when the -- the Whey Price  
25 Contribution kicked in or -- or start -- or became



1 effective in those months, so those were the months I  
2 chose for comparison. So if you went down to August of  
3 2012, and you looked at the Whey Price Contribution  
4 Column Federal Milk Marketing Order in that particular  
5 product, the National Dairy Products Sales Report price  
6 was .352. The Dairy Market News --

7 Q. Wait. Was that .5352?

8 A. Yes.

9 Q. Okay.

10 A. The Western Whey Mostly Price was .5355.

11 Q. And just -- just to interrupt you there, are  
12 those the numbers that you carried through on 1.K?

13 A. Yes, they are.

14 Q. So it wasn't -- it's not actually a rounding  
15 thing --

16 A. That's correct.

17 Q. -- you're using -- for the California  
18 calculation, it uses a different prize series than the  
19 Federal order calculation, correct?

20 A. Correct.

21 Q. And a different -- yeah, a different set of --  
22 different set of prices?

23 A. That is correct. So it's my mistake earlier  
24 when I attributed those differences to an Excel  
25 rounding. It was the actual prices that were effective

1 that month.

2 So in the Federal order calculation using the  
3 formula that I outlined in Table 1.K, there would have  
4 been \$2 and four -- \$2.0423 available from whey values  
5 to go into a Class III price. Using the California  
6 State order calculation, there would have been \$.6250  
7 available to go to the 4b price. And that difference  
8 would be 1.4173. And that accounts for a large part of  
9 the difference between the two price series, Federal  
10 Order Class III and California State Order 4b.

11 If you look down column -- the very last  
12 column, Difference Federal Milk Order less California  
13 State Order, and you look at Table 1.J.5, you get an  
14 average difference of 1.7084 percent hundredweight for  
15 that period.

16 Q. What period is that?

17 A. August of 2012 to July of 2015.

18 Q. Okay.

19 A. And so that's a pretty sizable difference per  
20 hundredweight. I would tell you from -- just like I  
21 outlined what might be a -- a difference of notice to a  
22 Class I, II, III, IV buyer, a difference of \$1.80 or  
23 \$1.70 -- 1.708 or \$1.784 difference in the ability to --  
24 to pay a dairy farmer would be a variation of notice,  
25 and that the dairy farmers would be concerned about

1 those differences, and we'll hear from some of them  
2 today about that, that -- that will testify to that.

3 Q. Okay. Now, you've testified that in your  
4 opinion, the Class III price -- prices, the difference  
5 in Class III prices between the California state order  
6 and the Federal system is -- is an important difference  
7 sufficient -- a difference that establishes a material  
8 misalignment between competitors and a disorderly  
9 condition?

10 A. Correct.

11 Q. Okay. Now, I want you to set aside the whey  
12 issue and just consider differences in prices that  
13 you've depicted in your tables here on Table 20, Class I  
14 prices, Class II prices, Class IV prices. In your  
15 opinion, based on your knowledge of the national  
16 marketplace, in all these categories of pricing, without  
17 the Class III issue, is -- do those prices -- are those  
18 prices properly aligned? Do they represent an orderly  
19 marketplace?

20 A. They would not be properly aligned. They  
21 would represent differences that would cause concern in  
22 the marketplace, and do. And, you know, as I mentioned  
23 in several instances where I could -- could discuss  
24 without revealing private -- extreme private  
25 information, that they do now. And those -- those

1 differences regularly, you know, are asked absent the  
2 Class III, they're asked by Class I buyers, by Class II  
3 buyers, by Class IV buyers. And so, yes, the Class III  
4 issue is a big issue, but in terms of the entire issue,  
5 the other class prices are also important.

6 Q. Do you have anything -- anything else to add  
7 at this point, Mr. Hollon?

8 A. I do not.

9 Q. Thank you.

10 MR. BESHORE: I have no questions for  
11 Mr. Hollon on direct examination, and he would be  
12 available for cross.

13 I would move Exhibits 19 and 20, the admission  
14 those exhibits.

15 JUDGE CLIFTON: Did I already admit those?

16 MR. BESHORE: You did not.

17 JUDGE CLIFTON: I did. Yes?

18 MR. HILL: We marked --

19 JUDGE CLIFTON: No.

20 MR. BESHORE: No, just marked.

21 JUDGE CLIFTON: Just marked. All right. In  
22 any event, it doesn't hurt if I admit them twice. It  
23 hurts if I omit to admit them.

24 Does anyone wish to ask any further questions  
25 of Mr. Hollon before determining whether you have any

1 objection to the admission into evidence of Exhibit 19?

2 No one.

3 Is there any objection to the admission into  
4 evidence of Exhibit 19? There is none.

5 Exhibit 19 is admitted into evidence.

6 (Whereupon Exhibit 19 was admitted  
7 into evidence.)

8 JUDGE CLIFTON: Is there anyone that would  
9 like to ask any questions of Mr. Hollon before  
10 determining whether you have objection regarding Exhibit  
11 20?

12 MR. ENGLISH: May I consult for a second, Your  
13 Honor?

14 JUDGE CLIFTON: You may.

15 MR. ENGLISH: No, Your Honor.

16 JUDGE CLIFTON: Thank you, Mr. English.

17 There is none.

18 Does anyone object to the admission into  
19 evidence of Exhibit 20? No one does.

20 Exhibit 20 is admitted into evidence.

21 (Whereupon Exhibit 20 was admitted  
22 into evidence.)

23 JUDGE CLIFTON: Now, before we begin  
24 cross-examination of Mr. Hollon, I'd like to take a  
25 15-minute break, so please be back and ready to go at

1 11:22. 11:22. Thank you.

2 (Whereupon a break was taken.)

3 JUDGE CLIFTON: We're back on record. It's  
4 11:28.

5 Mr. Hollon, what did you want to add to your  
6 direct testimony before I invite cross-examination?

7 THE WITNESS: I did note -- I had a note, but  
8 I forgot to mention it, that on Table 1.G.5, there is a  
9 label "Average and Median" that was omitted, and that  
10 would be for the period August of '12 to July of '15 in  
11 the upper box. So that would correspond to a Column B  
12 number of \$19.26 and that should be -- in the month  
13 column, that should be the average. And then the box  
14 immediately below it next to the \$18.37 should say  
15 "median." And that is all.

16 JUDGE CLIFTON: Okay. I'm going to ask you to  
17 say it again.

18 THE WITNESS: Table 1.G.5, in Column A where  
19 the month is listed in the upper -- there's two boxes  
20 there, in the upper -- two large boxes. In the upper  
21 box, the bottom two rows corresponding to August of 2012  
22 through July 2015 should be labeled "Average" and that  
23 would be next in the same row as \$19.26. And then the  
24 row below it next to the number \$18.37, that row should  
25 be labeled "Median."

1 JUDGE CLIFTON: Does everybody have the page  
2 and did you understand where to insert the words?

3 All right. All is well.

4 Who will be the first to cross-examine  
5 Mr. Hollon?

6 MR. ENGLISH: Chip English. So, Your Honor, a  
7 couple of things. This is going to be a lengthy  
8 cross-examination, and I understand that there are, I  
9 think, some dairy farmers who I think Mr. Beshore  
10 indicates would like to testify after lunch.

11 MR. BESHORE: Yes.

12 MR. ENGLISH: And I am certainly content as  
13 long that's in order for Mr. Beshore and Mr. Hollon to  
14 suspend my cross-examination, assuming I'm the one  
15 questioning him at that time. I appear to have either  
16 in the dust of Fresno or thanks to other participants  
17 came down with a small cold, or maybe I'm just  
18 congested, and besides which I think we have tried on  
19 our side to organize the cross-exam in some way, and it  
20 will make sense for me to stand down periodically. I  
21 have tried to break this up into 12 subject areas,  
22 and -- but, again, this will be -- this will be lengthy.

23 JUDGE CLIFTON: Now, I know that there's a  
24 drought here. You may not blame your condition on the  
25 dust.

1 MR. ENGLISH: If you were outside a couple of  
2 times with, say, an animal, you might understand how  
3 much dust got up into my nostrils. And also if you're  
4 just walking outside in your shorts or business attire.  
5 This doesn't have to be on the record.

6 JUDGE CLIFTON: Well --

7 MR. ENGLISH: Whatever it is, I've got  
8 something that is catching in my throat.

9 JUDGE CLIFTON: All right. Well, some of us  
10 who have been walking around aren't sounding like you,  
11 so I think you've caught a bug. All right.

12 That -- that sounds good. With -- so why  
13 don't we do this, Mr. English, why don't you call the  
14 lunch hour when you're ready?

15 MR. ENGLISH: Well, or if Mr. Hollon's ready.

16 JUDGE CLIFTON: All right.

17 MR. ENGLISH: To be fair to him, too, he gets  
18 to --

19 THE WITNESS: Enjoy this.

20 JUDGE CLIFTON: So it's 11:32 now, so at a  
21 time you feel is a good break, Mr. English, and you may  
22 use a signal from Mr. Hollon as a way to decide that,  
23 we'll take from lunch, and then when we come become  
24 we'll take testimony of dairy farmers.

25 MR. ENGLISH: Thank you, Your Honor.



1 CROSS-EXAMINATION

2 BY MR. ENGLISH:

3 Q. Good afternoon, Mr. Hollon.

4 A. Good morning, Mr. English.

5 Q. It's afternoon somewhere.

6 So since this is your first time up, and  
7 you're testifying for DFA, and I'd like to get some  
8 things on the record with respect to Dairy Farmers of  
9 America, and you testified in response this morning from  
10 Mr. Beshore that Dairy Farmers of America was formed in  
11 1998, correct?

12 A. Correct.

13 Q. At the time it was formed, it was formed by  
14 the merger of four existing dairy-farmer-owned  
15 cooperatives, correct?

16 A. Correct.

17 Q. Can those Mid-America Dairyman?

18 A. Yes.

19 Q. Dairyman, Inc.?

20 A. Wrong.

21 Q. Wrong. So -- so Dairyman, Inc., had already  
22 been acquired -- had been already merged with Mid-Am at  
23 that point?

24 A. Correct.

25 Q. So Mid-Am, Associated Milk Producers?

1 A. Associated Milk Producers, Southern Region.

2 Q. Southern Region. Milk Marketing, Inc.?

3 A. Correct.

4 Q. And what's the fourth? Was there a fourth?

5 A. There was a fourth, and I'm going to get the  
6 name wrong, but it was the -- it was the western group,  
7 I think they were Western General Dairies maybe was the  
8 name of the co-op. They were --

9 Q. WDCA?

10 A. I think WDCI.

11 Q. WDCI. Prior to the merger -- well, let me --  
12 let me backtrack.

13 So -- so when did Mid-Am merge with Dairymen,  
14 Inc., if you know?

15 A. I don't remember.

16 JUDGE CLIFTON: Would -- would you spell that  
17 for me, Mr. English?

18 MR. ENGLISH: Dairymen, Inc., or Mid --

19 JUDGE CLIFTON: You're saying Mid -- Mid-Am?

20 MR. ENGLISH: Mid-Am. Mid, M-I-D, hyphen,  
21 A-M.

22 BY MR. ENGLISH:

23 Q. Mid-American Dairymen or America Dairymen or  
24 Mid-American Dairymen?

25 A. You know, it wasn't my line. I think it was

1 Mid-America Dairymen, Incorporated.

2 Q. So M-I-D hyphen A-M-E-R-I-C-A.

3 Which organizations did you come from?

4 A. Associated Milk Producers, Inc.

5 Q. Had each of those entities participated in --  
6 in varying degrees in Federal Milk Marketing Order  
7 hearings before the merger forming Dairy Farmers of  
8 America?

9 A. Yes.

10 Q. Prior to the merger, had you testified at  
11 Federal order hearings on behalf of Associated Milk  
12 Producers?

13 A. Yes.

14 Q. Do you -- if you know, prior to the merger,  
15 who was the individual who would testify on behalf of  
16 Mid-American Dairymen? Would that be Mr. Blakeslee?

17 A. I don't remember for certain.

18 Q. But as you indicated with Mr. Beshore, you're  
19 here testifying on behalf of Dairy Farmers of America,  
20 not yourself individually, correct?

21 A. Correct.

22 Q. And that testimony is approved by your  
23 employer, Dairy Farmers of America, to be given on  
24 behalf of Dairy Farmers of America --

25 A. Correct.

1 Q. -- correct?

2 All right. And you're opining today for Dairy  
3 Farmers of America on what constitutes disorderly  
4 marketing, correct?

5 A. I am offering my opinions, stated testimony on  
6 what's an orderly situation as opposed -- as regards to  
7 Proposal 1.

8 Q. Do you recall whether Bill Blakeslee did on  
9 behalf of Mid-America Dairymen at some point before the  
10 merger appear and testify at these kind of proceedings  
11 on behalf of Mid-America Dairymen?

12 A. No, I don't have any recollection of Bill  
13 working that -- I know he worked in that arena, but I  
14 don't have any recollection of any specific thing that  
15 he did.

16 Q. By the way, Blakeslee is spelled  
17 B-L-A-K-E-S-L-E-E.

18 Now, before Dairymen, Inc., merged with  
19 Mid-America Dairymen, do you recall George Jung,  
20 J-U-N-G, testifying on behalf of Dairymen, Inc., in  
21 these kind of proceedings?

22 A. Same answer, I recall that George testified on  
23 behalf of Dairymen, Inc., but I have no specific  
24 information about what he -- hearings or where he was or  
25 what he did, what he said.

1 Q. And -- and after the acquisition of the merger  
2 of Dairymen, Inc., and Mid-America Dairymen, did  
3 Mr. Jung continue to participate and at times testify on  
4 behalf of Mid-America Dairymen?

5 A. I don't know.

6 Q. Do you know who your economist equivalent was  
7 at MMI prior to the merger of Dairy Farmers of America?

8 A. Probably the best fit would have been Rod  
9 Carlson.

10 Q. And do you remember Rod Carlson participating  
11 at these kind of proceedings and testifying on behalf of  
12 MMI at these kind of Federal order proceedings?

13 A. I know that he participated, I don't remember  
14 any specifics that he may have testified to.

15 Q. What about WDCI, do you recall who they had as  
16 an economist prior to the merger that formed Dairy  
17 Farmers of America?

18 A. I do not.

19 Q. So prior to the merger of Dairy Farmers of  
20 America, now turning to the history in California, do  
21 you recall which of the entities that merged to form  
22 Dairy Farmers of America had a California presence  
23 before the merger?

24 A. I'm not following your question. Try it  
25 again.

1 Q. So did Mid-America Dairymen own a plant in  
2 California at the time of Dairy Farmers of America being  
3 formed?

4 A. It did.

5 Q. Was that Golden Cheese?

6 A. I don't remember the name, and I don't think  
7 we associated the name. I think that there was a plant  
8 in Corona that if that was Golden Cheese, then that  
9 would be, yes.

10 Q. Were there any other plants that Mid-America  
11 Dairymen owned at the time of the merger forming DFA?

12 A. Yes. There was a plant in Hughson,  
13 California, Turlock, California, and Petaluma,  
14 California, that I recall. There may have been others.

15 Q. But leaving Petaluma aside for a moment, you  
16 said Hughson?

17 A. Correct.

18 Q. And which entity that formed DFA owned that  
19 plant at the time of the merger?

20 A. You mean --

21 Q. I'm talking about --

22 A. Try it again.

23 Q. I'm talking about when DFA was formed by  
24 merger in 1998, I think you just told me now that there  
25 were four plants. I want to leave Petaluma aside

1 because I think it was actually later, but you've just  
2 talked about a plant in Corona that Mid-America owned,  
3 correct?

4 A. Correct.

5 Q. Okay. And you've mentioned a plant in  
6 Hughson?

7 A. Mid-America would have owned that.

8 Q. Okay. And you mentioned a plant in Turlock?

9 A. Mid-America would have owned that.

10 Q. Now, leaving aside Petaluma for a moment, were  
11 there any other facilities in California that were  
12 owned -- owned or operated by the predecessor entities  
13 that formed Dairy Farmers of America at the time of the  
14 merger?

15 A. I don't know.

16 JUDGE CLIFTON: Would you spell for me the --  
17 or one of -- you let me ask Mr. Hollon first, the town  
18 in California that sounds to me like Houston, what is  
19 that name?

20 THE WITNESS: H-U-G-H-S-O-N.

21 JUDGE CLIFTON: H-U-G-H-S-O-N?

22 THE WITNESS: Correct.

23 JUDGE CLIFTON: Hughson?

24 THE WITNESS: Yes.

25 JUDGE CLIFTON: Thank you. And would one of

1 you -- I don't know who knows it -- spell Carlson as in  
2 Rod Carlson.

3 MR. ENGLISH: I think it's C-A-R-L-S-O-N.

4 THE WITNESS: Sounds good to me.

5 JUDGE CLIFTON: Thank you, Mr. English.

6 All right. Go ahead.

7 MR. ENGLISH: And Turlock is T-U-R-L-O-C-K,

8 And Petaluma is P-E-T-A-L-U-M-A.

9 BY MR. ENGLISH:

10 Q. So just to be clear, a plant in Petaluma was  
11 owned and operated prior to a merger with Dairy Farmers  
12 of America by California Gold, correct?

13 A. I'm not certain.

14 Q. Okay. So you don't know the history of -- of  
15 how Petaluma plant came into the DFA family?

16 A. I don't.

17 Q. Do you know that there was post the merger  
18 that actually formed Dairy Farmers of America a further  
19 merger with the co-op known as California Gold?

20 A. That is true.

21 Q. So going back to the time of the merger as  
22 opposed to the owning of plant facilities, which of the  
23 four predecessor organizations -- and I'm excluding  
24 California Gold because I think that happened shortly  
25 thereafter, and I was involved so I'm pretty darn



1 sure -- that -- which of those four entities, which had  
2 dairy farmers located -- dairy farmer members located in  
3 California prior to the merger that formed Dairy Farmers  
4 of America in 1998?

5 A. Mid-America Dairymen?

6 Q. Only, to your knowledge?

7 A. Well, I can say for certain that AMPI and Milk  
8 Marketing, Inc., did not. I cannot say for certain that  
9 Western General did not.

10 Q. But to your knowledge, WDCI did not, but you  
11 just don't know?

12 A. I just don't know.

13 Q. So other than California Gold, have there been  
14 other mergers or acquisitions by Dairy Farmers of  
15 America in California after it was formed in 1998?

16 A. I don't think there have been any transactions  
17 that would have termed a merger or an acquisition.

18 Q. Now, outside of California, there have been  
19 several other organizations that have since merged or  
20 otherwise been acquired by Dairy Farmers of America,  
21 correct?

22 A. Yes.

23 Q. The most -- would the most recent be Dairylea  
24 in the northeast?

25 A. Correct.

1 Q. What are the others? I think there may be  
2 three or four.

3 A. I don't know that I can recall them all, but  
4 there was a merger of a cooperative in the Black Hills  
5 areas of South Dakota, in Michigan, and in the  
6 Maryland/Virginia area, I don't recall the name.

7 Q. Okay.

8 JUDGE CLIFTON: Mr. Hollon, can you spell  
9 Dairylea for me?

10 THE WITNESS: D-A-I-R-Y-L-E-A.

11 BY MR. ENGLISH:

12 Q. And it was formerly a cooperative operating in  
13 the Northeast order?

14 A. Among others.

15 Q. It did operate elsewhere?

16 A. It did operate elsewhere.

17 Q. The -- you referenced a transaction involving  
18 Maryland/Virginia: Were you referring to Piedmont Milk  
19 Sales or was that a different transaction?

20 A. No, this was a group that I think owns the  
21 bottling plants in the Washington, D.C., area. It was  
22 very early on; I don't remember all the details.

23 Q. All right. So turning back now to California,  
24 does Dairy Farmers of America still own and/or operate a  
25 plant in Corona that I think was called Calusa Cheese?

1 A. It does not operate that facility at all.

2 Q. Is that facility still open today?

3 A. No.

4 Q. Does Dairy Farmers of America still operate  
5 the facility at Hughson?

6 A. It does.

7 Q. Does Dairy Farmers of America still operate  
8 the facility at Turlock?

9 A. It does.

10 Q. What products are produced as a product at  
11 Hughson?

12 A. Hughson would be a Class 4a, general plant,  
13 cream, condensed, dry products, butter.

14 Q. And going back to the discussions with the  
15 court reporter, that's Arabic 4a, correct?

16 A. Yes.

17 Q. And what about the plant in Turlock, what  
18 products are produced in Turlock?

19 A. Italian cheeses.

20 Q. And the plant in Petaluma has since closed; is  
21 that correct?

22 A. DFA no longer has any ownership arrangement  
23 with the plant in Petaluma.

24 Q. Is it operating for any other purpose, to your  
25 knowledge?

1           A.    I think perhaps someone else is operating the  
2 plant.  I don't know if it's the same facility or not.

3           Q.    Other than the plants in Turlock and Hughson,  
4 does Dairy Farmers of America operate any other plants  
5 located in California?

6           A.    We have some operations in Ventura, and then  
7 jointly with a bottling plant in the Los Angeles area.

8           Q.    So what is the operation you have in Ventura?

9           A.    Makes extended-shelf-life-type products.

10          Q.    What's the name of that facility?

11          A.    I'm sorry, I know it as the Ventura plant, but  
12 I don't know the exact name of the facility.

13          Q.    And by ESL, extended-shelf-life products?

14          A.    Products of that category.

15          Q.    Are they Class 1 products under the California  
16 order?

17          A.    Yes.

18          Q.    And what is the joint venture that you have  
19 with the bottling operation near Los Angeles?

20          A.    Stremicks is the name of that facility.

21                JUDGE CLIFTON:  I'll need a spelling, please.

22                THE WITNESS:  S-T-R-E-M-I-C-K-S.

23 BY MR. ENGLISH:

24          Q.    And when you see -- say a "joint venture,"  
25 what exactly do you mean in your mind?

1 A. There's ownership by DFA and other parties.

2 Q. And what products does that plant produce?

3 A. It's primarily a Class I facility.

4 Q. Okay. Does the Ventura plant sell products  
5 outside the State of California?

6 A. I'm not familiar, so I do not know.

7 Q. Does the Stremicks plant sell products outside  
8 of California?

9 A. Again, I'm not intimately familiar there  
10 either.

11 Q. From Exhibit 19, page 2 --

12 A. Is that the statement?

13 Q. That's your statement, yes. So it has some  
14 predecessor question, which is -- this is in the second  
15 paragraph. You indicate that there are 14,000 members  
16 with 9,000 dairy farms. Can you explain the difference  
17 between a "member" and a "dairy farm"?

18 A. A member would be an individual person, so --  
19 and a dairy farm would be an operation, a farm that  
20 produces milk, and a farm may be owned by more than one  
21 member.

22 Q. So, for instance, a husband and wife, just as  
23 an example but not exclusively, a husband and wife may  
24 own the dairy farm together and they could be both  
25 members of Dairy Farmers of America?

1 A. Correct.

2 Q. So how many of those 14,000 members of Dairy  
3 Farmers of America are California members?

4 A. I don't know an exact number.

5 Q. Can you give me an estimate?

6 A. Not off the top of my head. I think we'll  
7 have a chance to talk later, if you will give me a  
8 chance to investigate that, I --

9 Q. I am certainly not going to anywhere.  
10 Obviously, yes, I think we're going to be here for a  
11 while, Mr. Hollon, so certainly if you don't know the  
12 answer now, I'm happy to, you know, have you not guess  
13 and give a response later to that. Thank you.

14 Would the response be the same as to the  
15 number of dairy farms, that you don't -- that you would  
16 need to get the information about that?

17 A. Correct.

18 Q. As to the farms that operate in California, do  
19 you know the average production of those farms, the  
20 Dairy Farmers of America members in California?

21 A. I don't.

22 Q. Would you be prepared to get that for me at a  
23 later time?

24 A. Probably not.

25 Q. Because it's --

1 A. Certain elements of just private business.

2 Q. Would you be able to tell me the relative  
3 production on those farms as compared to the average  
4 within California?

5 A. Probably not.

6 Q. For the same reason?

7 A. Yes.

8 Q. And if I went down that line and asked other  
9 questions -- again, I want to shorten this if I can --  
10 if I asked other questions to try to get the same  
11 information, you'd probably say probably not, correct?

12 A. Yes, sir, Mr. English.

13 Q. If I asked, as opposed to the production,  
14 information with respect to the components, the average  
15 components of the milk of DFA members, would you have,  
16 and maybe to short circuit by saying, would you be  
17 willing to provide that information?

18 A. I would not.

19 Q. So turning to disorderly marketing, I have  
20 reviewed past testimony of Dairy Farmers of America.

21 JUDGE CLIFTON: Let's -- let's stop,  
22 Mr. English. You know, we already did the lawn mowing,  
23 which Mr. Hollon had to talk through. Now we're doing  
24 the blowing of the patio, which is a little more  
25 obtrusive. Let's just wait a few minutes until that

1 gentleman is through working right outside our door.

2 (Whereupon noise disruption.)

3 MR. ENGLISH: Your Honor, all that dust he's  
4 blowing --

5 (Whereupon unintelligible due to  
6 noise disruption.)

7 JUDGE CLIFTON: No, I'm perfectly content to  
8 stay on record. I don't think it will take that long.

9 (Whereupon pausing for noise  
10 disruption.)

11 JUDGE CLIFTON: Mr. English, he's far enough  
12 way now, I think we can proceed.

13 BY MR. ENGLISH:

14 Q. So I was just prefacing my next question,  
15 Mr. Hollon. I've looked at -- back at a -- at a number  
16 of testimonies that I can say that I've seen every one,  
17 but in the past you have testified that regulated  
18 handlers in a competing marketing area with a  
19 differential price, that that constitutes a disorderly  
20 market. Do you remember testimony along those lines?

21 A. Repeat that, please.

22 Q. In the past, I believe you've testified that  
23 regulated handlers with different prices within a common  
24 marketing area, that that constitutes disorderly  
25 marketing. Did that -- do you recognize that kind of



1 testimony?

2 A. Are you referring to -- when you say  
3 "different prices," different regulated minimum?

4 Q. Different regulated minimums, yes.

5 A. Sorry, I don't recall the context of that.

6 Q. All right. We can get back to that.

7 Are all price disparities between regulated  
8 milk prices disorderly marketing?

9 A. I think the Act allows for differences, and so  
10 those by definition would not be something that was  
11 disorderly, a quality, you know, whatever the terms are  
12 in the Act, I think it allows for those.

13 Q. Okay. If -- if the milk is within the same  
14 class and the same quality and the same volume, is it  
15 your testimony that price disparities in those instances  
16 would constitute disorderly marketing?

17 A. Again, do you mean the regulated minimum?

18 Q. Yes, the regulated minimums?

19 A. If the regulated minimums are in those ranges,  
20 then, no, I would say that would not be disorderly  
21 marketing. So, for an example, if a handler in Los  
22 Angeles paid the Class I mover plus \$2.10 and a handler  
23 in Phoenix paid Class I mover plus \$2.35, those two  
24 comparisons would not be in the realm of disorderly  
25 because they met the national grid price. And by

1 national grid, I mean the differentials that are across  
2 the country.

3 Q. But the price disparities that you had spoken  
4 about in your testimony in 19 and Exhibit 20, you do  
5 think those constitute disorderly marketing?

6 A. Again, please.

7 Q. The test -- the price differences that you've  
8 testified about in Exhibit 19 and Exhibit 20, you do  
9 believe those constitute disorderly marketing, correct?

10 A. Correct.

11 Q. Have you ever testified before that a  
12 comparison of a price paid in California to a price paid  
13 in Chicago is a valid comparison for disorderly  
14 marketing conditions?

15 A. I do not know.

16 Q. If mandatory regulated minimum Federal milk  
17 order prices under a California Federal milk order with  
18 inclusive pooling are not marketing clearing, does that  
19 lead to disorderly marketing conditions?

20 A. I think you'd have to have a much longer  
21 discussion of that question and understand the pieces  
22 and they components of it.

23 Q. Let's have that much longer conversation.

24 A. Okay.

25 Q. Do you agree that under Federal milk orders,

1 the Class III and IV prices are designed to be marketing  
2 clearing?

3 A. Yes.

4 Q. And are they designed to be market clearing  
5 because otherwise if they are higher than market  
6 clearing prices, that would lead to disorderly  
7 marketing?

8 A. I think they were designed as market clearing  
9 because they are a collection of the prices that are  
10 actually experienced, and so whatever those prices are  
11 represent transactions that took place, and they're --  
12 as indicated last week, collected regularly, assembled,  
13 audited, and those become the classes that operated in  
14 the market, and in essence, cleared the market because  
15 the market moved.

16 Q. But if -- but isn't it the case that Federal  
17 orders define their mission of Class III and IV pricing  
18 as market clearing in order to avoid disorderly  
19 marketing that would otherwise result?

20 A. I'm not aware of that.

21 Q. You've never testified to that?

22 A. I don't know if I have or I haven't.

23 Q. Under what circumstances would regulated  
24 minimum prices that are higher than market clearing not  
25 lead to disorderly marketing.

1           A.     Again, we're -- we're -- we're delving into, I  
2 guess, the theoretical world.  However, if prices that,  
3 you know, were not achievable, there would be an impact  
4 on the -- the commercial transaction, would be an impact  
5 on the buyer or the seller if those prices weren't  
6 achievable.

7           Q.     And isn't it a fact that at times in  
8 California, regulated minimum prices for one or more of  
9 manufactured products have been higher than market  
10 clearing prices?

11          A.     I don't know that I have any definite  
12 information on that.

13          Q.     Are you aware of times within the last decade  
14 in which California regulated minimum prices resulted in  
15 milk being moved out of state in order to avoid the  
16 regulated minimums in California?

17          A.     I'm aware of milk moving out of state because  
18 at that -- at those points in time, there was not  
19 capacity to sell it.

20          Q.     Is there capacity to sell it now?

21          A.     Today?

22          Q.     Today?

23          A.     Yes.

24          Q.     Is it your testimony that there are not  
25 presently limits on capacity in California to market the

1 milk produced in California?

2 A. I'm not sure I'm following your question.

3 Q. Well, you earlier testified a moment ago that  
4 at one point in time -- was that as recent as 2007?

5 A. Yes.

6 Q. That there wasn't sufficient capacity in  
7 California to sell the milk, correct?

8 A. Correct.

9 Q. Was it only capacity or was it also regulated  
10 price issues?

11 A. To my knowledge, it was capacity.

12 Q. And it is your testimony now that that  
13 capacity issue in 2007 does not exist today?

14 A. To my knowledge that is true.

15 Q. How much excess capacity exists in California  
16 today based -- compared to California milk production?

17 A. I don't have a number or a calculation.

18 Q. Would you agree that there is excess,  
19 significant excess capacity for milk in the Upper  
20 Midwest?

21 A. In general -- and would you put a time frame  
22 just so I can refer to it?

23 Q. Today?

24 A. Today. Today there is capacity. In -- there  
25 have been off and on weekends, times, you know, of

1 recent date where capacity has been tight in the Upper  
2 Midwest.

3 Q. But leaving aside --

4 JUDGE CLIFTON: I'm sorry, what do you mean  
5 "capacity has been tight"?

6 THE WITNESS: There have been times when it's  
7 been difficult to find capacity for milk sales.

8 BY MR. ENGLISH:

9 Q. But that's not on an everyday basis, is it?

10 A. It's not on an everyday basis.

11 Q. Did DFA --

12 (Whereupon a noise interruption.)

13 JUDGE CLIFTON: Sorry, Mr. English. What  
14 machine do we have now?

15 MS. MAY: I can't see.

16 MS. FRISIUS: It looks like a truck that  
17 parked out front.

18 JUDGE CLIFTON: Oh, okay. We'll wait for the  
19 truck.

20 MS. FRISIUS: They're setting up cones and  
21 everything. I don't know if it --

22 JUDGE CLIFTON: You know, it's --

23 MR. ENGLISH: It's earlier than I -- it's  
24 earlier than I intended, Your Honor. I'm certainly  
25 prepared to go at least another half an hour or more,

1 but if this is going to go on, maybe we should take  
2 lunch now.

3 JUDGE CLIFTON: I agree.

4 THE WITNESS: I can hear Mr. English just  
5 fine. I'm prepared to keep going.

6 MR. ENGLISH: I'm worried about the court  
7 reporter.

8 JUDGE CLIFTON: Well, yeah. I'm sorry, it's  
9 distracting the judge. It's pretty loud. All right.  
10 How much time do you want, Mr. English?

11 MR. ENGLISH: One hour 15 minutes, Your Honor.

12 JUDGE CLIFTON: All right.

13 Please be back at and ready to go at 1:20.  
14 1:20. Thank you.

15 (Whereupon a lunch break was taken.)

16 JUDGE CLIFTON: We're back on record now at  
17 1:22. I see some handouts. I suppose those are for  
18 people who are about to testify. Let's make sure the  
19 judge gets a copy and the court reporter.

20 Mr. Beshore.

21 MR. BESHORE: Thank you, Your Honor.

22 Your Honor, I would like to ask that the  
23 document that our next witness has prepared be marked as  
24 the -- it's five page, cover page and four pages of  
25 text, be marked as the next consecutive number, which is

1 perhaps 21.

2 MS. FRISIUS: Correct.

3 MR. BESHORE: And the first witness for the  
4 afternoon, then, is Mr. Cornell Kasbergen.

5 JUDGE CLIFTON: All right. So all of you, I'm  
6 marking the exhibit that looks like as Exhibit 21.

7 (Whereupon Exhibit 21 was marked for  
8 identification.)

9 JUDGE CLIFTON: And, Mr. Kasbergen, I'll swear  
10 you in in a seated position. Would you raise your right  
11 hand, please?

12 Do you solemnly swear or affirm under penalty  
13 of perjury that the evidence you will present will be  
14 the truth?

15 THE WITNESS: I do.

16 JUDGE CLIFTON: Thank you. Please state and  
17 spell first and last names for us.

18 THE WITNESS: Cornell Kasbergen.  
19 C-O-R-N-E-L-L. Kasbergen is K-A-S-B-E-R-G-E-N.

20 DIRECT EXAMINATION

21 BY MR. BESHORE:

22 Q. Okay. Now, Mr. Kasbergen, have you prepared,  
23 personally, a -- the document that's been marked as  
24 Exhibit 21 for this hearing, which identifies your name  
25 and address and a date on the cover page, and then has



1 proposed testimony behind that. Did you prepare that?

2 A. Yes, I have.

3 Q. Okay. Are you prepared to present it?

4 A. Yes, I am.

5 Q. Please do so.

6 A. Thank you.

7 STATEMENT OF CORNELL KASBERGEN

8 THE WITNESS: Thank you for the opportunity to  
9 testify before you today. My name is Cornell Kasbergen.  
10 My wife and I own and operator a dairy farm in Tulare,  
11 California, milking 3,000 cows, in partnership with our  
12 son, Case, and his wife, Allison. We also operate a  
13 dairy farm in Wisconsin, Federal Order 30, with my  
14 brother George, my daughter Hilary and her husband paul.

15 We have been in the dairy industry or dairy  
16 business all of our lives. My parents immigrated to the  
17 United States in the 1950's. They started milking cows  
18 by hand for other dairy farmers. In the late '50's,  
19 they purchased cows, rented a facility and start --  
20 started milking cows in Southern California.

21 I am here today to testify in support of our  
22 California Dairy Industry. Cooperatives and private  
23 industry have invested billions of dollars in dairy  
24 farming facilities and plants to convert our milk into  
25 salable products. Today we risk that entire investment

1 by everyone. To quote Benjamin Franklin, "We must,  
2 indeed, all hang together or, most assuredly, we should  
3 all hang separately."

4 We do not need petty infighting amongst the  
5 players that surely will doom our corrals and plants to  
6 new orchards and housing developments. What we do need  
7 a plan -- is a plan to insure milk production viability  
8 and the sustainable of our processing plants. Being on  
9 a level playing field with the rest of the country is  
10 the answer.

11 I support the proposed Federal order plan that  
12 was submitted by CDI, DFA, and LOL. The current pricing  
13 structure in California is not sustainable. In fact, it  
14 is leading to an unprecedented decline in dairy farms,  
15 milk production, and the demise of an industry that was  
16 once the envy of the world.

17 I understand that market dynamics in the  
18 different regions in the country results in varying  
19 over-order premiums paid to dairies and their  
20 cooperatives. But the California state order has gone  
21 beyond that, steeply discounting the base minimum price  
22 for our milk relative to the published minimums used in  
23 the Federal Milk Marketing Orders. The California  
24 discount has cost California dairy farmers hundreds of  
25 millions of dollars. A majority of the discount has

1 been on California's 4b price compared to the Federal  
2 Order Class III.

3 From August 2012 through December 2014, 2014,  
4 the discount averaged \$1.84 per hundredweight. Assuming  
5 that 40 percent of the milk production is 4b, I used a  
6 per hundredweight impact cost of \$.736 per  
7 hundredweight. The impact of that \$.73 per  
8 hundredweight on our dairy alone is as follows:

9 August 2012 through December 20 -- 2012 was  
10 over \$350,000.

11 2013 was over \$975,000.

12 2014, over \$958,000.

13 That amounts to a loss of over \$2,200,000  
14 during this time period for our dairy alone. In an  
15 industry where we must compete for animals and feed  
16 with dairies around the country, this discount puts me  
17 at a huge disadvantage. In fact, it puts the entire  
18 California dairy industry at risk and is why we are here  
19 today.

20 The purpose of forming a Federal order has  
21 three main tenets: One, to provide for orderly  
22 marketing; two, to assure reasonable prices to both  
23 dairy farmers and consumers; and three, to assure an  
24 adequate supply of milk to consumers.

25 Milk pricing in system -- the milk pricing

1 system in California has failed all three areas. In  
2 fact, California's system is exactly why the Federal  
3 orders were created. That was to protect the dairy  
4 industry or the industry from equal -- unequal economic  
5 impact.

6 As for the third point, another failure of our  
7 system, the consumer is filling the brunt of decreased  
8 California production nationwide, with butter reaching  
9 historic high prices last week. All dairy trade  
10 publications lay one of the main reasons for this  
11 historic price at the feet of California's decreased  
12 milk production.

13 The fact that the Cooperatives' proposal  
14 yields a \$700 million benefit for dairy farmers versus  
15 the seven mill -- \$70 million Dairy Institute's proposal  
16 speaks volumes. The Dairy Institute's proposal hopes to  
17 keep the status quo while destroying the value of quota,  
18 and the California dairy industry. Destroying the value  
19 of quota is not in keeping with the intent of Congress.  
20 Allowing California quota to be recognized if a Federal  
21 order were to be implemented is the intent of  
22 Congressional legislation and would maintain over a  
23 billion dollars of asset value for California dairy  
24 farms.

25 During the hearing, it has been stated that

1 other orders are allowed to pay less than minimum  
2 regulated prices. Although the plants may buy some milk  
3 under class or may not even be part of the pool, the  
4 majority of plants pay the minimum in order to keep  
5 their milk supply. My experience with our dairy farm in  
6 Wisconsin, Federal Order 30, has never been paid less  
7 than Class 3 for our milk. I'd like to repeat that  
8 statement. We have never been paid less than the  
9 announced Class 3 price for our milk in Wisconsin over  
10 the past 16 years.

11           The California dairy industry can no longer  
12 afford to operate under the current system. Left  
13 unchecked, the California dairy industry will continue  
14 to shrink at a rapid pace, unlike our counterparts in  
15 other areas of the country.

16           I just returned from a -- from our dairy farm  
17 in Wisconsin. The dairy industry there is alive and  
18 vibrant. Expansions are common, upgrading to the latest  
19 technologies. This is in stark contrast to California  
20 where the life and energy have been taken out. In fact,  
21 many are delving into other crops, such as orchards or  
22 vines, and -- and some are simply selling and retiring.

23           The California dairy farmers cannot compete  
24 with \$1.84 discount. Any perceived production  
25 efficiency we've had in the past are -- have been

1 largely eroded away. In fact, in a recent article,  
2 online article written by Hoard's Dairymen, noted the  
3 significance in seeing Wisconsin's milk production per  
4 cow higher than California's for the first time in 50  
5 years. California's higher prices for grains, hays,  
6 utilities, combined with our significant regulatory  
7 costs, have eroded the cost advantages we have once  
8 enjoyed.

9           The rate of decreasing milk production and the  
10 loss of cow numbers is accelerating in California. Just  
11 look at the record. A dairy family a week is selling  
12 the farm and pursuing other opportunities. Just this  
13 past week, I received flyers for 17,000 head of cattle,  
14 dairy cattle, in California be sold at auction. Most,  
15 if not all cattle, go to the out -- to out-of-state  
16 dairy farmers that enjoy the benefits of the Federal  
17 order. The California dairy industry will not survive  
18 under our current system.

19           It was reported by USDA within the Preliminary  
20 Regulatory Impact Analysis, Exhibit 5, during this  
21 hearing that California would expand if the Federal  
22 order is adopted under the Cooperatives' proposal. I  
23 can tell you that if the Cooperatives' proposal is  
24 adopted, the result would be a decrease in the rate of  
25 decline in milk production, not an increase in overall

1 production. The Cooperatives' base plans, which limit  
2 production to current plant capacity are still in place.  
3 This is the upper limit of California's milk production.

4 If the Cooperatives' proposal is adopted, it  
5 would only slow the decline of milk production that we  
6 have seen this year. The days of the California dairy  
7 industries expanding three to five percent each year are  
8 over for the foreseeable future.

9 A sustainable future for the dairies that  
10 remain in California relies on putting those dairies on  
11 an even playing field with our out-of-state colleagues,  
12 and USDA is in the unique position to facilitate  
13 transition in this process constructing a Federal Milk  
14 Marketing Order in California. I urge USDA to adopt the  
15 Co-op's proposal and bring stability to a dying  
16 industry.

17 DIRECT EXAMINATION

18 BY MR. BESHORE:

19 Q. Thank you, Mr. Kasbergen. I have just another  
20 question or two for you. On your prepared -- the  
21 testimony you prepared, which is Exhibit 21, could you  
22 go to the second page where you have some numbers in the  
23 text?

24 A. Okay.

25 Q. Okay. So when you read the -- the dollar

1 figures on page two of Exhibit 21, you didn't -- you  
2 didn't read the full numbers on the printed page out to  
3 the -- to the final dollar. My question for you is did  
4 you prepare the numbers that are on the printed  
5 Exhibit 21 on the basis of your personal financial  
6 records of milk production?

7 A. Yes. I took my hundredweight milk production,  
8 multiplied it by \$.73 -- \$.736 for hundredweight.

9 Q. Okay. And that was for the periods indicated,  
10 August through December 2012, cal -- the second one,  
11 then, is calendar year 2013?

12 A. Yes.

13 Q. And then calendar year 2014?

14 A. Correct.

15 Q. Okay. And I have just one other question.

16 You're a member of Land O'Lakes; is that  
17 correct?

18 A. That's correct.

19 Q. Do you -- have you been elected by your  
20 colleague members to any positions within Land O'Lakes?

21 A. I serve on the board of directors.

22 Q. Okay. Is that -- does Land O'Lakes' structure  
23 have just one national board of directors?

24 A. Yes.

25 Q. Okay. How long have you served on the



1 national board?

2 A. 17 years.

3 Q. And, then, all the members of that board  
4 are -- are elected by their constituent -- by their  
5 neighbor dairy farmers in particular geographic area; is  
6 that the way it works?

7 A. That's correct.

8 Q. Have you held any offices within the board?

9 A. I currently serve on the executive committee,  
10 and I'm representing -- one of a -- serve on the  
11 national producers board.

12 Q. The Board of National Milk Producers  
13 Federation?

14 A. Correct.

15 Q. Do you have anything else you'd like to add at  
16 this point?

17 A. No, I don't think.

18 Q. Thank you. Thank you very much.

19 MR. BESHORE: I have no other questions for  
20 Mr. Kasbergen, Your Honor.

21 JUDGE CLIFTON: Thank you, Mr. Beshore.

22 This is a remarkable statement, Mr. Kasbergen,  
23 and I appreciate very much your appearing here and  
24 giving it to us. I'm now going to invite anyone to ask  
25 you questions.

1                   Who would like to go first?

2                                   CROSS-EXAMINATION

3 BY MR. ENGLISH:

4           Q.    Good afternoon. My name is Chip English.

5                   Good afternoon, sir.

6           A.    Good afternoon.

7           Q.    We've met before, correct?

8           A.    Yes.

9           Q.    Maybe more than once, but certainly about 18  
10 months ago at the Western United meeting where in a  
11 different forum, obviously, we -- there were discussions  
12 about the merits -- the merits and what a Federal order  
13 might look like, right?

14          A.    That's correct.

15          Q.    So as a board member of Land O'Lakes, are you  
16 aware that the Cooperatives requested a study by Mark  
17 Stephenson and Chuck Nicholson to evaluate what a  
18 Federal order would look like in view for California  
19 dairy farmers?

20                   MR. BESHORE: Your Honor. Your Honor, before  
21 we get any -- any further into -- into that subject  
22 matter. The study -- there was a study done, it's not a  
23 secret. It is a private --

24                   JUDGE CLIFTON: I'm sorry, state your name  
25 again.

1 MR. BESHORE: Marvin Beshore, sorry.

2 It is a study that was done for the private  
3 use of the Cooperatives, and before we even get to  
4 what -- get to the point, it will not be made available  
5 for this hearing record because it is a private,  
6 proprietary study that was done and is the private  
7 information of the Cooperatives. So maybe we can just  
8 move things from there.

9 JUDGE CLIFTON: Would you spell the name of  
10 two gentlemen, if you know that, either of you?

11 MR. ENGLISH: Mark is M-A-R-K. Stephenson is  
12 it S-T-E-P-H-E-N-S-O-N. And Chuck Nichols -- Chuck  
13 Nicholson. C-H-U-C-K. Or Charles. Nicholson  
14 N-I-C-H-O-L-S-O-N.

15 Well, I appreciate Mr. Beshore interrupting me  
16 to talk about what may or may not happen, I did not ask  
17 that question. I asked was such -- was he aware that  
18 such a study had been commissioned, and you know, he's  
19 now announced what he's going to do, and I wasn't  
20 proposing to go into it much more than that today. We  
21 may very well have legal argument about the implications  
22 of withholding that at some later date, but I wasn't  
23 proposing doing that now. Mr. Nichols -- Mr. Beshore  
24 has stated his point.

25 Q. But my question right now is merely are you

1 aware that such a study was done?

2 A. Yes.

3 Q. Have you seen that study?

4 A. Yes.

5 Q. Now, you make a number of statements in -- in  
6 your testimony, and you already have a farm in the Upper  
7 Midwest as you've indicated. And where is that farm  
8 exactly?

9 A. Brodhead, Wisconsin.

10 Q. Where? Would you spell that for the record?

11 A. B-R-O-D-H-E-A-D.

12 Q. And where in Wisconsin is that relative to the  
13 metropolitan --

14 A. Just 30 miles south of Madison.

15 Q. And to whom do you sell your milk or market  
16 your milk through? Are you a member of Land O'Lakes  
17 there as well?

18 A. No.

19 Q. Are you a member of another cooperative?

20 A. No.

21 Q. Do you sell your -- who do you sell your milk  
22 to?

23 A. Grande Cheese.

24 Q. And do you know whether Grande Cheese is a  
25 pool plant on --

1 A. I don't know.

2 Q. You do not know?

3 A. No.

4 JUDGE CLIFTON: Is Grande G-R-A-N-D-E?

5 THE WITNESS: Correct.

6 JUDGE CLIFTON: Thank you.

7 BY MR. ENGLISH:

8 Q. Do you know whether Grande Cheese's -- Grande  
9 Cheese's price paid to you is directly impacted by the  
10 Central Milk Producers Cooperative?

11 A. I don't know.

12 Q. Do you know what Central Milk Producers  
13 Cooperative is?

14 A. No.

15 Q. Are you aware that there is excess capacity,  
16 plant capacity looking for volumes of milk in the Upper  
17 Midwest?

18 A. I'm not -- I wouldn't know.

19 Q. Have you ever looked to sell your milk to  
20 someone other than Grande Cheese?

21 A. Yes.

22 Q. Was that primarily for price purposes?

23 A. Yes.

24 Q. And were you ever offered a higher price than  
25 Grande Cheese was paying?

1 A. No.

2 Q. So how long have you had that farm in the  
3 Upper Midwest?

4 A. I think it's over 16 -- 16 years.

5 Q. And how long have you had the farm here in  
6 California?

7 A. At our current location, we've been there 26  
8 years.

9 Q. And was there another location that you had  
10 before that?

11 A. Prior?

12 Q. Yeah. You said current location you've been  
13 there 26 years, that implies that your farm has actually  
14 been in business longer than 26 years.

15 A. We were in -- we started in 1978 in Southern  
16 California.

17 Q. And where is your farm now?

18 A. Tulare, California.

19 Q. So if things are so bad in California and you  
20 have a farm in the Upper Midwest, why are you still  
21 dairying in California?

22 A. It's a -- that's a good question. That's why  
23 we're planting trees.

24 Q. But you're still dairying?

25 A. Yes, we do.

1 Q. Now, you tie a lot of what's happened in  
2 California to the California order. Have you also not  
3 had impacts from the drought?

4 A. As far as the milk production loss that I  
5 mentioned?

6 Q. Milk production loss, cost of your farm?

7 A. I would say probably the -- the three to  
8 five percent reduction in production that we've seen  
9 this year might be 20 percent drought, 80 percent milk  
10 prices.

11 Q. What about feed costs?

12 A. They've actually come down some.

13 Q. What about environmental issues in California?

14 A. Those cost to do that are pretty -- been  
15 pretty consistent over the years. Over the last two or  
16 three years.

17 Q. Now, you have a sentence -- the pages aren't  
18 numbered, so I'm going to just --

19 A. Sorry about that.

20 Q. That's okay. It doesn't have to be, it just  
21 makes it harder for me to refer to it for the record,  
22 so --

23 I guess on the last page of your testimony,  
24 your -- in the middle of the document, you reference  
25 that if the California proposal is adopted, it will not

1 result in an increase in production but result in a  
2 decline of; do you see that?

3 A. Yes.

4 Q. And you referenced Cooperative base paint --  
5 base plans. Are those mandated by California, the State  
6 of California in any way?

7 A. No.

8 Q. They are private agreements between the  
9 cooperatives and its members, correct?

10 A. That is correct.

11 Q. And they can end at any time, correct?

12 A. What was that question?

13 Q. They can be terminated by the members at any  
14 time?

15 A. Not by the members.

16 Q. But -- well, the members could vote in their  
17 co-ops to terminate them, correct?

18 A. Only the board of directors can decide that.

19 Q. Who votes for the board of directors?

20 A. Members.

21 Q. And you indicate that the limit -- there's a  
22 limit to milk production that is tied to plant capacity.  
23 So were these base plants put into effect -- when were  
24 these base plants put into effect?

25 A. I couldn't tell you the exact year, but it was



1 in the last six, seven years.

2 Q. Were they put in in response to plant  
3 limitation, plant capacity issues?

4 A. Yes.

5 Q. Were you a board member back six or seven  
6 years ago?

7 A. Yes.

8 Q. At that time, did Land O'Lakes because the  
9 plant capacity issues need to move milk out of state?

10 A. Yes.

11 Q. Going back to, again, it's the second page of  
12 your statement, but the third page with the cover, so it  
13 is the page that has the numbers that Mr. Beshore  
14 referred you to, and you talk about Federal order three  
15 main tenets. How did you decide that these were the  
16 Federal order main tenets, three main tenets?

17 A. I think during the informational meetings that  
18 USDA provided, and I think I actually got it off from  
19 Bob Cropp's, he had a deck that he had these tenets on,  
20 and during the informational meetings that we had with  
21 USDA, these were some of the tenets that they had put  
22 forth.

23 Q. Are you aware that the third tenet, to assure  
24 an adequate supply of milk to consumers, was based upon  
25 fluid milk?

1           A.    No.

2           Q.    If -- if the third tenet, with respect, has to  
3 do with bringing forth adequate supply of milk for fluid  
4 use, you aren't saying there isn't enough milk in  
5 California for Class I use, are you?

6           A.    No.

7           Q.    And there's really no chance, reasonable  
8 chance that would ever happen in California, is there?

9           A.    If we continue on the path we're going,  
10 possibly.

11          Q.    Really? With a -- with Class I utilization  
12 you have today, you're saying that in your view, it's so  
13 bad that at some point you get down, you wouldn't have  
14 enough milk for Class I?

15          A.    I -- I'd say if we stay on the trajectory that  
16 we started this year, declining milk production year  
17 over year, in time we could possibly not have enough  
18 milk for Class I.

19          Q.    So one year makes a trajectory for you?

20          A.    I think coming off the best year we ever had  
21 financially and to see the three to five percent decline  
22 where the rest of the country is all increasing, you  
23 have to ask yourself why. And I -- and the only reason,  
24 the only thing you can point to, one of the major  
25 factors, is our pricing structure. We don't get paid

1 what the rest of the country is getting paid.

2 Q. So when I began, I discussed with you the fact  
3 that you were -- we met each other at the Western United  
4 meeting, correct?

5 A. Yes.

6 Q. And after I gave my presentation, we had a  
7 little conversation, correct?

8 A. Yes.

9 Q. Okay. And your response -- I believe your  
10 response to me, you can agree or disagree, your response  
11 to me was that even if the Federal order didn't have  
12 inclusive pooling, it would nonetheless be beneficial  
13 because then your cooperatives could charge over order  
14 premiums. Do you remember telling me that?

15 A. Not -- I -- could you repeat that again?

16 Q. Let me ask it a different way.

17 Is it your view that if a Federal order were  
18 in place, even if there weren't inclusive pooling, that  
19 nonetheless that would enable your cooperatives to  
20 change over order premiums to return more money to the  
21 dairy farmers?

22 A. I don't remember that statement. I -- yeah,  
23 I -- the only thing I could say about -- maybe at that  
24 time, my knowledge of what inclusive pooling was was  
25 not -- I didn't have a good understanding of what

1 depooling meant.

2 Q. Do you have a good understanding what  
3 depooling means now?

4 A. I have a better understanding.

5 Q. And -- and do you understand that, for  
6 instance, the buyer of your milk, Grande Cheese, in the  
7 Upper Midwest, assuming it is a pool plant, nonetheless  
8 has the opportunity to depool milk?

9 A. I understand that.

10 Q. And do you understand that if the Cooperative  
11 proposal is adopted, that plants processing cheese in  
12 California would not have that opportunity?

13 A. That's my understanding.

14 Q. And you're in favor of that result?

15 A. Yes, I am.

16 MR. ENGLISH: I have no further questions.

17 JUDGE CLIFTON: Mr. Kasbergen, do you know how  
18 to spell Bob Cropp's last name?

19 THE WITNESS: C-R-O-P-P.

20 JUDGE CLIFTON: C-R-O-P-P; is that correct?

21 THE WITNESS: Correct.

22 JUDGE CLIFTON: Yes.

23 Who would next like to question Mr. Kasbergen?

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MR. VETNE:

3 Q. John Vetne representing Hilmar Cheese.

4 Mr. Kasbergen, referring to the farm in  
5 Wisconsin and its relationship to Grande Cheese, do you  
6 know what entity, if any, pools your milk under Order  
7 30?

8 A. Could you repeat that question?

9 Q. Do you know what entity pools your milk,  
10 includes it on a monthly report to the Market  
11 Administrator?

12 A. No, I don't.

13 Q. You don't.

14 Does -- do you know -- do you know whether the  
15 milk from that farm goes to Grande Cheese every day?

16 A. I don't know.

17 Q. Once it gets picked up, you're not sure where  
18 it goes?

19 A. No. I think the majority of the time it goes  
20 there, but I'm not -- we don't know.

21 Q. How far are you from the Grande Cheese plant?

22 A. We're not far from their plant in Juda, which  
23 is about 10 miles from our farm.

24 Q. Okay.

25 A. Juda, Wisconsin, J-U-D-A.

1 Q. You indicated you had other buyers who seek to  
2 acquire your milk in Wisconsin?

3 A. Yes.

4 Q. And those buyers, were they further away than  
5 the Grande plant?

6 A. Yes.

7 Q. And you would incur greater transportation  
8 costs to supply those other buyers that have sought your  
9 milk supply?

10 A. It could have been. Sometimes the hauling  
11 charges are not -- sometimes the buyers pay hauling  
12 charges of the hauling for milk there in Wisconsin, so  
13 that would not necessarily be the case.

14 Q. So that would be another form of premium in  
15 effect; is that correct?

16 A. Correct.

17 Q. You indicated you went from the best year you  
18 ever had financially; what year would that have been?

19 A. 2014.

20 Q. Okay. And was that because of the milk  
21 prices?

22 A. Yes.

23 Q. When you spoke -- on page -- I don't know what  
24 page. Let's see. Printed page one, two, three, four,  
25 five, six. You spoke of 17,000 head of cattle in

1 California to be sold at auction --

2 JUDGE CLIFTON: I'm sorry, Mr. Vetne. So  
3 you're counting the cover page as one?

4 MR. VETNE: No, I'm covering the printed.  
5 There's one, so let's see. Oh, yeah, I am covering --  
6 one, two, three, four, five, six. I am.

7 JUDGE CLIFTON: Are -- I don't -- I don't get  
8 that many pages. Are you on the last page?

9 MR. VETNE: I'm on a page that the first two  
10 words are "per cow higher."

11 JUDGE CLIFTON: Okay. And is -- are there any  
12 pages after that?

13 MR. VETNE: There are not. It's the last  
14 page.

15 JUDGE CLIFTON: Okay.

16 MR. VETNE: Whoa.

17 BY MR. VETNE:

18 Q. Okay. Are you with me?

19 A. Yes.

20 Q. Thank you.

21 You say that most, if not all, cattle will go  
22 to out-of-state dairy farmers. How do you know that?

23 A. Just based on the -- talking to the auction  
24 yards that are actually selling the cows, attending some  
25 of those auctions, seeing who the buyers are. And this

1 is not only, you know, just recently, it's probably been  
2 in the last couple of years that most cattle are going  
3 to out-of-state buyers.

4 Q. Last couple years, including the best year you  
5 ever had financially?

6 A. Yes.

7 Q. Okay. And that would have been a good year  
8 financially for other dairy farmers, too?

9 A. Probably better.

10 Q. Probably better for others for what reason?

11 A. Because their milk prices are higher in the  
12 other states.

13 Q. Okay. We -- we -- we moved from apples to  
14 apples to something else.

15 Best year financially for other farmers in  
16 California?

17 A. What was the question?

18 Q. The question was would it have been a -- a  
19 good year for other dairy farmers in California  
20 financially?

21 A. Yes.

22 Q. And there were still cows being sold from  
23 California and being purchased by folks out of state  
24 based on your observations at auctions and chatting with  
25 folks?



1           A.     Well, the price of cattle last year that were  
2 at probably record highs, people that wanted to exit the  
3 industry after recovering from, you know, the 2009, I  
4 call it the depression, milk depression, I think people  
5 saw it as an opportunity to exit the industry.

6           Q.     Would it not be true that cows available for  
7 sale in California have for years, if not decades, been  
8 purchased by dairy farms outside of California as well  
9 as within?

10          A.     No, actually if you go back in time, probably  
11 most of the cattle that -- that came to California for a  
12 long period of time came out of the Upper Midwest. And  
13 now we see the reverse happening, cows are going back.

14          Q.     They came from the Upper Midwest because  
15 production in California was growing; is that correct?

16          A.     That's correct.

17          Q.     And you add to that that the buyers will enjoy  
18 the -- I'm sorry -- farmers that enjoy the benefits, in  
19 the present tense, of the Federal order. Are you  
20 included buyers in Idaho, Utah, Nevada, in that context?

21          A.     Yes.

22          Q.     Do you understand that there is no federal  
23 order in those markets?

24          A.     Yes. I also have relatives in that area, and  
25 they get paid, most of them, if not all, get paid over

1 Class III, even though it's unregulated.

2 Q. Okay. In your testimony, the narrative  
3 portion is -- which is page two and three, you talk  
4 about over order premiums in other regions of the  
5 country. And you get an over order premium in Wisconsin  
6 also, correct?

7 A. Yes.

8 Q. By the way, is -- is your price in Wisconsin a  
9 Federal Class III or blend price plus a premium, or is  
10 it determined by some cheesy old formula or something  
11 else?

12 A. I believe it's a Class III blend price.

13 Q. Plus premiums?

14 A. I'm not sure if it's the -- yeah.

15 Q. I'm sorry?

16 A. I think it's based off Class III plus  
17 premiums.

18 Q. Plus premiums. And are the premiums, then,  
19 simply a volume premium or is it a dollar premium based  
20 on component, quality, and other factors?

21 A. There is some volume, there's some components,  
22 and quality.

23 Q. Do you know if your component premium reflects  
24 dollar for dollar the component values set by the  
25 Federal order system?

1 A. It's higher than the Federal order.

2 Q. Okay.

3 A. The premium is higher than the Federal order.

4 Q. Okay.

5 A. That's why they call it premium.

6 Q. Well, I was talking about the rate at which  
7 you were paid for, say, an additional component. Would  
8 it be the same rate as established under the Federal  
9 order per pound for that component or could it be a  
10 higher or lower rate at a premium?

11 A. So my understanding, it would be a rate,  
12 Federal order rate for protein, let's say, talk premium.

13 Q. Yes.

14 A. And we get a premium on top of that rate, that  
15 protein price.

16 Q. Okay. So you're getting a protein price that  
17 somewhat exceeds the Federal order minimum protein  
18 price?

19 A. Yes.

20 Q. When you refer on page two to three of your --  
21 your statement, you talk about market dynamics and over  
22 order premiums, which we just discussed, which -- which  
23 are -- which are market prices, and then you turn to  
24 discuss the California state order, which are minimum  
25 regulated prices; is that correct?

1           A.    Yes.

2           Q.    You're comparing market prices in one area  
3 with regulated prices in another area, correct?

4           A.    Comparing the market prices in the Federal  
5 order to a discounted California price.

6           Q.    Is it your testimony that premiums cannot be  
7 charged in California for some regulatory reason?

8           A.    No.

9           Q.    If California, like Wisconsin or Minnesota,  
10 had capacity in search of supply, do you believe that  
11 premiums would be paid?

12          A.    Comparing California to Wisconsin, it's --  
13 it's apples and oranges.

14          Q.    Thank you.

15          A.    I think you have hundreds of plants competing  
16 for milk in Wisconsin, here we don't have that  
17 competitive dynamic.

18          Q.    Okay.  You indicated with respect to your  
19 calculated loss at difference in California regulated  
20 and Federal regulated prices, just under a million  
21 dollars in 2013 and 2014.  I did the arithmetic -- tell  
22 me if I'm wrong because I'm not good at math -- you have  
23 approximately 11 million pounds per month milk  
24 production?

25          A.    I couldn't tell you right off the top of my

1 head, but if the take the \$.736 per hundredweight,  
2 that's when you'll get my annual milk production.

3 Q. Okay. Well, actually, if you want pounds,  
4 you'd have to put a couple zeros before the .736 because  
5 you represented it as a hundredweight --

6 A. Right.

7 Q. -- correct?

8 A. Uh-huh. That's correct.

9 Q. Thank you.

10 On the last page of your testimony, you refer  
11 to something you call "cost advantages we once enjoyed."  
12 Can you provide me a list of those cost advantages that  
13 you once enjoyed?

14 A. When we had \$2 corn, our milk production was  
15 higher than anyone else in the rest of the nation. We  
16 had scale that no one else had.

17 Q. Scale, you mean?

18 A. Size, size and scale. Size of our farms  
19 were -- were bigger than most of the rest of the  
20 country. Comparing a 50 cow farm in Wisconsin to a  
21 3,000 cow farm in California, that's huge efficiencies  
22 there.

23 Q. So your cost of production is lower in  
24 California than Wisconsin?

25 A. No. Yeah, I didn't say that.

1 Q. Oh.

2 A. I'm saying compared to a 50 cow farm,  
3 possibly, but our farm in Wisconsin is much more  
4 profitable than our farm in California?

5 Q. My question wasn't profitability, my question  
6 was cost of the production, which is in the cost?

7 A. So we -- when corn was \$2, and we had high  
8 milk production in the area, one of the  
9 highest-milk-producing states in the nation, we had a  
10 great advantage. But then ethanol came, and we had \$8  
11 corn.

12 And -- and then we have exported our kids and  
13 grandkids to the rest of the nation, and we've taught  
14 the rest of the nation how to dairy farm. And when you  
15 look at expansions going on throughout the nation,  
16 it's -- a lot of it is California-based families  
17 expanding. Or relocating.

18 Q. Both farms have operated for more than ten  
19 years, correct?

20 A. Correct.

21 Q. Wisconsin and California?

22 A. Uh-huh.

23 Q. With respect to that ten-year period, how does  
24 your cost of producing milk in California compare with  
25 the cost of producing milk in Wisconsin?

1           A.     I would have to guess, and I don't really want  
2 to do that.

3           Q.     Do you have an impression, either more or  
4 less?

5           MR. BESHORE:   Your Honor, I -- I object. I  
6 object to the question. He just said he didn't want to  
7 answer, he didn't want to guess or speculate, and he's  
8 been asked the same question again. And, you know, what  
9 good is that? That's -- that's objection number one,  
10 that it was asked and answered.

11                     Objection number two is why would we ask  
12 witnesses for their impressions or their speculation for  
13 this record?

14           MR. VETNE:   My question, the last question was  
15 intended to take away the guesswork at particular  
16 numbers and inquire whether he was aware of the  
17 directional difference, more in one place, less in the  
18 other, just generally, directional rather than specific.

19           JUDGE CLIFTON:   You're asking him to spot  
20 trends, current trends?

21           MR. VETNE:   No, the question was over the 10  
22 years, whether one area -- farm in one place has greater  
23 or lesser, in general, costs than the other area.

24           JUDGE CLIFTON:   And you're just asking him to  
25 base this on his own experience, one farm in Wisconsin

1 and the one farm in California?

2 MR. VETNE: Yes, absolutely.

3 JUDGE CLIFTON: You may answer.

4 THE WITNESS: I'd have -- I really don't want  
5 to guess. I'd be guessing, and I just rather have the  
6 numbers in front of me to actually answer it  
7 intelligently.

8 BY MR. VETNE:

9 Q. Okay.

10 A. If I knew it, I would tell you, but I just  
11 don't want to guess.

12 Q. One final question. You -- or two final  
13 questions.

14 You indicated that -- that you were aware of  
15 this Stephenson/Nicholson study, my question does not go  
16 to its contents, it is this: Was the study generally  
17 distributed to the membership?

18 A. No.

19 Q. And then finally, you reference to Federal  
20 Milk Marketing Order tenets, you say you got that from  
21 Bob Cropp. Do you recall the publication name or  
22 approximate name so we can try to duplicate a Google  
23 search?

24 A. No. If I have it -- I might have the slide  
25 with me. If I do, I can give it to you, but it was a --



1 it was a summary of Federal orders and how they worked  
2 and operated, and one of the slides, this is one --  
3 those three tenets he had as one of his slides on the --

4 Q. Was it at a live presentation or did you go  
5 online to find it?

6 A. I went online and found it.

7 Q. Thank you.

8 JUDGE CLIFTON: Who will next question  
9 Mr. Kasbergen?

10 CROSS-EXAMINATION

11 BY MR. RICHMOND:

12 Q. Bill Richmond, USDA. Thank you, Your Honor.  
13 And thank you, Mr. Kasbergen, for your testimony today.

14 Just had one brief question. This goes back  
15 to your discussion on the cooperative-based plan. Could  
16 you walk us through kind of the process for what you or  
17 another Land O'Lakes member might need to go through if  
18 you wanted to expand production on your farm?

19 A. If you wanted to expand, you can -- you can  
20 but you do at your own risk. So I think all -- all the  
21 co-ops have similar type programs, it's not just  
22 Land O'Lakes, so you would expand at your own risk. If  
23 you wanted to purchase base, you could by purchasing  
24 another farm, so that's the only way you could expand  
25 and have your milk production covered by the co-op base.

1 Q. Got it. So there is kind of a formalized  
2 process in place full, if you will?

3 A. Yes.

4 Q. Got it. That's all. Thank you.

5 JUDGE CLIFTON: Does that prompt anyone else  
6 to question?

7 MR. VETNE: Sorry, Marvin.

8 RE-CROSS-EXAMINATION

9 BY MR. VETNE:

10 Q. Mr. Kasbergen, when you said "purchase base,"  
11 you were referring to private base plant within the  
12 Land O'Lakes cooperative; is that correct?

13 A. Correct.

14 Q. You weren't referring to the regulated?

15 A. Not the quota.

16 Q. Not the -- not the quota -- well, quota is --  
17 system includes quota base and over base, this is  
18 something entirely different?

19 A. That's correct.

20 Q. Okay. And -- and you can -- and -- and you're  
21 not prevented from expansion, but if you can't recover  
22 your marginal costs, why bother; is that basically your  
23 decision process?

24 A. If you wanted to expand in today's market  
25 where there's excess capacity, you could probably do so

1 at no risk.

2 Q. Okay.

3 A. Because milk production has not reached the  
4 ceiling.

5 Q. Thank you.

6 REDIRECT EXAMINATION

7 BY MR. BESHORE:

8 Q. I have just one clarifying question.

9 When -- Mr. Kasbergen, in response to, I think  
10 Mr. Vetne, you referred to California as previously  
11 being a highest milk-producing state at a prior time  
12 when there was a California advantage or it was more  
13 favorable to do so in California. When you talked about  
14 the highest milk-producing state, were you talking about  
15 per cow or just aggregate production?

16 A. I think per -- per cow production.

17 Q. Okay. That's what I thought, and I don't  
18 think that's clear, but I wanted to -- I wanted to make  
19 that clear.

20 There was a time when it had the highest  
21 production per cow, and that is no longer the case?

22 A. No.

23 JUDGE CLIFTON: When he says that is no longer  
24 the case, is he correct?

25 THE WITNESS: He's correct. Yes. Sorry.

1 MR. BESHORE: Thank you.

2 Thank you very much for your testimony today,  
3 Mr. Kasbergen.

4 THE WITNESS: Thank you.

5 JUDGE CLIFTON: Are there any other questions  
6 before Mr. Kasbergen steps down? There are none.

7 Thank you so much.

8 THE WITNESS: You're welcome.

9 MR. BESHORE: I would ask that Exhibit 21 be  
10 admitted, if it has not already been.

11 JUDGE CLIFTON: Thank you. It has not.

12 MR. BESHORE: With help from Mr. English.

13 JUDGE CLIFTON: Is there any objection to the  
14 admission into evidence of Exhibit -- Mr. --

15 MR. HILL: Brian Hill. Brian Hill.

16 One question -- well, one statement. With the  
17 Department's focus on personally identifiable  
18 information, I'm not sure about this address --

19 JUDGE CLIFTON: Ah.

20 MR. HILL: -- on the front. Maybe I should --

21 JUDGE CLIFTON: Yes.

22 MR. HILL: -- have that stricken for the  
23 record.

24 JUDGE CLIFTON: Mr. Kasbergen, could I --  
25 could I ask is this a business address on the front of

1 Exhibit 21?

2 THE WITNESS: Yes, it is.

3 JUDGE CLIFTON: All right. If it's a business  
4 address, we have no problem with privacy interests or  
5 personally identifiable information, so thank you.

6 MR. HILL: That's all I had, Your Honor. I do  
7 not have an objection.

8 JUDGE CLIFTON: Thank you. Thank you,  
9 Mr. Hill.

10 MR. BESHORE: Thank you, Mr. Hill.

11 JUDGE CLIFTON: Exhibit -- were there any  
12 other comments or objections?

13 Exhibit 21 is admitted into evidence.

14 (Whereupon Exhibit 21 was admitted  
15 into evidence.)

16 JUDGE CLIFTON: Mr. Beshore.

17 MR. BESHORE: The next dairy producer witness  
18 is Mr. Jared Fernandes, and he has prepared a three-page  
19 statement, or a statement with three typed sides, which  
20 I would ask be marked for identification as Exhibit  
21 Number 22.

22 JUDGE CLIFTON: And I believe that's already  
23 been distributed to us. Does it look like this,  
24 Mr. Beshore?

25 MR. ENGLISH: Yes, it does.

1 JUDGE CLIFTON: All right. We'll mark that as  
2 Exhibit 22.

3 (Whereupon Exhibit 22 was marked for  
4 identification.)

5 JUDGE CLIFTON: And does everybody have one?  
6 All right. It appears they've been distributed.

7 Mr. Beshore, you may -- oh, let me swear in  
8 the witness.

9 I'll swear you in in the seated position.  
10 Do you solemnly -- please raise your right  
11 hand.

12 Do you solemnly swear or affirm under penalty  
13 of perjury that the evidence you will present will be  
14 the truth?

15 THE WITNESS: I do.

16 JUDGE CLIFTON: Would you please state and  
17 spell your name?

18 THE WITNESS: Name is Jared Fernandes.  
19 J-A-R-E-D. F-E-R-N-A-N-D-E-S.

20 JUDGE CLIFTON: D-E-S, that surprised me.

21 THE WITNESS: Portuguese.

22 JUDGE CLIFTON: Portuguese. Thank you.

23 Mr. Beshore.

24 MR. BESHORE: Thank you, Your Honor.

25 ///

1 DIRECT EXAMINATION

2 BY MR. BESHORE:

3 Q. Mr. Fernandes, have you prepared the  
4 three-page statement that's just been marked as Exhibit  
5 22 for presentation today?

6 A. Yes, I have.

7 Q. Have you been in the room during  
8 Mr. Kasbergen's testimony?

9 A. Yes, I was.

10 Q. Are you still prepared to testify?

11 A. Yes. Yes, I am.

12 Q. Thank you. You may proceed with your  
13 testimony.

14 STATEMENT OF JARED FERNANDES

15 THE WITNESS: All right.

16 Thank you for the opportunity to testify  
17 before you today. My name is Jared Fernandes, and I'm a  
18 third generation dairyman operating just south of  
19 Tulare. My family partnership consists of myself and  
20 four brothers. Together we own and operator three dairy  
21 farms, with over 14,000 animals, and collectively farm  
22 approximately 2500 acres devoted primary -- primarily to  
23 forages to feed our cows.

24 As a member owner of Land O'Lakes, I support  
25 the proposal put forth by Land O'Lakes, Dairy Farmers of

1 America, and California Dairies to institute a Federal  
2 Milk Marketing Order in California.

3 I'm here today to discuss the challenges of  
4 the California 4b pricing has had on our operation both  
5 financially and with hedging. First I'd like to look at  
6 the differences between the California Class 4b versus  
7 the Federal Order Class III.

8 I have "Analysis of 4b versus Class III  
9 Pricing for California Dairy Producers."

10 As a California dairy producer who markets  
11 milk to handlers regulated under the California state  
12 order -- milk order, we are at a disadvantage in terms  
13 of managing price risk due to an inherent basis  
14 difference to the hedging instrument, the Class III milk  
15 futures contracts, through the Chicago Mercantile  
16 Exchange, CMI.

17 As a general rule, producers outside of  
18 California who market their milk to handlers regulated  
19 under a Federal Milk Marketing Order, FMMO have, as part  
20 of their value formula, Class III milk pricing. Recall  
21 that Class III milk within the Federal Milk Marketing  
22 Order refers to milk used to make cheese and whey  
23 products. The Class III pricing in the Federal Milk  
24 Marketing Order includes cheese and whey factors and  
25 also represents the settlement value for the Class III



1 milk futures contracts. For the Class III components of  
2 the Federal Milk Marketing Order pricing formula, the  
3 producer whose price -- pricing is administered by an  
4 FMMO may directly hedge the Class III components of his  
5 overall price with the Class III futures contract on the  
6 CME. Thus, an FMMO producer experiences significantly  
7 less "basis" risk between his price and that of a -- of  
8 the hedging instrument -- and that of the hedging  
9 instrument.

10 By contrast, a dairyman in California, like  
11 myself, operating in the California state milk order  
12 that has a different formula for determining the milk --  
13 price for milk used to make cheese and whey products.  
14 The California Class 4B price includes different cheese  
15 and whey price factors than the FMMO Class III pricing  
16 formula. Since California uses its own pricing methods  
17 and price discovery series, a discrepancy or price basis  
18 difference is created within the California 4b price and  
19 the FMMO Class III prices.

20 The difference between the two prices series  
21 is almost always negative for California 4b, pricing  
22 less than Class III price -- than the Class III pricing.  
23 More importantly for hedging and risk management  
24 purposes, the basis is highly volatile and unpredictable  
25 month to month. For example, the annual average of the

1 basis, calculated by subtracting the FMMO Class III  
2 price from the California 4b price, has ranged from a  
3 value of a negative \$1.24 in 20 -- in 2010 to a value of  
4 a negative \$2.41 in 2014. Within 2011, the basis ranged  
5 from a negative \$1.88 in November 2011 to a negative  
6 \$3.63 in December, a swing of a negative \$1.75 in just  
7 one month.

8 The table below illustrates the average annual  
9 basis different -- values between the two series of  
10 announced prices and also offers the monthly minimum and  
11 maximum differences in each year. The table has the  
12 California 4b versus the Class III basis value. The top  
13 line has the year, followed by the average of the basis  
14 difference, the maximum, and the minimum.

15 In 2010, it averaged a negative \$1.24 with a  
16 maximum of a negative \$2.30, and a minimum of .37.

17 In 2011, it was a negative \$2, with a maximum  
18 of \$3.63, and a minimum of .08.

19 JUDGE CLIFTON: Now, let's make clear that  
20 both the minimums that you've testified about are  
21 negative minimums.

22 THE WITNESS: Those are negative, and that's  
23 in cents, yes.

24 In 2012, it averaged a negative \$1.91, with a  
25 maximum of a negative \$2.82, and a minimum of a negative

1 \$.98.

2 2013 was a negative \$1.57, a maximum of a  
3 negative \$2.30, and a minimum of a negative .67.

4 2014 was a negative of \$2.41 average, a  
5 maximum of a negative \$3.24, and a minimum of a negative  
6 .84 cents.

7 In 2015 --

8 JUDGE CLIFTON: Just --

9 THE WITNESS: I'm sorry.

10 JUDGE CLIFTON: Just negative \$.84.

11 THE WITNESS: A negative \$.84, yes.

12 JUDGE CLIFTON: Okay.

13 THE WITNESS: In 2015 thus far is a negative  
14 \$1.49, with a maximum of a negative \$2.43, and a minimum  
15 of a negative \$.53.

16 As the table suggests, the swing in basis  
17 values throughout any given year are quite signature and  
18 at times are north of \$3 a hundredweight. Given that  
19 there's no availability or liquid financial hedging  
20 instrument that tracks either the absolute California 4b  
21 pricing or the basis difference to Class III, the  
22 California producer has no legitimate vehicle to lay off  
23 his -- this significance portion of his price risk.  
24 Instead, we typically hedge with Class III futures to  
25 the extent cheese and whey influences our pay price and

1 hope for the best in terms of our forecasts of base risk  
2 versus what actually occurs. The transition from the  
3 California milk mark -- milk order to the FMMO will add  
4 another tool for California dairy farmers to manage our  
5 milk price risks.

6 Moving to a California FMMO will:

7 1. It will erase the current 4b basis risk  
8 attributed to an announced class pricing.

9 2. It places the California producer on a  
10 level playing field with the rest of the country in  
11 terms of available risk management tools.

12 3. It will allow California producer to  
13 receive substantially the same price as producers  
14 outside of California operating in the Federal Milk  
15 Marketing Order.

16 4. It raises California's All Milk Price  
17 allowing for less margin risk within the M -- Margin  
18 Protection Program, or MPP.

19 "My Journey."

20 Given the volatility in the marketplace, I  
21 realize our family's dairy operation needed to evaluate  
22 a risk management strategy. We started slowly in 2009,  
23 before the basis risk of California's Class 4b versus  
24 FMMO Class III was considerable. I enrolled into a  
25 two-year risk management class and began understanding

1 the tools available to producers to minimize the  
2 volatility in the marketplace. While I've learned a  
3 tremendous amount about -- about the complicated world  
4 of risk hedging, I have to say that much of the time  
5 I've been frustrated with our ability to offset the  
6 basis I described above. There have been many instances  
7 why I've given up an opportunity because my settlement  
8 price was above the ceiling I had locked in, however, my  
9 cash price was well below my ceiling. I have also had  
10 my floor protected but not realized. For example, this  
11 past July 2015, I purchased \$15.50 puts and sold \$20  
12 calls on half of my Class 3 usage. This position cost  
13 our operation \$.31 per hundredweight paying \$.52 for the  
14 put and selling off the top for \$.21. The July Class 3  
15 price settled -- settled price was \$16.33, well above my  
16 put. However, the Class -- the California 4b settled  
17 price was \$14.98, below my floor price.

18 I've currently hired a risk management  
19 consultant to assist us in our hedging strategies. This  
20 consultant works with dairies throughout the USA and has  
21 repeatedly indicated hedging would be more  
22 straightforward with reduced basis risk if California  
23 could adopt the same value as a FMMO for whey in the  
24 California 4b formula price or have -- or have  
25 California institute a Federal Milk Marketing Order.



1 BY MR. BESHORE:

2 Q. Mr. Fernandes, since you've prepared this and  
3 had the opportunity to spend a few minutes in the  
4 hearing here today, is there anything you'd like to --  
5 to add or --

6 A. No, I -- the only thing I don't -- I -- I  
7 spoke in some terms that I'm sure not everyone  
8 understands as far as hedging, I -- I tried to simplify  
9 it, but there's nothing else. I just don't know if  
10 there's some questions about some of the terms I used.

11 MR. BESHORE: There -- there may be, and I'll  
12 leave those to other potential examiners.

13 JUDGE CLIFTON: Who would like to go first in  
14 asking questions of Mr. Fernandes?

15 MR. ENGLISH: Can you give us one minute,  
16 Your Honor?

17 JUDGE CLIFTON: Certainly.

18 MR. ENGLISH: Thank you.

19 JUDGE CLIFTON: Why don't we take a  
20 five-minute stretch break? Everyone don't go too far,  
21 we won't be long. It's now 2:27.

22 (Whereupon a break was taken.)

23 JUDGE CLIFTON: All right. We're back on  
24 record at 2:33.

25 ///

1 CROSS-EXAMINATION

2 BY MR. ENGLISH:

3 Q. Good afternoon, sir. My name is Chip English,  
4 an attorney for the Dairy Institute of California.

5 A. Good afternoon.

6 Q. And I don't have a lot of questions. I think.  
7 In lieu of the contracts that you have tried,  
8 has your consultant suggested or have you looked at  
9 using cheese, butter, and nonfat dry milk contracts in  
10 proportion that those are in pool in California?

11 A. Well, we've talked about them. When -- when I  
12 first was hired on with them, we were skeptical because  
13 of they -- they were very low liquidity contracts,  
14 meaning there wasn't a lot of buyers on the other end,  
15 so it's hard to make a contract if there's someone not  
16 on the other end willing to do it. Since they had --  
17 the liquidity has picked up in those contracts, but I  
18 rely on my consultants now, now I've stepped away from  
19 the game and have hired consultants to do this for me,  
20 and they are -- strictly been doing Class III, Class IV,  
21 and we have been doing a little bit of some butter  
22 contracts, recently.

23 Q. Does that effectively mean that that is sort  
24 of what you're doing now, I mean, if you're doing  
25 butter, nonfat dry milk?



1           A.     Say that again.

2           Q.     Does that mean you sort of are now doing that  
3 not, getting into butter, nonfat dry milk contracts?

4           A.     I'm not doing -- you mentioned cheese and dry  
5 milk, but I'm mainly doing Class III, Class IV, and we  
6 are doing some butter.

7           Q.     Actually, that's what I thought I asked.  If I  
8 skipped it, I apologize.

9           JUDGE CLIFTON:  For those of us who don't  
10 understand, what is -- what is the equivalent to nonfat  
11 dry milk, Mr. -- Mr. English, as you're using it?

12          MR. ENGLISH:  N-F-D-M.  I'm sorry.

13          JUDGE CLIFTON:  So --

14          MR. ENGLISH:  Oh, as we're talking about it?  
15 Class 4a or Class -- Class 4a with the Arabic 4a in  
16 California, or Class IV, Roman numeral IV in the  
17 Federal, that's the nonfat dry milk.  But butter also  
18 falls under Class IV in the Cal -- in the Federal order.

19          JUDGE CLIFTON:  All right.  So the reason you  
20 thought you were asking the same thing as he answered is  
21 you were equating his answer Class III with cheese; is  
22 that right?

23          MR. ENGLISH:  One way or the other, I think he  
24 thought I was leaving butter out, but I did not intend  
25 to leave butter out, so --

1 JUDGE CLIFTON: All right. Thank you.

2 BY MR. ENGLISH:

3 Q. Just to be -- let's just clear it all up.

4 What are you doing now?

5 A. We currently have some Class IV positions,  
6 some Class III positions, and we do have some butter  
7 contracts, Class -- butter positions.

8 Q. All right. Are you a board member of  
9 Land O'Lakes?

10 A. No, I'm not.

11 Q. Are you aware of the study I referenced  
12 earlier by Mark Stephenson and Chuck Nicholson that the  
13 cooperatives requested with respect to the Federal  
14 orders?

15 A. I'm aware of the study.

16 Q. Have you seen it?

17 A. I have not.

18 MR. ENGLISH: I have no further questions of  
19 this witness.

20 JUDGE CLIFTON: Who would next like to ask  
21 questions of Mr. Fernandes?

22 CROSS-EXAMINATION

23 BY MR. VETNE:

24 Q. John Vetne. Representative for Hilmar Cheese.

25 With respect to that Stephenson/Nicholson

1 study, have you been told anything about its contents?

2 MR. BESHORE: Before he has a chance to answer  
3 that. I object to any questions that would -- about the  
4 content, that would lead to the content of the  
5 proprietary private confidential study that was done for  
6 the cooperatives.

7 JUDGE CLIFTON: Thank you, Mr. Beshore. And  
8 although you're always just one step ahead, I think  
9 that's better than waiting too long.

10 So you may answer the question you've been  
11 asked, which is?

12 BY MR. VETNE:

13 Q. Have you been told anything about its content?

14 A. Not that -- I don't remember anything about  
15 it, to be honest with you.

16 Q. So it didn't come up at any producer meetings  
17 concerning the adoption of a Federal Milk Marketing  
18 Order, to your memory?

19 A. It may have, but I can't -- I don't even  
20 remember what it was about.

21 Q. You -- towards the end of your statement, you  
22 used a period of January 2010 through June of 2015 to  
23 apply what you characterize as a \$.72 discount; is that  
24 correct?

25 A. That is -- that is correct.

1 Q. My question is why the period starting in  
2 January 2010?

3 A. Well, I -- I used that mainly just to kind of  
4 refer back to the chart that I gave the basis  
5 differential on page two, so just a reflection of during  
6 that time period, I just took that snapshot.

7 Q. Okay. Is it your testimony that this state  
8 order system was acceptable prior to 2010 and it's been  
9 less acceptable since?

10 A. I would say that the volatility has increased  
11 since 2010.

12 Q. So since 2010, some undesirable aspects of the  
13 state pricing program have evolved, and one of those  
14 aspects is volatility; is that your answer?

15 A. That's -- that's correct. Or volatility or  
16 basis risk.

17 Q. Okay. So your testimony was in -- in context  
18 of the ability of your dairy farm operation to hedge  
19 under the formulas rather than -- rather than a  
20 characterization of whether the resulting price was good  
21 or bad?

22 A. My testimony was based solely on hedging  
23 difficulties.

24 Q. Hedging difficulties.

25 And when you say it translates into a

1 California overbase impact of \$.72 per hundredweight, at  
2 that point you were referring to the regulated overbase  
3 price, not a cooperative overbase price?

4 A. I was referring to a regulated, yes, minimum  
5 price.

6 Q. Okay. Is there any particular reason you  
7 chose to refer to an overbase impact rather than a quota  
8 impact?

9 A. No.

10 Q. Do you --

11 A. I'm not sure what you mean, actually.

12 Q. Well, in California there's overbase milk and  
13 quota milk. For quota milk, you receive something more  
14 than overbase milk, correct?

15 A. Yeah, but I was talking about the minimum  
16 prices on -- I believe I was talking about the minimum  
17 prices differences of \$1.80.

18 Q. Okay. And how does use of overbase versus  
19 quota play into that -- into your analysis here?

20 A. Repeat, please.

21 Q. How does use of overbase in reference -- in --  
22 in your testimony, how -- how does that play into it  
23 versus referring -- referring to quota impact, if at  
24 all?

25 A. I'm not sure.

1 Q. Do you own quota?

2 A. Yes.

3 Q. What portion of your milk is covered by quota?

4 A. A very small portion.

5 Q. What is your monthly milk production?

6 A. I'm not sure. It's approximately on the three  
7 farms about -- about 15 million pounds per month.

8 Q. Thank you. Are the farms of roughly equal  
9 size?

10 A. No.

11 Q. That 15 million pounds represents a range,  
12 approximate range of what to what, smallest farm to the  
13 largest farm?

14 A. From one million to eight.

15 Q. Bless you.

16 Are you, in addition to California quota and  
17 overbase, your production is subject to a cooperative  
18 base plan, correct?

19 A. That's correct.

20 Q. And under that base plan, should you decide to  
21 expand your milk production, you would expect to pay  
22 less for a volume produced above whatever base it's  
23 assigned to, correct?

24 A. I would be taking a risk.

25 Q. And the risk would be at a lower price,

1 correct?

2 A. The risk would be in the event that the plant  
3 was at capacity and I was shipping overbase, then I  
4 could be shoved into the lower price.

5 Q. Okay. It only triggers when the plant is  
6 at -- your customer plant is at capacity; is that  
7 correct?

8 A. I believe so.

9 Q. Is that a particular plant or is that plants  
10 generically within the California system?

11 A. All three of our farms ship to Land O'Lakes,  
12 and the base is with Land O'Lakes.

13 Q. And if those plants are at capacity and you  
14 have produced more milk than the base assigned to you,  
15 what is the price penalty that you would expect to  
16 suffer; do you know?

17 A. I do not know.

18 Q. You've never measured that against your  
19 marginal costs of producing extra milk?

20 A. I've never been faced with that situation.

21 Q. Thank you.

22 JUDGE CLIFTON: Who next will question  
23 Mr. Fernandes? No other questions.

24 Thank you, Mr. Fernandes.

25 THE WITNESS: Thank you.

1 MR. BESHORE: There is a third dairy farmer  
2 here who would like to testify at this time. He is --  
3 does not have a prepared statement, but his name is  
4 Xavier Avila, and I'd call him at this time.

5 JUDGE CLIFTON: Thank you.

6 Please come forward, and you may be seated in  
7 the witness chair.

8 THE WITNESS: Hello.

9 JUDGE CLIFTON: Hello, and welcome.

10 I'll swear you in in a seated position. Would  
11 you raise your right hand, please?

12 Do you solemnly swear or affirm under penalty  
13 of perjury that the evidence you will present will be  
14 the truth?

15 THE WITNESS: I do.

16 JUDGE CLIFTON: Thank you.

17 Please state and spell your name.

18 THE WITNESS: My name is Xavier Avila.

19 X-A-V-I-E-R. Avila. A-V-I-L-A.

20 JUDGE CLIFTON: Thank you.

21 DIRECT EXAMINATION

22 BY MR. BESHORE:

23 Q. Mr. Avila, are you a dairy farmer in  
24 California?

25 A. Yes, I am.



1 Q. And do you have some comments that you would  
2 like to present here at this hearing?

3 A. Yes.

4 Q. Please -- please proceed.

5 STATEMENT OF XAVIER AVILA

6 A. I am a small dairy producer. I live in  
7 Tulare. I'm in a partnership. We're trying to survive  
8 and -- and build from that. I've been a dairy producer  
9 since 1992. My parents and my grandparents were in the  
10 dairy business, so it's basically all I know.

11 I am a board member of Land O'Lakes, and I've  
12 been a member of a trade group in -- in the early  
13 200's -- or 2000's. I was a -- a chairman of California  
14 Dairy Campaign, so I've been observing the events of  
15 this state for quite a few years now.

16 I am in favor, obviously, of the three Co-ops'  
17 proposal, that's what we call it, Land O'Lakes, CDI, and  
18 DFA.

19 A couple of points about the proposal. I know  
20 quota is an issue and -- and the pooling is an issue.  
21 As far as the -- the -- as far as the stability of the  
22 market here, it's been very unstable, as you heard  
23 previous people say, but I'd like to get into that after  
24 I touch on a few things here.

25 We're going to be asking for inclusive

1 pooling, and I just wanted to point out a few  
2 observations I've made. You know, I often hear it said  
3 that we don't have inclusive pooling anywhere else, and,  
4 you know, we probably won't get that. Well, that might  
5 be true, but California is also different than  
6 everywhere else. We have the whole Pacific Ocean on one  
7 side, and as you leave the Valley dust on an airplane  
8 and head east, what do you see when you look below?  
9 Wasteland. Desert. We're not like those two huge  
10 competitive areas, that Upper Midwest and the East Coast  
11 where you've got most of the nation's population, and  
12 dairy producers can get out of their contract fairly  
13 quickly. In California, it takes a year or longer.

14 Milk moves around there fairly -- fairly good,  
15 so milk could go in a lot, you know, a lot of milk will  
16 end up from the Upper Midwest to the East Coast or down  
17 to the South. That really doesn't happen here in  
18 California. As I said, our geographic area puts us  
19 different, and I think that reason is why we're asking  
20 for inclusive pooling. We really don't have a lot of  
21 options in our competition for the raw milk, it's really  
22 completely different than other areas.

23 So the other thing, too, is the quota. We  
24 have our quota system. It works very good for  
25 producers. We even have a proprietary cheese plant in

1 this state that people say if it wasn't for them selling  
2 their quota, they won't exist. Most dairy farmers like  
3 their quota. It doesn't, you know, it -- it's a way  
4 to -- if they don't want to grow in -- in numbers or are  
5 landlocked to -- to help their farm out, so it's -- it's  
6 voluntary. You can sell it. You can buy it. To prove  
7 its -- its value, it's actually quite expensive. If it  
8 wasn't necessary -- if it wasn't an advantage to  
9 dairymen, its price would be down there pretty good.

10 So some remarks were made about depooling, you  
11 know, do we expect California not to allow any  
12 depooling. Well, that's kind of what we do now in our  
13 state. You really can't depool now, and I think it's  
14 because of those conditions I said. So -- but depooling  
15 works -- could -- could be pretty detrimental to us here  
16 because we have a different class utilization. You  
17 know, we -- we -- we don't have a whole lot of one  
18 thing, we're kind of balanced.

19 So just give you an example, in an area that's  
20 90 percent Class III, if you depool, there's not a big  
21 difference there, you know. Or if you're in an area  
22 where there's a huge amount of Class I, like the East  
23 Coast, you're not really gaining anything by depooling,  
24 so allowing depooling in those areas is really not that  
25 bad compared to how it would be in California when you

1 have a 30 percent butter powder, you know, 40 percent  
2 cheese and whey, and you can get these big swings in  
3 those two different prices.

4 So depooling here is just a way of gaming the  
5 system. When it's to your benefit, you want in, and  
6 when it's not, you don't -- you don't -- you don't want  
7 to be in, so you take everything for you, and the result  
8 is basically a lower producer pay price.

9 So -- now, the state of our -- our -- the  
10 state of mind of the California dairymen is, in fact, in  
11 decline. It takes a while for things to happen. You  
12 know, almonds, you can basically start planting almonds,  
13 and in a few years be making a lot more money. I think  
14 people haven't given up yet. I -- you know, being --  
15 talking to a lot of dairymen about this, they're hugely  
16 in favor of this proposal, and a lot of them are waiting  
17 to see what happens with this because there's no hope  
18 less -- left. This is our last hope is this process.

19 We've been through a number of CDFA hearings.  
20 There was even a lawsuit. We've tried all these  
21 different things. And I was one of -- I was one -- I've  
22 been in favor of the Federal order before the big  
23 differences in the Classes III, 4b. I've been in favor  
24 of this for probably about 15 years, so you recall, I  
25 think it was some -- we were offered in the '96 Farm

1 Bill to keep our quota and join the Federal order in  
2 '90 -- back in '96, and I think we received that offer  
3 because it was a group of dairymen at that time saw it  
4 as beneficial at that point, so this is not something  
5 new. It's popular now, but there was always a group, a  
6 segment of dairymen that wanted to do this, join the  
7 Federal order.

8           So when you -- when you have conditions that  
9 you can make more money with your land doing something  
10 else, and quite a bit more, I think somebody figured out  
11 that milk would have to be \$40 a hundredweight to  
12 compete with the almonds. Well, you really have to love  
13 cows and love the dairy industry not to make that  
14 switch. And you can drive all over the country in the  
15 Valley here and see all the young -- you can tell almond  
16 trees by their size, and you can see them going in  
17 everywhere.

18           So we're doing this to save our industry,  
19 and -- and we appreciate the processers, but we're  
20 actually saving them, because if enough people exit,  
21 then what are they going to do without milk? So --  
22 and -- and it is going to happen, it's already  
23 happening. I agree with Cornell, what he said earlier.  
24 This will slow it down. It won't stop it, just for the  
25 fact there's better things they can do with their equity

1 than milk cows.

2           So just one more bit before I stop, and that's  
3 just the emotional state of the dairymen, and I think I  
4 should talk about it. We -- we have plenty -- plenty of  
5 technical, you know, testimony here, but the emotional  
6 state of the dairymen, you know, when you -- when you go  
7 to somebody's farm and visit them, and they invite you  
8 into the kitchen, and they're sitting around the table,  
9 and they don't know how to pay their bills, and the  
10 bank's breathing down their neck, and, you know, land  
11 values are high and cow values are high, you know, what  
12 do you think's going to happen?

13           You know, it's a sad story when they make that  
14 decision to sell out. You know, I could tell you, you  
15 know, the children are -- their dreams, hopes and dreams  
16 are -- some are to continue, but even if it's not,  
17 they're hugely involved in agriculture. They take ag  
18 classes, and, you know, in my high school, we're one of  
19 only two school -- school -- school-owned dairy farms in  
20 the United States. So there's a lot of 4H and FFA  
21 judging, dairy judging, things like that. These kids,  
22 there's -- there's been so many dairy families in just  
23 the last few years that have gone out of business, that  
24 these kids -- I mean, the day that the -- the truck  
25 showed up to haul the cows off, it's -- you know, it's

1 like a death in the family. Speaking of which, you  
2 know, I had -- my brother-in-law committed suicide about  
3 seven years ago because of financial difficulty.

4 Now, I know what some people are thinking:  
5 Was this 4b, 4a thing, you know, part of this? And I  
6 say yes, it's -- it's got a cumulative effect when you  
7 look at the difference in the California price versus  
8 the Federal order price and you accumulate that.

9 Now, I know in my head, you know, how much  
10 people owed to the hay company or the feed company or to  
11 the bank, and when you -- it's -- when you calculate  
12 what they would have got versus what they owed, what  
13 they would have got fills in that hole quite a bit, if  
14 not completely. And I'm going to stress this, because  
15 that's how a lot of dairymen think now. "Xavier, will  
16 this Federal order fix it?"

17 I go, "Look, not one thing ever fixes, you  
18 still got to manage your dairy, you still got to do a  
19 good job, you know, but if you're good, for the most  
20 part this -- this takes a big, big bite out of that."

21 So I'll let that conclude my testimony. Thank  
22 you for having me.

23 JUDGE CLIFTON: It's extremely powerful  
24 testimony.

25 Who would like to question Mr. Avila?

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CROSS-EXAMINATION

BY MR. RICHMOND:

Q. Bill Richmond. Bill Richmond, USDA.

Thank you very much, Mr. Avila, for your testimony. We really appreciate it.

If you could, we're just trying to determine if your farm is, in fact, a small business. Can you give us roughly your monthly production?

A. We're a small -- we're small. We milk 80 cows.

Q. Got it. Okay. I appreciate it.

That's all we have. Thank you.

JUDGE CLIFTON: Are there other questions for Mr. Avila?

CROSS-EXAMINATION

BY MS. MCMOODY:

Q. Good afternoon. Andy Acmoody, A-C-M-O-O-D-Y, with Western United Dairymen.

Just one question. You've mentioned the frustration with CDFA. We're not here to talk about their merits, but just for the record, do you -- do you know about how many times have you gone to CDFA to testify to those issues that you've mentioned today? I know I've seen you a lot, but if you could just tell us a little more specifically how much time or how many



1 times you've testified for this?

2 A. Over what -- I mean, over my lifetime?

3 Q. In recent years --

4 A. Well --

5 Q. -- issues we've talked about?

6 A. -- I mean, I've lost count actually. I -- you  
7 know, I was actually -- read the testimony when we put  
8 whey into the formula back in 2004, so probably eight or  
9 nine times not counting hearings in Sacramento.

10 Q. Okay. So a lot of your time?

11 A. Yeah, a lot of my time.

12 Q. Thank you.

13 A. Thank you.

14 JUDGE CLIFTON: When you -- when you say "not  
15 counting Sacramento," when you do appear in Sacramento,  
16 to whom do you speak?

17 THE WITNESS: Well, most recently, about 13  
18 months ago we actually had a bill, SB2730, that  
19 attempted to resolve this, but us co-ops killed it. We  
20 did our -- our best to kill it. It was basically going  
21 to depool the manufacturing milk. Which jeopardizes  
22 quota, and a lot of people -- a lot of dairymen in  
23 California, we're big supporters of the pool because you  
24 can't have quota without a pool.

25 And my -- my way of thinking is since milk has

1 to be picked up on a daily basis, we're at the mercy of  
2 the buyers.

3 By the way, I'd like to make a correction, not  
4 from my testimony, but just from the other day when I  
5 was here. There was some press people here, and they  
6 did a lot of interviews, and I've read those interviews,  
7 and I've seen a lot of talk about how we need to keep  
8 the government, it seems like there -- there seems to be  
9 kind of a minor public relations or media, you know,  
10 information saying that the government sets the price,  
11 which when you read on social media, those comments are  
12 kind of negative. So I spend a little bit of time  
13 saying the government does not set the price, the buyers  
14 of butter powder and cheese set the price. The  
15 government is the referee, the merely calculate those  
16 prices and convert it into, you know, minimum prices.

17 JUDGE CLIFTON: It's complicated. I think the  
18 newspeople were confronted with a very difficult  
19 situation to report concisely, but I'm very glad you  
20 pointed that out.

21 Who else has questions for Mr. Avila? There  
22 are none.

23 Mr. Avila, thank you so much.

24 THE WITNESS: Thank you.

25 JUDGE CLIFTON: Mr. Beshore, do you know of

1 any other dairy farmers that are would be testifying  
2 now?

3 MR. BESHORE: Marvin Beshore.

4 I do not. I believe that we would be ready  
5 for Mr. Hollon to resume --

6 JUDGE CLIFTON: All right.

7 MR. BESHORE: -- the stand.

8 JUDGE CLIFTON: Let me ask: Are there any  
9 other producers, dairy farmers who would like to testify  
10 now? Now, there are more back there than just the few  
11 we've seen. No one.

12 UNIDENTIFIED VOICE: Excuse me.

13 JUDGE CLIFTON: Yes.

14 UNIDENTIFIED VOICE: Is this the only time  
15 that we have?

16 JUDGE CLIFTON: No. No. We do not know how  
17 long this hearing will take, but clearly it will take a  
18 few more weeks. And every day we're happy to have dairy  
19 farmers testify, every day.

20 All right. Then, Mr. Beshore, we'll resume  
21 the testimony of Mr. Hollon.

22 MS. FRISIUS: Your Honor, we haven't put that  
23 into the official file.

24 JUDGE CLIFTON: Ah, thank you. Oh, good job.

25 So we have Exhibit 22. Is there any objection

1 to the admission into evidence of Exhibit 22? There is  
2 none.

3 Exhibit 22 is admitted into evidence.

4 (Whereupon Exhibit 22 was admitted  
5 into evidence.)

6 MR. BESHORE: Thank you.

7 JUDGE CLIFTON: And in case I've made a  
8 mistake a long the way, we now have all 22 exhibits  
9 admitted. If I forgot to say it, I'm saying it now.  
10 Exhibits 1 through 22 are admitted into evidence.

11 MR. BESHORE: Mr. Hollon as resumed the stand,  
12 and he's in cross-examination, it may continue.

13 JUDGE CLIFTON: Mr. Hollon, again state your  
14 name, please.

15 THE WITNESS: Elvin. E-L-V-I-N. Hollon.  
16 H-O-L-L-O-N.

17 CROSS-EXAMINATION

18 BY MR. ENGLISH:

19 Q. Chip English.

20 Good afternoon, Mr. Hollon.

21 A. Good afternoon.

22 Q. So I want to backtrack a little bit. When we  
23 were talking earlier, you did not have certain  
24 information, and since then I've had a chance to look at  
25 your website, Dairy Farmers of America website, which I

1 take is maintained by DFA with every effort to make it  
2 accurate, correct?

3 A. That would be true.

4 Q. And when I look at that website, it has a  
5 number of different -- it basically has the various  
6 different regions, and so there's a section for the  
7 Western Region.

8 A. Western Area, correct.

9 Q. Western Area. Which covers California,  
10 Nevada, and Arizona, correct?

11 A. Correct.

12 Q. And it states that you have 304 member farms  
13 in that region; does that sound right?

14 A. That sounds correct.

15 Q. Approximately how many of those farms are in  
16 Nevada? That's -- the farms are in Northern Nevada; is  
17 that correct?

18 A. There are farms in Northern Nevada. I would  
19 say slightly less than 20.

20 Q. That sounds --

21 A. I don't know an exact number.

22 Q. That sounds familiar to me.

23 Are there farms in Southern Nevada that are  
24 DFA members?

25 A. No.

1 Q. Are there farms in Arizona that are DFA  
2 members?

3 A. There are.

4 Q. Do they ship into California?

5 A. They do not.

6 Q. Further on the website -- and actually I found  
7 two different websites with two different numbers, so  
8 there's a reference to total number of pounds and then  
9 there's a reference to million pounds annually per  
10 producer on average, which I believe was information you  
11 weren't willing to provide to me earlier, correct?

12 A. I think we stopped at the farm number, the  
13 average per farm, I didn't have that information.

14 Q. So I saw two different numbers. One was  
15 23.8 million pounds annual average, and the other was  
16 25 million pounds annual average, fairly close. Do  
17 those sound familiar?

18 JUDGE CLIFTON: What -- you saw them in what  
19 context?

20 MR. ENGLISH: Two different -- two different  
21 websites.

22 JUDGE CLIFTON: In what context?

23 MR. ENGLISH: Two different sections.

24 JUDGE CLIFTON: What -- what did they purport  
25 to show?

1 MR. ENGLISH: They purported to show for the  
2 number of farms that DFA had in the Western region, that  
3 the annual average was 25 million pounds annually, and  
4 the other was 23.8 million pounds annually. And it may  
5 be that I'm looking at sites that have a different date  
6 attached to them, but those are -- those are the numbers  
7 I was able to find. What I was going to ask him,  
8 because of course what I have to say isn't evidence,  
9 whether that sounds right.

10 THE WITNESS: I didn't do those and provide  
11 those for the website, but they sounded -- they sound  
12 reasonable to me.

13 BY MR. ENGLISH:

14 Q. And do you have any reason to believe that  
15 those averages, given the fact that you have to include  
16 the farms up in Northern Nevada and Arizona, are not  
17 representative of California?

18 A. No, I have no reason to think they're not  
19 representative of California.

20 Q. Thank you.

21 Now, we also discussed some of the operations  
22 that DFA owns, and I forgot to ask about one, and there  
23 was some questions about some of the other ones.

24 So you referenced a joint venture with  
25 Stremicks, correct?

1 A. Yes.

2 Q. Stremicks has two plants?

3 A. To my knowledge, they do.

4 Q. Okay. And you also referenced a plant in  
5 Ventura County, correct? Did you say it had ESL  
6 operations?

7 A. Yes.

8 Q. So --

9 A. I don't know if that's the county or the city.

10 Q. I understand that.

11 Well, we -- we've looked -- we've looked at  
12 the CDFA plant list, and we're unable to find a DFA  
13 facility in the city or the county of Ventura, and,  
14 again, your website suggests, I think you use the phrase  
15 that is a "contract plant" that makes coffee beverages.  
16 Does that sound right?

17 A. Yes.

18 Q. Okay. Now, since it's not listed on the CDFA  
19 website, does that mean that the dairy products it  
20 receives are not fluid milk?

21 A. That would be correct.

22 Q. Okay. So that is not a Class I operation?

23 A. It receives cream, condensed, and packages  
24 that makes things like double shots for frappuccinos.

25 Q. The question I asked is that's not a plant --



1 it's not making any Class I products, correct?

2 A. I think that's correct.

3 Q. Now, the facility I forgot to ask about, DFA  
4 has built a plant in Fallon, Nevada, correct?

5 A. That's correct.

6 Q. And when did that plant open?

7 A. It's been inside the last two years, I don't  
8 know the exact date.

9 Q. And what products are manufactured at that  
10 plant?

11 A. Milk powders.

12 Q. Any cream processed into butter or strictly  
13 powder?

14 A. Strictly powders.

15 Q. So now moving back to where we were when we  
16 left off. We were talking about plant capacity. Do you  
17 agree that as recently as January of 2014, the average  
18 daily California milk production exceeded the daily  
19 maximum effective plant capacity?

20 A. I do not have any data on that.

21 Q. You have stated in your statement, or maybe in  
22 answer to some questions from Mr. Beshore, that there  
23 are customers of yours who have commented or otherwise  
24 complained that there is -- there are products,  
25 manufactured products coming out of California against

1 which they can't compete on price; is that correct?

2 A. I missed the last part of your sentence, your  
3 voice faded off there, which is somewhat atypical.

4 Q. I agree. That due to regulated price  
5 differences in manufactured products, that there are  
6 customers of yours who have commented or complained that  
7 those differences put them at a disadvantage; is that a  
8 fair characterization of what you said to Mr. Beshore?

9 A. Yes.

10 Q. Can you name those entities?

11 A. I can, but those are private.

12 Q. Are any of them going to appear for this  
13 record to testify that -- about their competitive  
14 issues, that you know of?

15 A. I do not know.

16 Q. Can you provide specific examples for this  
17 record where price disparities between regulated prices  
18 between California and regulated areas outside of  
19 California have caused disorderly marketing?

20 A. I think I have the examples I gave when I was  
21 talking to Mr. Beshore, that we have -- I mentioned  
22 several Class III customers who have raised specific  
23 issues. I mentioned one situation with a plant that we  
24 own in Texas that makes Hispanic cheeses that struggles  
25 because of regulated minimum prices even in its own home

1 market. And I mentioned specifically a plant that we  
2 own and operate out of Winthrop, Minnesota, making  
3 sweetened condensed products that has recognized and  
4 brought to my attention competitive situations with milk  
5 due to the regulatory minimum price difference.

6 Q. Are those Hispanic cheeses able to move any  
7 farther than Texas?

8 A. They are.

9 Q. Okay. To your knowledge, your testimony is  
10 that Hispanic cheeses coming out of California are able  
11 to move east of Texas?

12 A. Is that --

13 Q. Hispanic cheeses coming out of Cali --

14 A. Back -- back up one question. I thought you  
15 were asking about did the Hispanic cheeses that we  
16 produced move out of Texas. Was that your question?

17 Q. No, it wasn't, but I'll make it my question.  
18 So let's -- let's -- do your Hispanic cheeses from your  
19 plant produced in Texas move east out of Texas?

20 A. They can.

21 Q. And they do?

22 A. To my knowledge, they do.

23 Q. And do you know whether Hispanic cheeses  
24 produced in California are able to move farther east  
25 than Texas?

1           A.    I do not know.

2           Q.    When have you asserted for this proceeding in  
3 any USDA Federal order hearing that regulated price  
4 disparities on the Class II, Class III, and Class IV  
5 regulated handlers constitutes disorderly marketing?

6           A.    I don't recall.

7           Q.    Other than your statement with respect to  
8 Class I, Class II, Class III, and Class IV price levels,  
9 are there any other disorderly marketing conditions in  
10 California?

11          A.    Well, I think we laid out in our statement the  
12 producer price comparison and the class price  
13 comparison.

14          Q.    Now, the producer price comparison, of course,  
15 is a function of a number of things, including  
16 utilization, correct?

17          A.    Yes.

18          Q.    So, for instance, the producer prices received  
19 by farmers in Florida are higher than the producer  
20 prices received by producers in the Upper Midwest for  
21 regulated prices, correct?

22          A.    I think I mentioned that already today.

23          Q.    And you do not deem that to be disorderly, do  
24 you?

25          A.    That would be an unreasonable comparison to

1 say a Florida -- Florida mailbox price versus a  
2 Wisconsin mailbox price or a Florida mailbox price  
3 versus a California mailbox price.

4 Q. I was not asking on your commentary if it was  
5 reasonable or not, sir, nor was I talking about the  
6 mailbox price. My question was Florida producers  
7 receive a higher regulated minimum price than the  
8 regulated minimum prices that are received by Wisconsin  
9 producers, correct?

10 A. Yes.

11 Q. And you do not consider that to be a  
12 disorderly marketing condition, do you?

13 A. I do not consider those to be similar  
14 situations, and so that's part of the basis of the  
15 answer.

16 Q. Yes or no, sir, you do not consider that to be  
17 a disorderly marketing --

18 A. You have my answer.

19 JUDGE CLIFTON: No. I'm waiting for your yes.  
20 I mean, you can explain your yes. So he's asking  
21 whether you consider that to constitute disorderly  
22 marketing. I think your answer is "no, I don't consider  
23 that to be disorderly marketing," and then explain it.  
24 Is that fair?

25 THE WITNESS: All right. That would be fair.

1 JUDGE CLIFTON: Okay.

2 So ask it again, if you will, Mr. English.

3 BY MR. ENGLISH:

4 Q. You do not consider the fact that farmers on  
5 the Florida order receive a higher minimum regulated  
6 price than their counterparts in Order 30 to be a  
7 disorderly marketing? Yes or no, and then you may  
8 explain.

9 A. No.

10 Q. Okay.

11 A. Because I don't think those are similar  
12 situated conditions for which that comparison would be  
13 valid.

14 Q. Okay. I don't consider -- okay, first, is it  
15 true that dairy farmers on the Florida order receive a  
16 higher regulated minimum price in most events than their  
17 counterparts in the Southeast order?

18 A. Yes.

19 Q. And you don't consider that to be disorderly  
20 marketing, do you, sir?

21 A. The same answer would be no, because they  
22 aren't similarly situated -- situations similarly  
23 situated.

24 Q. But it's your assertion that California dairy  
25 farmers and Upper Midwest dairy farmers are similarly

1 situated?

2 A. Yes, they are more similarly situated than the  
3 two examples you gave me before.

4 Q. I didn't provide adjectives, sir. I said in  
5 absolute terms is it your testimony that dairy farmers  
6 in California are similarly situated -- no more, no  
7 less -- similarly situated?

8 JUDGE CLIFTON: His answer stands. It  
9 properly answered your question, Mr. English.

10 MR. ENGLISH: Thank you, Your Honor.

11 BY MR. ENGLISH:

12 Q. So we've talked about processors or producers  
13 under Minnesota versus California. What about products  
14 produced by entities, manufacturing entities at -- at  
15 minimum regulated prices competing against products made  
16 by processors where the milk is not regulated? Is that  
17 a disorderly marketing condition?

18 A. I think that we would need a good deal more  
19 detail to drill through that.

20 Q. Okay. Let's provide a good more detail then.  
21 When a plant in Idaho that is not subject to minimum  
22 regulation produces cheese and competes against the  
23 Upper Midwest for sales of cheese against an entity  
24 subject to minimum pricing, is that disorderly  
25 marketing?

1 A. That may be, yes.

2 Q. Under what conditions would it be?

3 A. I think that you would have to examine some  
4 more of the similarly situated, you know, conditions to  
5 see, and some of those we'll be able to deal in, of  
6 course, some we won't because we won't know them all.

7 Q. What if because of market conditions, supply  
8 and demand, in Idaho, the Idaho manufacturer of cheese  
9 is able to obtain its milk at a discounted price  
10 otherwise from the Class III price and its competitor in  
11 the Upper Midwest paid the Class III price; is that  
12 disorderly marketing?

13 A. I think of the definitions we've established,  
14 yes.

15 Q. Now, what about a circumstance where an entity  
16 is able to depool its milk and still manufacture cheese,  
17 say in the same region, and as a result of depooling as  
18 compared to an entity that doesn't depool, it has a  
19 different cost for its milk for a particular month  
20 because of the price relationships and Class III is  
21 effectively paying into the pool, does that create  
22 disorderly marketing?

23 A. That was a fairly long question. Do you want  
24 to try again?

25 Q. If two plants, both in Wisconsin, both



1 manufacturing cheese, one because of price  
2 relationships, it would otherwise require to pay into  
3 the pool chooses not to pool its milk, and it competes  
4 against a cheese facility down the street that because  
5 it can't depool for one reason or another or doesn't  
6 choose to depool, does that create disorderly marketing  
7 when those two compete against each other?

8 A. I would say in the situation you outlined, no.

9 Q. And why not?

10 A. Because you'd have to consider the remaining  
11 situations that what -- while it may not have paid the  
12 pool regulated price that you can see, if you look at  
13 the mailbox price or the competitive situation for milk  
14 in that scenario and those prices were identical or  
15 almost close, I think you would say that it paid the  
16 same price.

17 Q. But in my example, I said the plant that's  
18 pooled is going to have to pay the pool on its Class  
19 III, so now it's actually not only -- forget -- it's not  
20 just the mailbox price, but it has an additional  
21 obligation, doesn't it, sir, to pay the pool that's  
22 shared among all producers?

23 A. It would. But you would also have to consider  
24 how did it -- how did it attract and maintain its milk  
25 supply and what did both plants pay for that, and those

1 would have to come out of whatever plant returns that  
2 they had. So I would say that those two plants would be  
3 in similar situated positions and pay similar prices.

4 Q. Okay. But didn't the plant that depooled --  
5 wasn't -- isn't the plant that depooled able to return  
6 to its producers whatever that competitive price turns  
7 out to be minus what that plant that pooled has to pay  
8 into the pool for that month?

9 A. Yes.

10 Q. And that difference as a price disparity, can  
11 that be a disorderly marketing condition?

12 A. Again, I would go back to the answer I gave  
13 you. You have to look at what did they pay as a  
14 competitive price and where did -- how -- where did  
15 those returns come from. In your example, one -- one  
16 set of returns came from their P and L, as an example,  
17 and the other one came from what they paid or didn't pay  
18 into the pool, and at the end of the day, they both had  
19 to pay a very similar price to maintain the milk supply.

20 Q. So we've spent a lot of time talking about  
21 Class III, but your testimony also focuses to some  
22 extent on Class II. It's true, of course, under Federal  
23 orders as currently constructed that a standalone Class  
24 II plant can choose to be a pool plant or a nonpool  
25 plant, correct?

1           A.     Correct.

2           Q.     And isn't it a fact that during some of the  
3 time period for which you did your analysis in 2013 to  
4 2014, because of the relative Class II price, a number  
5 of standalone Class II operations choose not to pool?

6           A.     I don't know about if the number chose to or  
7 not to, but I would agree with you that the price  
8 comparisons would have indicated they may or may not  
9 have.

10          Q.     And you didn't take that into consideration in  
11 doing your chart because you were comparing the  
12 regulated prices of plants and you didn't consider in  
13 Exhibit 20 for plants that were nonpooled plants,  
14 correct?

15          A.     Rephrase that, please.

16          Q.     When you did your comparison in Exhibit 20  
17 that was summarized in Exhibit 19 discussing condensed  
18 and the various price levels, you were looking at  
19 regulated minimums, correct?

20          A.     Correct.

21          Q.     So if a standalone Class II plant was not  
22 pooled during some of those time periods you did that  
23 analysis, you didn't take that into consideration, did  
24 you?

25          A.     I did not.

1           MR. ENGLISH: I've handed Mr. Beshore a  
2 document I'm going to have marked, but I think -- I  
3 think I now need three for Meredith, correct? And one  
4 each, so I need six. I'm trying to change the numbers  
5 here.

6           I've handed the witness a document from USDA  
7 that's labeled FMMO Supply Plant Information for 2015.  
8 I'd like to have it marked.

9           JUDGE CLIFTON: Will this be Exhibit 23?

10          MR. ENGLISH: I believe so, Your Honor.

11          MS. FRISIUS: Yes.

12          JUDGE CLIFTON: All right. Exhibit 23.

13          (Whereupon Exhibit 23 was marked for  
14 identification.)

15          JUDGE CLIFTON: And are there additional  
16 copies for those in the room?

17          MR. BESHORE: I'm sorry, yes, Your Honor.

18          JUDGE CLIFTON: Do you need any more made  
19 before we go on? We can take --

20          MR. ENGLISH: I think -- I think we've made  
21 enough, I mean, I'm not sure I have everybody, if every  
22 single person wants in the room. I think we were trying  
23 to make 25 to 30 or 30 and not --

24          THE WITNESS: I think this is already an  
25 exhibit.

1 MR. ENGLISH: Is it? I'm sorry, if it is, I  
2 apologize.

3 MS. FRISIUS: That's what we were just  
4 discussing. We believe it's the same as the table in 9.

5 MR. ENGLISH: I apologize.

6 MR. CARMAN: Table 5 of Number 9.

7 JUDGE CLIFTON: But this is a handy little  
8 tool right now that you're handing out, so if anybody  
9 else needs to get it, we need to go to Exhibit 5?

10 MR. CARMAN: 9.

11 JUDGE CLIFTON: Exhibit 9.

12 MR. CARMAN: Table 5.

13 JUDGE CLIFTON: Oh, I see. Somebody give me a  
14 report on whether there are more Exhibit 9 stacks on the  
15 table to my left, your right.

16 MS. FRISIUS: There are.

17 MS. MAY: There were a few.

18 MR. ENGLISH: I apologize, Your Honor. I  
19 think part of what happened is that Table 5 is on the  
20 back of Table 4, and -- and I didn't -- wasn't aware --  
21 we'll just say okay, oops. I didn't know that we went  
22 from one thing to another, so --

23 JUDGE CLIFTON: Before we go on, let me see a  
24 show of hands of those of you who would like a copy  
25 right now of this Exhibit 23 so you can be looking at it

1 during this testimony. Raise your hand if you'd like a  
2 copy and don't have it.

3 MR. ENGLISH: Well, I don't want to clutter  
4 the record, so I guess it's a question of whether I even  
5 want to offer -- I mean, we already have this same  
6 information in the record, while I don't mind people,  
7 you know, obviously, having extra copies, I'm not here  
8 to add, you know, duplicative exhibits, and I would be  
9 happy to withdraw it now that I realize that it is Table  
10 5 of Exhibit 9. And I just didn't know it was there,  
11 and I apologize.

12 JUDGE CLIFTON: All right. Then this document  
13 is withdrawn as an exhibit, but it's still a useful tool  
14 for our use today, particularly if you don't happen to  
15 have a copy of Exhibit 9.

16 (Whereupon Exhibit 23 was  
17 withdrawn.)

18 MR. ENGLISH: And I would note that Exhibit 9  
19 is actually a more wholesome document in that it has  
20 some additional columns, like the county and things like  
21 that, so it -- it has what I want, but it has additional  
22 information, so, I mean, Table 5 is actually a more  
23 complete version.

24 JUDGE CLIFTON: Okay. So -- Ms. Frisius.

25 MS. FRISIUS: I have two copies.

1 JUDGE CLIFTON: And, Ms. Frisius, would you  
2 check with Mr. Vetne and see if he would still like one?

3 MR. VETNE: I'm fine.

4 JUDGE CLIFTON: You're good? Okay. We have  
5 one still available, someone can look on during his  
6 testimony. Oh, come on, somebody take it. There we go.  
7 Thank you. All right. Good.

8 So those of you who have Exhibit 9, if you'll  
9 turn to Table 5.

10 MR. ENGLISH: Which is page eight of ten,  
11 which is why I apologize.

12 JUDGE CLIFTON: Now, do you want Mr. Hollon to  
13 be looking at --

14 MR. ENGLISH: I was trying to offer him that,  
15 but I figured his lawyer could -- I -- it's essentially  
16 the same, and I'm not going to ask questions about the  
17 county, which I think is the most relevant information  
18 that is on Table 5 that is not on what has been  
19 withdrawn, but he's welcome if he, you know, wants to  
20 have the bigger document. It may be easier to read the  
21 bigger document if he wants to try that.

22 MR. BESHORE: He can have mine.

23 THE WITNESS: Okay. Oh, that's --

24 MR. ENGLISH: Starts at four.

25 THE WITNESS: So I've gone to that.

1 JUDGE CLIFTON: Okay. I think that's good  
2 because you mentioned, Mr. English, there's something in  
3 addition on it which may be of significance to  
4 Mr. Hollon, so --

5 MR. ENGLISH: It may very well be. I won't  
6 try to speak for him. Actually I have -- I now see the  
7 county is also on 23, it's just in a different place,  
8 but it's bigger. I think the real benefit to Exhibit 9,  
9 Table 5, is that, at least to my eyesight, it's more  
10 easy to read.

11 JUDGE CLIFTON: Very good. All right. We're  
12 all ready to go now, so Mr. English --

13 MR. ENGLISH: All right.

14 JUDGE CLIFTON: -- you may resume with your  
15 questions about Exhibit 9, Table 5.

16 BY MR. ENGLISH:

17 Q. So this is a list of Federal Milk Order Supply  
18 Plants from January to June of 2015; is that correct,  
19 Mr. Hollon?

20 A. That is the way it's labeled.

21 Q. Okay. And there's a column at the end,  
22 "Pooling Order of Milk and -- of Plant and Month  
23 Pooled," and is it your understanding that if a plant is  
24 pooled for a particular month, that the order number  
25 appears there?



1 A. Yes.

2 Q. And if it is not pooled on any Federal order,  
3 then for that particular month and that particular  
4 plant, if there's a blank that appears; is that correct?

5 A. Yes.

6 Q. So, for instance, Dairy Farmers of America in  
7 Cass City, Tuscola, Michigan, operates a plant, a supply  
8 plant; is that correct?

9 A. We operate a plant there that for one of these  
10 months was a regulated supply plant.

11 Q. For one month, yes. What -- what kind of  
12 plant is that? What does it process?

13 A. Makes condensed milk products.

14 Q. Does it operate year round?

15 A. Hasn't been in operation for a year yet, but  
16 it's intended to operate year round. It's a new plant.

17 Q. It's a new plant. And so when did -- when did  
18 it first go into operation?

19 A. I don't remember the exact month.

20 Q. Was it before January of this year? I mean,  
21 it seems like it was clearly February because at least  
22 in February it was regulated on an order, correct?

23 A. I don't -- I don't remember.

24 Q. Well, would you agree that if it was pooled on  
25 Order 33 for the month of February, that it must have

1     been operational in the month of February?

2             A.     Yes.

3             Q.     Has it closed since it opened?

4             A.     It has not.

5             Q.     Okay.  So for the month of March, April --  
6     well, the month of March 2015, it -- it's blank, and  
7     therefore it is a nonpool plant, correct?

8             A.     Correct.

9             Q.     And that is also true for the months of April,  
10    May, and June, correct?

11            A.     Correct.

12            Q.     Okay.  So the condensed skim manufactured at  
13    that facility is not subject to any regulated minimum  
14    price, correct?

15            A.     Correct.

16            Q.     So Dairy Farmers of America also operates a  
17    plant in Winnsboro in Wood County, Texas, correct?

18            A.     Correct.

19            Q.     Is that a butter powder operation?

20            A.     It is.

21            Q.     And for the month of January of 2015 when it  
22    doesn't show as a pool plant, was it in operation?

23            A.     It was.

24            Q.     And it processed -- it processed and made  
25    nonfat milk and butter for that month?

1 A. Yes.

2 Q. But it was not a -- it was a nonpool plant,  
3 correct?

4 A. Correct.

5 Q. Does Dairy Farmers of America have any kind of  
6 ownership interest in GSA doing business as Southwest  
7 Cheese?

8 A. Yes.

9 Q. And that is located in Clovis, New Mexico?

10 A. Yes.

11 Q. And by its name, does that plant make cheese?

12 A. It does.

13 Q. What kind of cheese?

14 A. American style cheeses.

15 Q. American style cheese, including cheddar?

16 A. Include -- including cheddar.

17 Q. And so for the month of January and February,  
18 it appears as a pool plant, correct?

19 A. Correct.

20 Q. But for the months of March, April, May, and  
21 June of this year, it chose nonpool plant status,  
22 correct?

23 A. Correct.

24 Q. Thank you.

25 I guess I will ask the Government if I have

1 for Order 1 a nonpool plant handler listing for  
2 August 2015, is that also something you provided us? I  
3 don't believe so.

4 And, Your Honor, I'm next going to hand you  
5 and the witness and the court reporter, I've already  
6 started passing those around, United States Department  
7 of Agriculture, Agricultural Marketing Service, Dairy  
8 Programs, Nonpool Handler Listing, August 2015, Federal  
9 Order 1, which I got off the February 1 website  
10 yesterday.

11 JUDGE CLIFTON: Thank you. We'll use the  
12 Exhibit Number 23 for this document. This will be  
13 Exhibit 23.

14 (Whereupon Exhibit 23 was marked for  
15 identification.)

16 BY MR. ENGLISH:

17 Q. Mr. Hollon, you've worked with Order 1,  
18 haven't you?

19 JUDGE CLIFTON: Wait, wait just a minute.  
20 We're still distributing.

21 MR. ENGLISH: I'm sorry.

22 JUDGE CLIFTON: And I want to make sure  
23 everybody has a chance to look at it --

24 MR. ENGLISH: Very good.

25 JUDGE CLIFTON: -- just a little bit before

1 Mr. Hollon starts to talk about it.

2 Is there anyone who did not get a copy of this  
3 Exhibit 23, this Nonpool Plant Handler Listing for  
4 August of 2015?

5 Mr. English, you may proceed when ready.

6 MR. ENGLISH: Thank you.

7 BY MR. ENGLISH:

8 Q. So this is a listing from the Market  
9 Administrator for August of 2015 of nonpool plants, and  
10 so like we discussed before, these are -- this -- these  
11 plants are not obligated to pay on milk they receive a  
12 minimum regulated price, correct?

13 A. Correct.

14 Q. So just going down the list and maybe a few  
15 that jump out. There's -- there's two Ben and Jerry's  
16 in Saint Albans, Vermont, and Waterbury, Vermont. Those  
17 would be making ice cream?

18 A. Primarily.

19 Q. Cayuga Milk Ingredients, LLC, are they a  
20 fairly new dairy powder operation, making dairy powder?

21 A. They are a new operation. I don't know what's  
22 made there.

23 Q. Okay. Do you know if they were operating in  
24 August of 2015?

25 A. I don't. I would correct that. In August

1 2015, I do think they were operating.

2 Q. So Dairy Farmers of America has a plant in  
3 Mechanicsburg, Pennsylvania.

4 A. You have to ask before I can answer something.

5 Q. Well, I'm -- it was -- what does that plant  
6 manufacture when it's manufacturing?

7 A. Milk powders.

8 Q. Does it operate sort of as a true supply, a  
9 true balancing operation, and not operate at times of  
10 the year when milk is short?

11 A. No.

12 Q. So it operates year round?

13 A. Yes.

14 Q. Okay. So for the month of August 2015, it was  
15 making milk powders and it was a nonpool plant, correct?

16 A. Correct.

17 Q. Dreyers Grand Ice Cream in Laurel, Maryland,  
18 ice cream operation?

19 A. Other than what the name would indicate, I  
20 don't know.

21 Q. Okay. Friendly Ice Cream in Massachusetts, do  
22 you know what they make?

23 A. I do not, other than the name.

24 Q. My Maine residency, Giffords Ice Cream, do you  
25 know what Giffords Ice Cream makes in Maine?

1 A. Say that again.

2 Q. Giffords Ice Cream in Skowhegan, Maine.  
3 Spelled S-K-O-W-H-E-G-A-N, Skowhegan.

4 A. I -- I don't see a plant called Difference Ice  
5 Cream.

6 Q. Giffords, Giffords, G-I-F-F-O-R-D-S.

7 A. Again, other than the name, I do not know.

8 Q. Hershey Chocolate Company in Hershey,  
9 Pennsylvania, do you know what they make?

10 A. Among other things, chocolate.

11 Q. Which is, after lots of years and disputes,  
12 it's a Class II product, correct? Chocolate?

13 A. I don't know that --

14 Q. If they make it -- if they make it with -- if  
15 they make it with fresh milk, it's Class II, correct?  
16 If they make the chocolate with fresh milk, it's Class  
17 II, correct?

18 A. I'm sorry, I don't remember the details. I  
19 remember you're right, there was lots of activities over  
20 it, but I'm not up to speed on the end result.

21 Q. I'll skip ahead, I don't want to do every one  
22 of these. Stonyfield Farm in Londonderry, New  
23 Hampshire, do you know what they make?

24 A. To my knowledge, they're a yogurt  
25 manufacturer.

1 Q. And that's a Class II product, right?

2 A. Yes.

3 Q. And being a nonpool plant means they're not  
4 subject to minimum price regulations in the Federal  
5 order, correct?

6 A. Correct.

7 MR. ENGLISH: Your Honor, I'm not sure I need  
8 to admit it, but I mean, it's an official document I got  
9 off the website, and so I move admission for Exhibit 23.

10 JUDGE CLIFTON: Does anyone want to ask any  
11 questions before you determine whether you have any  
12 objection?

13 MR. BESHORE: Just to the admission of the  
14 document?

15 JUDGE CLIFTON: Yes.

16 MR. BESHORE: No.

17 JUDGE CLIFTON: All right. Does anyone object  
18 to the admission into evidence of Exhibit 23? No one.

19 Exhibit 23 is admitted into evidence.

20 (Whereupon Exhibit 23 was admitted  
21 into evidence.)

22 BY MR. ENGLISH:

23 Q. Now, I am not asking to see it, but are you  
24 aware of a study requested by the Cooperatives of Mark  
25 Stephenson and Chuck Nicholson with respect to Federal



1 orders in California?

2 A. I'm just waiting to see if there's any  
3 objection.

4 MR. BESHORE: I'm going to object to any  
5 further questioning about the document. We'll stipulate  
6 there is such a document, we've done that, said that for  
7 the record. And I will also state that it will not be  
8 produced for this proceeding.

9 JUDGE CLIFTON: You know, I'm getting the deja  
10 vu all over again feeling here. Didn't we already do  
11 this with Mr. Hollon once?

12 MR. BESHORE: I think we did, and I would just  
13 like to not do it again with any witness, and therefore  
14 I object to the line of questioning.

15 JUDGE CLIFTON: Okay. So Mr. Vetne is shaking  
16 his head no, so maybe we didn't do it with Mr. Hollon.  
17 Maybe we began --

18 MR. ENGLISH: We've done it with other  
19 witnesses. No, I -- I had not gotten to the point where  
20 I'm going to ask this witness before.

21 JUDGE CLIFTON: Okay.

22 MR. ENGLISH: And in fact, there might be some  
23 debate as to whether this was, now I'll ask the  
24 question. Your Honor, I'm asking foundation questions.

25 JUDGE CLIFTON: Yes. I think you should.

1 It's -- it's very clear at what point you should stop  
2 asking questions, but you can ask those initial ones.

3 BY MR. ENGLISH:

4 Q. So do you remember the question?

5 A. I'm aware there was a study done.

6 Q. Okay. And have you seen it?

7 A. I have seen it.

8 Q. Okay. Thank you.

9 Is the pressure on California dairy farmers  
10 caused more by milk pricing regulations or problems with  
11 feed costs, land costs, environmental regulations, and  
12 other costs imposed by California?

13 A. That's quite an option there. I think we --

14 JUDGE CLIFTON: Would you ask it again so we  
15 can all wrap our heads around it?

16 BY MR. ENGLISH:

17 Q. Is the pressure on California dairy farmers  
18 caused more by milk pricing regulations or problems  
19 related to feed cost, land value and cost, environmental  
20 regulations, and other California regulations?

21 A. I wrote down five items: Milk price, feed  
22 costs, land costs, environment regulations, and other  
23 regulations.

24 Q. Other California regulations.

25 A. Other California regulations. So I would say

1 that the milk price scenario is a big cause of problem.

2 I would say feed costs at the moment are not  
3 as big cause of problem or a big problem, it's a moving  
4 problem.

5 Land costs I'm not totally familiar with.

6 Environmental regulations, yes, that is an  
7 issue in California.

8 And other I can't speak to because I don't  
9 know what "other" includes.

10 Q. What is the pressure on farmer-owned  
11 cooperatives that the California state order has  
12 created?

13 A. I think you, first of all, have to look  
14 through -- start with the word cooperatives and go back  
15 to our individual members, and so --

16 Q. What about the cooperatives themselves --

17 A. Well --

18 Q. -- as cooperative entities, owning and  
19 operating facilities?

20 A. Personally, my -- personally, my opinion, I  
21 choose to use those interchangeably. I think the  
22 members and their investments and their farms are  
23 interchangeable, so if there's one -- one -- if one does  
24 good, all do -- all do well, and if one is stressed, all  
25 are stressed.

1 Q. Is the Class 4a price too high for California  
2 cooperatives?

3 A. The price alignment issues that we mentioned  
4 earlier, went through in the table, all indicate that  
5 there was a misalignment with Class I, II, III, and IV  
6 prices in California as regulated by the state order and  
7 with the Federal order.

8 Q. Thank you. That wasn't my question.

9 A. Oh.

10 Q. My question was is the price, the 4a price too  
11 high in California?

12 A. The misalignment and 4a price is out of  
13 alignment and would not -- is not correct.

14 Q. To be clear, I'm not asking about alignment.  
15 I'm asking is the 4a price too high for California  
16 cooperatives?

17 A. I think our answer is that it is too low.

18 Q. It wasn't too high last year when product  
19 losses result in multi million dollars lost to the  
20 cooperatives that had to be reblended to their dairy  
21 farms?

22 A. That was -- that -- you're -- you're  
23 identifying something that happened, and that was a  
24 cyclical issue related to price movement.

25 Q. Nonetheless, cooperatives suffered losses last

1 year with respect to 4a prices, correct?

2 A. They did.

3 Q. Won't a Federal Milk Marketing Order make that  
4 worse if 4a prices are higher?

5 A. In --

6 Q. In the California market?

7 A. In the situation you described, in the time  
8 frame you described, that would be yes. But, again, I  
9 would say that that was a cyclical price issue, and that  
10 has to be taken into consideration in answering the  
11 question. Whether you asked it or not.

12 Q. Okay. In that instance you gave me the  
13 answer, and you're allowed to explain. Thank you.

14 Your Honor, I note that it's ten to 4:00, and  
15 I have finished section two, and I would propose we  
16 take, you know, maybe a 15-minute break before I resume.

17 THE WITNESS: Just for the record, I'm very  
18 willing and content to keep right on going.

19 JUDGE CLIFTON: Oh, but we've got to let the  
20 court reporter rest. That's the reason we always use.

21 THE WITNESS: So we're going to go a little  
22 longer today so we can make some progress?

23 JUDGE CLIFTON: No. We're making good  
24 progress. You -- you may feel it's going slowly, but,  
25 you know, you know this material, not all of us do.

1 All right. It's -- it's now ten minutes to  
2 4:00. Please be back and ready to go at five minutes  
3 after 4:00.

4 (Whereupon a break was taken.)

5 JUDGE CLIFTON: All right. We're back on  
6 record at 4:06.

7 Mr. English.

8 BY MR. ENGLISH:

9 Q. So, Mr. Hollon, I want to actually go back  
10 just for a moment, because I think there might be some  
11 lack of clarity, and I'm probably the cause of that, so  
12 I apologize.

13 A nonpool plant can, of course, receive by  
14 diversion or otherwise pooled milk, correct?

15 A. Correct.

16 Q. But the entity that is responsible for the  
17 minimum price of the pooled milk received at a nonpool  
18 plant is the reporting handler that made it pool milk,  
19 correct?

20 A. Correct.

21 Q. So if Dairy Farmers of America has a nonpool  
22 plant for a particular month, but its own milk is going  
23 to a plant and it's pool milk, it may still have a pool  
24 obligation and have a minimum price obligation, correct?

25 A. Correct.

1 Q. But if pool milk is received by an entity  
2 other than the entity pooling it, that is to say if DFA  
3 has pool milk that it were to deliver to one of those  
4 nonpool plants on Exhibit 23, like Ben and Jerry's, Ben  
5 and Jerry does not have a minimum price obligation under  
6 the regulations, correct?

7 A. I don't know that we do that so I'm not clear  
8 that I can answer that, that question might be directed  
9 to the government witnesses who were here on Tuesday.

10 Q. Well, you -- you certainly must deliver pool  
11 milk to nonpool plants over which you do not have any  
12 ownership interest, don't you?

13 A. Yes.

14 Q. Okay. And those plants, whatever your private  
15 arrangement with them, those plants are not accounting  
16 to the pool at the minimum regulated price, are they?

17 A. That would be correct, they don't account to  
18 the pool for anything if they're a nonpool plant.

19 Q. And in fact, this year, there has been  
20 significant quantities of milk that have been received  
21 at nonpool plants at prices that are below class,  
22 correct?

23 A. No, I would not say that.

24 Q. Has there not been significant quantities of  
25 milk sold below class in the Upper Midwest this year?

1           A.    Have there been quantities of milk sold in  
2 distress situation in the Upper Midwest.  That's in the,  
3 I think Dairy Market News citation that you requested I  
4 think earlier in the -- no, the Department made mention  
5 of that.  So, yes, there is.  To call that significant  
6 in terms of the pool sizes, I would not say that.

7           Q.    So we quibble about the volumes, but it  
8 happens?

9           A.    Quibble about the volumes, but your question  
10 started out with the volume.

11          Q.    So strike the word "significant."  There have  
12 been volumes this year as reported by Dairy Market News  
13 that have been received by plants that has been sold to  
14 them at as much as 5 or \$6 below class, correct?

15          A.    I'm not familiar with those dollar ranges at  
16 that level.  There have been some, and that also -- I  
17 would also say that it doesn't mean that the seller of  
18 that didn't have the pool obligation on that milk and  
19 report it as such.

20          Q.    And that's what we just talked about.

21                So let me just return briefly to Table 5 of  
22 Exhibit 9, and I want to ask one more series of  
23 questions about Dairy Farmers of America plants.

24          A.    Okay.  I lose track of which is Table 5,  
25 Exhibit -- oh, tell me --



1 Q. This is the Federal Milk Marketing Order  
2 Supply Plants from January to June 2015.

3 A. Okay.

4 Q. The -- I just want to go down the list quickly  
5 of Dairy Farmers of America plants. The plant in  
6 Colorado --

7 JUDGE CLIFTON: Now, help -- help us find the  
8 page you're on.

9 MR. ENGLISH: I'm back on page eight of ten,  
10 and it looks like all the DFA plants are on page eight  
11 of ten. There's 12 DFA plants listed on page eight of  
12 ten.

13 BY MR. ENGLISH:

14 Q. Now, I recognize that order rules are a little  
15 different so just bare with me. The Fort Morgan plant  
16 in Colorado, can you tell me whether that plant has  
17 split plant status?

18 A. I do not know.

19 Q. The Dairy Farmers of America plant in  
20 Independence, Iowa, can you tell me whether that plant  
21 has split plant status?

22 A. I do not know.

23 Q. The Dairy Farmers of America plant in Goshen,  
24 Indiana, can you tell me whether that plant has split  
25 plant status?

1 A. It does not.

2 Q. The Dairy Farmers of America plant in Adrian,  
3 Michigan, does that have split plant status?

4 A. It does not.

5 Q. The plant we've also caused in Cass City,  
6 Michigan, does that have split plant status?

7 A. It does not.

8 Q. The plant in Cabool, Missouri, does that have  
9 split plant status?

10 A. I do not know.

11 Q. The plant in Portales, New Mexico, does that  
12 have split plant status?

13 A. It does not.

14 Q. The plant in Middlebury Center, Pennsylvania,  
15 does have it split plant status?

16 A. It does not.

17 Q. The plant in New Wilmington, Pennsylvania,  
18 does it have split plant status?

19 A. It does not.

20 Q. The plant in Reading, Pennsylvania, does it  
21 have split plant status?

22 A. It does not.

23 Q. The plant in Winnsboro, Texas, does it have  
24 split plant status?

25 A. It does not.

1 Q. Does the plant in Fond du Lac, Wisconsin, have  
2 split plant status?

3 A. I do not know.

4 JUDGE CLIFTON: I know this has already been  
5 explained to us, but I've forgotten.

6 Mr. Hollon, what is split plant status?

7 THE WITNESS: Some of the orders have  
8 regulations that allow a plant that manufacturers  
9 something, if it follows some very dedicated rules, to  
10 declare a part of its plant as a separate entity, and  
11 pooling requirements can impact -- now you have a plant  
12 that has two parts, and the pooling requirements in  
13 those two parts can be operated independently. But not  
14 all orders allow split plant status.

15 JUDGE CLIFTON: That is extremely helpful.  
16 Thank you.

17 BY MR. ENGLISH:

18 Q. Mr. Hollon, do you agree we are here today,  
19 this week, this month, next month, to discuss --

20 A. Yes.

21 Q. -- current -- current marketing -- current  
22 marketing conditions for milk in California?

23 A. Well, I suppose all of those words have, you  
24 know, meaning, but I think that pricing conditions have  
25 been more than just I would say current as of today or

1 in the recent period of time, and those conditions and  
2 price relationships and price comparisons have been a  
3 problem for -- for our members and the members of the  
4 big co-ops for multiple years.

5 Q. But when we either adopt or amend Federal  
6 orders, we try to look at the most current marketing  
7 conditions available, correct?

8 A. I think we're going to look at a lot of  
9 marketing conditions and not necessarily the most  
10 current available.

11 Q. Well, thank you. I think you're probably  
12 right.

13 JUDGE CLIFTON: Do you want, for the purpose  
14 of your question, to define "current"?

15 MR. ENGLISH: No. I'm fine.

16 THE WITNESS: Thank you, Judge Clifton.

17 BY MR. ENGLISH:

18 Q. Your answer to the last questions was actually  
19 what I was trying to get, so --

20 The price surface, the national price grid or  
21 price surface to which you've referred throughout your  
22 testimony, with some exceptions, but largely is a result  
23 of Federal Milk Order Reform, correct?

24 A. Correct.

25 Q. And Federal Milk Order Reform was finalized in

1 1999, correct?

2 A. Correct.

3 Q. And --

4 A. Other than the 1a and 1b differentials which  
5 were finalized a little later.

6 Q. I think they were modified on December 12th,  
7 1999, I remember exactly where I was, but okay.

8 The -- the bottom line is Federal Order Reform  
9 did commence January 1st, 2000, wasn't it?

10 A. Correct.

11 Q. And this national price grid was based upon  
12 data and the spatial analysis that was available to USDA  
13 in 1996, 1997, 1998, correct?

14 A. Correct.

15 Q. And since then, we have had I think the  
16 following procedures in Federal orders: Three hearings  
17 in Federal orders that have addressed make allowances,  
18 correct?

19 A. I don't have count.

20 JUDGE CLIFTON: And can you identify the  
21 locations in which they occurred? That sometimes helps.

22 MR. ENGLISH: Well, I'm going to ask him about  
23 that.

24 JUDGE CLIFTON: Okay.

25

1 BY MR. ENGLISH:

2 Q. Do you recall post-Federal Order Reform a  
3 proceeding in 2000 held in Alexandria, Virginia, with  
4 respect to make allowances?

5 A. I do.

6 Q. Okay. And that was literally right on the  
7 heels of Federal Order Reform, correct?

8 A. Correct.

9 Q. Okay. Do you recall a second proceeding in  
10 2006 -- and I'm looking for the location. I'm not sure  
11 location is in the final decision. A second hearing in  
12 2006, that was -- early 2006, it was reconvened in 2006,  
13 with respect to make allowances?

14 A. Generally, yes.

15 Q. And you're aware of a third proceeding  
16 convened in early 2007, convened again in May of 2007  
17 with respect to make allowances?

18 A. Generally, yes.

19 Q. Now, did any of those three proceedings  
20 address issues with respect to how the formulas were  
21 constructed as opposed to make allowances?

22 A. I tend to view both of those as the same  
23 thing.

24 Q. Okay. You agree that the end product formulas  
25 include multiple factors, correct?

1 A. Yes.

2 Q. Okay. Did those hearings held by USDA adopt  
3 any changes to anything in those multiple factors other  
4 than make allowances?

5 A. I don't recall.

6 Q. We also had a couple of proceedings, one in  
7 the Southeast with respect to temporary Class I  
8 differentials, correct?

9 A. Yes.

10 Q. Okay. And indeed, temporary Class I  
11 differentials were adopted for the Southeast, correct?

12 A. Correct.

13 Q. And remain in effect, correct?

14 A. Correct.

15 Q. And there was another hearing to consider for  
16 some of the markets north of the Southwest temporarily  
17 Class I differential increases, correct?

18 A. Correct.

19 Q. But that proceeding ultimately was terminated  
20 with no change, correct?

21 A. Correct.

22 Q. Had there been any proceedings with respect to  
23 the Class II price level since Federal Order Reform  
24 except to the extent that it is priced off of Class IV?

25 JUDGE CLIFTON: Say that --

1 BY MR. ENGLISH:

2 Q. Except to the extent that it is priced off of  
3 Class IV.

4 A. I think you would have to consider the Fluid  
5 Milk Product Hearing having some relevance to Class II  
6 items, wouldn't you agree?

7 Q. I -- I would agree, and also I'm remembering  
8 now that there was a hearing for both Class I and II  
9 price increases that National Milk requested, correct?

10 A. That is correct. I was there for all of that  
11 hearing.

12 Q. But that proceeding also -- let's divide that  
13 out. That -- that -- that second proceeding as  
14 discussed with respect to Class I price levels, and I  
15 think Class II as well, terminated without any change as  
16 well, correct?

17 A. You need to give me a little more detail.

18 Q. Have there been, except for the changes in the  
19 Southeast that are temporary Class I adjustments that  
20 we've already discussed, any other changes to the Class  
21 I or Class II price levels adopted by USDA since Federal  
22 Order Reform?

23 A. No.

24 Q. Is it your assertion that nothing has changed  
25 with respect to marketing conditions in the dairy



1 industry since 2000?

2 A. No. It's not my assertion.

3 Q. Should USDA in promulgating an order look at  
4 what the current values are for nonfat dry milk, butter,  
5 whey, and cheese in adopting end product price formulas?

6 A. I think the primary consideration in that -- I  
7 will say no, and the primary reason for that is that  
8 those prices are uniform across the country, and that  
9 should be their number one consideration is to have a  
10 uniform price surface, and that was repeated a number of  
11 times in the Reform Decision.

12 Q. Even if that national price surface is out of  
13 date?

14 A. I don't necessarily know that it is out of  
15 date, but, again, I would say that their top priority  
16 needs to be a uniform price surface for those products.

17 Q. You could have proposed as part of this  
18 proceeding a Part 1000 change that would have made those  
19 changes national, couldn't you have?

20 A. Yes.

21 Q. But you didn't, did you?

22 A. We did not.

23 Q. Okay. Now, in fact, it is the case that the  
24 California Department of Food and Agricultural, or CDFA,  
25 has regularly-held hearings to address conditions

1 in California, correct?

2 A. Correct.

3 Q. And you just don't like the results you've  
4 gotten, right?

5 A. Correct.

6 Q. And I think we already heard some testimony  
7 from one of the farmers that Dairy Farmers of California  
8 has gone so far as to sue CDFA over its hearing  
9 decisions, correct?

10 A. Correct.

11 Q. And you didn't prevail there either, did you?

12 A. Did not.

13 Q. Now, we've just discussed that except for the  
14 temporary changes in the southeast, the Class I price  
15 surface has not been changed by USDA since Federal Order  
16 Reform, correct?

17 A. Correct.

18 Q. But there have been ongoing studies, haven't  
19 there?

20 A. Ongoing studies of?

21 Q. Studies of what that price surface can or  
22 should be?

23 A. I don't know that I'm aware of any in the  
24 public realm.

25 Q. Are you aware of discussions of them in the

1 public realm?

2 A. I'm not certain. Why don't you share with me  
3 the ones you're aware of, and I'll let you know if I'm  
4 aware of them.

5 Q. It looks like we have a printer problem, so we  
6 may have to address that issue tomorrow.

7 JUDGE CLIFTON: Oh, he's not going to be done  
8 with you today, Mr. Hollon.

9 THE WITNESS: Is there a time limit on these?

10 MR. ENGLISH: No, there isn't.

11 Just give me a moment, Your Honor, because I  
12 thought we were going to have a document, but apparently  
13 we don't.

14 JUDGE CLIFTON: Now, our copy machine still  
15 works, right? I mean, there's nothing -- that's not a  
16 problem.

17 MR. ENGLISH: I don't think it's the copy  
18 machine.

19 JUDGE CLIFTON: Oh, good. The copy machine is  
20 good. Okay. Thank you.

21 MR. ENGLISH: Okay. Give me a minute,  
22 Your Honor, because I think it doesn't make sense to ask  
23 some questions without talking about that first.

24 BY MR. ENGLISH:

25 Q. So in your testimony you have compared mailbox

1 prices, correct?

2 A. Correct.

3 Q. Now, those are not the same as minimum  
4 regulated prices, correct?

5 A. Correct.

6 Q. Now, as we get started, and you sort of  
7 discussed this a little bit, your comparison has omitted  
8 New Mexico, correct?

9 A. Yes.

10 Q. And yet New Mexico is within a Federal milk  
11 order, correct?

12 A. Yes.

13 Q. And it has significant cheese production,  
14 correct?

15 A. Yes.

16 Q. And at least as you stated for yourself,  
17 because milk is exported sometimes, it has a low Class I  
18 utilization in needs within New Mexico, correct?

19 A. Yes.

20 Q. Isn't it true that New Mexico sometimes has  
21 plant capacity issues or has had plant capacity issues  
22 in the past?

23 A. There has been reason to move milk out of  
24 New Mexico because of plant capacity issues in the past  
25 as I made mention of already.

1 Q. Do those plant capacity issues exist today?

2 A. Yes.

3 Q. You also included in your analysis, the  
4 Pacific Northwest, correct?

5 A. The Northwest States Region, yes.

6 Q. Which includes the Pacific Northwest, correct?  
7 What -- so what is it -- what does that include, the  
8 Northwest States region?

9 A. The states of Oregon and Washington.

10 Q. Okay. Which is the Pacific Northwest, is it  
11 not?

12 A. What do you mean, when I use that term, do you  
13 mean the order or just the geographic --

14 Q. I was referring to the order, but I think my  
15 colleagues from there would say that's the Pacific  
16 Northwest as well, but, okay. We're talking about  
17 Oregon/Washington, correct?

18 A. Well, I think the Pacific Northwest order has  
19 some geography, I think in Idaho, so --

20 Q. Okay. But the bottom line, you included  
21 Washington and Oregon and not Idaho; is that correct?

22 A. Because the mailbox milk price, the region  
23 that they label Northwest States in the footnotes say --  
24 contain -- refers to Oregon and Washington.

25 Q. Now, the Class I utilization in that market is

1 actually twice the Class I utilization in California?

2 A. It is higher, yes. I don't have an exact  
3 number in my head.

4 Q. All right. And there is a dominant  
5 cooperative in that market that is able to command  
6 premium prices in the marketplace, correct?

7 A. I don't know. There is a cooperative in that  
8 market, I'm not familiar with the premium prices.

9 Q. And you didn't include Idaho, correct?

10 A. Correct.

11 Q. Are those prices available?

12 A. I don't recall that there's a mailbox price  
13 series for Idaho.

14 Q. If there isn't, is that because the Western  
15 order doesn't put it out?

16 A. Well, I suppose indirectly that would be to  
17 the extent the mailbox price series is performed by the  
18 AMS Federal orders, and there's not one there, so  
19 there's not data for that.

20 Q. Wasn't that order before it was voted out at  
21 least similar to California today with a lot of milk  
22 production and relatively low Class I utilization?

23 A. Yes, it was.

24 Q. And before DFA effectively voted out the  
25 order --

1           A.    I object to that characterization.

2           Q.    Well, you -- DFA chose after a hearing to vote  
3 against the amendments which voted against the entire  
4 order, correct?

5           A.    I object to that characterization.  The order  
6 was terminated.

7           Q.    The order was terminated after a regulatory  
8 proceeding?

9           A.    Yes, I agree with that.

10          Q.    A regulatory proceeding in which DFA  
11 participated, correct?

12          A.    Yes.

13          Q.    And in which DFA after USDA issued a proposed  
14 mandatory order voted no, correct?

15          A.    I have no more comments on DFA's participation  
16 in the vote.

17          Q.    Even though it's public knowledge you voted  
18 no, you refuse -- you refuse to put that in the public  
19 records?

20          A.    I have no more comments about DFA's voting on  
21 Federal order issues.

22                    JUDGE CLIFTON:  Mr. English, the eligible  
23 voters were producers?

24                    MR. ENGLISH:  Producers, although, of course,  
25 cooperatives block vote.

1 JUDGE CLIFTON: I didn't know that.

2 Would you ask Mr. Hollon about that?

3 MR. ENGLISH: Well, I suspect he's not going  
4 to answer, but yes, I can.

5 BY MR. ENGLISH:

6 Q. It's true that -- that dairy farm cooperatives  
7 are eligible to block vote, correct?

8 A. Correct.

9 Q. Did DFA block vote in that particular  
10 instance?

11 A. If my memory serves me, it did.

12 MR. HILL: Your Honor, we're going to object  
13 to the question. We don't release the results of these,  
14 and we -- he answered this question. It's -- he doesn't  
15 need to disclose the way they voted for this. We're  
16 objecting to that question.

17 MR. ENGLISH: I'm not sure why the Department  
18 is objecting. I'm not asking the Department to answer.  
19 And private parties can answer or not. If he doesn't  
20 want to answer and he refuses, that's fine, but I'm sure  
21 why I'm getting an objection from the USDA.

22 MR. BESHORE: I think the Government properly  
23 noted --

24 JUDGE CLIFTON: Your name?

25 MR. BESHORE: Marvin Beshore. I think the



1 Government properly noted that what was being asked for  
2 is confidential information that is submitted to the  
3 government, and Mr. Hollon certainly doesn't have to  
4 answer if he doesn't want to.

5 JUDGE CLIFTON: Yes. So I appreciate the  
6 Government pointing out that the Government would not  
7 answer that question, would not be permitted to answer  
8 that question. The testimony we have stands. I think  
9 it is useful to know that in some instances cooperatives  
10 do vote the same way as a group, so I appreciate that  
11 information.

12 And you may continue, Mr. English.

13 BY MR. ENGLISH:

14 Q. Did you participate in that proceeding? I  
15 think it was in Salt Lake City that we had the hearing.

16 A. I did.

17 Q. And wasn't Dairy Farmers of America, and maybe  
18 even with the assistance of entities that I represented  
19 at the time, seeking to make pool qualification more  
20 meaningful and responsive for performance standards so  
21 that milk that was genuinely serving or eligible to  
22 serve the fluid market would pool, correct?

23 A. Yes.

24 Q. And a goal of DFA and some of the entities I  
25 represented at the time was to make pooling effectively

1 more restrictive, correct?

2 A. Yes.

3 Q. Now, as you have testified, and I think we  
4 agree to some extent, the Upper Midwest is similar to  
5 California, correct?

6 A. Yes.

7 Q. But the mailbox prices that aren't the same as  
8 regulated prices, they are -- they result from supply  
9 and demand conditions based upon plants with a lot of  
10 capacity -- I'll take out the word "lot" -- with  
11 capacity that are seeking milk, correct?

12 A. There's a total mix of plants there that have  
13 capacity, that are seeking milk, that are not seeking  
14 milk, that have contractual arrangements that fill them  
15 that don't, so I disagree with that assertion.

16 Q. Do you disagree that there -- that a reason  
17 why Cali -- I'm sorry, Upper Midwest mailbox prices are  
18 higher than California is because there is demand  
19 seeking supply?

20 A. Yes.

21 Q. I'm sorry, you deny that? Or you agree with  
22 it?

23 A. Yes.

24 Q. You agree with it.

25 JUDGE CLIFTON: He said yes.

1 MR. ENGLISH: Yes, but I forgot what the  
2 question was, I'm sorry.

3 BY MR. ENGLISH:

4 Q. Were you agreeing -- you were agreeing with  
5 me --

6 JUDGE CLIFTON: You asked if prices are  
7 higher, isn't that demand seeking supply.

8 MR. ENGLISH: Yes, and he said yes.

9 JUDGE CLIFTON: Yeah.

10 MR. ENGLISH: All right. Thank you.

11 JUDGE CLIFTON: Okay.

12 MR. ENGLISH: I apologize. I was getting used  
13 to not getting an answer.

14 BY MR. ENGLISH:

15 Q. But in California, isn't it often the case the  
16 capacity issues are in the reverse?

17 A. No.

18 Q. Isn't it the case in the time period you've  
19 analyzed that DFA has had to move milk out of  
20 California?

21 A. We analyzed time periods from 2000 to 2015,  
22 so, yes, in some time periods over that 15-year period  
23 there was milk moved out of the state.

24 Q. Did some of that milk move all the way to  
25 Texas?

1           A.     I'm not aware that DFA moved milk to Texas.

2           Q.     When milk moved out of state during this time  
3 period, wasn't it because you couldn't move the milk  
4 into a California plant and return the needed value?

5           A.     I didn't hear the end of your question.

6           Q.     In those instances when DFA had to move milk  
7 out of state in that time period, isn't it the case that  
8 you needed to do so, move that milk because you couldn't  
9 move it into a California plant and return the needed  
10 value?

11          A.     No.

12          Q.     Regardless, you are now -- in your mailbox  
13 comparison, you're not comparing minimum regulated  
14 prices but rather mailbox prices that include premiums,  
15 correct?

16          A.     Correct.

17          Q.     And those premiums in the Upper Midwest are  
18 substantial, correct?

19          A.     Premiums in the Upper Midwest are higher than  
20 in California.

21          Q.     What is the Central Milk Producers  
22 Cooperative?

23          A.     A common marketing agency.

24          Q.     And it's often used the name CMPC?

25          A.     Correct.

1 MR. ENGLISH: Your Honor, we unfortunately ran  
2 out of clips, so fortunately the ones that I'll provide  
3 to the Government, and to you, and the witness, and  
4 court reporter have clips. The rest are bound by rubber  
5 bands. I will -- what I will provide you, the witness,  
6 and the court reporter are copies of Central Milk  
7 Producers Cooperative Price Announcement dated  
8 January 12, 2012, through July 1, 2015.

9 JUDGE CLIFTON: Ms. Frisius, will this be  
10 Exhibit 24?

11 MS. FRISIUS: It will be.

12 JUDGE CLIFTON: Thank you.

13 It will be Exhibit 24.

14 (Whereupon Exhibit 24 was marked for  
15 identification.)

16 BY MR. ENGLISH:

17 Q. Mr. Hollon, is the -- is Dairy Farmers of  
18 America a member of CMPC?

19 A. We are.

20 Q. And do you receive these price announcements?

21 A. On a periodic basis, I don't receive every --  
22 I don't receive every one that comes out.

23 Q. Do you recognize this form?

24 A. I recognize this form.

25 Q. Do you have any reason to believe that these

1 are not the accurate forms?

2 A. I have no reason to believe they're not the  
3 accurate forms, if you will tell me they are the  
4 accurate forms.

5 Q. I will tell you they are. I'll represent --

6 A. I believe you.

7 Q. -- they are. Thank you.

8 So while they may change from time to time, in  
9 essence, if we were to look at one of these and discuss  
10 one of them and not all of them, would the same general  
11 rules apply as to how the premiums are done?  
12 Calculated?

13 A. It's been a number of years since I was  
14 intimate with CMPC, but one of the things that I  
15 remember is that their programs changed on an annual  
16 basis.

17 Q. Okay.

18 A. So they may not all be identical year to year  
19 to year.

20 Q. All right. Well, why don't we try to take a  
21 selected few without trying to -- I mean, let's start  
22 with the first one, since we're on the first page, for  
23 January of 2012. And it references "All Buyers in Order  
24 30." So what -- who is subject to these premiums when  
25 it says "all buyers"?

1           A.    It would be the buyers who buy milk from  
2 suppliers who will members of CMPC.

3           Q.    Who are the suppliers, who are members of CMPC  
4 today?

5           A.    I don't have a list.

6           Q.    Is it fair to say it is a very -- it  
7 represents a significant volume of -- of Order 30?

8           A.    Yes, it would be fair to say it represents a  
9 significant volume, but I can't say that it represents  
10 all of the volume.

11          Q.    But it represents a sufficient volume that it  
12 is able to not only announce these prices but enforce  
13 these prices, correct?

14          A.    I don't know that they have an enforcement  
15 mechanism.

16          Q.    Right.  But they're able to collect them?

17          A.    They're able to announce these prices, and,  
18 again, they don't have an enforcement mechanism.

19          Q.    But to your knowledge, they get collected,  
20 correct?

21          A.    As far as I know they get collect -- they get  
22 collected.

23          Q.    So let's go through and do a calculation here  
24 for the month of January 2012.  And the base zone, is  
25 that Chicago?

1 A. Yes.

2 Q. And there's a reference to "Skim Old Order  
3 30." What does that reference; do you know?

4 A. No.

5 Q. And there's a charge for the base zone of  
6 \$18.31, is that the Federal order minimum price,  
7 regulated minimum price; do you know?

8 A. Only from the standpoint that that's the line  
9 it's on. I don't know what the base price was that  
10 particular month or --

11 Q. Okay. And then there's a fuel surcharge and a  
12 processor assessment and the processor assessment is the  
13 Milk Pet Program; is that correct?

14 A. That's the -- yes, it is.

15 Q. Okay. And then is the Federal Order 30  
16 administrative fee the fee that is collected by the  
17 Market Administrator on volumes to pay for its  
18 activities?

19 A. Yes.

20 Q. So that totals 18.73, and then in the line  
21 below that, it says "Minimum Class Prices Per  
22 Hundredweight," and it says "\$24.40."

23 A. I see that.

24 Q. Yes. Is that the announced Class I price with  
25 premiums for that month for Class I?



1           A.    I do not know.  I think the answer to that is  
2   yes, but, again, I don't deal with this on a  
3   month-to-month basis.

4           Q.    If your assumption is correct and it is the  
5   price, then the premium on class I was somewhere in the  
6   neighborhood of \$5.67 for that month?

7           A.    Yes, the gross announced premium if all these  
8   lines represent that would have been \$5.67.

9           Q.    Okay.  And the important words you just used  
10   is the "gross premium," correct?

11          A.    Correct.

12          Q.    Are there then credits applied to that to get  
13   to a net premium?

14          A.    Yes.

15          Q.    Can you from this describe for me what those  
16   credits are?

17          A.    Other than in -- in the main, I cannot  
18   describe them.  And in general they would be for  
19   different competitive situations, different services  
20   reflecting different costs, but I'm not familiar, it's  
21   been a number of years since I was involved in putting  
22   one of these documents together for the annual programs.

23          Q.    Are there also premiums on Class III and Class  
24   IV?

25          A.    I think -- I think the only premiums on Class

1 IV would be if that's on a Class I handler's market  
2 report.

3 Q. So --

4 A. If they -- if they have that utilization in  
5 their plant, there is a premium.

6 Q. Is that found under subparagraph (3)b, for  
7 instance, Class III and IV over 8% of the handler's  
8 Class I and Class II, would that be what you're just  
9 referring to?

10 A. Yes.

11 Q. Can you tell from this what the Class II  
12 premium is?

13 A. The only thing that I could do would be, as  
14 you did before, to look up in that box that's labeled  
15 (2) and make that subtraction of 14.47 and 14.25.

16 Q. Is there no additional Class II premium over  
17 and above that?

18 A. I'm not -- I -- I do not know.

19 Q. If you look down to Class II price change,  
20 there's a statement that says, "The CMPC minimum price  
21 for Class II skim milk will decrease \$.38 per  
22 hundredweight to 14.47," which is the same number you  
23 just looked at in the right-hand column. But then it  
24 says, "The CMBC minimum premium for Class II butterfat  
25 will remain at \$2.47 per hundredweight effective

1 January 1st, 2012." Does that mean as opposed to skim  
2 milk, that -- that there is a \$2.47 upcharge on Class II  
3 butterfat?

4 A. I do not know.

5 Q. Okay. Near the bottom of the page, there is  
6 references to areas two and three with credits, and the  
7 credits are for sales -- for instance, "Area 2, a credit  
8 of \$.54 per hundredweight will be issued on Class II  
9 sales in old Order 68 in Upper Midwest," so when you see  
10 "old Order 68 area of Upper Midwest," that's referring  
11 to the pre-Federal Order Reform Order 68 before the  
12 merger with Order 30, correct?

13 A. I'm not certain. It could have been what was  
14 Order 68, you know, in the '90's.

15 Q. Okay. Well, that's pre-Federal Order Reform?

16 A. There was different geographies.

17 Q. Were there -- were there other changes in the  
18 Upper Midwest in the 1990's other than the Federal Order  
19 Reform?

20 A. I think there may have been some marketing  
21 area changes.

22 Q. Well, regardless, if it refers to old Order  
23 68, does that help explain when we're looking at old  
24 Order 30, that this announcement on the -- in the top  
25 when it says "Skim Old Order 30" was designed to imply

1 the Order 30 prior to the merger with the Federal Order  
2 Reform, correct?

3 A. Correct.

4 Q. And, in fact, there's a similar marketing  
5 agency for old Order 68, is it called UMMA or --

6 A. There is a common marketing agency that  
7 functions in Order 68.

8 Q. And how is that one spelled for the court  
9 reporter? Is it Upper Midwest --

10 A. I think it's Upper Midwest Milk Marketing  
11 Association.

12 Q. So under "Area 2" --

13 JUDGE CLIFTON: So when you said UMMA, is that  
14 U and then three M's and an A?

15 MR. ENGLISH: I thought it was two M's, but --  
16 two M's.

17 JUDGE CLIFTON: Two M's. Capital U, capital  
18 M, capital M, capital A. Okay. Thanks.

19 BY MR. ENGLISH:

20 Q. So when we look at "Area 2," it says, "A  
21 credit of \$.54 per hundredweight will be issued on Class  
22 II sales in old Order 68 area of Upper Midwest." If you  
23 took a credit of \$.54 against 14.47, that would actually  
24 take it below the 14.25, which I think we thought was  
25 the minimum regulated price, correct?

1           A.     Correct.

2           Q.     So that means that -- that probably does mean  
3 that this butterfat premium of 2.47 is a real premium,  
4 correct?

5           A.     Again, I don't know all those calculations.

6           Q.     Nonetheless, if you -- if you look down and  
7 compare -- if you look at the bottom of the left-hand  
8 column, it talks about "December 2011 CMPC minimum  
9 pricing information," so that's December. If we go to  
10 the next page, which is page two of Exhibit 24, which is  
11 the February notice, that has a reference to  
12 "January 2012 CMPC minimum pricing information." Do you  
13 see that at the bottom left-hand corner?

14          A.     I do.

15          Q.     And it refers to "Class II sales outside Area  
16 2 and 3 will be priced," and then it says here is CMPC  
17 minimum pricing information, and it has a Class I price  
18 per hundredweight, and it says \$2.91, and it has Class  
19 II of \$1.73. Do you see that?

20          A.     I do.

21          Q.     Does that suggest that the Class II premium  
22 for January was \$1.73?

23          A.     2.47 on the January page minus \$.54 is \$1.93.  
24 So I -- I would suggest, Mr. English, that I'm not  
25 familiar with these, but there is someone in your staple

1 there, Mr. Blaufuss, who may be able to just run right  
2 through this when you have a chance for him to be a  
3 witness and can outline every single one of these points  
4 since I think he is a representative of the payer of  
5 this.

6 Q. Well, nonetheless, for now I'm -- I'm asking  
7 you about -- because you talked about mailbox prices,  
8 I'm asking you to, to the extent you can, tell us how  
9 this works as best you can.

10 MR. BESHORE: I would like to interpose --

11 JUDGE CLIFTON: Name?

12 MR. BESHORE: Marvin Beshore. An objection to  
13 this line of questioning, because it is -- this record  
14 is going to be exceeding confused because counsel who  
15 perhaps does not have a master in the document, he's  
16 asking a witness who has stated he doesn't have a  
17 mastery of the document to speculate about what it says.  
18 And among other things, we have testimony comparing skim  
19 prices to 35 prices, and all sorts of other things.  
20 It's going to be incredibly confusing, and the premise  
21 that comparing an over order agency price announcement  
22 for about 15 percent of the milk in Order 30 or  
23 something to mailbox prices, that's a big problem, too.  
24 So I object to any further testimony at this time, at  
25 this time on this line of questioning.

1 JUDGE CLIFTON: Go back to the microphone, if  
2 you will, Mr. Beshore. You've just injected a  
3 percentage of 15 percent. Is that something based on  
4 evidence we have in the record or is that of your own  
5 knowledge?

6 THE WITNESS: It's in --

7 MR. BESHORE: Both.

8 JUDGE CLIFTON: Both. Okay.

9 MR. BESHORE: Okay. And that's, you know,  
10 approximately the, you know, the Class I percentage, or  
11 it may be more, a little bit more than the Class I  
12 percentage in Order 30, which this is -- well, yeah,  
13 Order 30, which is he's talking about. That -- you  
14 know, that percentage I believe was testified to by  
15 Mr. Schaefer, and there's probably other testimony in  
16 about that, and Mr. Hollon is aware of that, too. So  
17 that's the answer to that question.

18 But this -- this -- using -- again, I just  
19 want to -- this line of questioning, I'm not saying it  
20 could never go on for any purpose, but I really -- if  
21 it -- I think it should be stopped now so that -- go on  
22 to something else where we're making sense because the  
23 dialogue in this record about this document is going to  
24 make no sense at all.

25 MR. ENGLISH: Your Honor, the witness' very

1 first table and presumptive issue was comparison of  
2 mailbox prices, and we're entitled to try to understand  
3 what that mailbox price is made up of. And we know that  
4 there's a minimum regulated price, and we know of course  
5 that milk is pooled in the Upper Midwest, and what we  
6 have now, and the witness says yes, he's generally  
7 familiar with it, but you know, this is an accurate  
8 document, I think should become part of the record.  
9 And, yes, we have another witness that can tell us more  
10 about it, but the fact of the matter is that we are  
11 looking at significant charges on these CMPC price  
12 analysis which clearly factor into that mailbox price,  
13 and the witness has made a great deal of that mailbox  
14 price, and he just talks about the conclusion. Well, we  
15 need to know where that comes from.

16 And I will agree that I was actually a little  
17 surprised that he didn't have greater knowledge of it,  
18 and I certainly agree that I have been overly familiar  
19 with it, but the fact of the matter is I think there are  
20 numbers to which he testified about, and I'm trying to  
21 just quickly conclude, but the bottom line is we can't  
22 talk about mailbox prices if we don't know where it came  
23 from.

24 JUDGE CLIFTON: Are you in agreement that  
25 you've gone as far as you can with this witness on those



1 specifics?

2 MR. ENGLISH: I -- I will for now. I may  
3 overnight think about it some more, but -- but I will --  
4 I also note it's almost 5:00 o'clock, but I will for  
5 now, and I'll think about it some more.

6 JUDGE CLIFTON: All right. Very good. I -- I  
7 realize that you want to go as far as you can with  
8 Mr. Hollon, he knows a lot, but the record may have to  
9 contain additional information about this exhibit at  
10 some other point before you can get it admitted into  
11 evidence.

12 All right. Oh, my goodness, it truly is 4:55.  
13 Let's talk about what we'll do tomorrow. We know we'll  
14 have some dairy farmers tomorrow, at least I think we  
15 will. We know we'll have Mr. Hollon. Is there any  
16 other evidence -- oh, and we may, we may or may not have  
17 additional data from the USDA, so I think that will keep  
18 us busy all day. Is there anything anyone else foresees  
19 as evidence for tomorrow?

20 MR. RICHMOND: Thank you. You mentioned it,  
21 Your Honor, we do have some --

22 JUDGE CLIFTON: Your name?

23 MR. RICHMOND: Bill Richmond, USDA. We do  
24 have some additional information and some potential  
25 lines of questioning regarding the outstanding data

1 requests, which we can address some housekeeping issues  
2 perhaps in the morning.

3 JUDGE CLIFTON: That's good news.

4 All right. Does anyone else have any  
5 questions about what we'll be doing tomorrow?

6 MR. BESHORE: May I? Okay. I'm honestly not  
7 sure how --

8 JUDGE CLIFTON: Name.

9 MR. BESHORE: Marvin Beshore. I'm not sure  
10 what the best way to handle this is, but there are a  
11 number of witnesses. We have -- we do have three farmer  
12 witnesses for sure tomorrow. There are a number of  
13 witnesses from the trade associations, not -- not  
14 proponents of Proposal 1 but supporting organizations  
15 for Proposal 1 who are -- would be here and had planned  
16 to and/or will be here tomorrow in anticipation of being  
17 able to testify at that time. You know, whether they  
18 can come back at a later time or stay until, you know,  
19 this witness is done, and everybody else is done in  
20 front of them or whatever, I don't know.

21 JUDGE CLIFTON: We should not do that. We  
22 should -- if they're here, and they'd like to be done  
23 tomorrow, we should try to take them.

24 MR. BESHORE: Okay. And Mr. Hollon also would  
25 like to have his testimony continued to get done some

1 time here, but I think maybe -- maybe they should be --  
2 at the risk of getting into trouble with my own witness  
3 here, maybe they should have the opportunity tomorrow, I  
4 agree with you.

5 JUDGE CLIFTON: Yeah, I -- I think so. I -- I  
6 suspect their testimony is short compared to what we  
7 expect from Mr. Hollon, and it would be wise to move  
8 them in and out so that they're not stuck here.

9 MR. ENGLISH: Just to be clear, I am  
10 entirely -- I'm sorry, Chip English. I think absolutely  
11 that we should be flexible with those kinds of  
12 witnesses.

13 JUDGE CLIFTON: Good. All right. So you just  
14 taught me something, Mr. Beshore. I can ask if dairy  
15 farmers are here, or producers, but they wouldn't be the  
16 only drop-in witnesses that I should inquire about,  
17 there will be other categories as well.

18 All right. We'll -- you can come into this  
19 room as early at 8:00 tomorrow morning and make  
20 yourselves comfortable. The -- the refreshments would  
21 be out by then. Talk with one another. We will not go  
22 on record until 9:00. That being said, we go off the  
23 record now at 4:59.

24 (Whereupon the proceedings recessed  
25 at 4:59 p.m.)

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Dated: October 14, 2015

  
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	<b>\$18.60 (1)</b> 886:15	1088:21		939:1;943:17
<b>\$</b>	<b>\$1863 (1)</b> 924:18	<b>\$39 (2)</b> 914:24,24	<b>A</b>	<b>acquisitions (1)</b> 943:14
<b>\$08 (1)</b> 926:8	<b>\$19.26 (2)</b> 932:12,23	<b>\$4.30 (4)</b> 909:21;910:6,8,13	<b>AA (1)</b> 902:3	<b>acres (1)</b> 997:22
<b>\$1.06 (1)</b> 900:25	<b>\$2 (7)</b> 890:22;892:8;	<b>\$40 (1)</b> 1019:11	<b>AB (1)</b> 902:2	<b>across (5)</b> 878:25;894:19;
<b>\$1.24 (2)</b> 1000:3,15	897:8;928:4;987:14;	<b>\$48 (1)</b> 903:4	<b>ability (5)</b> 869:20;876:10;	912:4;952:1;1071:8
<b>\$1.49 (1)</b> 1001:14	988:7;1000:17	<b>\$5.21 (2)</b> 909:19;910:2	928:23;1003:5;	<b>Act (14)</b> 864:15,15;867:25;
<b>\$1.57 (1)</b> 1001:2	<b>\$2,200,000 (1)</b> 961:13	<b>\$5.67 (2)</b> 1087:6,8	1010:18	870:5,10,11;871:18;
<b>\$1.60 (1)</b> 890:20	<b>\$2.0423 (1)</b> 928:4	<b>\$52 (1)</b> 1003:13	<b>able (21)</b> 858:9,14;866:6;	872:1,2,4;873:11;
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902:7;903:11	<b>\$21 (1)</b> 1003:14	<b>\$73 (2)</b> 961:7;966:8	<b>absorb (1)</b> 912:8	983:10;987:3;990:6;
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<b>\$11.92 (1)</b> 892:15	<b>\$23 (3)</b> 897:3,4;898:6	<b>\$8 (1)</b> 988:10	<b>accept (1)</b> 1004:20	1011:11;1017:7;
<b>\$12 (1)</b> 922:22	<b>\$24.40 (1)</b> 1086:22	<b>\$81 (3)</b> 892:5;901:1,2	<b>acceptable (2)</b> 1010:8,9	1019:20;1023:6,7,
<b>\$12.19 (1)</b> 891:25	<b>\$25 (6)</b> 900:10,12,20,22;	<b>\$84 (2)</b> 1001:10,11	<b>account (2)</b> 893:5;1061:17	18;1028:6;1039:19;
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<b>\$18.31 (1)</b> 1086:6	<b>\$37 (3)</b> 897:5,6;898:7	/// (5) 905:25;978:24,25;	1094:7	912:20;930:6;932:5;
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			<b>ACMOODY (3)</b> 856:13,13;	1002:3;1005:5;
			1022:17	1044:8
			<b>A-C-M-O-O-D-Y (2)</b> 856:13;1022:17	<b>added (2)</b> 860:11;890:19
			<b>acquire (3)</b> 868:10,11;980:2	<b>addition (5)</b> 861:6;867:18;
			<b>acquired (2)</b> 935:22;943:20	1004:1;1012:16;
			<b>acquisition (2)</b>	1046:3
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				912:23;985:7;
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				1044:20,21;1088:16;
				1095:9,17,24
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