

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

IN RE:) [AO]
) DOCKET NO. 15-0071
)
MILK IN CALIFORNIA)
)

VOLUME VIII

TRANSCRIPT OF PROCEEDINGS

OCTOBER 1, 2015

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

IN RE:) [AO]
) DOCKET NO. 15-0071
)
MILK IN CALIFORNIA)
)

BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

THURSDAY, OCTOBER 1, 2015

9:05 A.M.

CLOVIS VETERANS MEMORIAL DISTRICT
808 4TH STREET
CLOVIS, CALIFORNIA 93613

TRANSCRIPT OF PROCEEDINGS

VOLUME 8

REPORTED BY:
MYRA A. PISH CSR
CERTIFICATE NO. 11613

1 APPEARANCES:

2 U.S. DEPARTMENT OF OFFICE OF THE GENERAL COUNSEL
 3 AGRICULTURE: BY: BRIAN HILL, ESQ.
 4 LAUREN BECKER, ESQ.

5 U.S. DEPARTMENT OF WILLIAM RICHMOND, DAIRY
 6 AGRICULTURE: PRODUCT MARKETING SPECIALIST
 7 LAUREL MAY, MARKETING SPECIALIST
 8 MEREDITH FRISIUS, MARKETING SPECIALIST

9 CALIFORNIA DAIRIES, LAW OFFICES OF MARVIN BESHORE
 10 INC., DAIRY FARMERS BY: MARVIN BESHORE, ESQ.
 11 OF AMERICA, INC., HANSON BRIDGETT, SAN FRANCISCO
 12 LAND O'LAKES, INC.: BY: JOHN VLAHOS, ESQ.
 13 MEGAN OLIVER THOMPSON, ESQ.

14 DAIRY INSTITUTE OF DAVIS WRIGHT TREMAINE
 15 CALIFORNIA: BY: CHIP ENGLISH, ESQ.
 16 ASHLEY VULIN, ESQ.

17 LEPRINO FOODS: SUE TAYLOR, VICE-PRESIDENT
 18 DAIRY ECONOMICS AND POLICY

19 DEAN FOODS COMPANY: ROB BLAUFUSS

20 HILMAR CHEESE JOHN VETNE, ESQ.
 21 COMPANY: JAMES DEJONG

22 CALIFORNIA PRODUCER STOEL RIVES
 23 HANDLERS ASSOCIATION: BY: NICOLE HANCOCK, ESQ

24 SELECT MILK PRODUCERS: MILTNER LAW FIRM, INC.
 25 BY: RYAN MILTNER, ESQ.

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I N D E X - V O L U M E 8

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I N D E X - V O L U M E 8

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1 THURSDAY, OCTOBER 1, 2015 - - MORNING SESSION
2 JUDGE CLIFTON: ALL RIGHT. WE'RE ON RECORD NOW, ON
3 OCTOBER 1, 2015. IT'S THURSDAY, IT'S 9:05 IN THE MORNING.
4 MY NAME IS JILL CLIFTON, I'M THE UNITED STATES ADMINISTRATIVE
5 LAW JUDGE WHO IS ASSIGNED TO TAKE EVIDENCE AT THIS MILK
6 HEARING.

7 THE DOCKET NUMBER OF THIS HEARING, AS ASSIGNED BY THE
8 HEARING CLERK OF THE UNITED STATES DEPARTMENT OF AGRICULTURE,
9 IS, IN BRACKETS [AO], THAT JUST STANDS FOR AGREEMENTS AND
10 ORDERS, DOCKET NUMBER 15-0071. THE CAPTION IS IN RE: MILK IN
11 CALIFORNIA.

12 I WOULD LIKE TO TAKE APPEARANCES OF THOSE
13 PARTICIPATING. I WOULD LIKE TO BEGIN WITH EMPLOYEES OF THE
14 UNITED STATES DEPARTMENT OF AGRICULTURE. I AM ONE OF THOSE
15 EMPLOYEES AND I WOULD LIKE THE OTHERS TO LINE UP AT THE PODIUM,
16 PLEASE, AND STATE AND SPELL YOUR NAME. AND SAY WHAT WORK YOU
17 DO WITH THE USDA, PLEASE.

18 MR. RICHMOND: GOOD MORNING, BILL RICHMOND,
19 R-I-C-H-M-O-N-D, WITH USDA AGRICULTURAL MARKETING SERVICE DAIRY
20 PROGRAMS, I WORK WITH THE ORDER FORMULATION AND ENFORCEMENT
21 GROUP. GOOD MORNING.

22 MS. MAY: GOOD MORNING, LAUREL MAY WITH USDA AMS DAIRY
23 PROGRAM. I'M ALSO IN THE ORDER FORMULATION DIVISION AND DO
24 RULE WRITING.

25 MR. CARMAN: GOOD MORNING. WELCOME TO FY '16, THE FIRST

1 DAY. WE ARE HERE. MY NAME IS CLIFFORD CARMAN, C-A-R-M-A-N.
2 I'M ASSISTANT AT TO THE DEPUTY ADMINISTRATOR FOR DAIRY
3 PROGRAMS.

4 MS. FRISIUS: GOOD MORNING, MY NAME IS MEREDITH FRISIUS,
5 M-E-R-E-D-I-T-H, F-R-I-S-I-U-S, AND I WORK FOR AMS DAIRY
6 PROGRAMS AS A MARKETING SPECIALIST.

7 MR. NIERMAN: GOOD MORNING, JASON NIERMAN, N-I-E-R-M-A-N.
8 ASSISTANT MARKET ADMINISTRATOR FEDERAL ORDER 5 AND ON DETAIL
9 WITH AMS DAIRY PROGRAMS.

10 MR. SCHAEFER: HENRY SCHAEFER, H-E-N-R-Y, S-C-H-A-E-F-E-R
11 AGRICULTURAL ECONOMIST FOR THE UPPER MIDWEST MILK MARKETING
12 ORDER, FEDERAL ORDER 30, AND I'M ON DETAIL TO AMS DAIRY
13 PROGRAMS.

14 MS. BECKER: LAUREN BECKER L-A-U-R-E-N, B-E-C-K-E-R, USDA
15 OFFICE OF THE GENERAL COUNSEL.

16 MR. HILL: BRIAN HILL, THE ONLY PROPER WAY TO SPELL
17 B-R-I-A-N, H-I-L-L, THE OFFICE OF THE GENERAL COUNSEL.

18 JUDGE CLIFTON: NOW, I WOULD LIKE TO TAKE THE TEAMS
19 ASSOCIATED WITH PROPOSALS.

20 MR. BESHORE: MARVIN BESHORE, M-A-R-V-I-N, B-E-S-H-O-R-E,
21 COUNSEL FOR THE PROPONENTS OF PROPOSAL NUMBER 1, CALIFORNIA
22 DAIRIES, INC., DAIRY FARMERS OF AMERICA, AND LAND O'LAKES, INC.

23 MR. VLAHOS: JOHN VLAHOS, J-O-H-N, I'M TEMPTED TO SAY USUAL
24 SPELLING, BUT I WON'T -- CAPITAL V-L-A-H-O-S, CO-COUNSEL FOR
25 THE DAIRY COOPERATIVES, PROPONENTS OF PROPOSAL NUMBER 1.

1 MS. OLIVER-THOMPSON: GOOD MORNING, MEGAN OLIVER-THOMPSON.
2 MEGAN IS M-E-G-A-N. I'M ALSO CO-COUNSEL FOR THE PROPONENTS OF
3 PROPOSAL NUMBER 1.

4 MR. SCHAD: GOOD MORNING, DENNIS SCHAD, S-C-H-A-D. LAND
5 O'LAKES.

6 MR. WEGNER: THOMAS WEGNER, T-H-O-M-A-S, WEGNER,
7 W-E-G-N-E-R, WITH LAND O'LAKES.

8 MR. ERBA: ERIC ERBA, CALIFORNIA DAIRIES, E-R-I-C, E-R-B-A,
9 IF I HAD A SENSE OF HUMOR LIKE OTHER PEOPLE, I'D SPELL IT OUT
10 AND SAY THE ONLY PROPER WAY IS WITH A C AND NOT A K, BUT I
11 DON'T HAVE A SENSE OF HUMOR.

12 MR. ENGLISH: GOOD MORNING, YOUR HONOR. CHIP ENGLISH, THE
13 ENGLISH WAY OF SPELLING THE NAME. BY THE WAY, I'M PICKING UP
14 JUST A MODEST RING IN THE MICROPHONE FEEDBACK.

15 CHIP ENGLISH, C-H-I-P, E-N-G-L-I-S-H, FOR THE DAIRY
16 INSTITUTE OF CALIFORNIA.

17 MS. VULIN: ASHLEY VULIN, A-S-H-L-E-Y, V-U-L-I-N, WITH
18 DAVIS, WRIGHT, TREMAINE, REPRESENTING THE DAIRY INSTITUTE OF
19 CALIFORNIA.

20 MR. SCHIEK: WILLIAM -- ALSO KNOWN AS BILL -- SCHIEK,
21 S-C-H-I-E-K, ECONOMIST WITH THE DAIRY INSTITUTE OF CALIFORNIA.

22 MS. KALDOR: RACHEL KALDOR, R-A-C-H-E-L, K-A-L-D-O-R, I
23 THINK THE ONLY WAY TO SPELL IT, EXECUTIVE DIRECTOR OF DAIRY
24 INSTITUTE OF CALIFORNIA.

25 MR DEJONG: JAMES DEJONG, J-A-M-E-S, D-E-J-O-N-G, DAIRY

1 POLICY ECONOMIST ANALYST WITH HILMAR CHEESE COMPANY.

2 MS. TAYLOR: SUE TAYLOR WITH LEPRINO FOODS, L-E-P-R-I-N-O.

3 MR. VETNE: JOHN VETNE, V-E-T-N-E, REPRESENTATIVE FOR
4 HILMAR CHEESE COMPANY, A FARMER-OWNED CHEESE PROCESSING
5 FACILITY. THANK YOU.

6 MS. HANCOCK: NICOLE HANCOCK, N-I-C-O-L-E, H-A-N-C-O-C-K,
7 WITH STOEL RIVES, THAT'S S-T-O-E-L, R-I-V-E-S, AND I REPRESENT
8 CALIFORNIA PRODUCER HANDLERS ASSOCIATION AND PONDEROSA DAIRY.

9 JUDGE CLIFTON: I WOULD LIKE NOW TO TAKE APPEARANCES OF
10 OTHERS WHO WILL BE PARTICIPATING, EVEN THOUGH THEY MAY NOT BE
11 ASSOCIATED WITH A PARTICULAR PROPOSAL.

12 MR. MILTNER: RYAN MILTNER WITH MILTNER LAW FIRM,
13 M-I-L-T-N-E-R, REPRESENTING SELECT MILK PRODUCERS, INC.

14 JUDGE CLIFTON: IS THERE ANYTHING HERE WHO EXPECTS TO
15 TESTIFY TODAY WHO HAS NOT ALREADY INTRODUCED HIMSELF? NO ONE
16 AT THIS POINT.

17 AS ONE OF MY PRELIMINARY MATTERS, I AM DELIGHTED THAT
18 THE MILK IS BACK. THE MILK IS NOT BEING PROVIDED BY THE
19 CATERER, BUT RATHER IT'S A GIFT FROM ONE OF THE DAIRY ENTITIES
20 HERE IN CALIFORNIA, AND I'M SO PLEASED.

21 OTHER PRELIMINARY MATTERS? WHO WOULD LIKE TO BEGIN?

22 MS. MAY: LAUREL MAY WITH AMS. AS ALWAYS, WE'RE GLAD TO
23 SEE YOU HERE THIS MORNING AND LOOKING FORWARD TO ANOTHER
24 EXCITING AND INTERESTING DAY.

25 WE WOULD INVITE YOU TO LET MEREDITH KNOW IF YOU HAVE

1 ANY PRODUCERS OR OTHER PEOPLE WHO COME IN AND WOULD LIKE TO
2 TESTIFY AND SHE WILL GET YOU ON THE LIST. IF ANYBODY WOULD
3 LIKE TO QUESTION ANY OF THE WITNESSES, YOU MAY APPROACH THE
4 PODIUM AND THE JUDGE WILL RECOGNIZE YOU AND ALLOW YOU TO DO SO.

5 AS A REMINDER, WE ARE BROADCASTING THIS HEARING THROUGH
6 A LIVE AUDIO FEED, WHICH IS NOT BEING RECORDED, BUT IS
7 AVAILABLE AT TINYURL.COM/CAMILKHEARING. THE COURT REPORTER IS
8 MAKING AN OFFICIAL TRANSCRIPT OF THE HEARING, AND THAT WILL BE
9 AVAILABLE STARTING APPROXIMATELY TWO WEEKS AFTER THE END OF
10 THIS WEEK, I BELIEVE. DOES THAT SOUND CORRECT? SOMETHING LIKE
11 THAT. AND IT WILL BE UPDATED AFTER THAT. EXHIBITS ARE
12 NUMBERED IN THE ORDER OF PRESENTATION, AND COPIES OF SOME OF
13 THEM ARE AVAILABLE ON THAT TABLE IN THE BACK OF THE ROOM.

14 AND WE HAVE REFRESHMENTS THAT EVERYBODY IS WELCOME TO
15 ENJOY. AND WE WILL BE HERE IN THIS ROOM AGAIN TOMORROW AND
16 THEN WE'LL BE MOVING BACK TO THE LIBERTY ROOM, WHERE WE HAVE
17 BEEN, ON MONDAY.

18 AT THE END OF THE DAY YESTERDAY MR. HOLLON WAS PROVIDED
19 A SUMMARY OF HIS TESTIMONY, AND KIND OF GAVE US A PREVIEW OF
20 WHAT'S COMING. AND TODAY, I BELIEVE WE'RE GOING TO BEGIN WITH
21 MR. WEGNER AND THEN DR. ERBA.

22 JUDGE CLIFTON: WHAT OTHER PRELIMINARY MATTERS NEED TO BE
23 ADDRESSED, IF ANY? THERE DON'T APPEAR TO BE ANY.

24 I INVITE ANYONE WHO WANTS TO RECORD THE PROCEEDINGS TO
25 DO SO SO THAT YOU WILL HAVE A REFRESHER OF TESTIMONY THAT YOU

1 MAY WANT TO RESPOND TO.

2 YESTERDAY I LEARNED THAT ONE GROUP IS RECORDING THE
3 LIVE WEBCAST AND MAKING IT AVAILABLE TO THEIR MEMBERS VIA THEIR
4 OWN WEBSITE, AND THAT'S A TERRIFIC IDEA, BECAUSE IT ENABLES
5 PEOPLE TO LISTEN IN WHO MIGHT NOT BE FREE BETWEEN 9:00 AND
6 5:00, SO I THINK THAT WAS AN EXCELLENT ADAPTATION OF THE
7 RESOURCE.

8 ALL RIGHT. THERE IS A COPY MACHINE IN THE BACK OF THE
9 ROOM IN CASE ADDITIONAL COPIES NEED TO BE MADE OF EXHIBITS.

10 I DO WANT TO COMMENT ON WHY WE HAVE THE PODIUM WHERE IT
11 IS. THE DESIRE IS TO MAKE SURE THAT THE COURT REPORTER HAD
12 DIRECT RECEIPT FROM THAT PODIUM, BECAUSE SOMETIMES IT WAS MORE
13 DIFFICULT TO HEAR THE PERSON SPEAKING FROM THE PODIUM, WHICH IS
14 ASKING, THAT PERSON WAS ASKING QUESTIONS. IT WAS MORE
15 DIFFICULT TO HEAR THAT PERSON THAN IT WAS THE WITNESS.

16 I KNOW IT'S A BIT AWKWARD, SO I INVITE YOU TO
17 EXPERIMENT A BIT. THAT PODIUM IS MOBILE. THE REASON IT IS A
18 BIT AWKWARD IS THE PERSON WHO IS QUESTIONING THE WITNESS IS IN
19 A LITTLE BIT OF AN AWKWARD POSITION VIS-A-VIE THE WITNESS. I
20 KNOW THAT I APPRECIATE WHEN A WITNESS JUST SPEAKS GOING
21 FORWARD.

22 ARE YOU THINKING THAT IF I WERE IN THE WITNESS CHAIR
23 AND THE WITNESS WERE HERE, THAT THAT MIGHT WORK BETTER? THAT
24 WOULD WORK FOR ME.

25 MR. BESHORE: I WOULD LIKE THE PODIUM MOVED OUT, IT CAN

1 STILL BE STRAIGHT TO THE REPORTER.

2 JUDGE CLIFTON: THAT SHOULD WORK WELL. NOW, DOES IT HELP
3 IF I'M TO THE RIGHT? WE'LL BE HERE FOR TWO DAYS, WE MIGHT AS
4 WELL TRY TO GET IT RIGHT FROM THE BEGINNING. THEN THE PERSON
5 AT THE PODIUM IS SPEAKING TO THE WITNESS AND VICE VERSA.

6 MR. ENGLISH: AND ALSO LINE OF SIGHT FOR THE COURT REPORTER
7 IS IDENTICAL, AS OPPOSED TO, I'M GOING TO BE TEMPTED TO DO
8 THIS, BECAUSE I THINK WHAT THE COURT WOULD PREFER WE DON'T DO.

9 JUDGE CLIFTON: RIGHT. I CAN'T HEAR YOU AS WELL THAT WAY.
10 SO LET'S DO THAT. LET'S TAKE A FIVE-MINUTE STRETCH BREAK. I'M
11 GOING TO SWITCH TABLES, AND I THINK THOSE ARE GOOD SUGGESTIONS.

12 AND THEN WILL MR. WEGNER BE OUR FIRST WITNESS? SO AS
13 SOON AS I GET MOVED, MR. WEGNER IS FREE TO COME OCCUPY THIS
14 TABLE.

15 (WHEREUPON, A BREAK WAS TAKEN.)

16 JUDGE CLIFTON: BACK ON RECORD NOW, AT 9:24. THAT WORKED
17 OUT WELL. I'M PLEASED WITH OUR RESULT.

18 SO DURING THAT TIME OFF RECORD WE ALSO HAD DOCUMENTS
19 DISTRIBUTED. LET ME GET THE NUMBERING OF THESE STRAIGHT.
20 WHICH IS THE NEXT, NUMBER 34?

21 MS. FRISIUS: YES.

22 JUDGE CLIFTON: THE NEXT NUMBER 34. WHICH DOCUMENT WILL BE
23 34? IS IT THE ONE THAT SAYS DOWN AT THE BOTTOM, COOPERATIVES'
24 EXHIBIT 3 OR IS IT THE OTHER ONE?

25 MR. BESHORE: WE WOULD ASK THAT IT BE THE COOPERATIVES'

1 EXHIBIT 3, THE STATEMENT, 23-PAGE STATEMENT, TESTIMONY OF
2 TOM WEGNER.

3 JUDGE CLIFTON: ALL RIGHT. THAT THEN, WILL BE EXHIBIT 34.
4 WHICH MEANS THEN, EXHIBIT 35 WILL BE EXHIBITS OF TOM WEGNER.

5 (THEREAFTER, EXHIBIT 34 AND EXHIBIT 35
6 WERE MARKED FOR IDENTIFICATION.)

7 JUDGE CLIFTON: MR. WEGNER, I'M GOING TO SWEAR YOU IN IN A
8 SEATED POSITION.

9 IF YOU WOULD RAISE YOUR RIGHT HAND, PLEASE. DO YOU
10 SOLEMNLY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY, THAT THE
11 EVIDENCE THAT YOU WILL PRESENT WILL BE THE TRUTH?

12 MR. WEGNER: I DO.

13 JUDGE CLIFTON: THANK YOU. PLEASE STATE AND SPELL YOUR
14 NAME.

15 MR. WEGNER: THOMAS WEGNER, T-H-O-M-A-S, WEGNER,
16 W-E-G-N-E-R.

17 JUDGE CLIFTON: MR. BESHORE, YOU MAY PROCEED.

18 MR. BESHORE: THANK YOU, YOUR HONOR. MARVIN BESHORE.

19 DIRECT EXAMINATION

20 BY MR. BESHORE:

21 Q. MR. WEGNER, BEFORE PROCEEDING TO PRESENT YOUR
22 TESTIMONY, WHICH HAS BEEN MARKED AS EXHIBIT 34, COULD YOU JUST
23 INTRODUCE YOURSELF A LITTLE BIT, TELL US A LITTLE BIT ABOUT
24 YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND?

25 A. CERTAINLY. I TOOK A BACHELOR'S OF SCIENCE IN

1 AGRICULTURE AT THE UNIVERSITY OF WISCONSIN, MADISON, AND A
2 MASTER'S OF SCIENCE IN APPLIED ECONOMICS AT THE SAME
3 UNIVERSITY. WORKED FOR THE WISCONSIN DEPARTMENT OF
4 AGRICULTURE, THEN WORKED FOR THE USDA AND AMS DAIRY PROGRAMS
5 DIVISION, THEN MOVED ONTO THE NEW YORK STATE SENATE. AND THEN
6 CAME TO LAND O'LAKES FOR THREE YEARS, THEN WORKED FOR THE
7 UNIVERSITY OF THE MINNESOTA FOR A DOZEN YEARS. AND SINCE 2005,
8 I HAVE BEEN WORKING FOR LAND O'LAKES.

9 Q. OKAY. JUST TAKE US BRIEFLY THROUGH YOUR WHAT YOUR JOBS
10 WERE WITH THOSE RESPECTIVE EMPLOYERS. BASICALLY, YOU HAVE
11 IDENTIFIED YOUR EMPLOYERS, TELL US A LITTLE BIT ABOUT WHAT YOU
12 HAVE DONE DURING YOUR PROFESSIONAL CAREER.

13 A. I SOMETIMES QUESTION WHAT I HAVE DONE.

14 Q. WE DON'T QUESTION IT.

15 A. NO, I WORKED AS AN ECONOMIST FOR THE DEPARTMENT OF --
16 EXCUSE ME, THE WISCONSIN DEPARTMENT OF AGRICULTURE, THEN WORKED
17 AS A DAIRY PRODUCTS MARKETING SPECIALIST FOR USDA AMS IN
18 WASHINGTON, THEN WORKED AS A STAFF ECONOMIST FOR THE NEW YORK
19 STATE SENATE FOR A COUPLE OF YEARS. CAME TO LAND O'LAKES IN
20 1990, AND WORKED AS A CONSULTING ECONOMIST ESSENTIALLY, WITH
21 PAUL CHRIST AT LAND O'LAKES. AND THEN WORKED FOR THE
22 UNIVERSITY OF MINNESOTA EXTENSION SERVICE AS A REGIONAL
23 EXTENSION EDUCATOR IN NATURAL RESOURCE RELATED ISSUES, MORE
24 AROUND ISSUES AROUND LAND USE, PLANNING, ETCETERA. AND NOW
25 HAVE BEEN BACK AT LAND O'LAKES FOR THE PAST TEN YEARS, WORKING

1 AS A DAIRY ECONOMIST, WORKING ON POLICY RELATED ISSUES AS IT
2 RELATES TO FEDERAL DAIRY POLICY, FEDERAL MILK MARKETING ORDERS,
3 STATE-BASED DAIRY POLICY AS WELL -- AS WELL AS WORKING WITH
4 MILK SUPPLY DIVISION IN THE BUY AND SELL OF MILK WITH OUR
5 MEMBERSHIP.

6 Q. OKAY. WITH LAND O'LAKES, WHERE HAVE YOU BEEN OFFICED?

7 A. ARDEN HILLS. CORPORATE OFFICE IS IN ARDEN HILLS,
8 MINNESOTA.

9 Q. OKAY. AND SO HAVE RESPONSIBILITIES WITH LAND O'LAKES
10 BEEN THE NATIONAL COOP?

11 A. YES. THEY HAVE BEEN PRIMARILY ON THE DAIRY SIDE,
12 NATIONAL, IN THE THREE YEARS WHERE WE HAVE MEMBERSHIP.

13 Q. VERY GOOD. WOULD YOU PROCEED THEN, AND PRESENT YOUR
14 TESTIMONY, WHICH IS [EXHIBIT 34](#)?

15 A. VERY GOOD.

16 MY NAME IS TOM WEGNER. I'M HERE ON BEHALF OF
17 LAND O'LAKES TO TESTIFY IN SUPPORT OF PROPOSAL 1, SPONSORED BY
18 CALIFORNIA DAIRIES, DAIRY FARMERS OF AMERICA, AND LAND O'LAKES.
19 MY BUSINESS ADDRESS IS 4001 LEXINGTON AVENUE NORTH, ARDEN
20 HILLS, MINNESOTA, 55164. MY CURRENT IS DIRECTOR OF GOVERNANCE
21 AND LEADER DEVELOPMENT. FROM 2005 TO 2015, I SERVED AS
22 DIRECTOR OF ECONOMICS IN DAIRY POLICY FOR LAND O'LAKES.
23 LAND O'LAKES THANKS THE DEPARTMENT FOR CALLING THIS HEARING TO
24 CONSIDER THE ADOPTION OF A CALIFORNIA FEDERAL MARKETING ORDER.

25 LAND O'LAKES IS A DAIRY COOPERATIVE WITH 2,200 DAIRY

1 FARMER-MEMBER OWNERS. LAND O'LAKES HAS A NATIONAL MEMBERSHIP
2 BASE, WHOSE MEMBERS ARE POOLED ON THE CALIFORNIA STATE PROGRAM
3 AND FIVE DIFFERENT FEDERAL ORDERS. LAND O'LAKES MEMBERS OWN
4 SEVERAL CHEESE, BUTTER POWDER, AND VALUE-ADDED PLANTS IN THE
5 UPPER MIDWEST, EAST AND CALIFORNIA. CURRENTLY, OUR 200
6 CALIFORNIA MEMBER-OWNERS SUPPLY US WITH OVER 16 MILLION POUNDS
7 OF MILK PER DAY THAT ARE PRIMARILY PROCESSED AT OUR TWO PLANTS
8 IN CALIFORNIA LOCATED IN TULARE AND ORLAND. WE ALSO OPERATE A
9 DAIRY DESSERT PLANT IN TURLOCK, CALIFORNIA.

10 MY TESTIMONY HERE IS IN TWO PARTS. THE FIRST ADDRESSES
11 THE PART 1000 UNIFORM FEDERAL ORDER PROVISIONS WHICH WE PROPOSE
12 TO ADOPT IN THE CALIFORNIA FEDERAL ORDER. SECOND, I DISCUSS
13 SECTIONS 1051.60, 1051.61 AND 1051.62, WHICH CONCERN THE
14 HANDLER VALUE OF MILK FOR THE POOL, THE CALCULATION OF MULTIPLE
15 PRODUCER COMPONENT PRICES, HOW WE PROPOSE TO ADDRESS THE POOL
16 VALUE, USUALLY REFERRED TO AS THE PPD, AND THE DATES FOR
17 ANNOUNCEMENT OF PRODUCER PRICES.

18 PART 1000 PROVISIONS.

19 IN DRAFTING THE PROPOSED CALIFORNIA FEDERAL MILK
20 MARKETING ORDER, WE HAVE ENDEAVORED TO AVOID UNNECESSARY
21 COMPLICATION AND LENGTHENING OF THE ORDER'S LANGUAGE. WE HAVE
22 IDENTIFIED THOSE PROVISIONS CONTAINED IN PART 1000 THAT ARE
23 COMMON TO ALL OF THE EXISTING FEDERAL MILK MARKETING ORDERS,
24 AND PROPOSE THAT ALL PART 1000 LANGUAGE REMAIN UNCHANGED.
25 UTILIZING THESE IDENTICAL PROVISIONS IN THE PROPOSED CALIFORNIA

1 FEDERAL ORDER IS CONSISTENT WITH THE FEDERAL ORDER REFORM
2 DECISION ISSUED IN 1999, WHICH EXPANDED PART 1000 AND
3 EXPLICITLY STATED:

4 Q. COULD I ASK YOU TO PERHAPS SLOW DOWN JUST A LITTLE BIT,
5 MR. WEGNER, IN YOUR PRESENTATION? I THINK IT WILL BE HELPFUL
6 TO BOTH THE COURT REPORTER AND EVERYONE, SO JUST --

7 A. VERY GOOD.

8 Q. THANK YOU.

9 A. YOU'RE WELCOME.

10 Q. FINALLY -- IT IS QUOTED:

11 "FINALLY, THIS RULE EXPANDS PART 1000 TO INCLUDE
12 PROVISIONS THAT ARE IDENTICAL WITHIN EACH
13 CONSOLIDATED ORDER TO ASSIST IN SIMPLIFYING THE
14 REGULATIONS. THESE PROVISIONS INCLUDE THE
15 DEFINITIONS OF ROUTE DISPOSITION, PLANT,
16 DISTRIBUTING PLANT, SUPPLY PLANT, NONPOOL PLANT,
17 HANDLER, OTHER SOURCE MILK, FLUID MILK PRODUCT,
18 FLUID CREAM PRODUCT, COOPERATIVE ASSOCIATION, AND
19 COMMERCIAL FOOD PROCESSING ESTABLISHMENT. IN
20 ADDITION, THE MILK CLASSIFICATION SECTION, PRICING
21 PROVISIONS, AND MOST OF THE PROVISIONS RELATING TO
22 PAYMENTS, HAVE BEEN INCLUDED IN THE GENERAL
23 PROVISIONS. THESE CHANGES ADHERE WITH THE EFFORTS
24 OF THE NATIONAL PERFORMANCE REVIEW- REGULATORY
25 REFORM INITIATIVE TO SIMPLIFY, MODIFY, AND

1 ELIMINATE UNNECESSARY REPETITION OF REGULATIONS."
2 64 FED. REG. AT 16031 (1999)

3 IN LIGHT OF THE COMPLEXITY AND SPECIFICITY OF SEVERAL
4 OF THESE PROVISIONS, WE REQUESTED THAT USDA PROVIDE WITNESSES
5 TO ASSIST WITH EXPLANATIONS FOR THE RECORD OF THE OPERATION OF
6 SEVERAL OF THESE PROVISIONS, AND TO SPECIFIC QUESTIONS ABOUT
7 THEM. WE APPRECIATE GREATLY THE TESTIMONY PROVIDED BY
8 MR. SCHAEFER, MR. MYKRANTZ, AND MR. WISE.

9 THE SCOPE AND PURPOSE OF PART 1000 IS EXPLICITLY STATED
10 IN THE FOLLOWING:

11 1000.1 SCOPE AND PURPOSE OF PART 1000

12 PART 1000 SETS FORTH CERTAIN TERMS, DEFINITIONS, AND
13 PROVISIONS WHICH ARE COMMON TO, AND APPLY TO, FEDERAL MILK
14 MARKETING ORDER IN 7 CFR, CHAPTER X, EXCEPT AS SPECIFICALLY
15 DEFINED OTHERWISE, OR MODIFIED, OR OTHERWISE PROVIDED IN AN
16 INDIVIDUAL ORDER IN 7 CFR, CHAPTER X.

17 WE PROPOSE THAT PART 1051.1 GENERAL PROVISIONS REMAIN
18 UNCHANGED. WE DO NOT PROPOSE ANY CHANGES TO PART 1000 WHICH
19 WOULD NECESSARILY INVOLVE OTHER FEDERAL ORDERS.

20 1051.1 GENERAL PROVISIONS.

21 ALL PART 1000 LANGUAGE REMAINS UNCHANGED.

22 WE PROPOSE THAT THE MARKETING AREA WOULD BE COTERMINOUS
23 WITH THE BORDERS THE ENTIRE STATE OF CALIFORNIA. THE
24 DEFINITION OF THE CALIFORNIA MARKETING AREA FOLLOWS DIRECTLY
25 FROM THE LANGUAGE OF THE 2014 FARM BILL, (THE AGRICULTURAL ACT

1 OF 2014) WHICH SPECIFICALLY LINKS THE QUOTA AUTHORIZATION TO A
2 PETITION FOR A MARKETING ORDER FOR THE "STATE OF CALIFORNIA."
3 THE PROPOSED LANGUAGE FOR THE DEFINITION OF THE MARKETING AREA
4 IS:

5 1051.2 CALIFORNIA MARKETING AREA.

6 THE MARKETING AREA MEANS ALL TERRITORY WITHIN THE
7 BOUNDS OF THE FOLLOWING STATES AND POLITICAL
8 SUBDIVISIONS, INCLUDING ALL PIERS, DOCKS, AND
9 WHARVES CONNECTED THEREWITH, AND ALL CRAFT MOORED
10 THERE AT, AND ALL TERRITORY OCCUPIED BY GOVERNMENT
11 (MUNICIPAL, STATE, OR FEDERAL) RESERVATIONS,
12 INSTALLATIONS, INSTITUTIONS, OR OTHER SIMILAR
13 ESTABLISHMENTS, IF ANY PART THEREOF IS WITHIN ANY
14 OF THE LISTED STATES OR POLITICAL SUBDIVISIONS:
15 ALL OF THE STATE OF CALIFORNIA.

16 WE PROPOSE TO ADOPT AS 1051.3, THE EXISTING UNIFORM
17 DEFINITION FOR ROUTE DISPOSITION IN PART 1000:

18 1051.3 ROUTE DISPOSITION.

19 ROUTE DISPOSITION MEANS A DELIVERY TO A RETAIL OR
20 WHOLESALE OUTLET (EXCEPT A PLANT), EITHER DIRECTLY
21 OR THROUGH ANY DISTRIBUTION FACILITY, (INCLUDING
22 DISPOSITION FROM A PLANT STORE, VENDOR, OR VENDING
23 MACHINE) OF A FLUID MILK PRODUCT IN CONSUMER-TYPE
24 PACKAGES OR DISPENSER UNITS CLASSIFIED AS CLASS I
25 MILK.

1 ROUTE DISPOSITION REFERS TO THE MEASUREMENT OF FLUID
2 MILK SALES IN COMMERCIAL CHANNELS. IT DOES NOT INCLUDE THE
3 DELIVERY OF FLUID MILK PRODUCTS TO A HANDLER'S DISTRIBUTION
4 POINTS. THE DISTRIBUTION FROM SUCH POINTS WOULD BE CONSIDERED
5 ROUTE DISTRIBUTION -- EXCUSE ME -- ROUTE DISPOSITION FROM THE
6 PLANT, FROM THE MILK PLANT WHERE THE FLUID MILK PRODUCTS WERE
7 PROCESSED AND PACKAGED. THE MARKET ADMINISTRATOR WILL USE
8 ROUTE DISPOSITION TO DETERMINE WHICH FLUID MILK SALES TO
9 INCLUDE IN THE MARKET-WIDE POOL. THE REFORM DECISION CONTAINS
10 THE FOLLOWING CONCISE DEFINITION:

11 ROUTE DISPOSITION IS A MEASURE OF FLUID MILK SALES
12 IN COMMERCIAL CHANNELS. IT IS DEFINED TO MEAN THE
13 AMOUNT OF FLUID MILK PRODUCTS DELIVERED BY A
14 DISTRIBUTING PLANT TO A RETAIL OR WHOLESALE OUTLET
15 (EXCEPT A PLANT), EITHER DIRECTLY OR THROUGH ANY
16 DISTRIBUTION FACILITY, (INCLUDING DISPOSITION FROM
17 A PLANT, STORE, VENDOR, OR VENDING MACHINE), OF A
18 FLUID MILK PRODUCT IN CONSUMER-TYPE PACKAGES OR
19 DISPENSER UNITS THAT IS CLASSIFIED AS CLASS I
20 MILK.

21 64 FED. REG. AT 126130 (1999)

22 WE PROPOSE TO ADOPT AS 1051.4, THE EXISTING UNIFORM
23 DEFINITION FOR A PLANT IN PART 1000:

24 1051.4 PLANT.

25 (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS

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SECTION, PLANT MEANS THE LAND, BUILDINGS, FACILITIES, AND THE EQUIPMENT CONSTITUTING A SINGLE OPERATING UNIT OR ESTABLISHMENT AT WHICH MILK OR MILK PRODUCTS ARE RECEIVED, PROCESSED OR PACKAGED, INCLUDING A FACILITY DESCRIBED IN PARAGRAPH (B)(2) OF THIS SECTION, IF THE FACILITY RECEIVED THE MILK OF MORE THAN ONE DAIRY FARMER.

(B) PLANT SHALL NOT INCLUDE:

(1) A SEPARATE BUILDING WITHOUT STATIONARY STORAGE TANKS THAT IS USED ONLY AS A RELOAD POINT FOR TRANSFERRING BULK FROM ONE TANK TRUCK TO ANOTHER, OR A SEPARATE BUILDING USED ONLY AS A DISTRIBUTION POINT FOR STORING PACKAGED FLUID MILK PRODUCTS IN TRANSIT FOR ROUTE DISPOSITION; OR

(2) AN ON-FARM FACILITY OPERATED AS PART OF A SINGLE DAIRY FARM ENTITY FOR THE SEPARATION OF CREAM AND SKIM OR THE REMOVAL OF WATER FROM MILK.

A PLANT DEFINITION IS NEEDED TO SPECIFY WHAT COMPRISES AN OPERATING ENTITY FOR FEDERAL MILK ORDER PRICING AND REGULATORY PURPOSES AND WHAT DOES NOT COMPRISE AN OPERATING ENTITY. THE REFORM DECISION PROVIDES A COMPREHENSIVE PLANT DEFINITION:

A PLANT DEFINITION IS INCLUDED TO SPECIFY WHAT CONSTITUTES AN OPERATING ENTITY FOR PRICING AND

1 REGULATORY PURPOSES. AS PROVIDED IN 1000.4 OF THE
2 GENERAL PROVISIONS, A PLANT IS THE LAND,
3 BUILDINGS, FACILITIES, AND EQUIPMENT CONSTITUTING
4 A SINGLE OPERATING UNIT OR ESTABLISHMENT, AT WHICH
5 MILK OR MILK PRODUCTS ARE RECEIVED, PROCESSED, OR
6 PACKAGED. THIS IS MEANT TO ENCOMPASS ALL
7 DEPARTMENTS, INCLUDING THOSE WHERE MILK PRODUCTS
8 ARE STORED, SUCH AS A COOLER. THE PLANT
9 DEFINITION DOES NOT INCLUDE A PHYSICALLY SEPARATE
10 FACILITY WITHOUT STATIONARY STORAGE TANKS, THAT IS
11 USED ONLY AS A RELOAD POINT FOR TRANSFERRING BULK
12 MILK FROM ONE TANK TO ANOTHER, OR A PHYSICALLY
13 SEPARATE FACILITY THAT IS USED ONLY AS A
14 DISTRIBUTION POINT FOR STORING PACKAGED FLUID MILK
15 PRODUCTS IN TRANSIT FOR ROUTE DISPOSITION.

16 64 FED. REG. AT 16130-16131 (1999)

17 JUDGE CLIFTON: GO AHEAD, MR. BESHORE.

18 MR. BESHORE: WELL, I WAS JUST GOING TO SUGGEST,
19 MR. WEGNER, I THINK YOU READ 64 FED. REG. AS FEDERAL
20 REGULATION, AND IT'S FEDERAL REGISTER, SO THAT WHEN THAT
21 APPEARS A NUMBER OF TIMES. THANK YOU.

22 MR. WEGNER: THANK YOU.

23 JUDGE CLIFTON: YOU GOT IT RIGHT THE FIRST TIME.

24 MR. WEGNER: WE PROPOSE TO ADOPT AS 1051.5, THE EXISTING
25 UNIFORM DEFINITION FOR DISTRIBUTING PLANT IN PART 1000:

1 1051.5 DISTRIBUTING PLANT.
2 DISTRIBUTING PLANT MEANS A PLANT THAT IS APPROVED
3 BY A DULY CONSTITUTED REGULATORY AGENCY FOR THE
4 HANDLING OF GRADE A MILK, AT WHICH FLUID MILK
5 PRODUCTS ARE PROCESSED OR PACKAGED, AND FROM WHICH
6 THERE IS ROUTE DISPOSITION OR TRANSFERS OF
7 PACKAGED FLUID MILK PRODUCTS TO OTHER PLANTS.

8 THIS PROVISION DEFINES THE PLANTS THAT PROCESS OR
9 PACKAGE FLUID MILK PRODUCTS FROM WHICH PACKAGED FLUID MILK
10 PRODUCTS ARE DISTRIBUTED INTO COMMERCIAL CHANNELS, OR
11 TRANSFERRED TO OTHER PLANTS. THE REFORM DECISION CONTAINS THE
12 FOLLOWING DEFINITION OF A DISTRIBUTING PLANT:

13 A DISTRIBUTING PLANT IS DEFINED AS A PLANT AS
14 APPROVED BY A DULY CONSTITUTED REGULATORY AGENCY,
15 WHO HANDLE GRADE A MILK AND AT WHICH FLUID MILK
16 PRODUCTS ARE PROCESSED OR PACKAGED, AND FROM WHICH
17 THERE IS ROUTE DISPOSITION OR TRANSFERS OF
18 PACKAGED MILK PRODUCTS TO OTHER PLANTS.

19 64 FED. REG. AT 16131 (1999)

20 WE PROPOSE TO ADOPT AS 1051.6, THE EXISTING UNIFORM
21 DEFINITION FOR A SUPPLY PLANT IN PART 1000:

22 1051.6 SUPPLY PLANT.
23 SUPPLY PLANT MEANS A PLANT APPROVED BY A DULY
24 CONSTITUTED REGULATORY AGENCY FOR THE HANDLING OF
25 GRADE A MILK THAT RECEIVES MILK DIRECTLY FROM

1 DAIRY FARMERS AND TRANSFERS OR DIVERTS FLUID MILK
2 PRODUCTS TO OTHER PLANTS OR MANUFACTURERS DAIRY
3 PRODUCTS ON ITS PREMISES.

4 THE SUPPLY PLANT PROVISION PROVIDES ANOTHER WAY FOR
5 DAIRY FARMERS TO QUALIFY, ASSOCIATE THEIR MILK WITH THE
6 CALIFORNIA FEDERAL MARKET-WIDE POOL. THE REFORM DECISION
7 INCLUDED IN THE FOLLOWING LANGUAGE -- EXCUSE ME -- THE REFORM
8 DECISION INCLUDED THE FOLLOWING LANGUAGE CONSISTENT WITH THE
9 PROPOSED DEFINITION OF A SUPPLY PLANT:

10 A SUPPLY PLANT IS A REGULAR OR RESERVE SUPPLIER OF
11 BULK MILK FOR THE FLUID MARKET THAT HELPS TO
12 COORDINATE THE SUPPLY OF MILK WITH THE DEMAND FOR
13 MILK IN A MARKET. A SUPPLY PLANT IS A PLANT
14 APPROVED BY A DULY CONSTITUTED REGULATORY AGENCY
15 FOR THE HANDLING OF GRADE A MILK THAT RECEIVES
16 MILK DIRECTLY FROM DAIRY FARMERS AND TRANSFERS OR
17 DIVERTS FLUID MILK PRODUCTS TO OTHER PLANTS, OR
18 MANUFACTURES DAIRY PRODUCTS ON ITS PREMISES.

19 64 FED. REG. 16131-16132 (1999)

20 WE PROPOSE TO ADOPT 1051.8, THE EXISTING UNIFORM
21 DEFINITION FOR A NONPOOL PLANT IN PART 1000.

22 1051.8 NONPOOL PLANT.

23 NONPOOL PLANT MEANS ANY MILK RECEIVING,
24 MANUFACTURING OR PROCESSING PLANT, OTHER THAN A
25 POOL PLANT. THE FOLLOWING CATEGORIES OF NONPOOL

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PLANTS ARE FURTHER DEFINED AS POSSIBLE:

JUDGE CLIFTON: AS WHAT?

MR. WEGNER: AS FOLLOWS.

JUDGE CLIFTON: OKAY.

MR. WEGNER: YEAH, I THINK I PUT AS POSSIBLE IN THERE, I'M
SORRY. THIS IS TEDIOUS.

PARAGRAPH (A): A PLANT FULLY REGULATED UNDER
ANOTHER FEDERAL ORDER, MEANS A PLANT THAT IS FULLY
SUBJECT TO THE PRICING AND POOLING PROVISIONS OF
ANOTHER FEDERAL ORDER.

(B) PRODUCER-HANDLER PLANT MEANS A PLANT OPERATED
BY A PRODUCER-HANDLER AS DEFINED UNDER ANY FEDERAL
ORDER.

(C) PARTIALLY REGULATED DISTRIBUTING PLANT MEANS A
NONPOOL PLANT THAT IS NOT A PLANT FULLY REGULATED
UNDER ANOTHER FEDERAL ORDER. A PRODUCER-HANDLER
PLANT OR AN EXEMPT PLANT FROM WHICH THERE IS ROUTE
DISPOSITION IN THE MARKETING AREA DURING THE
MONTH.

(D) UNREGULATED SUPPLY PLANT MEANS A SUPPLY PLANT
THAT DOES NOT QUALIFY AS A POOL SUPPLY PLANT AND
IS NOT A PLANT FULLY REGULATED UNDER ANOTHER

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FEDERAL ORDER, A PRODUCER-HANDLER PLANT, OR AN EXEMPT PLANT.

(E) AN EXEMPT PLANT MEANS A PLANT DESCRIBED IN THIS PARAGRAPH THAT IS EXEMPT FROM THE PRICING AND POOLING PROVISIONS OF ANY ORDER PROVIDED THAT THE OPERATOR OF THE PLANT FILES REPORTS AS PRESCRIBED BY THE MARKET ADMINISTRATOR OF ANY MARKETING AREA IN WHICH THE PLANT DISTRIBUTES PACKAGED FLUID MILK PRODUCTS TO ENABLE DETERMINATION OF THE HANDLER'S EXEMPT STATUS:

(1) A PLANT THAT IS OPERATED BY A GOVERNMENTAL AGENCY THAT HAS NO ROUTE DISPOSITION IN COMMERCIAL CHANNELS;

(2) A PLANT THAT IS OPERATED BY A DULY ACCREDITED COLLEGE OR UNIVERSITY DISPOSING OF FLUID MILK PRODUCTS, ONLY THROUGH THE OPERATION OF ITS OWN FACILITIES, WITH NO ROUTE DISPOSITION IN COMMERCIAL CHANNELS;

(3) A PLANT FROM WHICH THE TOTAL ROUTE DISPOSITION IS FOR INDIVIDUALS OR INSTITUTIONS FOR CHARITABLE PURPOSES WITHOUT REMUNERATION; OR

1 (4) A PLANT THAT HAS ROUTE DISPOSITION AND
2 PACKAGED SALES OF FLUID MILK PRODUCTS TO OTHER
3 PLANTS 150,000 POUNDS OR LESS DURING THE MONTH.

4 THE NONPOOL PLANT PROVISION DESCRIBES PLANTS THAT
5 RECEIVE, PROCESS, OR PACKAGE MILK, BUT THAT DOESN'T MEET THE
6 STANDARDS FOR BEING A POOL PLANT. EXAMPLES OF NONPOOL PLANTS
7 INCLUDE:

8 (1) PLANTS FULLY REGULATED UNDER ANOTHER FEDERAL
9 ORDER.

10 (2) A PRODUCER-HANDLER PLANT.

11 (3) A PARTIALLY REGULATED DISTRIBUTING PLANT.

12 (4) A GOVERNMENTAL AGENCY PLANT.

13 (5) AN UNREGULATED SUPPLY PLANT; AND

14 (6) THE FOUR CATEGORIES OF EXEMPT PLANTS.

15 THE REFORM DECISION SPEAKS DIRECTLY TO THE DEFINITION
16 OF WHAT CONSTITUTES A NONPOOL PLANT:

17 A DEFINITION IS PROVIDED IN ALL ORDERS DESCRIBING
18 PLANTS WHICH RECEIVE, PROCESS, OR PACKAGE MILK,
19 BUT WHICH DO NOT SATISFY THE STANDARDS FOR BEING A
20 POOL PLANT. WHILE PROVIDING FOR SUCH A DEFINITION
21 MAY APPEAR REDUNDANT, THIS PROVISION IS USEFUL TO
22 MORE CLEARLY DEFINE THE EXTENT OF REGULATION
23 APPLICABLE TO PLANTS. NONPOOL PLANTS SHOULD
24 INCLUDE A PLANT THAT IS FULLY REGULATED UNDER
25 ANOTHER FEDERAL ORDER COMMONLY REFERRED TO AS AN

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OTHER ORDER PLANT; A PRODUCER-HANDLER PLANT, A PARTIALLY REGULATED DISTRIBUTING PLANT THAT IS A PLANT THAT DOES NOT QUALIFY AS A POOL DISTRIBUTING PLANT, AN OTHER ORDER PLANT, A PRODUCER PLANT OR A GOVERNMENTAL AGENCY PLANT, AN UNREGULATED SUPPLY PLANT, AND AN EXEMPT PLANT. THE DEFINITIONS FOR THESE NONPOOL PLANTS ARE NOT MATERIALLY DIFFERENT THAN THOSE PROVIDED IN THE CURRENT ORDERS, WITH THE POSSIBLE EXCEPTION OF AN "EXEMPT PLANT".

CERTAIN PLANTS ARE EXEMPT FROM REGULATION UNDER FEDERAL MILK ORDERS. THESE PLANTS FALL INTO FOUR CATEGORIES:

- (1) PLANTS THAT ARE OPERATED BY A GOVERNMENTAL AGENCY, WHICH HAVE NO ROUTE DISPOSITION IN COMMERCIAL CHANNELS;
- (2) PLANTS OPERATED BY A COLLEGE OR UNIVERSITY THAT DISPOSED OF FLUID MILK -- THAT DISPOSE OF FLUID MILK PRODUCTS ONLY THROUGH THEIR OWN FACILITIES WITH NO ROUTE DISPOSITION IN COMMERCIAL CHANNELS;
- (3) PLANTS FROM WHICH THE TOTAL ROUTE DISPOSITION IS FOR INDIVIDUALS AND INSTITUTIONS FOR CHARITABLE PURPOSES WITH THEIR -- WITHOUT REMUNERATION; AND
- (4) PLANTS THAT HAVE ROUTE DISPOSITION OF 150,000 POUNDS OR LESS DURING THE MONTH. THESE TYPES OF

1 PLANTS HAVE LITTLE IMPACT ON THE REGULATED MARKET,
2 AND NEED NOT BE REGULATED TO ENSURE THE INTEGRITY
3 OF THE REGULATORY PLAN. MANY CURRENT FEDERAL
4 ORDERS ALSO PROVIDE REGULATORY EXEMPTION FOR A
5 PLANT OPERATED BY A STATE OR FEDERAL GOVERNMENTAL
6 AGENCY. FOR EXAMPLE, SOME STATES HAVE DAIRY FARM
7 AND PLANT OPERATIONS THAT PROVIDE MILK FOR THEIR
8 PRISON POPULATIONS. AS PROVIDED HEREIN,
9 REGULATORY EXEMPTION WOULD BE CONTINUED UNDER THE
10 CONSOLIDATED ORDERS UNLESS POOL PLANT STATUS IS
11 REQUESTED.

12
13 REGULATORY EXEMPTION ALSO SHOULD APPLY TO
14 COLLEGES, UNIVERSITIES, AND CHARITABLE
15 INSTITUTIONS, BECAUSE THESE INSTITUTIONS GENERALLY
16 HANDLE FLUID MILK PRODUCTS INTERNALLY AND HAVE NO
17 IMPACT IN THE MAINSTREAM COMMERCIAL MARKETS.
18 HOWEVER, IN THE EVENT THAT THESE ENTITIES
19 DISTRIBUTE FLUID MILK THROUGH COMMERCIAL CHANNELS,
20 ROUTE SALES BY SUCH ENTITIES, INCLUDING
21 GOVERNMENTAL AGENCIES, WILL BE MONITORED TO
22 DETERMINE IF FEDERAL REGULATIONS SHOULD APPLY.
23 THE DETERMINATION AND VERIFICATION OF EXEMPT PLANT
24 STATUS WILL, FROM TIME TO TIME, NECESSITATE THE
25 NEED FOR MARKET, FOR THE MARKET ADMINISTRATOR TO

1 REQUIRE REPORTS AND INFORMATION DEEMED APPROPRIATE
2 FOR THE SOLE PURPOSE OF MAKING THIS DETERMINATION.
3 SUCH AUTHORITY IS CURRENTLY PROVIDED IN THE
4 ORDERS, AND SHOULD CONTINUE.

5 64 FED. REG. 16134-16135 (1999)

6 WE PROPOSE TO ADOPT AS 1051.9, THE EXISTING UNIFORM
7 DEFINITION FOR A HANDLER IN PART 1000:

8 1051.9 HANDLER.

9 HANDLER MEANS:

10 (A) ANY PERSON WHO OPERATES A POOL PLANT OR A
11 NONPOOL PLANT.

12 (B) ANY PERSON WHO RECEIVES PACKAGED FLUID MILK
13 PRODUCTS FROM A PLANT FOR RESALE AND DISTRIBUTION
14 TO RESALE OR WHOLESALE OUTLETS, ANY PERSON --

15 JUDGE CLIFTON: LET ME HAVE YOU READ THAT AGAIN, BEGINNING
16 WITH PART (B).

17 MR. WEGNER:

18 (B) ANY PERSON WHO RECEIVES PACKAGED FLUID MILK
19 PRODUCTS FROM A PLANT FOR RESALE AND DISTRIBUTION
20 TO RETAIL OR WHOLESALE OUTLETS, ANY PERSON WHO AS
21 A BROKER, NEGOTIATES A PURCHASE OR SALE OF FLUID
22 MILK PRODUCTS OR FLUID CREAM PRODUCTS FROM OR TO
23 ANY POOL OR NONPOOL PLANT, AND ANY PERSON WHO BY
24 PURCHASE OR DIRECTION, CAUSES MILK OF PRODUCERS TO
25 BE PICKED UP AT THE FARM AND/OR MOVED TO A PLANT.

1 PERSONS WHO QUALIFY AS HANDLERS ONLY UNDER THIS
2 PARAGRAPH UNDER ANY FEDERAL MILK ORDER ARE NOT
3 SUBJECT TO THE PAYMENT PROVISIONS OF SECTIONS .70,
4 .71, .73, .76, AND .85 OF THAT ORDER.

5 JUDGE CLIFTON: YOU SKIPPED ONE, SO READ ME THE SECTIONS
6 AGAIN.

7 MR. WEGNER: SECTIONS .70, .71, .72, .73, .76 AND .85 OF
8 THAT ORDER.

9 (C) ANY COOPERATIVE ASSOCIATION WITH RESPECT TO
10 MILK THAT IT RECEIVES FOR ITS ACCOUNT FROM THE
11 FARM OF A PRODUCER AND DELIVERS TO POOL PLANTS OR
12 DIVERTS TO NONPOOL PLANTS PURSUANT TO SECTION .13
13 OF THE ORDER. THE OPERATOR OF A POOL PLANT
14 RECEIVING MILK FROM A COOPERATIVE ASSOCIATION MAY
15 BE THE HANDLER FOR SUCH MILK IF BOTH PARTIES
16 NOTIFY THE MARKET ADMINISTRATOR OF THIS AGREEMENT
17 PRIOR TO THE TIME THAT THE MILK IS DELIVERED TO
18 THE POOL PLANT, AND THE PLANT OPERATOR PURCHASES
19 THE MILK ON THE BASIS OF FARM BULK TANK WEIGHTS
20 AND SAMPLES.

21 AT ITS MOST BASIC LEVEL, FEDERAL ORDERS DEFINE HANDLERS
22 TO INCLUDE PERSONS WHO BUY MILK FROM DAIRY FARMERS. IN
23 ADDITION, OTHER ENTITIES MAY BE REGULATED AS HANDLERS FOR
24 REPORTING AND ACCOUNTABILITY PURPOSES UNDER THE ORDER. SUCH
25 HANDLERS HAVE THE FINANCIAL RESPONSIBILITY TO PAY DAIRY FARMERS

1 FOR THEIR MILK AND TO FILE THE REPORTS OF MILK RECEIPTS AND
2 UTILIZATION TO THE MARKET ADMINISTRATOR. WE ARE RECOMMENDING
3 THE UNIFORM DEFINITION OF A HANDLER.

4 THE REFORM DECISION SPEAKS DIRECTLY TO THE DEFINITION
5 OF A HANDLER.

6 FEDERAL MILK ORDERS REGULATE THOSE PERSONS WHO BUY
7 MILK FROM DAIRY FARMERS. SUCH PERSONS ARE CALLED
8 HANDLERS UNDER THE ORDER. THESE PERSONS HAVE A
9 FINANCIAL RESPONSIBILITY FOR PAYMENTS TO DAIRY
10 FARMERS FOR MILK IN ACCORDANCE WITH ITS CLASSIFIED
11 USAGE. THEY MUST FILE REPORTS WITH THE MARKET
12 ADMINISTRATOR, DETAILING THEIR RECEIPTS AND
13 UTILIZATION OF MILK.

14
15 THE HANDLER DEFINITION ADOPTED FOR THE
16 CONSOLIDATED ORDERS INCLUDES THE OPERATOR OF A
17 POOL PLANT, A COOPERATIVE ASSOCIATION THAT DIVERTS
18 MILK TO NONPOOL PLANTS, OR DELIVERS MILK TO POOL
19 PLANTS FOR ITS ACCOUNT, AND THE OPERATOR OF A
20 "NONPOOL PLANT," WHICH WOULD ENCOMPASS A
21 PRODUCER-HANDLER, A PARTIALLY REGULATED
22 DISTRIBUTING PLANT, A PLANT FULLY REGULATED UNDER
23 ANOTHER FEDERAL ORDER, AN UNREGULATED SUPPLY
24 PLANT, AND AN EXEMPT PLANT.

1 IN ADDITION, "THIRD PARTY" ORGANIZATIONS THAT ARE
2 NOT OTHERWISE REGULATED UNDER PROVISIONS OF AN
3 ORDER ARE INCLUDED IN THE HANDLER DEFINITION.
4 THIS CATEGORY INCLUDES ANY PERSON WHO ENGAGES IN
5 THE BUSINESS OF RECEIVING MILK FROM ANY PLANT FOR
6 RESALE AND DISTRIBUTION TO WHOLESALE AND RETAIL
7 OUTLETS, BROKERS, OR OTHERS WHO NEGOTIATE THE
8 PURCHASE OR SALE OF FLUID MILK PRODUCTS OR FLUID
9 CREAM PRODUCTS, FROM OR TO ANY PLANT, AND PERSONS
10 WHO, BY PURCHASE OR DIRECTION, CAUSE THE MILK OF A
11 PRODUCER, OF PRODUCERS, TO BE PICKED UP AT THE
12 FARM AND/OR MOVED TO A PLANT. SUCH INTERMEDIARIES
13 PROVIDE A SERVICE TO THE DAIRY INDUSTRY. THESE
14 PERSONS ARE NOT, HOWEVER -- THESE PERSON ARE NOT,
15 HOWEVER, RECOGNIZED OR REGULATED AS ENTITIES
16 REQUIRED TO MAKE MINIMUM PAYMENTS TO PRODUCERS.
17 THE EXPANDED MARKETING CHAIN BROUGHT ABOUT BY SUCH
18 INTERMEDIARIES HAS MADE IT INCREASINGLY DIFFICULT
19 FOR THE MARKET ADMINISTRATOR TO TRACK THE MOVEMENT
20 FROM MILK FROM FARMS TO CONSUMERS. THE REVISED
21 HANDLER DEFINITION ENABLES THE MARKET
22 ADMINISTRATOR TO MORE READILY IDENTIFY THESE
23 ENTITIES.

24 64 FED. REG. AT 16135 (1999)

25 ALL FEDERAL ORDERS NEED TO HAVE PROVISIONS FOR

1 MILK THAT IS NOT PRICED AND POOLED UNDER THAT ORDER. THIS
2 MILK, COMMONLY REFERRED TO AS OTHER SOURCE MILK, NEEDS TO BE
3 CLASSIFIED AT THE RECEIVING HANDLER'S PLANT.

4 WE PROPOSE TO ADOPT AS 1051.14, THE EXISTING UNIFORM
5 DEFINITION FOR OTHER SOURCE MILK IN PART 1000.

6 1051.14 OTHER SOURCE MILK.

7 OTHER SOURCE MILK MEANS ALL SKIM MILK AND
8 BUTTERFAT CONTAINED IN, OR REPRESENTED BY;

9
10 (A) RECEIPTS OF FLUID MILK PRODUCTS AND BULK FLUID
11 CREAM PRODUCTS FOR ANY SOURCE OTHER THAN
12 PRODUCERS, HANDLERS DESCRIBED IN SECTION 1000.9(C)
13 AND 1135.11, OR POOL PLANTS.

14
15 (B) PRODUCTS (OTHER THAN FLUID MILK PRODUCTS,
16 FLUID CREAM PRODUCTS, AND PRODUCTS PRODUCED AT THE
17 PLANT DURING THE SAME MONTH) FROM ANY SOURCE WHICH
18 ARE REPROCESSED, CONVERTED INTO, OR COMBINED WITH
19 ANOTHER PRODUCT IN THE PLANT DURING THE MONTH; AND

20
21 (C) RECEIPTS OF ANY MILK PRODUCT (OTHER THAN A
22 FLUID MILK PRODUCT OR A FLUID CREAM PRODUCT) FOR
23 WHICH THE HANDLER FAILS TO ESTABLISH A
24 DISPOSITION.

25 WE PROPOSE TO ADOPT AS 1051.15, THE EXISTING UNIFORM

1 DEFINITION FOR FLUID MILK PRODUCT IN PART 1000:

2 1051.15 FLUID MILK PRODUCT.

3 (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS
4 SECTION, FLUID MILK PRODUCT SHALL MEAN ANY MILK
5 PRODUCTS IN FLUID OR FROZEN FORM THAT ARE INTENDED
6 TO BE USED AS BEVERAGES CONTAINING LESS THAN 9
7 PERCENT BUTTERFAT AND 6.5 PERCENT OR MORE NONFAT
8 SOLIDS, OR 2.25 PERCENT OR MORE TRUE MILK PROTEIN.
9 SOURCES OF SUCH NONFAT SOLIDS/PROTEIN INCLUDE, BUT
10 ARE NOT LIMITED TO: CASEIN, WHEY PROTEIN
11 CONCENTRATE, MILK PROTEIN CONCENTRATE, DRY WHEY,
12 CASEINATES, LACTOSE, AND ANY SIMILAR DAIRY DERIVED
13 INGREDIENT. SUCH PRODUCTS INCLUDE, BUT ARE NOT
14 LIMITED TO, MILK, FAT-FREE MILK, LOWFAT MILK,
15 LIGHT MILK, REDUCED FAT MILK, MILK DRINKS, EGGNOG,
16 AND CULTURED BUTTERMILK, INCLUDING ANY SUCH
17 BEVERAGE PRODUCTS THAT ARE FLAVORED, CULTURED,
18 MODIFIED WITH ADDED OR REDUCED NONFAT SOLIDS,
19 STERILIZED, CONCENTRATED, OR RECONSTITUTED. AS
20 USED IN THIS PART, THE TERM CONCENTRATED MILK
21 MEANS MILK THAT CONTAINS NOT LESS THAN 25.5
22 PERCENT, AND NOT MORE THAN 50 PERCENT TOTAL MILK
23 SOLIDS.

24
25 (B) THE TERM FLUID MILK PRODUCT SHALL NOT INCLUDE:

1 (1) ANY PRODUCT THAT CONTAINS LESS THAN 6.5
2 PERCENT NONFAT MILK SOLIDS AND CONTAINS LESS THAN
3 2.25 PERCENT TRUE MILK PROTEIN; WHEY; PLAIN OR
4 UNSWEETENED EVAPORATED MILK; SKIM MILK; SWEETENED
5 CONDENSED MILK/SKIM MILK; YOGURT CONTAINING
6 BEVERAGES WITH 20 OR MORE PERCENT YOGURT BY
7 WEIGHT; AND KEFIR; PRODUCTS ESPECIALLY PREPARED
8 FOR INFANT FEEDING OR DIETARY USE (MEAL
9 REPLACEMENT) THAT ARE PACKAGED IN HERMETICALLY
10 SEALED CONTAINERS, AND PRODUCTS THAT MEET THE
11 COMPOSITIONAL STANDARDS SPECIFIED IN PARAGRAPH (A)
12 OF THIS SECTION, BUT CONTAIN NO FLUID MILK
13 PRODUCTS INCLUDED IN PARAGRAPH (A) OF THIS
14 SECTION.

15
16 (2) THE QUANTITY OF SKIM MILK EQUIVALENT IN ANY
17 MODIFIED PRODUCT SPECIFIED IN PARAGRAPH (A) OF
18 THIS SECTION THAT IS GREATER THAN AN EQUAL VOLUME
19 OF AN UNMODIFIED PRODUCT OF THE SAME NATURE AND
20 BUTTERFAT CONTENT.

21 WE PROPOSE TO ADOPT AS 1051.16, THE EXISTING UNIFORM
22 DEFINITION FOR A FLUID CREAM PRODUCT IN PART 1000;

23 1051.16 FLUID CREAM PRODUCT.

24 FLUID CREAM PRODUCT MEANS CREAM (OTHER THAN
25 PLASTIC CREAM OR FROZEN CREAM), INCLUDING

1 STERILIZED CREAM, OR A MIXTURE OF CREAM AND MILK,
2 OR SKIM MILK CONTAINING 9 OR MORE PERCENT
3 BUTTERFAT, WITH OR WITHOUT THE ADDITION OF OTHER
4 INGREDIENTS.

5 THIS DEFINITION WAS THE SAME FOR ALL FEDERAL ORDERS BEFORE
6 ORDER REFORM:

7 THE CURRENT DEFINITION IS UNIFORM UNDER ALL THE
8 ORDERS AND SHOULD BE USED IN THE NEWLY MERGED
9 ORDERS. THERE WERE NO COMMENTS SUPPORTING A
10 CHANGE IN THIS PROVISION.

11 64 FED. REG. AT 16122 (1999)

12 WE PROPOSE TO ADOPT AS 1051.18, THE EXISTING UNIFORM
13 DEFINITION FOR A COOPERATIVE ASSOCIATION IN PART 1000:

14 1051.18 COOPERATIVE ASSOCIATION.

15 COOPERATIVE ASSOCIATION MEANS ANY COOPERATIVE
16 MARKETING ASSOCIATION OF PRODUCERS WHICH THE
17 SECRETARY DETERMINES IS QUALIFIED UNDER THE
18 PROVISIONS OF THE CAPPER-VOLSTEAD ACT, HAS FULL
19 AUTHORITY IN THE SALE OF MILK OF ITS MEMBERS, AND
20 IS ENGAGED IN MARKETING MILK OR MILK PRODUCTS FOR
21 ITS MEMBERS. A FEDERATION OF TWO OR MORE
22 COOPERATIVES INCORPORATED UNDER THE LAWS OF ANY
23 STATE, WILL BE CONSIDERED A COOPERATIVE
24 ASSOCIATION UNDER ANY FEDERAL MILK ORDER, IF ALL
25 MEMBER COOPERATIVES MEET THE REQUIREMENTS OF THIS

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SECTION.

THE REFORM DECISION IDENTIFIED THE BENEFITS OF A
UNIFORM PROVISION RELATED, RELATING TO COOPERATIVE
ASSOCIATIONS.

ALL CURRENT ORDERS PROVIDE A DEFINITION FOR DAIRY
FARMER COOPERATIVE ASSOCIATIONS THAT MARKET MILK
ON BEHALF OF THE DAIRY FARMER MEMBERS. PROVIDING
FOR A UNIFORM DEFINITION OF A COOPERATIVE
ASSOCIATION FACILITATES THE ADMINISTRATION OF THE
VARIOUS ORDER PROVISIONS AS THEY APPLY TO SUCH
PRODUCER ORGANIZATIONS AND RECOGNIZES THE UNIQUE
STANDING GRANTED TO DAIRY FARMER COOPERATIVES
UNDER THE CAPPER-VOLSTEAD ACT. DAIRY FARMER
COOPERATIVES ARE RESPONSIBLE FOR MARKETING THE
MAJORITY OF THE MILK SUPPLIED TO REGULATED
HANDLERS UNDER THE FEDERAL ORDER SYSTEM.

AS PROVIDED HEREIN, A COOPERATIVE ASSOCIATION
MEANS ANY COOPERATIVE MARKETING ASSOCIATION OF
PRODUCERS WHICH THE SECRETARY DETERMINES, AFTER
APPLICATION FOR SUCH RECOGNITION BY THE
COOPERATIVE, IS QUALIFIED AS SUCH UNDER THE
PROVISIONS OF THE ACT OF CONGRESS OF FEBRUARY
18TH, 1922, AS AMENDED, KNOWN AS THE
"CAPPER-VOLSTEAD ACT." ADDITIONALLY, THE NEW

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ORDERS CONTINUE TO REQUIRE THAT A COOPERATIVE ASSOCIATION HAVE FULL AUTHORITY IN THE SALE OF THE MILK OF ITS MEMBERS, AND THAT IT BE ENGAGED IN MAKING COLLECTIVE SALES OR MARKETINGS OF MILK OR MILK PRODUCTS FOR ITS DAIRY FARMER MEMBERS.

SEVERAL CURRENT ORDERS PROVIDE A DEFINITION FOR A FEDERATION OF TWO OR MORE COOPERATIVE ASSOCIATIONS. AS ADOPTED HERE, ALL CONSOLIDATED ORDERS RECOGNIZE A FEDERATION OF COOPERATIVES AS SATISFYING THE COOPERATIVE DEFINITION FOR THE PURPOSES OF DETERMINING MILK PAYMENTS AND POOLING. INDIVIDUAL COOPERATIVES OF A FEDERATION OF COOPERATIVES MUST ALSO MEET THE CRITERIA AS SET FORTH FOR INDIVIDUAL COOPERATIVE ASSOCIATIONS AND THEIR FEDERATIONS AS INCORPORATED UNDER STATE LAWS.

64 FED. REG. AT 16136 (1999)

JUDGE CLIFTON: MR. WEGNER, YOU HAVE AMAZING CAPACITY, AND YOU ARE SO ARTICULATE. I WANT TO STOP YOU HERE AT THE BOTTOM OF PAGE 13 SO THAT WE CAN TAKE A SHORT STRETCH BREAK, JUST HERE AT OUR DESKS. IT'S A 23-PAGE DOCUMENT, AND I JUST WANT US TO MOVE AROUND A LITTLE BIT BEFORE YOU CONTINUE.

MR. WEGNER: THANK YOU.

JUDGE CLIFTON: ALL RIGHT. WE'LL GO OFF RECORD.

1 (WHEREUPON, A BREAK WAS TAKEN.)

2 JUDGE CLIFTON: LET'S GO BACK ON RECORD. IT'S NOW 10:06.
3 IT IS NOT 10:07. WE'LL GO BACK ON RECORD. MR. WEGNER, AT THE
4 TOP OF PAGE 14, YOU MAY PROCEED.

5 MR. WEGNER: WE PROPOSE TO ADOPT AS 1051.19, THE EXISTING
6 UNIFORM DEFINITION FOR A COMMERCIAL FOOD PROCESSING
7 ESTABLISHMENT IN THE PART 1000:

8 1051.19 COMMERCIAL FOOD PROCESSING ESTABLISHMENT.
9 COMMERCIAL FOOD PROCESSING ESTABLISHMENT MEANS ANY
10 FACILITY, OTHER THAN A MILK PLANT, TO WHICH FLUID
11 MILK PRODUCTS AND FLUID CREAM PRODUCTS ARE
12 DISPOSED OF, OR PRODUCER MILK IS DIVERTED THAT
13 USES SUCH RECEIPTS AS INGREDIENTS IN FOOD PRODUCTS
14 AND HAS NO OTHER DISPOSITION OF FLUID MILK
15 PRODUCTS, OTHER THAN THOSE RECEIVED IN
16 CONSUMER-TYPE PACKAGES (ONE GALLON OR LESS.)
17 PRODUCER MILK DIVERTED TO COMMERCIAL FOOD
18 PROCESSING ESTABLISHMENTS SHALL BE SUBJECT TO THE
19 SAME PROVISIONS RELATING TO DIVERSIONS TO PLANTS,
20 INCLUDING, BUT NOT LIMITED TO, SECTIONS .13, AND
21 .52 OF EACH FEDERAL MILK ORDER.

22 THIS DEFINITION IDENTIFIES THE USE OF FLUID MILK
23 PRODUCTS, FLUID CREAM PRODUCTS, OR PRODUCER MILK AS INGREDIENTS
24 AT COMMERCIAL FOOD PROCESSING ESTABLISHMENTS. THE REFORM
25 DECISION OFFERS FURTHER EXPLANATION ABOUT THE NEED FOR THIS

1 PROVISION.

2 PACKAGED FLUID MILK PRODUCTS SHOULD BE PERMITTED
3 TO BE TRANSFERRED TO A CFPE IN ANY SIZE, ONLY
4 THOSE PRODUCTS THAT ARE SHIPPED IN
5 LARGER-THAN-CONSUMER-SIZED PACKAGES, (I.E., LARGER
6 THAN ONE GALLON) SHOULD BE ELIGIBLE FOR A CLASS II
7 CLASSIFICATION. IF MILK IS RECEIVED BY A CFPE IN
8 GALLON CONTAINERS OR SMALLER, THE MILK SHOULD BE
9 PRICES AS CLASS I MILK, SINCE THERE IS NO WAY OF
10 GUARANTEEING THAT SUCH PRODUCTS WILL NOT BE SOLD
11 FOR FLUID USE.

12 64 FED. REG. AT 16123 (1999)

13 THESE TWO RESTRICTIONS ARE BASED UPON PRACTICAL
14 CONSIDERATIONS. THE INTEGRITY OF THE CLASSIFIED
15 PRICING SYSTEM WOULD BE MUCH MORE DIFFICULT TO
16 MAINTAIN IF THE MARKET ADMINISTRATOR WERE FORCED
17 TO AUDIT EVERY CFPE ON A REGULAR BASIS. BY
18 PROHIBITING THE SALE OF FLUID MILK PRODUCTS IN
19 CONSUMER-SIZED PACKAGES TO A CFPE FOR ANYTHING BUT
20 CLASS I USE, THERE WOULD BE LESS NEED TO REGULARLY
21 AUDIT CFPE'S TO BE SURE THAT SUCH PRODUCTS ARE NOT
22 BEING SOLD TO THE PUBLIC. SIMILARLY, SINCE
23 PACKAGED FLUID MILK PRODUCTS IN CONTAINERS LARGER
24 THAN ONE GALLON ARE RARELY, IF EVER, FOUND IN
25 RETAIL OUTLETS, IT IS UNLIKELY THAT SUCH PRODUCTS

1 WILL BE SOLD FOR FLUID USE. BY RESTRICTING FLUID
2 MILK PRODUCT DISPOSITION BY CFPE'S TO PACKAGE
3 PRODUCTS NOT LARGER THAN ONE GALLON IN SIZE, THERE
4 IS REASONABLE ASSURANCE THAT MILK PRICED AS CLASS
5 II WILL NOT BE DISPOSED OF AS FLUID MILK SOLD BY
6 THE GLASS FROM A BULK DISPENSER.

7 64 FED. REG. AT 16123 (1999)

8 OTHER ADMINISTRATIVE PROVISIONS FROM PART 1000

9 THE PROVISIONS 1000.25 THROUGH 1000.28, INCLUDE THE
10 LANGUAGE NECESSARY TO AUTHORIZE AND DIRECT THE MARKET
11 ADMINISTRATOR TO OPERATE AND ADMINISTER THE POOL. THESE
12 PROVISIONS IDENTIFY HOW TO MAKE THE POOL WORK AND HOLD HANDLERS
13 ACCOUNTANT TO THE POOL.

14 - WE PROPOSE TO ADOPT AS 10502.25, THE EXISTING
15 UNIFORM DEFINITION FOR THE MARKET ADMINISTRATOR IN
16 PART 1000.

17 - WE PROPOSE TO ADOPT AS 1052.26, THE EXISTING
18 UNIFORM DEFINITION FOR CONTINUITY AND SEVERABILITY
19 OF PROVISIONS IN PART 1000.

20 - WE PROPOSE TO ADOPT AS 1051.27, THE EXISTING
21 UNIFORM DEFINITION FOR HANDLER RESPONSIBILITY FOR
22 RECORDS AND FACILITIES IN PART 1000.

23 - WE PROPOSE TO ADOPT AS 1051.28, THE EXISTING
24 UNIFORM DEFINITION FOR THE TERMINATION OF
25 OBLIGATIONS IN PART 1000.

1 THE SPECIFIC LANGUAGE CONTAINED IN THESE FOUR
2 PROVISIONS IS INCLUDED IN COOPERATIVES EXHIBITS 3A -- BEG YOUR
3 PARDON, 34.

4 MR. BESHORE: EXCUSE ME, OKAY. SO COOPERATIVES' EXHIBIT 3A
5 IS ACTUALLY INCLUDED AS THE FIRST DOCUMENT IN WHAT'S NOW BEEN
6 MARKED AS PROPOSED [EXHIBIT 35](#).

7 MR. WEGNER: 35, BEG YOUR PARDON.

8 MR. BESHORE: THANK YOU FOR NOTING THAT.

9 MR. WEGNER: THE SPECIFIC LANGUAGE CONTAINED IN THESE FOUR
10 PROVISIONS IS INCLUDED IN COOPERATIVES' [EXHIBIT 35](#).

11 WE ALSO PROPOSE TO ADOPT AS THE EXISTING UNIFORM
12 PROVISIONS FROM PART 1000 FOR:

13 ADJUSTMENT OF ACCOUNTS-SECTION 1051.77.

14 CHARGES ON OVERDUE ACCOUNTS-SECTION 1051.78.

15 ASSESSMENT FOR ORDER ADMINISTRATION-SECTION 1051.85.

16 DEDUCTIONS FOR MARKETING SERVICES-SECTION 1051.86.

17 WITHOUT REPEATING IT, WE SUPPORT AND ADOPT THE
18 TESTIMONY GIVEN BY MR. MYKRANTZ EXPLAINING THE FUNCTION AND THE
19 OPERATION OF THESE PROVISIONS.

20 MR. BESHORE: YEAH, MR. WEGNER, ARE THOSE, THE SPECIFIC
21 LANGUAGE FOR THOSE PROVISIONS ALSO INCLUDED IN EXHIBIT 3A,
22 WHICH IS PART OF PROPOSED [EXHIBIT 35](#)?

23 MR. WEGNER: THEY ARE.

24 MR. BESHORE: THANK YOU. PLEASE PROCEED.

25 JUDGE CLIFTON: BEFORE HE DOES, SHALL I, MR. BESHORE, ASK

1 THAT MS. FRISIUS WRITE ON THE RECORD COPIES ON PAGE 15 OF
2 EXHIBIT 34, IN ABOUT THE MIDDLE OF THE PAGE, FOLLOWING THE TERM
3 EXHIBIT 3.A, SHALL I HAVE HER ADD THESE WORDS: "IN" -- CAPITAL
4 E, "EXHIBIT 35?"

5 MR. BESHORE: I WOULD APPRECIATE THAT GREATLY.

6 JUDGE CLIFTON: ALL RIGHT. AND THEN A PERIOD.

7 MR. BESHORE: THANK YOU.

8 JUDGE CLIFTON: THANK YOU. DO YOU REMEMBER WHERE YOU WERE,
9 MR. WEGNER?

10 MR. WEGNER: I DO.

11 JUDGE CLIFTON: ALL RIGHT. YOU MAY RESUME.

12 MR. WEGNER: TOP OF PAGE 16.

13 MULTIPLE COMPONENT PRICING IN THE CALIFORNIA FEDERAL MILK
14 MARKETING ORDER: HANDLER VALUE OF MILK; PRODUCER COMPONENT
15 PRICES; AND ANNOUNCEMENT OF PRICES
16 SECTIONS 1051.60, .61, .62;

17 WE PROPOSE A MULTIPLE COMPONENT PRICING (MCP) PROGRAM
18 BASED ON THREE COMPONENTS - BUTTERFAT, PROTEIN, AND OTHER
19 SOLIDS. MULTIPLE COMPONENT PRICING WILL BE APPLICABLE BOTH TO
20 HANDLERS AND PRODUCERS, FOLLOWING THE PREDOMINANT FMMO MODEL
21 WHICH PRICES COMPONENTS TO HANDLERS OF CLASS I (FAT AND SKIM);
22 CLASSES II AND IV (FAT AND SOLIDS-NOT-FAT); HANDLERS OF CLASS
23 III (FAT, PROTEIN, AND OTHER SOLIDS) AND TO PRODUCERS (FAT,
24 PROTEIN, AND OTHER SOLIDS) ON ALL MILK.
25 IN DISCUSSING MULTIPLE COMPONENT PRICING, USDA, IN THE FEDERAL

1 ORDER REFORM DECISION, SPOKE TO THE NATIONAL BASIS OF THIS
2 PRICING APPROACH.

3 THIS PRICING SYSTEM ELIMINATES THE NEED FOR
4 REGIONAL YIELDS BASED ON REGIONAL DIFFERENCES IN
5 THE MILK COMPOSITION. THE VALUE OF MILK WILL BE
6 ADJUSTED AUTOMATICALLY BASED ON THE LEVEL OF
7 COMPONENTS CONTAINED IN THE MILK IN EACH ORDER,
8 EVEN THOUGH THE COMPONENT PRICES ARE THE SAME
9 NATIONALLY. THIS AUTOMATIC ADJUSTMENT MEANS THAT
10 HANDLERS WILL PAY THE SAME PRICE PER POUND OF
11 COMPONENT, BUT MAY HAVE DIFFERING PER
12 HUNDREDWEIGHT VALUES BASED ON THE MILK COMPONENT
13 LEVELS, CREATING EQUITY IN THE MINIMUM COST OF
14 MILK USED FOR MANUFACTURING PURPOSES.

15 64 FED. REG. AT 16100 (1999)

16 FORTIFICATION OF MILK FOR CLASS I USES TO MEET THE
17 CALIFORNIA FLUID MILK STANDARDS, WILL BE ACCOMMODATED THROUGH A
18 FORTIFICATION ALLOWANCE TO CLASS I HANDLERS. THE CDFA'S
19 FORTIFICATION ALLOWANCES ARE INCORPORATED INTO THE CLASS I
20 PRICING PROVISIONS.

21 WE PROPOSE THE FOLLOWING LANGUAGE FOR SECTION 1051.60,
22 HANDLER'S VALUE OF MILK;

23 JUDGE CLIFTON: READ THE HEADING AGAIN, PLEASE.

24 MR. WEGNER:

25 1051.60 HANDLER'S VALUE OF MILK.

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FOR THE PURPOSE OF COMPUTING A HANDLER'S
OBLIGATION FOR PRODUCER MILK, THE MARKET
ADMINISTRATOR SHALL DETERMINE FOR EACH MONTH THE
VALUE OF MILK OF EACH HANDLER WITH RESPECT TO EACH
OF THE HANDLER'S POOL PLANTS AND OF EACH HANDLER
DESCRIBED IN SECTION 100.9(C) WITH --

JUDGE CLIFTON: READ ME THE SECTION AGAIN, PLEASE.

MR. WEGNER: 1051.60, HANDLER'S --

JUDGE CLIFTON: NO, NO, JUST NOW WHERE YOU'VE SAID, "EACH
HANDLER DESCRIBED IN SECTION -- "

MR. WEGNER:

-- EACH HANDLER DESCRIBED IN SECTION 1000.9(C)
WITH RESPECT TO MILK THAT WAS NOT RECEIVED AT A
POOL PLANT, BY ADDING THE AMOUNTS COMPUTED IN
PARAGRAPHS (A) THROUGH (I) OF THIS SECTION AND
SUBTRACTING FROM THAT TOTAL AMOUNT, THE VALUES
COMPUTED IN PARAGRAPHS (I) AND (J) OF THIS
SECTION. UNLESS OTHERWISE SPECIFIED, THE SKIM
MILK, BUTTERFAT, AND THE COMBINED POUNDS OF SKIM
MILK AND BUTTERFAT REFERRED TO IN THIS SECTION,
SHALL RESULT FROM THE STEPS SET FORTH IN SECTION
1000.44(A), (B), AND (C), RESPECTIVELY, AND THE
NONFAT COMPONENTS OF PRODUCER MILK IN EACH CLASS
SHALL BE BASED UPON THE PROPORTION OF SUCH
COMPONENTS IN PRODUCER SKIM MILK.

1 RECEIPTS OF NON FLUID MILK PRODUCTS THAT ARE
2 DISTRIBUTED AS LABELED RECONSTITUTED MILK, FOR
3 WHICH PAYMENTS ARE MADE TO THE PRODUCER-SETTLEMENT
4 FUND OF ANOTHER FEDERAL ORDER UNDER SECTIONS
5 1000.76(A)(4) OR (D) SHALL BE EXCLUDED FROM
6 PRICING UNDER THIS SECTION.

7
8 (A) CLASS I VALUE.

9 (1) MULTIPLY THE POUNDS OF SKIM MILK IN CLASS I BY
10 THE CLASS I SKIM MILK PRICE; AND

11 (2) ADD AN AMOUNT OBTAINED BY MULTIPLYING THE
12 POUNDS OF BUTTERFAT IN CLASS I BY THE CLASS I
13 BUTTERFAT PRICE;

14 MR. BESHORE: NOW, LET ME INTERRUPT YOU RIGHT THERE, IF I
15 COULD, MR. WEGNER. THIS IS MARVIN BESHORE. BEFORE YOU READ
16 THE LANGUAGE OF PROPOSED SECTIONS 1051.60(A)(3) AND (4), COULD
17 YOU JUST GIVE US A LITTLE EXPLANATORY NOTE ABOUT THAT LANGUAGE,
18 BECAUSE IT'S NOT LANGUAGE FOUND IN ANY OTHER ORDERS OR UNIFORM
19 PROVISIONS, SO WE ALL HAVE IT IN CONTEXT AND ARE FOCUSED ON IT
20 BEFORE YOU READ IT.

21 MR. WEGNER: SURE. AND CONCEPTUALLY, WHAT WE ARE PROPOSING
22 HERE IS THE ADOPTION OF THE FMMO CLASSIFICATION LANGUAGE AND
23 APPROACH TO FORTIFICATION AS EXPLAINED BY MR. SCHAEFER, AND
24 ADDING IN THE CALIFORNIA FORTIFICATION ALLOWANCE AS PROVIDED IN
25 THE CALIFORNIA STATE SYSTEM PRESENTLY.

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CONTINUING:
SECTION 3, OR BEG YOUR PARDON;
(3) DEDUCT FOR EACH POUND OF MILK SOLIDS NOT FAT
IN NONFAT DRY MILK USED FOR FORTIFYING CLASS I
PRODUCTS DURING THE CURRENT MONTH, A MAXIMUM
CHARGE EQUAL TO THE CURRENT CLASS I SOLIDS NOT FAT
PRICE[THE CLASS I SKIM MILK PRICE IN THE 2.10 ZONE
DIVIDED BY 9] --

JUDGE CLIFTON: LET ME ASK YOU TO EXPRESS THE 2.10 ZONE
DIFFERENTLY.

MR. WEGNER:
[-- \$2.10 ZONE DIVIDED BY 9], LESS THE CURRENT
CLASS IV SOLIDS NOT FAT PRICE ESTABLISHED IN
1050.53. IN NO CASE SHALL THE DEDUCTION BE LESS
THAN ZERO CENTS (\$0.00) NOR MORE THAN NINETEEN AND
EIGHTY-FIVE HUNDREDTHS CENTS (\$.1985); AND
(4) DEDUCT FOR EACH POUND THE MILK SOLIDS-NOT-FAT
IN CONDENSED SKIM MILK USED FOR FORTIFYING CLASS I
PRODUCTS DURING THE CURRENT MONTH, A MAXIMUM
CHARGE EQUAL TO THE CURRENT CLASS I SOLIDS NOT FAT
PRICE[THE CLASS I SKIM MILK PRICE IN THE \$2.10
ZONE DIVIDED BY9], LESS THE CURRENT CLASS II
SOLIDS NOT FAT PRICE ESTABLISHED IN SECTION
1051.53. IN NO CASE SHALL THE DEDUCTION BE LESS
THAN ZERO CENTS (\$0.00) NOR MORE THAN NINE AND

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EIGHTY-SEVEN HUNDREDTHS CENTS.

(B) CLASS II VALUE.

(1) MULTIPLY THE POUNDS OF NON --

JUDGE CLIFTON: I'M GOING TO -- I'M GOING TO ASK YOU TO HELP WITH THIS TRANSCRIPT EVEN MORE.

AT THE END OF SECTION 3, OR, AT THE END OF (3) WHERE YOU HAVE SAID IN WORDS THE PORTION OF A DOLLAR THAT IS EXPRESSED, I WANT YOU TO READ THE WORDS AGAIN, AND THEN EXPRESS WHAT'S IN THE PARENTHESES IN TERMS OF HOW MUCH OF A DOLLAR IT IS.

MR. WEGNER: VERY GOOD. SO PICK IT UP "IN NO CASE" AT THE END OF PARAGRAPH 3?

JUDGE CLIFTON: YES.

MR. WEGNER:

IN NO CASE SHALL THE DEDUCTION BE LESS THAN ZERO CENTS (\$0.00) NOR MORE THAN NINETEEN AND EIGHT-FIVE HUNDRED CENTS (\$0.1985); AND (4) DEDUCT FOR EACH POUND OF MILK SOLIDS NOT FAT IN CONDENSED SKIM MILK USED FOR FORTIFYING CLASS I PRODUCTS DURING THE CURRENT MONTH, A MAXIMUM CHARGE EQUAL TO THE CURRENT CLASS I SOLIDS NOT FAT PRICE [THE CLASS I SKIM PRICE -- SKIM MILK PRICE IN THE \$2.10 ZONE DIVIDED BY 9], LESS THE CURRENT CLASS II SOLIDS NOT FAT PRICE ESTABLISHED IN

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SECTION 1051.53. IN NO CASE SHALL THE DEDUCTION
BE LESS THAN ZERO CENTS (\$0.00) NOR MORE THAN NINE
AND EIGHTY-SEVEN HUNDREDTHS CENTS (\$.0987).

(B) CLASS II VALUE.

- (1) MULTIPLY THE POUNDS OF NONFAT SOLIDS IN CLASS II SKIM BY THE CLASS II NONFAT SOLIDS PRICE; AND
- (2) ADD AN AMOUNT OBTAINED BY MULTIPLYING THE POUNDS OF BUTTERFAT IN CLASS II TIMES THE CLASS II BUTTERFAT PRICE.

(C) CLASS III VALUE.

- (1) MULTIPLY THE POUNDS OF PROTEIN IN CLASS III SKIM MILK BY THE PROTEIN PRICE;
- (2) ADD AN AMOUNT OBTAINED BY MULTIPLYING THE POUNDS OF OTHER SOLIDS IN CLASS III SKIM MILK BY THE OTHER SOLIDS PRICE; AND
- (3) ADD AN AMOUNT OBTAINED BY MULTIPLYING THE POUNDS OF BUTTERFAT IN CLASS III BY THE BUTTERFAT PRICE.

(D) CLASS IV VALUE.

- (1) MULTIPLY THE POUNDS OF NONFAT SOLIDS IN CLASS IV SKIM MILK BY THE NONFAT SOLIDS PRICE.
- (2) ADD AN AMOUNT OBTAINED BY MULTIPLYING THE

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POUNDS OF BUTTER FAT IN CLASS IV BY THE BUTTERFAT PRICE.

(E) MULTIPLY THE POUNDS OF SKIM MILK AND BUTTERFAT OVERAGE ASSIGNED TO EACH CLASS PURSUANT TO SECTION 1000.44(A)(11) AND THE CORRESPONDING STEP OF SECTION 1000.44(B) BY THE SKIM MILK PRICES AND BUTTERFAT PRICES APPLICABLE TO EACH CLASS.

(F) MULTIPLY THE DIFFERENCE BETWEEN THE CURRENT MONTHS CLASS I, II, OR III PRICE, AS THE CASE MAY BE, AND THE CLASS IV PRICE FOR THE PRECEDING MONTH, AND BY THE HUNDREDWEIGHT OF SKIM MILK AND BUTTERFAT SUBTRACTED FROM CLASS I, II, OR III, RESPECTIVELY, PURSUANT TO SECTION 1000.44(A)(7) AND THE CORRESPONDING STEP OF SECTION 1000.44(B).

(G) MULTIPLY THE DIFFERENCE BETWEEN THE CLASS I PRICE APPLICABLE AT THE LOCATION OF THE POOL PLANT AND THE CLASS IV PRICE BY THE HUNDREDWEIGHT OF SKIM MILK AND BUTTERFAT ASSIGNED TO CLASS I PURSUANT TO SECTION 1000.43(D) AND THE HUNDREDWEIGHT OF SKIM MILK AND BUTTERFAT SUBTRACTED FROM CLASS I, PURSUANT TO SECTIONS 1000.44(A)(3)(I) THROUGH (VI), AND THE

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CORRESPONDING STEP OF SECTION 1000.44(B),
EXCLUDING RECEIPTS OF BULK FLUID CREAM PRODUCTS
FROM PLANTS REGULATED UNDER OTHER FEDERAL ORDERS
AND BULK CONCENTRATED FLUID MILK PRODUCTS FROM
POOL PLANTS, PLANTS REGULATED UNDER OTHER FEDERAL
ORDERS, AND UNREGULATED SUPPLY PLANTS.

(H) MULTIPLY THE DIFFERENCE BETWEEN THE CLASS I
PRICE APPLICABLE AT THE LOCATION OF THE NEAREST
UNREGULATED SUPPLY PLANTS FROM WHICH AN EQUIVALENT
VOLUME WAS RECEIVED AND THE CLASS III PRICE BY THE
POUNDS OF SKIM MILK AND BUTTERFAT IN RECEIPTS OF
CONCENTRATED FLUID MILK PRODUCTS ASSIGNED TO
CLASS I, PURSUANT TO SECTIONS 1000.43(D) AND
1000.44(A)(3)(I) AND THE CORRESPONDING SECTION,
BEG YOUR PARDON, AND THE CORRESPONDING STEP OF
SECTION 1000.44(B), AND THE POUNDS OF SKIM MILK
AND BUTTERFAT SUBTRACTED FROM CLASS I PURSUANT TO
SECTIONS 1000.44(A)(8), AND THE CORRESPONDING STEP
OF SECTION 1000.44(B), EXCLUDING SUCH SKIM MILK
AND BUTTERFAT IN RECEIPTS OF FLUID MILK PRODUCTS
FROM AN UNREGULATED SUPPLY PLANT TO THE EXTENT
THAT AN EQUIVALENT AMOUNT OF SKIM MILK OR
BUTTERFAT DISPOSED OF TO SUCH PLANTS BY HANDLERS
FULLY REGULATED UNDER ANY FEDERAL MILK ORDER IS

1 CLASSIFIED AS PRICED AS CLASS I MILK, AND IS NOT
2 USED AS AN OFFSET FOR ANY OTHER PAYMENT OBLIGATION
3 UNDER ANY ORDER.

4 JUDGE CLIFTON: I WOULD LIKE YOU TO RE-READ, I KNOW THAT'S
5 A LONG PHRASE, I THINK STARTING ABOUT FIVE LINES UP, WE'RE ON
6 PAGE 18, BOY, THAT'S A LONG SENTENCE. I DON'T KNOW WHERE TO
7 HAVE YOU START. GO AHEAD AND START WITH THE WORDS "UNREGULATED
8 SUPPLY PLANT."

9 MR. WEGNER: TRYING TO FIND IT HERE, FIVE LINES UP,
10 ROUGHLY. OKAY.

11 UNREGULATED SUPPLY PLANT, TO THE EXTENT THAT AN
12 EQUIVALENT AMOUNT OF SKIM MILK OR BUTTERFAT
13 DISPOSED OF TO SUCH PLANT BY HANDLERS FULLY
14 REGULATED UNDER ANY FEDERAL MILK ORDER, IS
15 CLASSIFIED AND PRICED AS CLASS I MILK, AND IS NOT
16 USED AS AN OFFSET FOR ANY OTHER PAYMENT OBLIGATION
17 UNDER ANY ORDER.

18
19 (I) FOR RECONSTITUTED MILK MADE FROM RECEIPTS OF
20 NON FLUID MILK PRODUCTS, MULTIPLY \$1.00, BUT NOT
21 MORE THAN THE DIFFERENCE BETWEEN THE CLASS I PRICE
22 APPLICABLE AT THE LOCATION OF THE POOL PLANT, AND
23 THE CLASS IV PRICE, BY THE HUNDREDWEIGHT OF SKIM
24 MILK AND BUTTERFAT CONTAINED IN RECEIPTS OF NON
25 FLUID MILK PRODUCTS THAT ARE ALLOCATED TO

1 CLASS I USE, PURSUANT TO SECTION 1000.43(D).

2 (J) COMPUTE THE AMOUNT OF CREDITS APPLICABLE
3 PURSUANT TO SECTION 1051.55.

4 PRODUCER WILL BE PAID TWICE PER MONTH BASED ON MCP
5 CALCULATIONS. THEY WILL BE PAID FOR POUNDS OF BUTTERFAT,
6 PROTEIN, AND OTHER SOLIDS. ALL PRODUCERS IN THE FMMO WILL
7 RECEIVE THE SAME COMPONENT PRICES. THERE WILL BE NO SOMATIC
8 CELL COUNT ADJUSTMENTS INCLUDED IN THE REGULATED PRICES. THERE
9 WILL BE NO PRODUCER LOCATION DIFFERENTIALS.

10 THE REFORM DECISION IDENTIFIED THE SOURCE OF THE
11 COMPONENT PRICES:

12 THE BUTTERFAT, PROTEIN, AND OTHER SOLIDS PRICES,
13 ARE COMPONENT PRICES BASED ON THE VALUE OF THE USE
14 OF MILK IN MANUFACTURING.

15 64 FED. REG. AT 16095 (1999)

16 USDA DEFINED A PRODUCER PRICE DIFFERENTIAL IN THE
17 REFORM DECISION:

18 THE PRODUCER PRICE DIFFERENTIAL REFLECTS THE
19 COLLECTIVE VALUE OF PARTICIPATION IN THE MARKET
20 WIDE POOL. PRIMARILY IT REPRESENTS THE PRODUCERS
21 PRO RATA SHARE OF THE ADDITIONAL VALUE OF CLASS I
22 AND II USE IN THE MARKET.

23 64 FED. REG. AT 16095 (1999)

24 IN THE CALIFORNIA ORDER, WE PROPOSE THAT THERE WILL BE
25 NO PRODUCER PRICE DIFFERENTIAL (PPD) VALUE, AS SUCH, PAID TO

1 PRODUCERS. INSTEAD, THE FUNDS GENERATED FROM THE PPD VALUE
2 COMPUTATION WILL BE PAID ACROSS ALL THREE COMPONENTS IN A RATIO
3 REPRESENTATIVE OF THEIR VALUE IN THE POOL. MORE SPECIFICALLY,
4 THE MARKET ADMINISTRATOR WILL CALCULATE THE CONTRIBUTION OF
5 EACH COMPONENT, BUTTERFAT, PROTEIN, AND OTHER SOLIDS, TO THE
6 VALUE OF THE CLASS III COMPONENTS TO PRODUCERS ON AN ANNUAL
7 BASIS. THE HIGHER THE PPD, THE LARGER THE ADJUSTMENT TO EACH
8 COMPONENT; THE LARGER THE COMPONENT'S CONTRIBUTION TO THE VALUE
9 OF THE CLASS III COMPONENTS TO PRODUCERS, THE LARGER THE SHARE
10 OF THE PPD ADJUSTMENT. A NEGATIVE PPD WOULD REDUCE THE
11 COMPONENT PRICES, AND ACCORDINGLY, THE LARGER THE COMPONENT'S
12 CONTRIBUTION TO THE VALUE OF THE CLASS III COMPONENTS TO
13 PRODUCERS, THE LARGER THE REDUCTION TO THE COMPONENT'S PRICE.

14 WE ARE PROPOSING TO ELIMINATE A PPD BECAUSE OUR
15 EXPERIENCE HAS BEEN THAT PRODUCERS IN FMMO'S FIND THE CONCEPT
16 OF PPD'S, CONFUSING. AND THE PPD CONCEPT ADDS AN UNNECESSARY
17 LEVEL OF COMPLICATION TO THE UNDERSTANDING OF THE FMMO PRICING.
18 MORE SPECIFICALLY, NEGATIVE PPD'S THAT CAN OCCUR WHEN INCREASES
19 IN COMMODITY PRICES LEAD TO CLASS PRICE INVERSIONS ARE EVEN
20 MORE DIFFICULT TO EXPLAIN TO PRODUCERS. ADDITIONALLY, SINCE
21 THE EXISTING STATE ORDER DOESN'T INCLUDE A PPD, WE BELIEVE THAT
22 ELIMINATING A PPD WILL GIVE US ONE LESS PRICING COMPLEXITY TO
23 EXPLAIN.

24 MR. BESHORE: SO I WOULD LIKE TO INTERRUPT YOUR READING OF
25 [EXHIBIT 34](#) AT THAT POINT, MR. WEGNER, AND ASK YOU IF THE

1 EXHIBIT TO WHICH THE NEXT TEXT IN SEQUENCE REFERS, IS EXHIBIT
2 3.B IN [EXHIBIT 35](#)?

3 MR. WEGNER: IT IS.

4 MR. BESHORE: OKAY. AND BEFORE YOU DESCRIBE IT IN TEXT, I
5 THINK IT MIGHT BE HELPFUL IF WE JUST LOOK AT IT NOW AND HAVE
6 YOU KIND OF WALK US -- WALK US THROUGH THE EXHIBIT A BIT TO
7 DESCRIBE THE PROPOSED DISTRIBUTION OF PRODUCER REVENUES WITHOUT
8 PPD. FIRST OF ALL, DID YOU PREPARE THIS EXHIBIT?

9 MR. WEGNER: I DID PREPARE THIS EXHIBIT.

10 MR. BESHORE: SO TAKE US THROUGH IT, PLEASE.

11 MR. WEGNER: THANK YOU FOR THE OPPORTUNITY.

12 COMPUTATION OF PRODUCER COMPONENT PRICES AND THE
13 PRODUCER PRICE DIFFERENTIAL CORRESPONDING TO SECTION 1051.61,
14 BASICALLY WHAT WE'RE DOING HERE IS, I HAVE GOT AN EXAMPLE THAT
15 COMES FROM DECEMBER 2013, THE UPPER MIDWEST FEDERAL MILK
16 MARKETING ORDER, FEDERAL ORDER 30, AS A WAY TO SHOW HOW WE
17 WOULD DO THIS IN THE CALIFORNIA ORDER.

18 SO IF YOU LOOK AT THE TOP LINE WHERE WE HAVE DECEMBER
19 2013, YOU WILL SEE THE PRODUCER POUNDS LISTED THAT ARE IN THE
20 POOL. THE BUTTERFAT POUNDS IN PRODUCER MILK OF 112,348,468;
21 TOTAL PROTEIN POUNDS IN PRODUCER MILK OF 91,887,703, AND THE
22 TOTAL OTHER SOLIDS POUNDS IN PRODUCER MILK OF 163,453,398.

23 MR. BESHORE: AND THOSE WERE ACTUAL POUNDS TAKEN FROM
24 DECEMBER '13 FOR ORDER 30?

25 MR. WEGNER: YES.

1 MR. BESHORE: JUST AS -- TO USE AS AN ILLUSTRATION?

2 MR. WEGNER: AS AN ILLUSTRATION.

3 MR. BESHORE: KEEP GOING.

4 JUDGE CLIFTON: WE HAVE HAPPY COOKS BEHIND US, I THINK.

5 ALL RIGHT. SO IN CASE ANYBODY GOT LOST, WE'RE IN

6 [EXHIBIT 35](#), AND AFTER THE FIRST SEVEN PAGES OF EXHIBIT 35,

7 WE'RE LOOKING AT A CHART WHICH IS CALLED COOPERATIVES' EXHIBIT

8 3.B. SO GO AHEAD, MR. BESHORE.

9 BY MR. BESHORE:

10 Q. OKAY. SO YOU WERE ON THE SECOND DATA LINE, I THINK, OR
11 ABOUT TO GET TO THE SECOND DATA LINE.

12 A. I WAS ABOUT TO GET TO THIS. YES. PERFECT.

13 THEN YOU WILL SEE IN THE NEXT BLOCK OF ROWS THERE, PPD
14 VALUE, THAT IS THE TOTAL VALUE OF PPD, DECEMBER 2013, IN
15 FEDERAL ORDER 30, AGAIN, AS AN EXAMPLE, THAT VALUE IS WHAT
16 WE'RE LOOKING TO DISTRIBUTE ACROSS THE THREE COMPONENTS.
17 THAT'S 11,178,073.29.

18 AND THEN YOU SEE THE BUTTERFAT PRICES, PROTEIN PRICES,
19 AND OTHER SOLIDS PRICES THAT WERE ANNOUNCED OF \$1.7672,
20 \$3.5390, ON THE CLASS III PROTEIN PRICE; AND THE OTHER SOLIDS
21 PRICE OF \$0.3826, AND THEN I HAVE THE PPD RATE THERE, WHICH
22 REALLY DOESN'T COME INTO THE CALCULATION.

23 Q. BUT THAT WAS THE ACTUAL --

24 A. THESE ARE ACTUAL NUMBERS BASED ON FEDERAL ORDER 30,
25 UPPER MIDWEST, DECEMBER OF 2013.

1 Q. OKAY. SO IN THAT MONTH, THOSE VALUES OR THOSE -- YEAH,
2 PPD OF 39 CENTS WAS GENERATED?

3 A. YES. AND THE TOTAL VALUE OF THAT AGAIN WAS THE FIRST
4 COLUMN OF PPD VALUE OF \$11,178,073.29.

5 JUDGE CLIFTON: NOW, BOTH OF YOU ARE VERY ENERGETIC AND YOU
6 ARE TALKING OVER EACH OTHER JUST A TINY BIT. SO, MR. WEGNER,
7 BE SURE THAT MR. BESHORE'S VOICE HAS DIED DOWN COMPLETELY
8 BEFORE YOU RESPOND TO HIS NEXT QUESTION, AND MR. BESHORE,
9 HOPEFULLY YOU WON'T HAVE TO INTERRUPT HIM.

10 MR. BESHORE: HOPEFULLY I WON'T INTERRUPT. OKAY.

11 BY MR. BESHORE:

12 Q. THE NEXT LINE WHICH SHOWS THE PERCENTAGE DISTRIBUTIONS,
13 I BELIEVE, COULD YOU DESCRIBE THAT AND HOW IT'S CALCULATED,
14 MR. WEGNER?

15 A. AND THIS IS A HYPOTHETICAL, THIS IS NOT BASED ON ACTUAL
16 NUMBERS. IN THIS CASE, WHAT WE'RE LOOKING AT IS HOW THE MARKET
17 ADMINISTRATOR WOULD LOOK AT A TWELVE-MONTH PERIOD, NOVEMBER,
18 EXCUSE ME, DECEMBER 1 THROUGH NOVEMBER 30TH, TO IDENTIFY THE
19 RATIO OF VALUE OF CONTRIBUTION OF THE CLASS III COMPONENTS
20 ACROSS THE TOTAL COMPONENTS OF, EXCUSE ME, OF CLASS III. SO
21 WHAT YOU HAVE GOT HERE IS THE PERCENTAGE OF VALUE OF BUTTERFAT
22 IN THOSE CLASS III COMPONENTS WAS 32 PERCENT OF THE TOTAL VALUE
23 OF THE THREE COMPONENTS. IN THE CASE OF PROTEIN, IT WAS 55
24 PERCENT OF THAT TOTAL VALUE; AND IN OTHER SOLIDS, IT WAS 13
25 PERCENT. THE POINT BEING TO COME UP WITH AN ANNUAL AVERAGE

1 EACH YEAR THAT THE MARKET ADMINISTRATOR WOULD PROVIDE.

2 Q. AND THOSE PERCENTAGES WOULD THEN, MUST TOTAL A THOUSAND
3 -- I MEAN, A HUNDRED?

4 A. THEY TOTAL A HUNDRED PERCENT.

5 Q. OKAY.

6 A. THEN THE NEXT LINE IS HOW WE ACTUALLY CAME UP WITH THE,
7 THESE ARE THE ADJUSTED PRICES, AND I TAKE YOU DOWN TO THE
8 CALCULATIONS BELOW THE HIGHLIGHTED ROWS, AND LOOK AT THE PPD
9 ADJUSTED BUTTERFAT PRICE. IN A VERY SIMPLE SENSE, THIS IS HOW
10 TO ALLOCATE THE \$11 MILLION ACROSS THE THREE COMPONENTS.

11 SO YOU TAKE THE PRESENT, OR THE CURRENT BUTTERFAT PRICE
12 OF \$1,7672 AND ADD THIS ADJUSTMENT. YOU CALCULATE THE
13 ADJUSTMENT BY TAKING THE TOTAL VALUE OF THE PPD, TIMES THE
14 PERCENTAGE OF THE PARTICULAR COMPONENT YOU ARE LOOKING AT. IN
15 THE CASE OF THE FIRST ONE, IT'S BUTTERFAT. THAT'S TIMES 32
16 PERCENT, AND THEN YOU ALLOCATE IT ESSENTIALLY, OVER ALL THE
17 POUNDS OF CLASS III COMPONENTS IN PRODUCER MILK OF BUTTERFAT.
18 SO YOU DIVIDE THAT BY THE 112,348,468. AND FOR THOSE THAT ARE
19 FOLLOWING ALONG, THIS IS PROVISION 3, 1051.61(F)(3), WHERE
20 WE -- BEG YOUR PARDON, BEG YOUR PARDON, 2.

21 YOU WILL SEE IN THE NEXT LINE I HAVE AN ERROR, THAT
22 SHOULD ACTUALLY BE 1.762 INSTEAD OF 763, PLUS THE \$0.0318, AND
23 THEN YOU COME UP WITH THE ADJUSTED BUTTERFAT PRICE.

24 Q. OKAY. LET'S GO TO THE NUMBER THAT YOU CORRECTED.

25 A. YES.

1 Q. THE MIDDLE LINE ON THE CALCULATION FOR ADJUSTED
2 PRODUCER BUTTERFAT PRICE SHOULD BE \$1.7672?

3 A. CORRECT.

4 Q. RATHER THAN 73?

5 A. CORRECT.

6 Q. OKAY.

7 A. SO THAT THEN GIVES YOU AN ADJUSTED BUTTERFAT, PRODUCER
8 BUTTERFAT VALUE PER POUND OF \$1.7990.

9 Q. VERY GOOD. CONTINUE.

10 A. OKAY. A SIMILAR CALCULATION, I WON'T TAKE YOU THROUGH
11 THE DETAIL, FOR PROTEIN AND FOR OTHER SOLIDS. THOSE
12 CALCULATIONS CORRESPOND WITH 1051.61(F)(3) FOR PROTEIN, AND
13 1051.61(F)(4) FOR OTHER SOLIDS.

14 Q. OKAY. SO THANK YOU FOR WALKING US THROUGH YOUR CHART,
15 WHICH IS PART OF [EXHIBIT 35](#).

16 WOULD YOU THEN RETURN TO THE NARRATIVE STATEMENT OF
17 YOUR TESTIMONY ON PAGE 20 WHERE I INTERRUPTED YOU, AND PROCEED?

18 A. VERY GOOD.

19 THE EXHIBIT, "1051.61 COMPUTATION OF PRODUCER COMPONENT
20 PRICES AND PRODUCER PRICE DIFFERENTIAL" CONTAINS AN EXAMPLE OF
21 THE CALCULATION OF COMPONENT VALUES THAT HAVE BEEN ADJUSTED FOR
22 THE PPD VALUE. THE EXAMPLE IS BASED ON THE ACTUAL VALUES THAT
23 WERE REPORTED FOR THE MONTH OF DECEMBER 2013, AND REPORTED BY
24 THE MARKET ADMINISTRATOR OF THE UPPER MIDWEST MARKETING AREA,
25 FEDERAL ORDER NUMBER 30.

1 THE EXAMPLE GOES THROUGH THE ADJUSTMENT OF THE
2 COMPONENT VALUES BY THE PPD RECORDED FOR DECEMBER 2013. THE
3 CONTRIBUTION OF EACH COMPONENT TO THE VALUE OF THE CLASS III
4 COMPONENTS TO PRODUCERS, WOULD BE CALCULATED BY THE CALIFORNIA
5 FMMO MARKET ADMINISTRATOR. IN THE CASE OF THIS EXAMPLE, THESE
6 CONTRIBUTIONS ARE EXPRESSED AS PERCENTAGES AND ARE PROVIDED TO
7 ENABLE US TO DISPLAY THE CALCULATION METHOD.

8 WE PROPOSE THE FOLLOWING LANGUAGE FOR SECTION 1051.61,
9 COMPUTATION OF PRODUCER COMPONENT PRICES AND PRODUCER PRICE
10 DIFFERENTIAL

11 1051.61. COMPUTATION OF PRODUCER COMPONENT PRICES
12 AND PRODUCER PRICE DIFFERENTIAL.

13 FOR EACH MONTH, THE MARKET ADMINISTRATOR SHALL
14 COMPUTE PRODUCER COMPONENT PRICES PER POUND FOR
15 BUTTERFAT, PROTEIN, AND OTHER SOLIDS. THE REPORT
16 OF ANY HANDLER WHO HAS NOT MADE PAYMENTS REQUIRED
17 PURSUANT TO SECTION 1051.71 FOR THE PRECEDING
18 MONTH, SHALL NOT BE INCLUDED IN THE COMPUTATION OF
19 THE PRODUCER COMPONENT PRICES, AND SUCH HANDLER'S
20 REPORT SHALL NOT BE INCLUDED IN THE COMPUTATION
21 FOR SUCCEEDING MONTHS UNTIL THE HANDLER HAS MADE
22 FULL PAYMENT OF OUTSTANDING MONTHLY OBLIGATIONS.
23 SUBJECT TO THE CONDITIONS OF THIS PARAGRAPH, THE
24 MARKET ADMINISTRATOR SHALL COMPUTE THE PRODUCER
25 COMPONENT PRICES IN THE FOLLOWING MANNER:

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(A) COMBINE INTO ONE TOTAL, THE VALUES COMPUTED PURSUANT TO SECTION 1050.60 FOR ALL HANDLERS REQUIRED TO FILE REPORTS PRESCRIBED IN SECTION 1051.50;

(A.1) SUBTRACT THE VALUE OF THE QUOTA PREMIUM FOR THE MONTH AS REPORTED TO THE MARKET ADMINISTRATOR BY CDFA.

(B) SUBTRACT THE TOTAL VALUES OBTAINED BY MULTIPLYING EACH HANDLER'S TOTAL POUNDS OF PROTEIN, OTHER SOLIDS, AND BUTTERFAT CONTAINED IN THE MILK FOR WHICH AN OBLIGATION WAS COMPUTED PURSUANT TO SECTION 1051.60, BY THE PROTEIN PRICE, OTHER SOLIDS PRICE, AND THE BUTTERFAT PRICE, RESPECTIVELY.

(C) ADD AN AMOUNT EQUAL TO NOT LESS THAN ONE HALF OF THE UNOBLIGATED BALANCE IN THE PRODUCER-SETTLEMENT FUND.

(D) DIVIDE THE RESULTING AMOUNT BY THE SUM OF THE FOLLOWING FOR ALL HANDLERS INCLUDED IN THESE COMPUTATIONS:

(1) THE TOTAL HUNDREDWEIGHT OF PRODUCER MILK; AND

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(2) THE TOTAL HUNDREDWEIGHT FOR WHICH A VALUE IS
COMPUTED PURSUANT TO SECTION 1051.6(G); AND

(E) SUBTRACT NOT LESS THAN 4 CENTS NO MORE THAN --
NOR MORE THAN 5 CENTS FROM THE PRICE COMPUTED
PURSUANT TO PARAGRAPH (E) OF THIS SECTION. THE
RESULT SHALL BE KNOWN AS THE PRODUCER PRICE
DIFFERENTIAL FOR THE MONTH (APPLICABLE IN SECTION
1000.76(A)(2)).

(F) THE PRODUCER BUTTERFAT, PROTEIN AND OTHER
SOLID'S PRICES, SHALL BE THE RESULT OF THE
FOLLOWING COMPUTATIONS:

(1) THE PERCENTAGE CONTRIBUTION THAT THE VALUE OF
BUTTERFAT, PROTEIN, AND OTHER SOLIDS MAKE TO THE
VALUE OF THE CLASS III COMPONENTS TO PRODUCERS,
SHALL BE COMPUTED AND ANNOUNCED BY THE MARKET
ADMINISTRATOR ON OR BEFORE JANUARY 1ST OF THE YEAR
FOR WHICH THE PERCENTAGES WILL BE APPLICABLE.
THE PERCENTAGES WILL BE COMPUTED AS AN AVERAGE
BASED ON THE PRIOR FISCAL YEAR OF DECEMBER 1ST,
THROUGH NOVEMBER 30TH.

(2) THE PRODUCER BUTTERFAT PRICE SHALL BE THE
RESULT OF ADDING THE PRICE COMPUTED IN SECTION
1000.50(1), TO THE RESULT OF MULTIPLYING THE

1 PERCENTAGE OF BUTTERFAT CONTRIBUTION ANNOUNCED IN
2 PARAGRAPH (F)(1) BY THE PRODUCER PRICE
3 DIFFERENTIAL VALUE AND DIVIDING THE RESULT BY THE
4 HANDLER'S TOTAL POUNDS OF BUTTERFAT CONTAINED IN
5 THE MILK, FOR WHICH AN OBLIGATION WAS COMPUTED
6 PURSUANT TO SECTION 1050.60, AND ROUNDED TO THE
7 FOURTH DECIMAL PLACE.

8 JUDGE CLIFTON: LET ME STOP YOU THERE AND I NEED
9 MR. BESHORE'S HELP. WE'RE AT THE TOP OF PAGE 22, MR. BESHORE,
10 AND WE'RE IN 2, AND I THINK THAT THAT 1000.50 MIGHT BE L.

11 MR. BESHORE: IT IS L, I BELIEVE.

12 JUDGE CLIFTON: YOU KNOW WHEN WE TYPE THINGS, WE CAN'T TELL
13 BY LOOKING AT THEM WHETHER THEY ARE A 1 OR AN L.

14 MR. BESHORE: YEAH, DEPENDING ON WHAT FONT YOU ARE USING
15 AND SUCH. SO I THINK THAT IS L AND WE SHOULD HAVE IT SO
16 REFLECTED IN THE TRANSCRIPT.

17 JUDGE CLIFTON: WOULD YOU READ AGAIN, MR. WEGNER, TOP OF
18 PAGE 22, BEGINNING WITH PARAGRAPH THAT HAS PARENTHESSES 2, CLOSE
19 PARENTHESSES?

20 MR. WEGNER: VERY GOOD.

21 (2) THE PRODUCER BUTTERFAT PRICE SHALL BE THE
22 RESULT OF THE ADDING THE PRICE COMPUTED IN SECTION
23 1000.50(L) TO THE RESULT OF MULTIPLYING THE
24 PERCENTAGE OF BUTTERFAT CONTRIBUTION ANNOUNCED IN
25 PARAGRAPH (F)(1) BY THE PRODUCER PRICE

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DIFFERENTIAL VALUE, AND DIVIDING THE RESULT BY THE
HANDLER'S TOTAL POUNDS OF BUTTERFAT CONTAINED IN
THE MILK FOR WHICH AN OBLIGATION WAS COMPUTED
PURSUANT TO SECTIONS 1050.60 AND ROUNDED TO THE
FOURTH DECIMAL PLACE.

(3) THE PRODUCER PROTEIN PRICE SHALL BE THE RESULT
OF ADDING THE PRICE COMPUTED IN SECTION 1000.50(N)
TO THE RESULT OF MULTIPLYING THE PERCENTAGE
PROTEIN CONTRIBUTION ANNOUNCED IN PARAGRAPH (F)(1)
BY THE PRODUCER PRICE DIFFERENTIAL VALUE, AND
DIVIDING THE RESULT BY THE HANDLER'S TOTAL POUNDS
OF PROTEIN CONTAINED IN THE MILK, FOR WHICH AN
OBLIGATION WAS COMPUTED PURSUANT TO SECTION
1051.60 AND ROUNDED TO THE FOURTH DECIMAL PLACE.

(4) THE PRODUCER OTHER SOLIDS PRICE SHALL BE THE
RESULT OF ADDING THE PRICE COMPUTED IN SECTION
1000.50(O) TO THE RESULTS OF MULTIPLYING THE
PERCENTAGE OTHER SOLIDS CONTRIBUTION ANNOUNCED IN
PARAGRAPH (F)(1) BY THE PRODUCER PRICE
DIFFERENTIAL VALUE AND DIVIDING THE RESULT BY THE
HANDLER'S TOTAL POUNDS OF OTHER SOLIDS CONTAINED
IN THE MILK FOR WHICH AN OBLIGATION WAS COMPUTED
PURSUANT TO SECTION 1051.60 AND ROUNDED TO THE
FOURTH DECIMAL PLACE.

BY MR. BESHORE:

1 Q. IF I COULD INTERRUPT YOU THERE, MR. WEGNER. I WOULD
2 LIKE YOU TO GO BACK TO SUBPART 2 WHERE YOUR, THE LANGUAGE
3 PROPOSES TO DESCRIBE THE PRODUCER BUTTERFAT PRICE. I THINK
4 THERE IS A TYPOGRAPHICAL ERROR IN THE SECTION REFERENCE IN THE
5 NEXT TO THE LAST LINE WHICH SAYS SECTION 1050.60. SHOULD THAT
6 NOT BE 1051?

7 A. SHOULD BE. WOULD YOU LIKE ME TO READ THAT AGAIN?

8 Q. YEAH, COULD YOU READ THAT WITH THE CORRECT REFERENCE,
9 IF YOU WOULD, PLEASE?

10 MR. WEGNER:

11 (2) THE PRODUCER BUTTERFAT PRICE SHALL BE THE
12 RESULT OF ADDING THE PRICE COMPUTED IN SECTION
13 1000.50(L) TO THE RESULT OF MULTIPLYING THE
14 PERCENTAGE BUTTERFAT CONTRIBUTION ANNOUNCED IN
15 PARAGRAPH (F)(1) BY THE PRODUCER PRICE
16 DIFFERENTIAL VALUE AND DIVIDING THE RESULT BY THE
17 HANDLER'S TOTAL POUNDS OF BUTTERFAT CONTAINED IN
18 THE MILK FOR WHICH AN OBLIGATION WAS COMPUTED
19 PURSUANT TO SECTION 1051.60 AND ROUNDED TO THE
20 FOURTH DECIMAL PLACE.

21 JUDGE CLIFTON: LET ME STOP YOU THERE. AND I WOULD LIKE
22 MS. FRISIUS TO MAKE THAT CORRECTION ON THE RECORD COPIES, SO
23 WERE YOU JUST SHOWING HER, MR. BESHORE, WHERE?

24 MR. BESHORE: IN PART. WE WERE ACTUALLY DISCUSSING WHETHER
25 THE REFERENCES TO SECTION 1000 IN THIS SECTION OF TEXT WAS

1 CORRECT OR NEEDED -- AND I BELIEVE THAT IT IS. WE'RE USING THE
2 PART 1000 THERE, AND THAT IS CORRECT. BUT WHERE WE WERE
3 REFERENCING THE PARTICULAR LANGUAGE ON OUR PROPOSED ORDER, IT
4 SHOULD BE 51 RATHER THAN, AS IT IS PUBLISHED IN THE HEARING
5 NOTICE, RATHER THAN 50, WHICH WE HAD USED IN SOME OF OUR
6 EARLIER SUBMISSIONS TO THE DEPARTMENT.

7 JUDGE CLIFTON: ALL RIGHT. SO MS. FRISIUS, ON PAGE 22, ON
8 YOUR TWO RECORD COPIES, IN THE PARAGRAPH THAT STARTS WITH
9 PARENTHESES, 2, CLOSE PARENTHESES -- IN THE NEXT TO THE LAST
10 LINE OF THAT PARAGRAPH -- DON'T WRITE ON THE RECORD COPY YET, I
11 JUST WANT TO BE SURE.

12 MR. BESHORE: I'M SORRY, YOUR HONOR.

13 JUDGE CLIFTON: THAT'S OKAY. SO IS IT ALL RIGHT IF I TELL
14 MS. FRISIUS TO MAKE THAT, WHERE IT SAYS, CAPITAL S, SECTION,
15 RIGHT NOW THE PRINTED PAGE SAYS 1050.60, I'M GOING TO ASK HER
16 TO STRIKE THROUGH THOSE NUMBERS AND INSTEAD MAKE THEM SAY
17 1051.60,

18 MR. BESHORE: WE WOULD LIKE THE RECORD COPY OF [EXHIBIT 34](#)
19 TO BE SO CORRECTED, YES.

20 JUDGE CLIFTON: VERY GOOD. ALL RIGHT. AND AS WE GO ALONG,
21 YOU KNOW, IF ANYBODY DISCOVERS AN ERROR THAT NEEDS TO BE
22 CORRECTED, WE CAN STILL DO IT. IT'S BEST IF WE DO IT WHILE THE
23 WITNESS IS TESTIFYING ABOUT THE EXHIBIT, BUT WE COULD EVEN DO
24 IT LATER. BUT ONCE IT'S BEEN TURNED OVER TO THE COURT REPORTER
25 TO BE SCANNED AND PUT UP ON THE WEBSITE, IT BECOMES MORE

1 PROBLEMATIC. IF WE WERE TO MAKE CORRECTIONS AFTER THAT HAD
2 BEEN DONE, I THINK WE WOULD PROBABLY END UP WITH AN ADDITION TO
3 THE WEBSITE THAT SHOWS THE CORRECTION, BUT WE WOULDN'T PROBABLY
4 TAKE DOWN WHAT WE HAD ALREADY POSTED.

5 MR. BESHORE: BEFORE WE FINALLY OFFER [EXHIBIT 34](#), THERE'S
6 ONLY -- THERE WILL BE A BREAK HERE AT SOME POINT, I WANT TO
7 JUST DOUBLE CHECK THOSE REFERENCES IN THE DOCUMENT, PRIOR
8 REFERENCES, FOR THE POSSIBILITY THAT THERE'S ANOTHER
9 INADVERTENT 1050 INSTEAD OF 1051.

10 JUDGE CLIFTON: VERY GOOD.

11 MS FRISIUS: YOUR HONOR?

12 JUDGE CLIFTON: YES, MS. FRISIUS?

13 MS. FRISIUS: DO YOU WANT ME TO MAKE THE CORRECTION TO 35
14 WHERE THE NUMBER 1.1673 SHOULD HAVE BEEN, 1.7672?

15 MR. BESHORE: WE WOULD REQUEST THAT.

16 JUDGE CLIFTON: THAT IS AN EXCELLENT SUGGESTION. THANK
17 YOU. SO THAT WAS ON THE LAST PAGE OF [EXHIBIT 35](#). YES, PLEASE.

18 MR. BESHORE: THANK YOU.

19 BY MR. BESHORE:

20 Q. ARE WE READY TO RESUME AND CONCLUDE YOUR TESTIMONY IN
21 READING PREPARED TESTIMONY IN [EXHIBIT 34](#)?

22 A. I'M READY.

23 Q. DO YOU KNOW WHERE YOU WERE WHEN WE LEFT OFF?

24 A. I KNOW WHERE I AM.

25 Q. EXCELLENT, YOU ARE BETTER THAN THE REST OF US PERHAPS.

1 GO AHEAD.

2 MR. WEGNER:

3 WE PROPOSE THE FOLLOWING LANGUAGE FOR SECTION 1051.62,
4 ANNOUNCEMENT OF PRODUCER PRICES:

5 1051.62 ANNOUNCEMENT OF PRODUCER PRICES.

6 ON OR BEFORE THE 14TH DAY AFTER THE END OF EACH
7 MONTH, THE MARKET ADMINISTRATOR SHALL ANNOUNCE
8 PUBLICLY THE FOLLOWING PRICES AND INFORMATION:

9

10 (A) THE PRODUCER PROTEIN PRICE;

11 (A1) THE QUOTA PREMIUM FOR NONFAT SOLIDS;

12 (B) THE PRODUCER OTHER SOLIDS PRICE;

13 (C) THE PRODUCER BUTTERFAT PRICE; AND

14 (D) THE STATISTICAL UNIFORM PRICE FOR NON-QUOTA
15 MILK CONTAINING 3.5 PERCENT BUTTERFAT, SHALL BE
16 THE SUM OF THE PRODUCER PROTEIN PRICE, MULTIPLIED
17 BY 2.9915, THE PRODUCER OTHER SOLIDS PRICE,
18 MULTIPLIED BY 5.6935, AND THE PRODUCER BUTTERFAT
19 PRICE, MULTIPLIED BY 3.5.

20 BY MR. BESHORE:

21 Q. NOW, IN THE TEXT IN THE DOCUMENT, THE DATE ON THE FIRST
22 LINE OF PROPOSED 1051.62 ANNOUNCEMENT OF PRODUCER PRICES IS
23 BOLDED. WAS THAT INTENTIONAL?

24 A. I BELIEVE IT WAS FOR OUR PURPOSES, BUT I DON'T KNOW IF
25 IT NEEDS TO BE.

1 Q. OKAY. BUT FOR OUR PURPOSES, IT WAS MEANT TO CALL
2 ATTENTION TO A MODIFICATION OF THAT DATE FROM THE DATE PROPOSED
3 IN THE HEARING NOTICE; IS THAT CORRECT?

4 A. CORRECT.

5 Q. OKAY. AND DR. ERBA IS GOING TO DISCUSS THAT MORE
6 LATER, I BELIEVE?

7 A. YES, DR. ERBA IS GOING TO DISCUSS THAT MORE, LATER.

8 Q. OKAY. THANK YOU.

9 JUDGE CLIFTON: HE'S GOT ONE MORE PAGE.

10 MR. BESHORE: I AM PREPARED TO HAVE HIM READ THE FINAL
11 PAGE.

12 MR. WEGNER:

13 CONCLUSION

14 PROPOSAL 1 INCLUDES THE UNIFORM PROVISIONS AS PRESENTED
15 IN MY TESTIMONY, AND ALSO PRESENTED BY SEVERAL USDA WITNESSES.
16 ADDITIONALLY, WE ARE PROPOSING THE INCORPORATION OF THE
17 CALIFORNIA ALLOWANCE FOR FORTIFICATION OF FLUID MILK PRODUCTS
18 AND A MINOR MODIFICATION IN THE PPD AS I DESCRIBED. I WILL NOW
19 ANSWER ANY QUESTIONS.

20 MR. BESHORE: I WOULD LIKE TO PROPOSE BEFORE MR. WEGNER
21 ANSWERS POSSIBLY A COUPLE OF QUESTIONS FROM ME, THAT WE TAKE A
22 MORNING BREAK.

23 JUDGE CLIFTON: I AGREE. IT'S ALMOST 11:00.

24 PLEASE BE BACK AND READY TO GO AT 11:15. 11:15.

25 (WHEREUPON, A BREAK WAS TAKEN.)

1 JUDGE CLIFTON: BACK ON RECORD AT 11:15. MR. BESHORE?

2 MR. BESHORE: THANK YOU, YOUR HONOR. MARVIN BESHORE.

3 BY MR. BESHORE:

4 Q. MR. WEGNER, I HAVE JUST ONE QUESTION OR TWO BEFORE WE
5 CONCLUDE YOUR DIRECT EXAMINATION. YOU INDICATED IN YOUR
6 TESTIMONY THAT LAND O'LAKES HAS SEVERAL MILK MANUFACTURING
7 PLANTS IN CALIFORNIA?

8 A. CORRECT.

9 Q. OKAY. DO YOU UNDERSTAND THAT PROPOSAL 1, IF ADOPTED,
10 WOULD INCREASE THE PRICES APPLICABLE TO THOSE PLANTS FOR THE
11 MILK THEY ACQUIRE AND PROCESS?

12 A. YES.

13 Q. AND IS THAT ACCEPTABLE TO LAND O'LAKES?

14 A. YES, IT IS.

15 Q. DOES LAND O'LAKES HAVE MANUFACTURING PLANTS, MILK
16 MANUFACTURING PLANTS IN OTHER PARTS OF THE COUNTRY?

17 A. YES, LAND O'LAKES DOES.

18 Q. WHERE?

19 A. IN THE UPPER MIDWEST. WE HAVE A CHEESE PLANT IN KEELE,
20 WISCONSIN, AND WE HAVE A CHEESE PLANT IN MELROSE, MINNESOTA.
21 WE ALSO HAVE A BUTTER POWDER PLANT IN CARLISLE, PENNSYLVANIA.

22 Q. LET'S TALK ABOUT THE CHEESE PLANTS IN THE UPPER
23 MIDWEST. DO THOSE PLANTS EXPERIENCE COSTS OF RAW MILK THAT ARE
24 AS REFLECTED IN THE MAILBOX PRICES?

25 A. YES, THEY DO.

1 Q. OKAY. AND SO THE PRICES THAT THEY PAY FOR THEIR RAW
2 MILK TO MANUFACTURE CHEESE ARE SUBSTANTIALLY IN EXCESS OF THE
3 MINIMUM FEDERAL ORDER PRICE, WHICH IS, IN TURN, SUBSTANTIALLY
4 IN EXCESS OF THE PRICE APPLICABLE TO CHEESE MANUFACTURERS IN
5 CALIFORNIA, CORRECT?

6 A. YES, THAT'S CORRECT.

7 Q. OKAY. DO THOSE PLANTS IN THE UPPER MIDWEST COMPETE
8 WITH CHEESE MANUFACTURERS IN CALIFORNIA?

9 A. YES, WE DO.

10 Q. THEN THE SAME -- I WOULD ASK THE SAME SORT OF THE SAME
11 SET OF QUESTIONS WITH RESPECT TO THE BUTTER POWDER PLANT. AND
12 WHERE DID YOU SAY THAT WAS LOCATED?

13 A. CARLISLE, PENNSYLVANIA.

14 Q. SO DOES THAT PLANT OR ITS, IS IT SUBJECT TO MINIMUM
15 FEDERAL ORDER PRICES, THE NATIONAL UNIFORM CLASS IV PRICES?

16 A. YES, IT IS.

17 Q. OKAY. AND DOES IT COMPETE IN THE NATIONAL MARKET WITH
18 ITS PRODUCTS?

19 A. YES.

20 Q. INCLUDING COMPETING WITH THE PRODUCTS SOURCED IN
21 CALIFORNIA?

22 A. YES, CARLISLE DOES COMPETE WITH PLANTS THAT ARE LANDING
23 MILK OR LANDING BUTTER AND POWDER INTO PENNSYLVANIA.

24 Q. SOURCED IN CALIFORNIA?

25 A. SOURCED IN CALIFORNIA BUT COMING INTO THE PENNSYLVANIA

1 MARKETPLACE.

2 Q. THANK YOU. NO FURTHER QUESTIONS FOR MR. WEGNER.

3 I WOULD LIKE TO, IF I MAY, AT THIS POINT, REQUEST THAT
4 A COUPLE OF TYPOGRAPHICAL REFERENCES TO 15051 OR 51, OR THAT
5 SORT THAT WE HAVE IDENTIFIED, BE CORRECTED ON PROPOSED EXHIBITS
6 34 AND 35.

7 AND FIRST GO TO PAGE 17 OF [EXHIBIT 34](#), AND ABOUT THE
8 MIDDLE OF THE PAGE, THIS IS PROPOSED SECTION 1051.60 ON PAGE 17
9 OF [EXHIBIT 34](#), PROPOSED SECTION PAREN A, CLASS I VALUE, SUBPART
10 3, THE FIFTH LINE THERE'S A REFERENCE TO 1050.53, WHICH SHOULD
11 BE 1051.53.

12 JUDGE CLIFTON: MR. BESHORE, WHEN HE GOT TO THAT SECTION I
13 WONDERED WHAT THAT LITTLE APOSTROPHE WAS FOR BEFORE THE NUMBER.
14 IS THAT ALSO SOMETHING WE CAN STRIKE?

15 MR. BESHORE: WE COULD EITHER STRIKE OR INSERT THE WORD
16 "SECTION," WHICH I THINK -- I THINK THE APOSTROPHE WAS THE
17 RESULT OF A SOFTWARE CONVERSION FROM A SECTION, SO I WOULD
18 PROPOSE THAT IT BE REPLACED WITH THE WORD "SECTION."

19 JUDGE CLIFTON: ALL RIGHT. SO IF WE STRIKE -- AND I'M
20 SAYING THIS OUT LOUD SO MS. FRISIUS CAN DO IT ON THE RECORD
21 COPIES -- IF WE STRIKE "' (SPACE) 1050.53." -- AND THEN THE
22 WORD "IN," IF WE STRIKE ALL OF THAT, AND WE WRITE OUT IN THE
23 MARGIN INSTEAD "SECTION."

24 MR. BESHORE: "1051.53."

25 JUDGE CLIFTON: AND THEN THE WORD "IN."

1 MR. BESHORE: YES.

2 JUDGE CLIFTON: GOOD. LET'S DO IT THAT WAY SO THERE'S ROOM
3 TO WRITE.

4 MR. BESHORE: THANK YOU, YOUR HONOR.

5 AND THEN ON PAGE 21 OF [EXHIBIT 34](#), TOWARD THE TOP OF
6 THE PAGE, AND SUBSECTION "(A)", THE SECOND LINE, "1050.60"
7 SHOULD BE "1051.60", THAT'S THE SECOND LINE IN SUBSECTION (A)
8 ON PAGE 21.

9 JUDGE CLIFTON: I SEE. OKAY. YOU HAVE -- FINALLY I FOUND
10 IT -- SO IT'S THE "(A)" NEAR THE TOP, AND IT'S THE SECOND LINE,
11 AND WE'LL STRIKE "1050.60" WE'LL REPLACE THAT WITH "1051.60".

12 MR. BESHORE: YES. AND IN THE NEXT LINE BELOW THAT, ON THE
13 SAME PAGE, THE -- THIS IS A DIFFERENT REFERENCE ERROR,
14 TYPOGRAPHICAL ERROR. SECTION 1051.50 NOW, SHOULD BE ".30".

15 JUDGE CLIFTON: SO STILL IN (A) PARAGRAPH, BUT THE VERY
16 LAST NUMBER WE'RE GOING TO STRIKE AND WE'RE GOING TO WRITE
17 "1051.30;".

18 MR. BESHORE: YES. AND THEN I HAVE ONE CORRECTION OF THE
19 SIMILAR -- ONE CORRECTION IN [EXHIBIT 35](#), I BELIEVE, PAGE 6. I
20 NEED TO CONSULT WITH MR. HOLLON HERE A MINUTE. OKAY. ON PAGE
21 6 OF [EXHIBIT 34](#), THE VERY LAST LINE, "1050.6", ETCETERA SHOULD
22 BE "1051". I'M SORRY, [EXHIBIT 35](#).

23 JUDGE CLIFTON: OKAY. SO -- AND I'M SAYING IT OUT LOUD
24 ALSO FOR MY AND MS. FRISIUS' BENEFIT. WE'RE IN [EXHIBIT 35](#),
25 WE'RE ON PAGE 6, WE FOUND THE VERY LAST LINE OF THE PAGE, AND

1 WE ARE STRIKING "1050.60(H)" WE'RE REPLACING THAT WITH
2 "1051.60(H)".

3 MR. BESHORE: YES. AND NEAR THE MIDDLE OF THE SAME PAGE,
4 FIRST LINE UNDER "SECTION 1051.85 ASSESSMENT FOR ORDER
5 ADMINISTRATION" WE HAVE THAT APOSTROPHE, WHICH SHOULD BE THE
6 WORD "SECTION" AND THEN "1050" SHOULD BE "1051".

7 JUDGE CLIFTON: VERY GOOD. SO -- AND I'M WRITING "SECTION"
8 WITH A CAPITAL S, IS THAT FINE WITH YOU? THAT SEEMS TO BE
9 CONSISTENT WITH THE OTHER PLACES.

10 MR. BESHORE: THAT IS THE CONVENTION THAT WE ATTEMPTED TO
11 FOLLOW.

12 JUDGE CLIFTON: SO ON PAGE 6 OF [EXHIBIT 35](#), MIDDLE OF THE
13 PAGE, THE SENTENCE "ON OR BEFORE THE PAYMENT RECEIPT DATE
14 SPECIFIED UNDER" WILL THEN HAVE THE REST OF THAT LINE STRICKEN,
15 AND INSERTED INSTEAD WILL BE "S" "SECTION 1051.71,".

16 MR. BESHORE: YES. AND THANK YOU, YOUR HONOR, AND EVERYONE
17 FOR YOUR INDULGENCE WITH THOSE CORRECTIONS. AND WITH THAT
18 DONE, I WOULD CONCLUDE MY DIRECT EXAMINATION OF MR. WEGNER'S
19 DIRECT TESTIMONY, AND MOVE FOR THE ADMISSION OF THE EXHIBITS 34
20 AND 35.

21 JUDGE CLIFTON: IS THERE ANYONE THAT WANTS TO ASK QUESTIONS
22 OF MR. WEGNER WITH REGARD TO [EXHIBIT 34](#) BEFORE DETERMINING
23 WHETHER YOU HAVE AN OBJECTION TO IT BEING ADMITTED INTO
24 EVIDENCE? THERE IS NO ONE. IS THERE ANY OBJECTION TO THE
25 ADMISSION INTO EVIDENCE OF [EXHIBIT 34](#)? THERE IS NONE. EXHIBIT

1 34 IS ADMITTED INTO EVIDENCE.

2 (THEREAFTER, EXHIBIT 34 WAS
3 RECEIVED INTO EVIDENCE.)

4 JUDGE CLIFTON: DOES ANYONE WISH TO QUESTION MR. WEGNER
5 REGARDING EXHIBIT 35 BEFORE DETERMINING WHETHER YOU HAVE ANY
6 OBJECTIONS TO IT BEING ADMITTED INTO EVIDENCE? THERE IS NO
7 ONE. ARE THERE ANY OBJECTIONS TO THE ADMISSION INTO EVIDENCE
8 OF EXHIBIT 35? THERE ARE NONE. EXHIBIT 35 IS ADMITTED INTO
9 EVIDENCE.

10 (THEREAFTER, EXHIBIT 35 WAS
11 RECEIVED INTO EVIDENCE.)

12 JUDGE CLIFTON: WHO WOULD LIKE TO ASK THE FIRST QUESTIONS,
13 CROSS-EXAMINATION QUESTIONS, OF MR. WEGNER?

14 CROSS-EXAMINATION

15 BY MR. ENGLISH:

16 Q. CHIP ENGLISH.

17 GOOD MORNING, MR. WEGNER.

18 A. GOOD MORNING, MR. ENGLISH.

19 Q. SO EXCEPT FOR MAYBE THE TEDIOUSNESS OF READING ALL THAT
20 LANGUAGE, IT WAS SOME OF MY VIEW YOU SOMEHOW DREW THE LONG
21 STRAW AS OPPOSED TO THE SHORT STRAW, IN THAT THERE'S A NUMBER
22 OF AREAS OF AGREEMENT, I THINK, BETWEEN THE DAIRIES IN
23 CALIFORNIA AND THE COOPERATIVES IN THE PROPOSALS. THERE'S
24 AREAS OF DISAGREEMENT, BUT THERE'S A NUMBER OF AREAS OF
25 AGREEMENT, CORRECT?

1 A. TO MY WAY OF THINKING, YES.

2 Q. OKAY. AND I MEAN, OBVIOUSLY YOU ARE FAMILIAR WITH YOUR
3 PROPOSAL, ARE YOU FAMILIAR WITH THE DAIRY INSTITUTE OF
4 CALIFORNIA PROPOSAL?

5 A. NOT NEARLY AS FAMILIAR.

6 Q. OKAY. BUT YOU CERTAINLY LOOKED AT IT?

7 A. I HAVE LOOKED AT IT, YES.

8 Q. AND WOULD IT BE FAIR TO SAY THAT IF YOU LOOK AT
9 EXHIBIT 1 AND YOU SEE REFERENCES TO PART 1000 IN BOTH PROPOSAL
10 1 AND PROPOSAL 2, THAT, IN ESSENCE, WE ARE IN AGREEMENT BECAUSE
11 WE'RE BOTH POINTING BACK TO THE UNIFORM PROVISIONS, CORRECT?

12 A. I WOULD AGREE WITH THAT.

13 Q. SO IF YOU WILL ACCEPT ANY REPRESENTATION FOR A MOMENT,
14 YOU ARE WELCOME TO LOOK THROUGH, I THINK WE HAVE SOME MODEST
15 WORD DIFFERENCES OTHERWISE SPECIFIED IN SECTION, 1 BUT
16 OTHERWISE AS I LOOKED AT IT, WE HAVE IDENTICAL PROVISIONS FOR
17 SECTIONS 2 THROUGH 6; SECTION 8; SECTIONS 15 THROUGH 19;
18 SECTIONS 25 TO 28; SECTIONS 52, 70, 77 AND 78, AND 86.

19 A. I WOULD TAKE YOUR RECOMMENDATION THAT THERE HAVE BEEN.

20 JUDGE CLIFTON: I'M SORRY, WOULD YOU READ THEM AGAIN?

21 MR. ENGLISH: YES. THERE'S, IN SECTION 1 WE HAVE ADDED THE
22 WORDS "UNLESS OTHERWISE SPECIFIED" BUT OTHER THAN THAT,
23 SECTION 1 IS IDENTICAL. AND I'M REPRESENTING THAT THE LANGUAGE
24 AS IN SECTIONS 2 THROUGH 6; 8; 15 THROUGH 19; AND I THINK
25 THERE'S ONE RESERVED THERE, BUT 15 THROUGH 19; 25 THROUGH 28;

1 52; 70; 77 AND 78; 86, THAT WE ARE ENTIRELY IN AGREEMENT.

2 JUDGE CLIFTON: AND IN SECTION 1 THE LANGUAGE YOU ADDED WAS
3 "UNLESS OTHERWISE"--

4 MR. ENGLISH: "UNLESS OTHERWISE SPECIFIED" AND THAT'S IN
5 THE FIRST SENTENCE. AND I DON'T THINK THAT MADE ANY REAL
6 DIFFERENCE IN THE MEANING, BUT THERE IT IS.

7 BY MR. ENGLISH:

8 Q. NOW, YOU -- WHEN I WENT THROUGH THE LIST AND I TRIED TO
9 CHECK IT ALL, I NOTED THAT THERE WAS ONE SECTION THAT YOUR
10 PROPOSAL 1, AND INDEED YOUR TESTIMONY, REFERENCES 1000, AND
11 THAT IS .76 WHICH IS THE "PARTIALLY REGULATED PLANT LANGUAGE"
12 BUT YOU DID NOT TESTIFY TO THAT, CORRECT?

13 A. I DID NOT TESTIFY -- I HAVE TO DOUBLE CHECK MY NOTES
14 HERE -- I DID NOT TESTIFY TO 76, YOU ARE CORRECT.

15 Q. SO ACTUALLY AS A PRECURSOR, ARE YOU GOING TO BE UP ON
16 THE STAND AGAIN IN THE PROPONENT'S CASE IN CHIEF?

17 A. MY PLANS ARE DICTATED BY THE COUNSEL. I PRESUME THAT
18 I'LL BE FINISHED, BUT WE'LL SEE.

19 Q. OKAY. BUT AS FAR AS YOU KNOW, THIS IS -- SO IN OTHER
20 WORDS, THIS IS MY ONE CHANCE, IN ESSENCE, AS FAR AS YOU KNOW
21 TODAY, FOR ME TO CROSS-EXAMINE YOU?

22 A. I BELIEVE THAT MAY BE TRUE.

23 Q. OKAY. AND THAT'S, OBVIOUSLY, THAT THERE'S NO
24 OBLIGATION THERE.

25 DO YOU KNOW WHO, OR CAN YOU AT LEAST SAY, I DON'T HAVE

1 TO HAVE A NAME, IS THERE A SUBSEQUENT WITNESS WHO WILL TESTIFY
2 ABOUT SECTION 76?

3 A. I BELIEVE THAT WILL BE THE CASE, BUT I'M NOT SURE. WE
4 WOULD BE INTERESTED IN KNOWING WHAT YOUR QUESTIONS ARE IN
5 REGARD TO 76, MR. ENGLISH.

6 Q. WELL, FOR THE MOMENT, I MEAN, I'LL CERTAINLY GET THERE,
7 AND IF YOU WANT ME TO ASK YOU, I'LL ASK YOU, I WAS TRYING TO
8 FIGURE OUT WHO THE RIGHT WITNESS WAS. BUT FOR NOW, I'M JUST
9 TRYING TO UNDERSTAND WHERE THIS FIT, BECAUSE THAT SECTION AT
10 LEAST, I MIGHT HAVE THOUGHT, GIVEN THAT YOU'RE TALKING ABOUT
11 UNIFORM PROVISIONS, COULD HAVE BEEN IN YOUR TESTIMONY. I'M
12 NOT, I'M NOT -- THIS IS NOT A CRITICISM, I AM JUST SAYING I
13 MIGHT HAVE THOUGHT THAT.

14 A. SURE.

15 Q. ALL RIGHT. AND IF YOU COULD TURN TO PAGE 11 OF YOUR
16 TESTIMONY FOR A MOMENT, IN SECTION 14, I EXPLICITLY DID NOT
17 INCLUDE 14 IN MY LIST, BUT LET'S JUST LOOK AT THAT FOR ONE
18 MOMENT. ON PAGE 11, "OTHER SOURCE MILK". AND I THINK IT IS A
19 RELATIVELY MODEST POINT AND A VERY MODEST DIFFERENCE, BUT IN
20 "OTHER SOURCE MILK" THE LANGUAGE THAT YOU HAVE FOR 1051.14, BY
21 POINTING BACK TO PART 1000 IN PARAGRAPH (A), THE LAST LINE
22 SAYS, "SECTIONS 1000.9(C) AND 1135.11." DO YOU SEE THAT?

23 A. I SEE THAT.

24 Q. OKAY. ARE YOU AWARE THAT THE REFERENCE TO 1135.11 IS A
25 REFERENCE TO THE WESTERN ORDER?

1 A. I'M AWARE OF THAT.

2 Q. OKAY. AND HOWEVER IT HAPPENED, YOU ARE AWARE THE
3 WESTERN ORDER IS NO LONGER IN EXISTENCE?

4 A. I'M AWARE OF THAT AS WELL.

5 Q. SO WE HAVE ANOTHER DIFFERENCE IN THERE OTHER THAN THAT,
6 BUT THAT IS A DIFFERENCE THAT WE HAVE AND THAT WE HAVE, WE WENT
7 THROUGH AND WE REMOVED REFERENCES TO THE PRIOR ORDER THAT NO
8 LONGER EXISTS. DID YOU UNDERSTAND THAT TO BE THE CASE FROM
9 READING OUR SUBMISSION?

10 A. I THINK I NOTED THAT, YES, AND WE RETAINED IT.

11 Q. NOW, ON PAGES 8 AND 9, TURNING TO THE BOTTOM OF
12 PAGE AND CARRY OVER TO PAGE 9. YOU HAVE QUOTED IN A NUMBER OF
13 SECTIONS, THE REFORM DECISION. AND IN QUOTING FROM THE REFORM
14 DECISION, ARE YOU ADOPTING THAT AS PART OF YOUR TESTIMONY?

15 A. YES, IT'S PART OF MY TESTIMONY.

16 Q. SO BOTTOM OF PAGE 8, AND THE TOP OF PAGE 9, THE
17 SENTENCE READS, "THESE TYPES OF PLANTS HAVE LITTLE IMPACT ON
18 THE REGULATED MARKET, AND NEED NOT BE REGULATED TO ENSURE THE
19 INTEGRITY OF THE REGULATORY PLANT," AND THAT'S REFERRING TO
20 EXEMPT PLANTS, CORRECT?

21 A. CORRECT.

22 Q. SO THERE'S A RECOGNITION THAT IF THE INTEGRITY OF THE
23 PLANT CAN BE MAINTAINED, THERE DOES NOT HAVE TO HAVE REGULATION
24 OF EVERY PLANT, CORRECT?

25 A. THAT APPEARS TO BE THE SENTENCE, YES.

1 Q. AND YOU AGREE WITH THAT?

2 A. I AGREE WITH WHAT'S WRITTEN THERE, YES.

3 Q. SO TURNING NOW TO [EXHIBIT 35](#), AND THE LAST PAGE, WHICH
4 IS YOUR EXHIBIT 3B AND YOUR CALCULATION OF THE PRODUCER
5 COMPONENT PRICES AND PRODUCER PRICE DIFFERENTIAL, I APPRECIATE
6 VERY MUCH YOUR HAVING WALKED THROUGH IT WITH MR. BESHORE.

7 IF I UNDERSTAND IT CORRECTLY, THE TOP TWO LINES OF
8 YELLOW TEXT WITH THE DATES AND THE VALUES, THAT IS ACTUAL DATA
9 FROM THE UPPER MIDWEST FOR DECEMBER 2013, CORRECT?

10 A. CORRECT.

11 Q. AND ONCE YOU GET TO THAT LINE AND THE LAST ITEM OF PPD
12 OF \$0.39, IS THAT WHERE THE UPPER MIDWEST ACTUAL DATA ENDS AND
13 YOUR EXPLANATION OF WHAT WOULD HAPPEN IN CALIFORNIA BEGINS?

14 A. IN PART. JUST RECALL THAT WHEN YOU GET DOWN TO THE
15 CALCULATION BELOW THE CHART, THOSE ARE STILL BASED ON THE
16 ACTUAL VALUES, THAT, BUT FOR CERTAINLY THE SECOND OR THE THIRD
17 ROW THERE IS JUST AN ESTIMATE PROVIDED AS AN EXAMPLE, IT'S NOT
18 BASED, I DIDN'T DO A CALCULATION, MR. ENGLISH, ON THAT ONE. I
19 PULLED THOSE BASED ON SOME ROUGH LOOKING OVER THE COMPONENT
20 SHARES OF A COUPLE OF MONTHS AND CAME UP WITH THESE ROUND
21 NUMBERS TO MAKE IT A LITTLE SIMPLER.

22 Q. RIGHT. AND I UNDERSTAND THAT -- BUT --

23 A. YEAH.

24 Q. I UNDERSTAND, BUT WHAT I'M GETTING AT IS THAT FOR THE
25 UPPER MIDWEST PURPOSES ON THIS PAGE, THE UPPER MIDWEST ANALYSIS

1 OF ACTUAL DATA STOPS WITH THAT PPD CALCULATION OF \$0.39,
2 CORRECT?

3 A. CORRECT.

4 Q. SO THEN STARTING ON THE NEXT SERIES OF LINES, WHERE THE
5 LEFT HAND BOX SAYS, "PERCENTAGE CONTRIBUTION OF BUTTERFAT TO
6 VALUE OF CLASS III COMPONENTS TO PRODUCERS," THAT IS SORT OF
7 YOUR HYPOTHETICAL ANALYSIS, BUT USING ACTUAL NUMBERS DOWN
8 BELOW, OF WHAT YOU'RE TRYING TO EXPLAIN WOULD HAPPEN UNDER
9 SECTION 1051.61 IF IT IS ADOPTED THAT WAY, CORRECT?

10 A. THAT'S CORRECT. HOW TO ALLOCATE THAT VALUE.

11 Q. SO THERE'S -- JUST TO BE CLEAR FOR THE RECORD -- THERE
12 IS NO ORDER PRESENTLY IN MULTIPLE-COMPONENT PRICING THAT DOES
13 THIS CALCULATION STARTING WITH PERCENTAGE OF CONTRIBUTION OF
14 BUTTERFAT, CORRECT?

15 A. CORRECT.

16 Q. OKAY. NOW, DO COMPONENTS REMAIN CONSTANT THROUGHOUT
17 THE YEAR?

18 A. IN WHAT SENSE?

19 Q. IN WHAT SENSE? A COMPONENT, IF A DAIRY, AN INDIVIDUAL
20 DAIRY FARMER'S COMPONENTS, WILL IT REMAIN CONSTANT THROUGHOUT
21 THE YEAR?

22 A. ARE YOU SPEAKING OF THE LEVEL OF THE COMPONENTS,
23 MR. ENGLISH?

24 Q. THE RELATIVE LEVEL OF THE COMPONENTS, YES.

25 A. THEY WILL CHANGE.

1 Q. THEY WILL CHANGE?

2 A. AS I UNDERSTAND, THEY WILL CHANGE.

3 Q. OKAY. BUT YOU HAVE PROPOSED THAT THERE BE AN ANNUAL
4 COMPUTATION BY THE MARKET ADMINISTRATOR, CORRECT?

5 A. CORRECT.

6 Q. OKAY. I GENERALLY DON'T KNOW THE ANSWER TO THIS
7 QUESTION, BUT IF IT IS DONE ANNUALLY, AND THE COMPONENTS CHANGE
8 DURING THE YEAR, COULD, IN ANY GIVEN MONTH, THE ANNUAL
9 CALCULATION DISTORT THE RESULTS AS TO WHAT IS ACTUALLY
10 HAPPENING ON THE FARM?

11 A. WELL, DISTORTION MIGHT BE A STRONG WORD FOR IT. I
12 THINK THAT THERE WOULD BE A DIFFERENCE POTENTIALLY IN TERMS OF
13 THE CONTRIBUTION TO THE CLASS III COMPONENTS IN TOTAL,
14 MR. ENGLISH. I THINK THAT COULD HAPPEN, YES.

15 Q. OKAY. AND SO IF THE COMPONENTS SHIFT DURING THE YEAR,
16 DOES THAT MEAN, FOR RISK MANAGEMENT PURPOSES, THAT THE BASIS
17 WOULD CHANGE DURING YEAR?

18 A. WELL, I THINK IN SOME RESPECTS BY HAVING THE
19 PERCENTAGES FIXED FOR A YEAR, THERE MAY BE LESS IMPACT ON THE
20 BASIS. I GUESS I WOULD ASK YOU IF YOU COULD GIVE ME AN EXAMPLE
21 OF WHERE YOU THINK THE BASIS WOULD START TO MOVE. THERE'S A
22 CERTAIN AMOUNT OF BASIS RISK INHERENT IN ANY OF THE CME
23 CONTRACTS AS A USE, BUT I'M JUST TRYING TO UNDERSTAND, WOULD IT
24 INCREASE IT, WOULD IT LESSEN IT? THERE'S THE POTENTIAL FOR IT.
25 I WOULD AGREE WITH THAT.

1 Q. OKAY. AND THE CURRENT CME DOESN'T, THERE'S, SINCE
2 THERE IS NO OTHER FEDERAL ORDER THAT USES THIS CALCULATION,
3 HOWEVER THE CME MAY BE AFFECTED OR THE PRICING MAY OCCUR, IT
4 DOESN'T PRESENTLY TAKE INTO CONSIDERATION THIS PARTICULAR
5 PROVISION, CORRECT?

6 A. NO, IT DOESN'T TAKE THE COMPONENTS INTO CONSIDERATION
7 AS IS, SO YOU ARE TALKING ABOUT --

8 Q. BUT IN TERMS OF BASIS RISK?

9 A. I GUESS MY POINT IS THAT IT IS DIFFICULT FOR ME TO
10 APPROXIMATE THE INCREASING BASIS RISK AS A RESULT OF THIS PPD
11 ALLOCATION. THAT'S WHAT I'M TRYING TO GET ACROSS.

12 Q. WOULD IT BE FAIR TO SAY YOU HAVEN'T DONE THAT ANALYSIS?

13 A. I HAVE NOT DONE THAT ANALYSIS.

14 Q. OKAY. SO TURNING TO PAGE 17 OF YOUR TESTIMONY,
15 ACTUALLY, IT IS 16 AND 17, I APOLOGIZE.

16 A. UH-HUH.

17 Q. YOU STATED JUST BEFORE YOU QUOTE FROM YOUR LANGUAGE FOR
18 1051.60, AND I'M -- JUST TO BE CLEAR FOR THE RECORD -- I'M NOW
19 TURNING TO THE ISSUE OF FORTIFICATION. OKAY.

20 SO IN THE LAST SENTENCE BEFORE YOU TALK ABOUT PROPOSING
21 THE LANGUAGE, YOU SAY "THE CDFA'S FORTIFICATION ALLOWANCES ARE
22 INCORPORATED IN CLASS I PRICING PROVISIONS," CORRECT?

23 A. I SAY THAT, YES.

24 Q. AND DID YOU DO THAT WORD FOR WORD?

25 A. I DON'T THINK WE PROBABLY DID IT WORD FOR WORD, BUT I,

1 TO BE HONEST, I DID NOT WRITE THE LANGUAGE THAT WENT INTO THIS
2 COMPONENT, OR THIS SECTION OF THE UNIFORM PROVISIONS, BUT THE
3 INTENT WAS TO MIMIC THAT LANGUAGE AND ESSENTIALLY CAPTURE
4 WHAT'S DONE IN THE CURRENT ORDER IN CALIFORNIA REGARDING
5 FORTIFICATION AND THE ALLOWANCE.

6 Q. DO YOU KNOW WHO DID WRITE IT?

7 A. I THINK OUR COUNSEL DID IT IN CONSULTATION WITH THE
8 TEAM.

9 Q. I GUESS THERE WON'T BE ANY CROSS-EXAMINATION
10 OPPORTUNITY THERE.

11 SO GIVEN YOUR KNOWLEDGE OF THE INDUSTRY IN CALIFORNIA,
12 LOOKING AT THE TWO SECTIONS ON PAGE 17 UNDER (A), CLASS I
13 VALUE, III AND IV, WOULD YOU AGREE WITH ME THAT TODAY,
14 EFFECTIVELY EVERYBODY IN CALIFORNIA IS USING THE CONDENSED
15 PRODUCT TO DO FORTIFICATION AND NOT THE DRY SOLIDS?

16 A. MY KNOWLEDGE IS BASED ON, YOU KNOW, DISCUSSIONS WITH
17 CLASS I CUSTOMERS THAT I KNOW. I DON'T HAVE ANY DIRECT
18 KNOWLEDGE OF WHETHER IT'S MORE CONDENSED OR MORE POWDER, BUT IT
19 APPEARS THAT THAT'S MORE OFTEN THE CASE, FROM WHAT I
20 UNDERSTAND. I'M GOING TO STAY AWAY FROM THE ABSOLUTES.

21 Q. THAT'S FINE. I CAN DEAL WITH THAT. THAT'S PERFECTLY
22 FINE. BUT YOU WOULD AGREE THAT AT LEAST IN YOUR EXPERIENCE,
23 CONDENSED IS USED MORE THAN THE DRY SOLIDS FOR FORTIFICATION IN
24 CALIFORNIA?

25 A. MY GENERAL KNOWLEDGE, PUT IT THAT WAY, RATHER THAN

1 EXPERIENCE.

2 Q. OKAY. SO THE LANGUAGE THAT APPEARS ON PAGE 17 IS ON
3 THE PARAGRAPH 4, THE LAST SENTENCE READS, "IN NO CASE SHALL THE
4 DEDUCTION BE LESS THAN ZERO CENTS (\$0.00) NOR MORE THAN NINE
5 AND EIGHTY-SEVEN HUNDREDTHS CENTS (\$.0987)," CORRECT?

6 A. CORRECT.

7 Q. ISN'T IT TRUE THAT THE CURRENT LANGUAGE IN THE
8 CALIFORNIA ORDER IS IT SHALL BE A MAXIMUM OF \$0.987?

9 A. I WILL TAKE YOUR WORD FOR THAT.

10 Q. AND DO YOU KNOW THAT, IN FACT, THAT THAT IS THE ACTUAL
11 CREDIT THAT PEOPLE TAKE, IS THE \$0.987?

12 A. AGAIN, I'LL TAKE YOUR WORD FOR THAT.

13 Q. SO WOULD YOU AGREE THAT PROPOSAL 1 USES BUTTERFAT AND
14 SKIM TO SET THE MONTHLY CLASS 1 MOVER PRICES?

15 A. ASK THAT ONCE MORE? PROPOSAL 1 DOES WHAT AGAIN?

16 Q. IT USES BUTTERFAT AND SKIM VALUES TO SET THE MONTHLY
17 CLASS 1 MOVER PRICES?

18 A. IN TERMS OF THE ADVANCED?

19 Q. YES.

20 A. YES.

21 Q. BUT THE CURRENT CALIFORNIA FARMERS USE BUTTERFAT,
22 SOLIDS, NONFAT, AND THE FLUID CARRIER TO CALCULATE THE MONTHLY
23 CLASS 1 PRICE, CORRECT?

24 A. CORRECT.

25 Q. AND ARE YOU AWARE THAT SOLIDS NONFAT TEST LEVELS IN

1 PRODUCER MILK CAN VARY FOR A NUMBER OF DIFFERENT REASONS?

2 A. I'M AWARE OF THAT.

3 Q. HAVE YOU OR YOUR FELLOW COOPERATIVE PROPONENTS STUDIED
4 WHAT IMPACT YOUR CHANGE IN ADOPTING PROPOSAL 1 IN THE PRICING,
5 WOULD HAVE ON CLASS 1 HANDLERS?

6 A. WE HAVE TRIED TO, AND I THINK WE'RE OPEN TO DISCUSSION
7 ABOUT HOW THIS WOULD MESH AGAINST YOUR PROPOSAL, MR. ENGLISH.
8 THIS WAS AN ATTEMPT TO MIMIC, LIKE I SAID, WHAT WE DO IN
9 CALIFORNIA AND IN INCORPORATE INTO THE FEDERAL ORDER LANGUAGE,
10 SO WE'RE OPEN TO THAT DISCUSSION. WE'RE GOING TO LISTEN TO
11 YOUR PROPOSAL, ABSOLUTELY.

12 Q. OKAY.

13 A. AND WE'RE AWARE THE FLUID CARRIER IS NOT IN OUR
14 PROPOSAL.

15 Q. IF WE WERE ABLE TO SHOW YOU, EITHER OFF THE RECORD OR
16 ON THE RECORD, THAT YOUR PROPOSAL WOULD RESULT IN UNEQUAL RAW
17 PRODUCT COST FOR FULLY REGULATED DISTRIBUTING PLANTS, WOULD
18 THAT BE A FACTOR YOU WOULD CONSIDER FOR LOOKING AT OUR
19 PROPOSAL?

20 A. I THINK THAT WOULD BE SOMETHING WE WOULD DEFINITELY
21 WANT TO BE AWARE OF.

22 Q. THANK YOU. I WANT TO TURN TO PAGE 21 AND FIRST DEAL
23 WITH WHAT I'M SURE IS JUST A NIT, AND I EMPHASIZE I THINK IT IS
24 A NIT BECAUSE I THINK IT IS. IN PARAGRAPH (E), WE'RE NOW IN
25 THE SECTION 61, COMPUTATION PRODUCER COMPONENT PRICES AND

1 PRODUCER PRICE DIFFERENTIAL. AND I COULD EASILY BE
2 MISUNDERSTANDING IT, BUT IN (E), THE FIRST SENTENCE SAYS,
3 "SUBTRACT NOT LESS THAN FOUR CENTS, NO MORE THAN FIVE CENTS,
4 FROM THE PRICE COMPUTED PURSUANT TO PARAGRAPH (E) OF THIS
5 SECTION."

6 SO I, AGAIN, I KNOW IT'S A NIT, MR. BESHORE, I'M JUST
7 TRYING TO UNDERSTAND, AND I DON'T KNOW WHETHER YOU CAN, WANT TO
8 TRY TO EXPLAIN THAT ON THE FLY OR IF YOU WANT TO DO THAT, YOU
9 KNOW, WITH YOUR COUNSEL AFTER BREAK, I JUST WANTED TO KNOW
10 THAT. AND I AGAIN, I RECOGNIZE FULLY IT'S A NIT.

11 A. THE NIT'S NOTED.

12 Q. THANK YOU. NOW, I LISTENED CAREFULLY TO MR. BESHORE
13 YESTERDAY IN RESPONSE TO QUESTIONS FROM THE DEPARTMENT WITH
14 RESPECT TO SORT OF, NOT SO MUCH THE NAMES, WHICH IS FINE, BUT
15 SORT OF THE ORDER OF WITNESSES. AND AS I UNDERSTAND IT, THERE
16 IS GOING TO BE A WITNESS TO TESTIFY, OR TWO WITNESSES, TO
17 TESTIFY ABOUT THE QUOTA PROGRAM, AND YOU WERE LISTED AS TALKING
18 ABOUT THE UNIFORM PROVISIONS.

19 AND I ASK THAT BECAUSE WITH RESPECT TO THE UNIFORM
20 PROVISIONS AND 60, 61, AND 62. SO WHAT WE HAVE HERE ON PAGE 21
21 IN SECTION 61 IS THE FIRST DISCUSSION UNDER (A), (A1), THE
22 LANGUAGE THAT SAYS "SUBTRACT THE VALUE OF QUOTA PREMIUM FOR THE
23 MONTH AS REPORTED TO THE MARKET ADMINISTRATOR BY CDFR." DO YOU
24 SEE THAT LANGUAGE?

25 A. I DO SEE THAT LANGUAGE.

1 Q. AND I'M REALLY NOT LOOKING TO EXTEND CROSS-EXAMINATION.
2 I HAVE TWO SETS OF QUESTIONS; AND THE FIRST ONE IS, THE OVERALL
3 QUOTA PICTURE OF WHY THAT IS THERE, AND I GUESS, GIVEN THE FACT
4 THAT I HAVE HEARD THIS THERE'S GOING TO BE TWO OTHER WITNESSES,
5 WOULD THAT BE A QUESTION BETTER ASKED OF ANOTHER WITNESS?

6 A. I BELIEVE THAT WOULD BE A QUESTION ASKED OF THE
7 WITNESSES THAT ARE GOING TO SPEAK TO QUOTA.

8 Q. NOW, SO LEAVING ASIDE WHY, GIVEN THE FACT YOU ARE
9 TESTIFYING ABOUT THIS WOULD BE THE LANGUAGE, ARE YOU PREPARED
10 TO TALK ABOUT WHAT SOME OF THE IMPLICATIONS OF THAT WOULD BE
11 UNDER CERTAIN HYPOTHETICALS?

12 A. REGARDING THE (A.1)?

13 Q. YES.

14 A. I AM NOT.

15 Q. YOU ARE NOT?

16 A. I AM NOT.

17 Q. OKAY. FOR YOUR SAKE, THAT'S A REALLY GOOD ANSWER.

18 MR. BESHORE, ON ADDITIONAL DIRECT, ADDED THROUGH YOU,
19 TESTIMONY WITH RESPECT TO WHAT YOU STATED ON PAGE 2 WITH
20 REGARDS TO LAND O'LAKES PLANTS. CORRECT?

21 A. YES.

22 Q. OKAY. YOU HAVE LISTED ON PAGE 2 A PLANT IN TULARE. IS
23 THAT A NONFAT SOLIDS AND BUTTERFAT PLANT?

24 A. WE MAKE BUTTER AND NONFAT DRY MILK THERE, CORRECT.

25 Q. AND YOU REFER TO A PLANT IN ORLAND, O-R-L-A-N-D. WHERE

1 IS ORLAND IN CALIFORNIA?

2 A. NEAR CHICO.

3 Q. FOR THOSE OF US FROM MAINE, WHERE'S CHICO RELATIVE
4 TO --

5 A. NORTH OF HERE.

6 Q. HOW MUCH NORTH OF HERE?

7 A. I THINK IT IS EIGHT-HOUR DRIVE FROM TULARE.

8 Q. SO IT IS --

9 A. ON A GOOD DAY.

10 Q. IT'S FAIR TO SAY IT IS IN TRUE NORTHERN CALIFORNIA,
11 CORRECT?

12 A. IT'S IN NORTHERN CALIFORNIA, AS I UNDERSTAND.

13 Q. IS THE MILK SHED THERE A LOT SMALLER THAN WHAT WE'RE
14 DEALING WITH DOWN HERE IN THE SOUTHERN AND CENTRAL CALIFORNIA?

15 A. MILK SHED IS SMALLER.

16 Q. AND IS THAT A CHEESE PLANT?

17 A. THAT IS A CHEESE PLANT.

18 Q. OKAY. AND IN THE, YOU KNOW, CALIFORNIA-WORLD VERSUS
19 THE REST OF THE WORLD, IS THAT A RELATIVELY SMALL CHEESE PLANT
20 FOR CALIFORNIA?

21 A. THAT'S A SMALLER CHEESE PLANT THAN SOME CHEESE PLANTS
22 BY YOUR CLIENTS, THAT YOUR CLIENTS OPERATE, YES.

23 Q. WOULD IT ALSO BE A SMALLER CHEESE PLANT THAN CHEESE
24 PLANTS THAT LAND O'LAKES HAS OWNED, BUT SOLD, IN THE LAST TEN
25 YEARS? SOLD OR CLOSED?

1 A. WOULD YOU LIKE TO SPEAK TO WHERE YOU ARE TALKING?

2 Q. WELL, IN CALIFORNIA?

3 A. YES.

4 Q. BEFORE WE GET TO THOSE, YOU REFERENCE A DAIRY DESSERT
5 PLANT IN TURLOCK. WHAT EXACTLY DO YOU MEAN BY THAT?

6 A. I MEAN A PUDDING PLANT. DESSERTS.

7 Q. DOES IT RECEIVE FRESH MILK?

8 A. IT RECEIVES STANDARDIZED MILK.

9 Q. STANDARDIZED MILK?

10 A. YES.

11 Q. SO WHAT OTHER PLANTS, OTHER THAN THE ONES IN TULARE,
12 ORLAND, AND TURLOCK, HAS LAND O'LAKES OWNED AN/ OR OPERATED IN
13 CALIFORNIA IN THE LAST TEN YEARS?

14 A. WE PREVIOUSLY OWNED A PLANT IN TULARE THAT MADE ITALIAN
15 VARIETIES THAT WE SOLD TO SAPUTO, AND THEN WE USED TO MAKE
16 CHEESE AND WHEY PRODUCTS AT TULARE THAT WE DISCONTINUED.

17 Q. AND CLOSED?

18 A. THE PLANT IS STILL THERE, WE DISCONTINUED MAKING CHEESE
19 AND WHEY, SO YOU COULD SAY IT'S CLOSED.

20 Q. WELL, THE PLANT MAY BE STILL THERE, BUT HAVE YOU SOLD
21 THE EQUIPMENT?

22 A. THAT I'M NOT AWARE OF.

23 Q. OKAY. AND WHEN DID YOU SELL THE ITALIAN-STYLE CHEESE
24 PLANT TO SAPUTO?

25 A. I WOULD HAVE TO CHECK MY NOTES. I THOUGHT YOU MIGHT

1 ASK THAT QUESTION. WE SOLD THE CPI PLANT IN 2007. WE CALLED
2 IT CHEESE PROTEIN INTERNATIONAL.

3 Q. AND WHEN DID YOU DISCONTINUE OPERATIONS AT THE TULARE
4 OPERATION?

5 A. 2010.

6 Q. SO YOU DISCUSSED COMPETITIVE SITUATION WITH?
7 MR. BESHORE. REGARDLESS OF THE COMPETITIVE SITUATION, YOU
8 DECIDED TO DISCONTINUE THE OPERATION OF THAT FACILITY IN 2010,
9 CORRECT?

10 A. REGARDLESS OF?

11 Q. -- OR BECAUSE OF THE COMPETITIVE SITUATION, COMPETING
12 THROUGHOUT THE UNITED STATES, YOU NONETHELESS DETERMINED TO
13 CLOSE THAT PLANT IN 2010, CORRECT?

14 A. WE CHOSE TO CLOSE THE PLANT IN 2010, I'M NOT QUITE SURE
15 WHAT YOU ARE TRYING TO GET AT, SO I'LL ASK YOU WHAT YOU MEAN BY
16 REGARDLESS OF COMPETITION.

17 Q. I GUESS WHAT I WAS GETTING AT, I MEANT MR. BESHORE'S
18 QUESTIONS HE WAS REFERRING TO THE PLANTS YOU HAVE IN THE UPPER
19 MIDWEST, AND THAT THOSE PLANTS, YOU SAID, PAY A HIGHER PRICE
20 FOR THEIR MILK THAN IN CALIFORNIA. AND HE WAS SUGGESTING THAT
21 THAT WOULD PUT PLANTS IN CALIFORNIA AT A COMPETITIVE ADVANTAGE.

22 A. I UNDERSTAND WHAT YOU ARE SAYING.

23 Q. AND IN THAT LIGHT, YOU, NONETHELESS WITH THAT
24 COMPETITIVE ADVANTAGE THAT YOU HAD AT PLANT IN TULARE,
25 CALIFORNIA, YOU CHOSE TO CLOSE THAT PLANT, CORRECT?

1 A. WE CHOSE TO CLOSE THAT PLANT, YES.

2 Q. AND AGAIN, SINCE MR. BESHORE OPENED THE DOOR AND ASKED
3 THE QUESTION, THE MAILBOX PRICES THAT ARE RECEIVED BY DAIRY
4 FARMERS IN THE UPPER MIDWEST, RESULT NOT JUST FROM, YOU KNOW,
5 THE REGULATED PRICE, BUT IN ESSENCE, FROM SUPPLY AND DEMAND FOR
6 PRODUCT IN THE UPPER MIDWEST, CORRECT?

7 A. THEY RESULT FROM A NUMBER OF FACTORS THAT ARE
8 INCORPORATED IN SUPPLY AND DEMAND.

9 Q. AND SUPPLY AND DEMAND HAS NOT RESULTED IN YOU AND YOUR
10 COOPERATIVE COLLEAGUES BEING ABLE TO CHARGE MORE FOR MILK IN
11 CALIFORNIA, HAS IT?

12 A. WE HAVE NOT FORMED COMPARABLE MARKETING AGENCIES IN
13 CALIFORNIA AS WE HAVE IN THE UPPER MIDWEST, AGREED.

14 Q. AND I DIDN'T QUITE WRITE IT DOWN, SO I APOLOGIZE. WHEN
15 DID YOU TELL US IN THE ORIGINAL TESTIMONY WITH MR. BESHORE THAT
16 YOU REJOINED LAND O'LAKES?

17 A. 2005.

18 Q. OKAY. AND WAS, WERE YOU HERE IN CALIFORNIA OR WERE YOU
19 IN THE UPPER MIDWEST?

20 A. I WAS IN MINNEAPOLIS.

21 Q. BUT YOU, NONETHELESS, BECAME FAMILIAR WITH CALIFORNIA
22 OR REFAMILIARIZED YOURSELF, OR WERE ALWAYS FAMILIAR WITH
23 CALIFORNIA, CORRECT?

24 A. I FAMILIARIZED MYSELF WITH CALIFORNIA, YES.

25 Q. AND YOU HAVE TESTIFIED A NUMBER OF TIMES BEFORE THE

1 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, CORRECT?

2 A. I HAVE.

3 Q. OKAY. SO, FOR INSTANCE, IN 2006 THERE WAS A HEARING
4 THAT CDFA HELD WITH RESPECT TO PRICES FOR PLANTS UNDER THE CDFA
5 PROGRAM, CORRECT?

6 A. I ASSUME SINCE YOU HAVE THE DOCUMENT IN FRONT OF YOU,
7 IT WAS 2006, YES.

8 Q. WELL, IRONICALLY, THE COVER SHEET SAYS 2005, BUT I
9 THINK THE TESTIMONY OF REFERENCES, THE DOCUMENT IS HEADED
10 JUNE 1ST, 2005, BUT THE TESTIMONY REFERENCES THINGS LIKE
11 SEPTEMBER 2005 WOULD SUGGEST THAT THERE'S SOMETHING WRONG WITH
12 THE COVER SHEET. BUT BE THAT AS IT, MAY DO YOU REMEMBER A
13 HEARING IN 2006?

14 A. VAGUELY, YES.

15 Q. VAGUELY? AND YOU APPEARED AT THAT HEARING?

16 A. I BELIEVE I DID.

17 Q. YES. AND DID YOU TESTIFY IN THAT HEARING WITH RESPECT
18 TO THE INADEQUACY OF THE MAKE ALLOWANCE FOR WHEY?

19 A. I MAY HAVE.

20 Q. WOULD YOU RECALL THE FOLLOWING STATEMENT:

21 "THE INADEQUACY OF THIS 20 CENT MAKE ALLOWANCE FOR WHEY
22 HAS BEEN FURTHER EXACERBATED BY THE FACT THE PRICES FOR WHEY
23 PROTEIN CONCENTRATES HAVE DECLINED WHILE THE MARKETS
24 STRENGTHENED, WHILE WHEY MARKETS STRENGTHENED."

25 A. I MAY HAVE SAID THAT. IF YOU HAVE THE TESTIMONY THERE,

1 YES, I SAID IT.

2 JUDGE CLIFTON: WAS THAT EXASPERATED OR EXACERBATED?

3 MR. ENGLISH: I'M AFRAID MY UPPER CANADA ROOTS HAVE A
4 LITTLE PROBLEM WITH THAT WORD EXACERBATED,
5 E-X-A-C-E-R-B-A-T-E-D. AND THERE ARE SOME WORDS THAT I JUST --
6 WHATEVER. I READILY ADMIT.

7 BY MR. ENGLISH:

8 Q. RATHER THAN READING ALL THIS TESTIMONY, WOULD YOU AGREE
9 WITH ME, I'LL PUT THIS IN AS AN EXHIBIT, BUT WOULD YOU AGREE
10 THAT IN ESSENCE, YOUR TESTIMONY FOR LAND O'LAKES AT THE TIME,
11 WAS THAT YOU WERE LOSING MONEY USING THE THEN-CURRENT WHEY
12 FORMULA CALCULATION?

13 A. I'D PROBABLY WANT TO READ THE TESTIMONY, BUT I SUGGEST
14 THAT IF I SPOKE TO THAT SPECIFIC MAKE ALLOWANCE COMPONENT, THAT
15 THAT MAY HAVE BEEN THE POSITION WE WERE IN AT THAT POINT.

16 Q. DO YOU RECALL RECOMMENDING COMPLETELY ELIMINATING A
17 WHEY FACTOR FROM THE CLASS 4B FORMULA?

18 A. I DON'T RECALL THAT.

19 Q. DO YOU RECALL ALSO ADVOCATING ADJUSTING THE MAKE
20 ALLOWANCES FOR CHEESE AND POWDER BASED UPON THE CDFA ADJUSTED
21 WEIGHTED AVERAGE COST, INCLUDING ENERGY AND LABOR UPDATES, FOR
22 THE PERIOD JANUARY 2005 THROUGH SEPTEMBER 2005 FOR CHEESE AND
23 NONFAT DRY MILK POWDER?

24 A. I DO RECALL THAT.

25 Q. DO YOU RECALL THAT AT LEAST ONE REASON FOR THE

1 PROCEEDING WAS THE STATE'S PLANT CAPACITY WAS BEING PRESSURED?

2 A. I WOULD HAVE TO LOOK TO SEE WHAT BROUGHT IT ON AND SEE
3 WHAT THE SPECIFIC PROPOSAL WAS THAT INITIATED IT, MR. ENGLISH.

4 Q. I'LL DO THIS A LITTLE MORE EASILY. LET ME ACTUALLY
5 HAVE YOU, AND EVERYBODY ELSE HAVE, THE TESTIMONY AND WE CAN GO
6 THROUGH IT TOGETHER.

7 A. OKAY.

8 JUDGE CLIFTON: MS. FRISIUS, WILL THIS BE EXHIBIT 36?

9 MS. FRISIUS: IT WILL BE.

10 JUDGE CLIFTON: THANK YOU.

11 (THEREAFTER, EXHIBIT 36 WAS MARKED
12 FOR IDENTIFICATION.)

13 MR. ENGLISH: YOUR HONOR, WHAT YOU HAVE JUST ASKED TO BE
14 MARKED AS EXHIBIT 36, THE COVER SHEET SAYS "PUBLIC HEARING,
15 STATE OF CALIFORNIA, DEPARTMENT OF FOOD AND AGRICULTURE, DAIRY
16 MARKETING BRANCH, DEPARTMENT OF FOOD AND AGRICULTURE,
17 SACRAMENTO, CALIFORNIA," AND IT SAYS, "DATED: THURSDAY,
18 JUNE 1, 2005."

19 MR. WEGNER, WHEN DID YOU REJOIN LAND O'LAKES IN 2005?

20 MR. WEGNER: SEPTEMBER OF 2005.

21 BY MR. ENGLISH:

22 Q. SO IF YOU TESTIFIED, AS IS INDICATED ON THE FOLLOWING
23 PAGE, ON PAGE 234, THEN THIS DATE HAS TO BE WRONG, CORRECT? IT
24 CANNOT BE JUNE 1ST, 2005, CAN IT?

25 A. IT APPEARS THAT IT WOULD BE WRONG.

1 Q. OKAY.

2 A. IF, IN FACT, THAT'S THE RIGHT COVER SHEET.

3 Q. IT IS WHAT WE PULLED OUT.

4 SO I REPRESENT TO YOUR HONOR THAT THIS DOCUMENT, ALONG
5 WITH OTHER DOCUMENTS OF ITS KIND, ARE AVAILABLE EVEN TODAY ON
6 THE CDFA WEBSITE. AND, OBVIOUSLY, IF SOMEONE WISHES TO
7 SUPPLEMENT OTHER PAGES, THEY ARE ENTITLED TO DO SO, BUT THESE
8 ARE THE PAGES WE HAVE USED?

9 A. MR. ENGLISH, ARE WE OFF A YEAR, PERHAPS?

10 Q. I THINK WE ARE OFF EXACTLY A YEAR.

11 A. IS THAT WHAT IT IS?

12 Q. I THINK IT'S 2006.

13 A. IT'S JUST MAKING ME A LITTLE UNCOMFORTABLE TO HAVE A
14 STATEMENT ATTRIBUTED TO ME.

15 Q. WELL, CAN YOU LOOK AT PAGE 235?

16 A. I SEE MYSELF IN THERE, YEAH.

17 Q. LET'S LOOK AT LINES 20 THROUGH 24.

18 A. YEAH, SO IT LOOKS LIKE WE ARE A DAY OFF.

19 Q. A YEAR OFF.

20 A. A YEAR OFF.

21 Q. YEAH. SO IT IS, THE HEARING OFFICER KRUG SPECIFICALLY
22 SAYS HE WANTS TO, "HERE'S A DOCUMENT THAT'S ENTITLED
23 CONSOLIDATED PUBLIC HEARING TO CONSIDER AMENDMENTS AND
24 TESTIMONY OF TOM WEGNER, JUNE 1, 2006."

25 SO DOES THAT HELP YOU AND DO YOU BELIEVE THAT IT IS

1 2006?

2 A. I DO. THANK YOU.

3 Q. THANK YOU.

4 A. THANK YOU.

5 Q. YOU'RE WELCOME, AND THANK YOU. AND YOU GAVE THIS
6 TESTIMONY ON BEHALF OF LAND O'LAKES, CORRECT?

7 A. CORRECT.

8 Q. OKAY. AND AT THE TIME YOU GAVE THIS TESTIMONY, LAND
9 O'LAKES STILL OWNED PLANT THAT IT LATER SOLD SAPUTO AND THE
10 PLANT IN TULARE THAT YOU CLOSED IN 2010, CORRECT?

11 A. WE WERE STILL OPERATING BOTH, CORRECT.

12 Q. OKAY. IF YOU WOULD LIKE, YOU CERTAINLY ARE ENTITLED
13 TO, AND WELCOME TO, READ THE ENTIRE -- YOUR HONOR, I HAVE
14 ATTACHED PAGES 234 THROUGH 255, AND IF HE IS CERTAINLY ENTITLED
15 TO READ ALL OF IT, I HAVE NO PROBLEM WITH THAT. I CAN POINT
16 HIM TO SPECIFIC PAGES, BUT IF HE WOULD LIKE TO READ ALL OF IT
17 BEFORE I PROCEED, I HAVE NO PROBLEM WITH THAT.

18 JUDGE CLIFTON: AND YOU START WITH PAGE 229; IS THAT RIGHT?

19 MR. ENGLISH: I MAY HAVE REMOVED SOME PAGES, SO MAYBE 229,
20 AND I GOT TO 234.

21 MS. FRISIUS: THERE'S A COUPLE OF EXTRA PAGES IN THERE THAT
22 HAPPENED TO -- THE TESTIMONY BEGINS ESSENTIALLY ON THE -- THE
23 PAGE CHIP IS REFERENCING, BUT THERE'S JUST A COUPLE EXTRA IN
24 THERE THAT I CAN CONFORM.

25 JUDGE CLIFTON: MR. BESHORE, WOULD YOU LIKE TO COME TO THE

1 MICROPHONE?

2 MR. BESHORE: JUST -- JUST A QUESTION. IS THIS THE
3 ENTIRETY OF MR. WEGNER'S TESTIMONY AT THAT HEARING?

4 MR. ENGLISH: I'M GETTING A NOD YES. AND IT DOES APPEAR ON
5 PAGE 255, ON LINE 18, THAT A NEW WITNESS, MR. BENJAMIN YALE,
6 WAS CALLED TO THE STAND. AND BASED UPON HOW CDFA HEARINGS RUN,
7 AND WE HAVE HEARD THAT TESTIMONY EARLIER, I DON'T THINK PEOPLE
8 GET A SECOND CHANCE TO TESTIFY. SO I THINK THAT IT -- MAYBE WE
9 HAVE EVEN OVER-INCLUDED, BECAUSE IT LOOKS LIKE WE ACTUALLY HAVE
10 SOME TESTIMONY IN ADDITION TO MR. WEGNER, OR DID DR. GRUEBELE
11 APPEAR WITH YOU AS A PANEL?

12 MR. WEGNER: THAT IS CORRECT, YES. JUST WANTED TO NOTE
13 THAT.

14 BY MR. ENGLISH:

15 Q. AND IT IS LIKE ANOTHER DIFFERENCE BETWEEN USDA
16 HEARINGS, ALTHOUGH WE SOMETIMES HAVE DONE THIS, AND CDFA
17 HEARINGS IS THAT A GROUP OF WITNESSES, PROPONENTS, WOULD APPEAR
18 TOGETHER; IS THAT CORRECT, MR. WEGNER?

19 A. YES.

20 Q. BEFORE CDFA?

21 A. YEP.

22 Q. SO DID YOU AND DR. GRUEBELE EFFECTIVELY APPEAR TOGETHER
23 ON BEHALF OF LAND O'LAKES AT THAT PROCEEDING?

24 A. THAT'S CORRECT.

25 JUDGE CLIFTON: AND WOULD YOU SPELL --

1 MR. ENGLISH: I WAS GOING TO DO THAT AND THEN ASK ANOTHER
2 QUESTION. FOR THE RECORD, DR. GRUEBELE, G-R-U-E-B-E-L-E.

3 BY MR. ENGLISH:

4 Q. AND JUST VERY BRIEFLY, MR. WEGNER, CAN YOU TELL US WHO
5 DR. GRUEBELE IS?

6 A. DR. GRUEBELE IS A CONSULTANT TO LAND O'LAKES.

7 Q. AND A DAIRY ECONOMIST?

8 A. A DAIRY ECONOMIST.

9 Q. WITH A PH.D.?

10 A. HE HAS A PH.D., I BELIEVE.

11 Q. IN ECONOMIC, AGRICULTURAL ECONOMICS?

12 A. I BELIEVE SO.

13 Q. OKAY. SO JUST, I'M TRYING TO ANSWER MR. BESHORE'S
14 QUESTIONS AS CLEARLY AS I CAN.

15 IT LOOKS LIKE ON PAGE 253, SO WE HAVE OVER-INCLUDED ON
16 THE BACK END. ON PAGE, ON LINE 19, HEARING OFFICER KRUG
17 EXCUSES THE WITNESSES, WHICH WOULD BE MR. WEGNER AND
18 DR. GRUEBELE. DOES THAT SOUND CORRECT?

19 A. YES.

20 Q. SO DO YOU -- HOW DO YOU -- DO YOU WANT ME TO JUST ASK
21 SPECIFIC QUESTIONS? DO YOU WANT IT READ THE WHOLE THING
22 THROUGH, MR. WEGNER?

23 A. WHY DON'T WE SEE WHAT YOU ARE SELECTING AND I'LL JUST
24 MAKE SURE THAT THE CONTEXT IS ACCURATE. I'M COMFORTABLE WITH
25 THAT.

1 Q. AND I HAVE NO PROBLEM WITH YOUR, AS I SAY, THE ENTIRE
2 THING WILL BE IN. BUT I HAVE NO PROBLEM WITH YOUR SAYING,
3 "MR. ENGLISH, YOU NEED TO LOOK AT TWO LINES UP OR THREE LINES
4 DOWN," OR ANYTHING LIKE THAT?

5 A. LET'S GIVE IT A TRY.

6 Q. OKAY. SO TURNING TO PAGE 240, ON LINES 17 THROUGH 21,
7 YOU TESTIFIED, FIRST, THAT "IT IS NOT SURPRISING TO FIND THE
8 STATE'S PLANT CAPACITY AS BEING PRESSURED." CORRECT?

9 A. YES.

10 Q. AND THEN YOU TESTIFY, "WE HAVE HEARD REPORTS OF
11 DISTRESSED MILK GETTING DUMPED" --

12 JUDGE CLIFTON: I'M SORRY, I THINK THE RECORD WILL BE
13 BETTER IF YOU READ THE WHOLE SENTENCE, IF YOU DON'T MIND.

14 MR. ENGLISH: I APPRECIATE THAT, YOUR HONOR. YOU ARE
15 ABSOLUTELY CORRECT.

16 JUDGE CLIFTON: OKAY.

17 MR. ENGLISH: SO STARTING ON LINE 17, "WITH THIS VOLUME
18 INCREASE," WELL, ACTUALLY, YOUR HONOR, THANK YOU, YOUR HONOR
19 LET ME GO BACK FURTHER, AND GO BACK TO LINE 10.

20 JUDGE CLIFTON: VERY GOOD.

21 MR. ENGLISH: BECAUSE THERE'S A HEADING CALLED, "CAPACITY
22 ISSUES COLON:"

23 MR. WEGNER, COULD YOU READ YOUR TESTIMONY FROM LINES 11
24 THROUGH 21 FROM THE 2006 TRANSCRIPT?

25 MR. WEGNER: YES.

1 AS YOU WELL KNOW, CALIFORNIA MILK PRODUCTION HAS
2 BEEN INCREASING VERY RAPIDLY. FEBRUARY 2006 MILK
3 PRODUCTION INCREASED BY 6.7 PERCENT AND MARCH
4 PRODUCTION INCREASED 6.2 PERCENT OVER 2005 LEVELS.
5 THE PRODUCTION INCREASE IN THESE TWO MONTHS ALONE
6 IS ENOUGH TO FILL A 6 MILLION POUND PLANT PER DAY
7 -- A 6 MILLION POUND PER DAY PLANT.
8 WITH THIS VOLUME INCREASE, IT IS NOT SURPRISING TO
9 FIND THAT THE STATE'S PLANT CAPACITY IS BEING
10 PRESSURED. WE HAVE HEARD REPORTS OF DISTRESSED
11 MILK GETTING DUMPED BECAUSE OF PLANTS BEING TOO
12 FULL TO PROCESS THE MILK.

13 BY MR. ENGLISH:

14 Q. AND THEN JUST CONTINUING, THE SENTENCE, I DON'T NEED
15 THE SECOND PART, THE SENTENCE CONTINUES ON LINE 22, AND THE
16 FIRST TWO WORD ON LINE 23.

17 A. "THE RELATIVELY NEW CPI PLANT IS OPERATING AT FULL
18 CAPACITY."

19 Q. IS THAT CPI PLANT THAT YOU ARE REFERRING TO ON LINES 22
20 AND 23, THE PLANT THAT YOU LATER SOLD TO SAPUTO?

21 A. THAT'S CORRECT.

22 Q. SO THEN ON PAGE 241, COULD YOU READ LINES 1 THROUGH 14?

23 A. YES.

24 MEANWHILE, THERE'S BEEN A LOSS OF PLANT CAPACITY
25 IN CALIFORNIA. THE RECENT PLANT CLOSINGS INCLUDE:

1 IN 2005, THE GUSTINE PLANT THAT HANDLED 30 LOADS
2 PER DAY, CLOSED.

3 IN 2004, THE DFA PLANT THAT HANDLED 20 LOADS PER
4 DAY, CLOSED.

5 IN 2003, THE SORRENTO PLANT THAT HANDED 32 LOADS
6 PER DAY, CLOSED.

7 AND IN 2002, THE SUPREMA PLANT THAT HANDLED 26
8 LOADS PER DAY, CLOSED.

9 I'M SORRY, DID YOU WANT ME TO GO FURTHER? I FORGET WHICH LINE.

10 Q. YES, I WOULD LIKE YOU ACTUALLY TO GO THROUGH LINE 21.

11 THE WHOLE, FINISH THE SECTION ON CAPACITY ISSUES.

12 MR. WEGNER:

13 THE TOTAL PLANT CAPACITY LOST AMOUNTS TO 108 LOADS
14 PER DAY, OR ABOUT 5.5 MILLION POUNDS OF MILK PER
15 PAY. THIS IS ROUGHLY THE CAPACITY OF THE CPI
16 PLANT IN TULARE. THIS VOLUME OF LOST PLANT
17 CAPACITY IS SIGNIFICANT IN LIGHT OF THE CONTINUED
18 GROWTH OF CALIFORNIA'S MILK SUPPLY. ANY
19 ADDITIONAL LOSS IN PLANT CAPACITY WOULD PUT MORE
20 STRESS ON THE MILK PROCESSING SECTOR.

21
22 WITHOUT A SIGNIFICANT ADJUSTMENT IN THE MAKE
23 ALLOWANCES, INCLUDING WHEY, IT WOULD NOT BE
24 SURPRISING TO OBSERVE FURTHER DECREASES IN PLANT
25 CAPACITY IN CALIFORNIA.

1 BY MR. ENGLISH:

2 Q. NOW, WE'LL STOP READING FOR A MOMENT. IS IT YOUR
3 RECOLLECTION THAT AS A RESULT OF THIS PROCEEDING, THERE WAS AN
4 ADJUSTMENT MADE TO THE WHEY FACTOR?

5 A. I'M TRYING TO RECALL IF THERE WAS. I DON'T THINK SO,
6 BUT I'M NOT ABSOLUTELY POSITIVE. BECAUSE WHAT I'M TRYING TO
7 RECALL IS IF THIS WAS THE HEARING WHERE THE FIXED FACTOR CAME
8 INTO PLAY AFTER THIS.

9 Q. THERE WERE A NUMBER OF CHANGES AND YOU DON'T
10 NECESSARILY RECALL AND THAT'S --

11 A. NOT RIGHT OFF THE TOP OF MY HEAD.

12 Q. THAT'S UNDERSTANDABLE. I'M NOT TRYING TO -- OKAY.

13 A. YEAH.

14 Q. SO NOW, UNFORTUNATELY, WE DIDN'T PULL DOWN THE
15 ATTACHMENT. WE'LL HAVE TO DEAL WITH THAT. BUT ON PAGE 242,
16 COULD YOU READ THOSE LINES 8 THROUGH 14?

17 MR. WEGNER:

18 TO HIGHLIGHT, THE ADDITION OF THE WHEY FACTOR IN
19 THE CLASS 4B FORMULA HAS BEEN COSTLY TO LAND
20 O'LAKES. THE ACCOMPANYING CHART, WHICH IS AT THE
21 END OF THE TESTIMONY LABELED ATTACHMENT A, SHOWS
22 THE DISPARITY IN THE DISTRIBUTION OF BENEFITS FROM
23 THE INCREASED CLASS 4B PRICES TO LAND O'LAKES
24 PRODUCERS AND PRODUCERS OUTSIDE OF LAND O'LAKES.

25 THAT'S LINE 14, MR. ENGLISH.

1 MR. ENGLISH: YES, I UNDERSTAND. SO PART OF WHAT I'M DOING
2 IS GOING AHEAD AND TRYING TO FIGURE OUT AND TRYING TO NOT UNDER
3 HAVE YOU -- SO IF YOU COULD READ FROM LINE 20 ON PAGE 242, OVER
4 TO PAGE 243, LINE 15.

5 MR. WEGNER: LINE 20 ON 242.

6 MR. ENGLISH: LINE 20 ON 242.

7 MR. WEGNER: TO LINE 15 ON 243.

8 LAND O'LAKES MEMBERS -- EXCUSE ME -- LAND O'LAKES
9 MEMBER-OWNERS, TOOK THE FINANCIAL RISK OF BUILDING
10 A NEW MODERN CHEESE FACILITY IN CALIFORNIA. WE
11 REALIZED THE RISKS INVOLVED IN BUILDING A NEW
12 PLANT, INCLUDING PRODUCT QUALITY, START UP
13 PROBLEMS, RUNNING AT LESS THAN FULL CAPACITY, AND
14 OTHER OPERATIONAL CHALLENGES.

15
16 BUT IN OUR CASE, THERE TURNED OUT TO BE
17 SIGNIFICANT RISK ASSOCIATED WITH THE CHANGE IN THE
18 CLASS 4B FORMULA INVOLVING THE ADDITION OF A WHEY
19 FACTOR. THE ADDITION OF THE WHEY FACTOR HAS
20 INCREASED THE COST OF MILK -- HAS INCREASED THE
21 COST OF MILK.

22
23 WHEN LAND O'LAKES MADE THE DECISION TO BUILD A NEW
24 CHEESE PLANT, THE WHEY FACTOR WAS NOT INCLUDED IN
25 THE CLASS 4B FORMULA. HOWEVER, THE ADDITION OF

1 THE WHEY FACTOR HAD A DIRECT IMPACT ON THE RETURN
2 OF INVESTMENT. THE ADDITION OF THE WHEY FACTOR
3 COMBINED WITH INADEQUATE MAKE ALLOWANCES, LED
4 DIRECTLY TO INADEQUATE RETURNS ON INVESTMENT FROM
5 OUR NEW CHEESE OPERATIONS AND LOSSES EXPERIENCED
6 BY LAND O'LAKES MEMBERS. THIS CHANGE IN THE
7 GROUND RULES FOR THE CLASS 4B FORMULA HAS HAD A
8 DIRECT IMPACT ON ALL OF CALIFORNIA'S CHEESE
9 PLANTS.

10 MR. ENGLISH: I'M GOING TO HAVE YOU READ JUST ONE MORE
11 SECTION, THEN I'M GOING TO MOVE ADMISSION, THEN WE CAN MOVE TO
12 A DIFFERENT AREA.

13 ON PAGE 244, COULD YOU READ LINE 16 THROUGH 25?

14 MR. WEGNER:

15 ADDITIONALLY, CALIFORNIA MANUFACTURING PLANTS FACE
16 DIFFERENT AND SOMETIMES HIGHER LEVEL OPERATING
17 COSTS THAN COSTS FACED BY PLANTS IN OTHER STATES.
18 ENVIRONMENT, LABOR, TRANSPORTATION AND ENERGY
19 COSTS ARE ALL AREAS WHERE THE UPPER MIDWEST
20 OPERATIONS MAY HAVE A SIGNIFICANT COST ADVANTAGE
21 OVER MANUFACTURING OPERATIONS IN CALIFORNIA. THE
22 CHALLENGES ASSOCIATED WITH THE CONSTRUCTION OF A
23 NEW PLANT, SUCH AS OBTAINING PERMITS, IS LIKELY
24 MORE COSTLY IN CALIFORNIA THAN CONSTRUCTING A
25 SIMILAR OPERATION IN OTHER STATES.

1 BY MR. ENGLISH:

2 Q. SO SIMILAR TO A PROCEEDING LIKE THIS, THIS TESTIMONY
3 WAS GIVEN UNDER OATH?

4 A. CORRECT.

5 Q. OKAY. AND YOU TESTIFIED TRULY AND CORRECTLY WHEN YOU
6 GAVE THIS TESTIMONY, CORRECT?

7 A. I DID.

8 Q. I MOVE ADMISSION OF EXHIBIT 36, YOUR HONOR.

9 JUDGE CLIFTON: DOES ANYONE WISH TO QUESTION THE WITNESS
10 BEFORE DETERMINING WHETHER YOU HAVE ANY OBJECTION TO ITS BEING
11 ADMITTED? NO ONE.

12 IS THERE ANY OBJECTION TO THE ADMISSION INTO EVIDENCE
13 OF EXHIBIT 36? THERE IS NONE. EXHIBIT 36 IS ADMITTED INTO
14 EVIDENCE.

15 (THEREAFTER, EXHIBIT 36 WAS
16 RECEIVED INTO EVIDENCE.)

17 BY MR. ENGLISH:

18 Q. AS WE HAVE ALREADY HEARD, THAT WASN'T THE LAST TIME
19 THAT CDFA TOOK UP THE ISSUE OF THE WHEY FACTOR, CORRECT?

20 A. CORRECT.

21 Q. THERE WAS, IN FACT, A HEARING IN THE FALL OF 2007,
22 DEALING WITH A NUMBER OF THE SAME ISSUES AS THE HEARING IN
23 2006; IS THAT CORRECT?

24 A. YES, THERE WAS.

25 Q. AND YOU TESTIFIED AT THAT PROCEEDING?

1 A. I THINK SO.

2 MR. ENGLISH: I APOLOGIZE, I STAND CORRECTED. MOVE BACK TO
3 EXHIBIT 36, YOUR HONOR. I DON'T -- I DON'T WANT TO HAVE HIM
4 READ THE ENTIRE TESTIMONY IN, BUT -- COULD YOU GO BACK TO
5 EXHIBIT 36, PAGE 245 FOR A MOMENT?

6 MR. WEGNER: OKAY.

7 MR. ENGLISH: LINES 1 THROUGH 13, IF YOU COULD READ THOSE
8 ON PAGE 245?

9 MR. WEGNER:

10 WE HAVE STATED PREVIOUSLY THAT THE HANDLERS WHOSE
11 MILK IS DEPOOLED DO NOT HAVE TO SHARE THE CLASS
12 III REVENUE WITH OTHER PROPOSALS.

13 MR. ENGLISH: IS THAT PROPOSAL OR PRODUCERS?

14 MR. WEGNER: PRODUCERS.

15 THIS CANNOT BE DONE IN THE SAME WAY IN CALIFORNIA.
16 OUR TESTIMONY AT THE JANUARY 31ST, 2005, HEARING,
17 CLEARLY IDENTIFIED THE POSITIVE BENEFITS OF
18 DEPOOLING BY CHEESE PLANTS IN FEDERAL ORDER
19 MARKETS. THE ABILITY TO DEPOOL PROVIDES CHEESE
20 PLANTS IN FEDERAL ORDER MARKETS A SIGNIFICANT
21 ADVANTAGE OVER CALIFORNIA CHEESE PLANTS. IN LIGHT
22 OF THE THESE ADVANTAGES, WE ARE NOT SURPRISED TO
23 OBSERVE THAT HILMAR RECENTLY CHOSE TO BUILD THEIR
24 NEW CHEESE PLANT IN TEXAS OVER CALIFORNIA, AND
25 THAT GLANBIA CHOSE TO BUILD IN NEW MEXICO OVER

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CALIFORNIA.

MR. ENGLISH: OKAY. I BELIEVE NOW I'M DONE WITH EXHIBIT 36.

JUDGE CLIFTON: I SUGGEST A WAY TO DEAL WITH [EXHIBIT 36](#). I'M GOING TO SAY THIS AND SEE WHAT YOU ALL THINK OF IT. I THINK WE SHOULD HAVE MS. FRISIUS PUT A STICKY NOTE ON THE COVER PAGE WITH THE WORDS "PROBABLY JUNE 1, 2006."

MR. ENGLISH: I HAVE NO PROBLEM. I THINK IT ACTUALLY IS, BUT I UNDERSTAND THE NATURE OF THE PROBLEM, YOUR HONOR. I THINK THE WITNESS ADOPTED THE IDEA THAT IT WAS JUNE 1, 2006, BUT I HAVE NO PROBLEM WITH WHATEVER APPROACH YOU WANT TO COME UP WITH.

JUDGE CLIFTON: WHAT DO THE REST OF YOU THINK? I'M THINKING THE STICKY NOTE, AND I'LL PUT MY INITIALS ON IT. I'LL PUT MY INITIALS, THAT WAY WE'RE NOT ALTERING THE DOCUMENT, IT JUST -- IT JUST MAKES SENSE THAT THAT'S WHAT IT IS.

MR. ENGLISH: I UNDERSTAND. ALTERING THE DOCUMENT IS THE PROBLEM. I GET IT NOW. TOOK ME A SECOND. I APOLOGIZE. I ENDORSE YOUR IDEA.

JUDGE CLIFTON: OKAY. DOES ANYONE HAVE ANY PROBLEM IF I DO THAT WITH THE TWO RECORD COPIES? ALL RIGHT. SO I'LL PROVIDE THE STICKY NOTES TO MS. FRISIUS TO AFFIX TO [EXHIBIT 36](#) SO THAT EVERYTHING THAT'S ON PAGE 1 IS STILL VISIBLE, AND MY STICKY NOTE IS IN ADDITION. OKAY. AND THEN YOU HAVE HANDED US SOME --

1 MR. ENGLISH: I HAVE NOW HANDED YOU WHAT I WOULD LIKE TO
2 HAVE MARKED AS [EXHIBIT 37](#), ANOTHER PUBLIC TRANSCRIPT -- ANOTHER
3 TRANSCRIPT LABELED, "PUBLIC HEARING, STATE OF CALIFORNIA,
4 DEPARTMENT OF FOOD AND AGRICULTURE DAIRY MARKETING BRANCH,
5 DEPARTMENT OF FOOD AND AGRICULTURE, SACRAMENTO, CALIFORNIA,
6 DATED: WEDNESDAY, OCTOBER 10, 2007."

7 AND IT IS COVER SHEET, AND THEN THE PAGES 102, WHERE
8 YOU WILL SEE ON LINE 23, MR. WEGNER, STATING HIS NAME. AND ON
9 127 HE IS EXCUSED ON PAGE 2, AND THE NEXT WITNESS IS
10 DR. SCHIEK. SO 102 TO 127. SO IN ADVANCE, IT IS THE ENTIRE
11 TESTIMONY OF MR. WEGNER IN A HEARING HELD A YEAR AND FOUR
12 MONTHS AFTER THE 2006 HEARING.

13 JUDGE CLIFTON: I SURELY WOULD HAVE LIKED DR. SCHIEK'S
14 TESTIMONY TO BE THERE.

15 MR. ENGLISH: I'M SURE IT CAN BE PROVIDED.

16 JUDGE CLIFTON: I THINK IT IS A GOOD PLAN. ALL RIGHT. GO
17 AHEAD, THEN, MR. ENGLISH.

18 MR. ENGLISH: SO I WOULD LIKE THAT TO BE MARKED AS
19 [EXHIBIT 37](#), YOUR HONOR.

20 JUDGE CLIFTON: IT WILL BE.

21 (THEREAFTER, [EXHIBIT 37](#) WAS MARKED
22 FOR IDENTIFICATION.)

23 BY MR. ENGLISH:

24 Q. MR. WEGNER, DO YOU REMEMBER TESTIFYING AT A FURTHER
25 HEARING, THIS ONE IN OCTOBER OF 2007?

1 A. I DO.

2 Q. BEFORE CDFA?

3 A. YES.

4 Q. AND AGAIN, YOU WERE TESTIFYING ON BEHALF OF
5 LAND O'LAKES?

6 A. YES.

7 Q. AND AGAIN, YOU WERE DOING SO UNDER OATH, EVEN AS YOU
8 ARE TODAY?

9 A. CORRECT.

10 Q. AND THE INFORMATION YOU PROVIDED WAS TRUE AND CORRECT?

11 A. IT WAS.

12 Q. SO STARTING ON PAGE 104, IF YOU COULD READ LINES 3 OF
13 104, OVER TO PAGE 105, LINE 22.

14 A. YES, I CAN.

15 Q. GOOD.

16 MR. WEGNER:

17 LAND O'LAKES IS VERY CONCERNED ABOUT THE APPARENT
18 LACK OF MANUFACTURING CAPACITY IN CALIFORNIA AND
19 BELIEVES THAT THE DEPARTMENT NEEDS TO MAKE CHANGES
20 TO THE CLASS 4A AND 4B FORMULAS TO ENCOURAGE
21 INVESTMENT IN THE DEVELOPMENT OF ADDITIONAL
22 MANUFACTURING CAPACITY IN THE STATE.

23

24 I'M HERE TO TESTIFY IN SUPPORT OF OUR ALTERNATIVE
25 PROPOSAL FILED WITH THE DEPARTMENT ON

1 SEPTEMBER 25TH, 2007, INVOLVING THE MAKE
2 ALLOWANCES, AND/OR, PRICE ADJUSTERS -- AS OPPOSED
3 TO PRIZE ADJUSTERS -- FOR BUTTER, NONFAT DRY MILK,
4 CHEESE, WHEY, BASED UPON THE WEIGHTED AVERAGE OF
5 COST INFORMATION AND OTHER DATA SUPPLIED BY THE
6 DEPARTMENT.

7
8 PROPOSAL SUMMARY. REGARDING THE 4A FORMULA,
9 LAND O'LAKES RECOMMENDS THAT THE DEPARTMENT
10 MAINTAIN THE CURRENT BUTTER MAKE ALLOWANCE OF 15.6
11 CENTS PER POUND. CONCERNING THE PRICE ADJUSTER,
12 WE RECOMMEND THAT THE DEPARTMENT USE THE SIMPLE
13 DIFFERENCE BETWEEN THE CHICAGO MERCANTILE EXCHANGE
14 BUTTER PRICE AND THE PRICES RECEIVED BY CALIFORNIA
15 PROCESSORS FOR TWELVE MONTHS, ENDING AUGUST 2007.
16 WE RECOMMEND INCREASING THE FOB PRICE ADJUSTER FOR
17 BUTTER FROM THE CURRENT LEVEL OF 1.68 CENTS TO
18 2.08 CENTS.

19 BY MR. ENGLISH:

20 Q. LET ME INTERRUPT YOU THERE FOR A SECOND, JUST TO MAKE
21 THIS A LITTLE MORE INTERESTING AND LESS TEDIOUS.

22 ON LINES 21 TO 23 YOU REFERENCED FOB PRICE ADJUSTER.
23 SO AT THE TIME OF THE HEARING, THERE ALREADY WAS AN FOB PRICE
24 ADJUSTER, CORRECT?

25 A. CORRECT.

1 Q. OKAY. AND TO BE CLEAR FOR THE RECORD, WHAT WAS THAT
2 FOB? WHAT DOES THAT MEAN? FREE ON BOARD?

3 A. IT MEANS FREE ON BOARD.

4 Q. WHAT DOES IT MEAN TO HAVE A PRICE ADJUSTER OF 1.6
5 CENTS?

6 A. THE 1.6 CENTS MEANS THAT THE 4A PRICE IS REDUCED
7 THROUGH THE FORMULA BY THE FOB PRICE ADJUSTER.

8 Q. AND THAT IS TO SAY, THE CHICAGO MERCANTILE EXCHANGE
9 PRICE, LESS THE 1.68 CENTS?

10 A. I BELIEVE SO. I DON'T HAVE THE CALCULATION RIGHT IN
11 FRONT OF ME, BUT I THINK THAT MAY BE IT.

12 Q. AND YOU WERE TESTIFYING TO INCREASE THAT TO 2.8 CENTS,
13 CORRECT?

14 A. I WAS.

15 Q. OKAY. AND YOU WERE DOING SO BECAUSE THE WHOLESALE
16 VALUE OF CHEESE IN CALIFORNIA WAS LESS THAN WHEN IT WAS
17 DELIVERED IN CHICAGO?

18 A. ACTUALLY, I THINK WE'RE SPEAKING OF THE 4A PRICE HERE.

19 Q. I'M SORRY, I'M SORRY, I APOLOGIZE. I GET CONFUSED
20 BETWEEN 4A AND 4B, AND III AND IV. SO AS TO NONFAT DRY MILK,
21 THE VALUE OF NONFAT DRY MILK, IN YOUR VIEW, WAS LESS IN
22 CALIFORNIA THAN IT WAS IN CHICAGO; IS THAT CORRECT?

23 A. I BELIEVE THIS IS SPEAKING TO ANOTHER PIECE OF THE 4A
24 FORMULA.

25 Q. OKAY. BUTTER, I APOLOGIZE.

1 A. WOULD YOU LIKE TO REPHRASE YOUR QUESTION?

2 Q. I'LL GET THERE YET.

3 A. I'M JUST ASKING FOR PRECISION.

4 Q. NO, I UNDERSTAND. AND YOU ARE ABSOLUTELY CORRECT.

5 A. THAT'S ALL I'M ASKING, JUST MAKE THE RECORD CLEAR.

6 Q. YOU ARE ABSOLUTELY RIGHT, THE RECORD SHOULD BE CLEAR.

7 JUDGE CLIFTON: MR. ENGLISH, WHILE MR. WEGNER IS EXPLAINING
8 HIMSELF, PLEASE DON'T INTERRUPT HIM.

9 MR. ENGLISH: I UNDERSTAND, AND I APPRECIATE THE
10 CORRECTIONS, MR. WEGNER.

11 BY MR. ENGLISH:

12 Q. SO WE'RE TALKING ABOUT BUTTER. AND SO THE VALUE OF
13 BUTTER, YOU WERE TESTIFYING, HAD A LOWER VALUE IN CALIFORNIA
14 THAN IT DID IN CHICAGO?

15 A. I THINK WHAT THIS REPRESENTS IS THE CDFA'S SURVEY OF
16 THESE PRICES, AND THE SURVEY PRICES SPEAK FOR THEMSELVES.

17 Q. BUT AS A RESULT OF THOSE SURVEY PRICES THAT SPOKE FOR
18 THEMSELVES, YOU WERE ADVOCATING AN INCREASE IN THE FOB PRICE
19 ADJUSTER FROM 1.68 TO 2.8?

20 A. THAT'S CORRECT.

21 Q. THAT WOULD MEAN THAT THE PRICE SURVEYS WERE INDICATING
22 THAT A GAP BETWEEN THE PRICE SURVEYS IN CALIFORNIA AND THE CME
23 WAS LARGER THAN WAS USED BY 1.68 CENTS, CORRECT?

24 A. THAT'S WHAT I WOULD GUESS. THAT'S WHAT I WOULD SURMISE
25 FROM THIS, EXCUSE ME. I DON'T HAVE THE ACTUAL DATA HERE, BUT I

1 THAT'S THE CASE.

2 Q. SO YOU CAN CONTINUE NOW, ON LINE 24 OF 104, OVER TO
3 PAGE 105, LINE 22, PLEASE.

4 MR. WEGNER:

5 FOR NONFAT DRY MILK, LAND O'LAKES RECOMMENDS THAT
6 THE MAKE ALLOWANCE BE INCREASED FROM THE CURRENT
7 16 CENTS PER POUND TO 16.64 CENTS PER POUND, WHICH
8 MAINTAINS THE WEIGHTED AVERAGE MANUFACTURING COSTS
9 FOR NONFAT DRY MILK IN THE MOST RECENT CDFA COST
10 SURVEY.

11
12 REGARDING THE 4B FORMULA, LAND O'LAKES RECOMMENDS
13 THE DEPARTMENT INCREASE THE CHEESE MAKE ALLOWANCE
14 FROM 17.8 CENTS TO 19.88 CENTS, REFLECTING THE
15 WEIGHTED AVERAGE MANUFACTURING COST FOR CHEESE
16 FROM THE MOST RECENT CDFA COST SURVEY. WE
17 RECOMMEND NO CHANGES IN THE FOB PRICE ADJUSTER FOR
18 CHEESE, SINCE THE FOB PRICE ADJUSTER MATCHES THE
19 MOST CURRENT 24-MONTH DIFFERENCE BETWEEN THE CME
20 PRICE AND THE PRICE THAT'S RECEIVED BY CALIFORNIA
21 CHEESE PLANTS.

22
23 WE RECOMMEND THAT THE DRY WHEY MAKE ALLOWANCE BE
24 BASED UPON THE DIFFERENCE BETWEEN THE CURRENT DRY
25 WHEY MAKE ALLOWANCE AND THE CURRENT MAKE ALLOWANCE

1 FOR NONFAT DRY MILK. THE CURRENT DIFFERENCE
2 BETWEEN THE TWO MAKE ALLOWANCES IS 10.7 CENTS,
3 26.7 CENTS WHEY MAKE ALLOWANCE, MINUS 16 CENTS
4 NONFAT DRY MAKE ALLOWANCE, EQUALS 10.7 CENTS.
5 WE RECOMMEND THAT THIS 10.7 CENT DIFFERENCE GET
6 ADDED DIRECTLY TO THE WEIGHTED AVERAGE
7 MANUFACTURING COST FOR NONFAT DRY MILK OF 16.64
8 CENTS, TO ARRIVE AT THE RECOMMENDED WHEY MAKE
9 ALLOWANCE OF 27.34 CENTS PER POUND.

10 BY MR. ENGLISH:

11 Q. SO GOING BACK NOW TO THE DISCUSSION OF FOB. AND THIS
12 TIME, IT IS CHEESE, CORRECT, FOR LINES 8 TO 12?

13 A. IS THAT A QUESTION?

14 Q. YES. AT THIS TIME, THE ADJUSTMENT, THE TESTIMONY YOU
15 HAD ON PAGE 105 FROM 8 TO 12 IS ABOUT AN FOB PRICE ADJUSTER FOR
16 CHEESE, CORRECT?

17 A. IT IS.

18 Q. OKAY. SO YOU ARE SAYING YOU ARE NOT ASKING IT TO BE
19 CHANGED, BUT NONETHELESS THERE WAS AN FOB PRICE ADJUSTER FOR
20 CHEESE AT THAT TIME, CORRECT?

21 A. YES, THERE WAS.

22 Q. AND YOU WERE IN FAVOR OF IT REMAINING THE SAME,
23 CORRECT?

24 A. WE ADVOCATED REMAINING AT THE SAME LEVEL.

25 Q. OKAY. AND THAT'S BECAUSE THERE WAS A DIFFERENCE

1 BETWEEN THE CME PRICE FOR CHEESE AND THE PRICE THAT'S RECEIVED
2 BY CALIFORNIA CHEESE PLANTS, CORRECT?

3 A. THAT IS WHY THE FOB ADJUSTER EXISTS, IS THAT YOUR
4 QUESTION?

5 Q. THAT'S WHY YOU TESTIFIED IN FAVOR OF IT, CORRECT?

6 A. IS THAT WHY THERE'S AN FOB ADJUSTER, IS THAT YOUR
7 QUESTION?

8 Q. NO, I'M ASKING IF THAT'S WHY YOU TESTIFIED -- I'M NOT
9 ASKING WHY IT EXISTS. I'M ASKING WHY YOU WERE IN FAVOR OF
10 KEEPING IT THE SAME?

11 A. BECAUSE THE 24-MONTH DIFFERENCE WAS NOT ANY DIFFERENT
12 THAN THE CURRENT ONE. I'M JUST NOT UNDERSTANDING WHAT YOU ARE
13 ASKING.

14 Q. I'M ASKING THAT YOU AGREE THAT THE VALUE OF CHEESE, THE
15 PRICE OF CHEESE RECEIVED BY CALIFORNIA CHEESE PLANTS, WAS LESS
16 THAN THE CME PRICE, CORRECT?

17 A. I AGREED WITH THE FOB ADJUSTER LEVEL AS IT WAS.
18 CORRECT.

19 Q. AND THE FOB ADJUSTER WAS ADJUSTER THAT LOWERED, NOT
20 RAISED THE PRICE. THAT'S TO SAY, CME PRICES WERE HIGHER THAN
21 THE PRICES THAT CHEESE PLANTS GOT IN CALIFORNIA, CORRECT?

22 A. CORRECT.

23 Q. SO COULD YOU GO TO PAGE 109 AND READ FROM LINE 19, TO
24 PAGE 111, LINE 25.

25 A. LINE 9, LINE 19 --

1 Q. 109, 19, OVER TO PAGE 111, LINE 25, THE MIDDLE OF THE
2 SENTENCE THAT ENDS "MANUFACTURING CAPACITY."

3 A. OKAY. TO CLARIFY --

4 JUDGE CLIFTON: MR. BESHORE?

5 MR BESHORE: I'M JUST WONDERING IN TERMS OF TIME, THAT'S
6 TWO AND A HALF PAGES OR SO OF TRANSCRIPT. WE HAVE GOT THE
7 EXHIBIT. I'M NOT SURE WHAT THE FUNCTION IS OF HAVING HIM READ
8 IT VERBATIM INTO THE RECORD.

9 JUDGE CLIFTON: IT IS SO THAT WHEN MR. ENGLISH ASKS HIM A
10 QUESTION, I HAVE SOME IDEA WHAT HE'S TALKING ABOUT.

11 MR. ENGLISH: AND I THINK IT TURNS OUT IT'S BEEN MORE
12 EFFICIENT THAN MY ASKING HIM QUESTIONS AND HAVING HIM SAY,
13 "WHAT DO YOU MEAN?"

14 SO I DON'T DISAGREE WITH MR. BESHORE. I TRIED THE
15 OTHER WITH [EXHIBIT 36](#), AND I FAILED IN MAKING IT WORK. AND SO
16 I AM TRYING A DIFFERENT MODE, AND I'M -- I AM TRYING VERY HARD
17 NOT TO JUST HAVE WILL WHOLE TRANSCRIPT READ IN.

18 JUDGE CLIFTON: I THINK THIS IS VERY USEFUL. OKAY.

19 THIS IS, LIKE, TWO PAGES, THREE PAGES, BUT MR. WEGNER
20 MOVES THROUGH THEM QUICKLY.

21 SO MR. WEGNER, YOU ARE AT PAGE 109, LINE 19, YOU MAY
22 PROCEED.

23 MR. WEGNER:

24 TO CLARIFY, OUR CURRENT PROPOSAL WOULD ADD 10.7
25 CENTS TO THE POWDER MAKE ALLOWANCE TO ARRIVE AT A

1 MAKE ALLOWANCE FOR WHEY. ASSUMING THAT THE
2 DEPARTMENT ADOPTED OUR PROPOSED INCREASE IN THE
3 MAKE ALLOWANCE FOR POWDER AND FOR WHEY AS A RESULT
4 OF THIS HEARING, THEN WITH AN INDEXING APPROACH WE
5 WOULD EXPECT, AS A RESULT OF FUTURE HEARINGS, THAT
6 THE ABSOLUTE DIFFERENCE BETWEEN THE POWDER MAKE
7 ALLOWANCE AND THE WHEY MAKE ALLOWANCE OF 10.7
8 CENTS, WOULD BECOME LARGER AS TIME GOES ON. SUCH
9 A RESULT WOULD MAKE ECONOMIC SENSE BECAUSE OF THE
10 FACT THAT MORE WATER HAS TO BE REMOVED FROM WHEY
11 THAN FROM SKIM TO MAKE POWDER. WE ARE CONFIDENT
12 THAT THE DEPARTMENT WILL DEVELOP AN ALTERNATIVE
13 METHOD OF CALCULATING THE APPROPRIATE VALUE FOR
14 DRY WHEY IN THE 4B FORMULA.

15
16 CAPACITY ISSUE. AS YOU KNOW, CALIFORNIA MILK
17 PRODUCTION HAS BEEN INCREASING RAPIDLY IN 2007.
18 THROUGH AUGUST 2007, MILK PRODUCTION HAS INCREASED
19 4.7 PERCENT OVER 2006. IF WE PROJECT THAT MILK
20 GROWTH FOR THE ENTIRE 2007 CALENDAR YEAR, WE'LL
21 HAVE ADDED ROUGHLY FOUR BILLION POUNDS OF
22 ADDITIONAL MILK. ON A DAILY BASIS, THIS INCREASE
23 AMOUNTS TO ABOUT FIVE MILLION POUNDS PER DAY,
24 WHICH NEARLY EQUALS THE INITIAL CAPACITY OF THE
25 NEW CDI PLANT.

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WITH THIS VOLUME INCREASE, IT IS NOT SURPRISING TO
FIND THAT THE STATE'S PLANT CAPACITY IS BEING
PRESSURED. WE HAVE HEARD REPORTS OF DISTRESSED
MILK GETTING DUMPED BECAUSE OF PLANTS BEING TOO
FULL TO PROCESS THE ADDITIONAL MILK.

LOSS OF CHEESE PLANT CAPACITY. MEANWHILE, THERE'S
BEEN A LOSS OF CHEESE PLANT CAPACITY IN
CALIFORNIA. THE LIST OF PLANT CLOSING AND
RECENTLY ANNOUNCED PLANS FOR CLOSING, INCLUDE:

IN 2003 -- EXCUSE ME -- IN 2002, THE SUPREMA PLANT
THAT HANDLED 26 LOADS PER DAY, CLOSED.

IN 2003, THE SORRENTO PLANT THAT HANDLED 32 LOADS
PER DAY, CLOSED.

IN 2005, THE GUSTINE PLANT THAT HANDLED 30 LOADS
PER DAY, CLOSED.

THE DFA PLANT THAT HANDLES 80 LOADS PER DAY, IS
SCHEDULED TO CLOSE BY EARLY 2008.

THE TOTAL PLANT CAPACITY LOST, AMOUNTS TO 168

1 LOADS PER DAY, OR ABOUT 8.5 MILLION POUNDS OF MILK
2 PER DAY. THIS IS ROUGHLY EQUAL TO THE CAPACITY OF
3 TWO PLANTS THE SIZE OF THE CPI PLANT IN TULARE.
4 THIS VOLUME OF LOST CHEESE PLANT CAPACITY IS
5 SIGNIFICANT IN LIGHT OF THE CONTINUED GROWTH OF
6 CALIFORNIA'S MILK SUPPLY. ANY ADDITIONAL LOSS IN
7 PLANT CAPACITY WOULD PUT EVEN MORE STRESS ON THE
8 MILK PROCESSING SECTOR. THE LOSS OF ADDITIONAL
9 CHEESE PLANT CAPACITY IS VERY POSSIBLE IN LIGHT OF
10 THE RECENT DEFAULT OF THE F&A CHEESE PLANT THAT
11 RECEIVES APPROXIMATELY 30 LOADS PER DAY.

12
13 THE IMPACT OF THE INADEQUACY OF THE CHEESE MAKE
14 ALLOWANCES ARE ALREADY BEEN REALIZED IN THE
15 DECISIONS BY BOTH GLANBIA AND HILMAR TO BUILD NEW
16 CHEESE PLANTS OUTSIDE OF CALIFORNIA. THESE TWO
17 PLANTS IN NEW MEXICO AND TEXAS, WOULD HAVE
18 PROVIDED CALIFORNIA WITH BADLY NEEDED
19 MANUFACTURING CAPACITY.

20 BY MR. ENGLISH:

21 Q. SO A COUPLE OF QUESTIONS. A FAIR BIT OF THE CAPACITY
22 ISSUE SEEMS TO BE VERY SIMILAR TO [EXHIBIT 36](#), CORRECT?

23 A. CORRECT.

24 Q. BUT THERE'S TWO NEW THINGS. FIRST, YOU REFERENCE THE
25 DFA PLANT THAT HANDLES 80 LOADS PER DAY WAS SCHEDULED SO CLOSE

1 BY EARLY 2008, CORRECT?

2 A. YES.

3 Q. IS THAT THE SAME -- WERE YOU HERE YESTERDAY?

4 A. I WAS.

5 Q. FOR THE TESTIMONY OF MR. HOLLON?

6 A. YES.

7 Q. WAS THE SAME PLANT THAT HE AND I DISCUSSED IN VENTURA?

8 A. CORONA I BELIEVE, IS THAT WHAT YOU ASKED?

9 Q. YES.

10 A. I THINK IT WAS.

11 Q. OKAY. AND THEN ON LINES 16 THROUGH 19 OF PAGE 111, YOU
12 REFERENCE THE LOSS OF PLANT CAPACITY AS A RESULT OF THE DEFAULT
13 OF AN F&A CHEESE PLANT. WHAT WAS THE F&A CHEESE PLANT?

14 A. YOU KNOW, I CAN'T TELL YOU SPECIFICALLY. I DON'T
15 RECALL EXACTLY WHAT IT WAS. I TRUST THAT I KNEW WHAT I WAS
16 TALKING ABOUT AT THAT POINT, BUT AT THIS POINT, I DON'T RECALL.

17 Q. NOW, BY THIS TIME, OCTOBER OF -- OCTOBER 10, 2007, HAD
18 YOU SOLD THE ITALIAN CHEESE PLANT TO SAPUTO?

19 A. WHAT I WANT TO CHECK ON IS WHEN IT BECAME EFFECTIVE.
20 IT WAS RIGHT IN THAT AREA, AND I CAN'T TELL YOU FOR CERTAIN IF
21 IT WAS FINALIZED. I DON'T REMEMBER AT THIS POINT.

22 Q. AROUND THAT TIME?

23 A. AROUND THAT TIME, IN 2007, YES.

24 Q. YOU CERTAINLY WERE CONTEMPLATING IT BY THAT TIME?

25 A. YES.

1 Q. SO JUST A COUPLE MORE ON THIS. IF YOU COULD TURN TO
2 PAGE 121. I'M LOOKING, STARTING AT LINE 20, AND THERE'S A
3 REFERENCE TO PANEL MEMBER IKARI -- AND THAT'S SPELLED,
4 I-K-A-R-I. WHO WAS PANEL MEMBER IKARI, MR. WEGNER?

5 A. HE WAS PART OF THE CDFA PANEL.

6 Q. SO HE WAS QUESTIONING YOU; IS THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. OKAY. SO YOUR HONOR, THE ANSWERS WILL ONLY MAKE, THIS
9 IS THE ONE THAT WAS PREPARED TESTIMONY, SO THIS IS A Q AND A,
10 SO HIS ANSWERS WON'T MAKE SENSE UNLESS HE READS THE QUESTION.
11 I'M GOING TO ASK, STARTING AT PAGE 121, TO READ FROM LINE 20,
12 AND THEN OVER ON PAGE 122, THERE'S ANOTHER QUESTION FROM
13 MR. IKARI, OVER TO PAGE 123, TOP OF -- LINE 3. SO BASICALLY
14 TWO QUESTIONS FROM MR. IKARI AND HIS RESPONSES, FROM 121, LINE
15 20, TO 123, LINE 3.

16 AND PLEASE INDICATE WHEN IT'S THE QUESTION, AND WHEN
17 IT'S YOU ANSWERING, SIR.

18 A. ALL RIGHT.

19 PANEL MEMBER IKARI, ASKING A QUESTION.

20 DO YOU THINK THAT THERE'S A POSSIBILITY THAT
21 THERE'S ANOTHER APPROACH, ANOTHER ALTERNATIVE,
22 WHERE SOME VALUE FOR DRY WHEY COULD BE REFLECTED,
23 AND ITS A MORE STEADY CONSTANT RANGE THAN THE
24 CURRENT FORMULA WHERE PRODUCERS WILL GET SOME
25 VALUE BUT YET IT WOULD NOT CREATE FINANCIAL, YOU

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KNOW, RUIN FOR SMALL CHEESE PROCESSORS? IS THAT A POSSIBILITY?

MR. WEGNER RESPONDS: WELL, I GUESS YOU HAVE TO LOOK AT WHAT YOU ARE DEALING WITH, WE'RE DEALING WITH, IN TERMS OF THE END-PRODUCT PRICING BOX THAT WE FIND OURSELVES IN HERE, THAT THE FEDERAL ORDER'S IN AS WELL. WHEN YOU HAVE RUN-UPS LIKE WE HAVE SEEN IN WHEY PRICING AND COMPARABLE RUN-DOWNS, THAT'S A VARIABILITY THAT GETS TRANSMITTED TO THE PAY PRICE, AS YOU GUYS WELL KNOW.

SO I'M NOT QUITE SURE -- I GUESS I'D NEED TO SEE MORE DETAIL BEHIND YOUR QUESTION ABOUT WHAT WOULD STABILIZE, IF I HEAR WHAT YOU ARE SAYING, SORT OF THAT RETURN FROM WHEY. THE MARKETS ARE WHAT THE MARKETS ARE. BUT I THINK THOSE HAVE MUCH -- THERE'S OTHER FACTORS THAT ARE ENTERING INTO WHY THE MARKETS ARE WHERE THEY ARE. HOW YOU CONNECT THAT VOLATILITY TO THE PRODUCER PAY PRICE FORMULA IS ANOTHER ISSUE, BUT IF YOU GO WITH PRODUCT PRICING, YOU ARE GOING TO HAVE THAT VOLATILITY,

PANEL MEMBER IKARI: QUESTION: AM I CORRECT IN

1 INTERPRETING YOUR TESTIMONY AS MEANING, IF THE
2 DEPARTMENT -- IF THE CURRENT FORMULA STAYED INTACT
3 AND LAND O'LAKES INCREASED ITS PRODUCTION, ARE YOU
4 KIND OF INDICATING TO US THAT YOU ARE NOT GOING TO
5 MAKE INVESTMENT IN BUTTER AND POWDER?

6 JUDGE CLIFTON: WHOA, WHOA, START AGAIN. START AGAIN WITH
7 HIS QUESTION, PLEASE.

8 MR. WEGNER: "AM I CORRECT IN INTERPRETING" --

9 JUDGE CLIFTON: FIRST OF ALL, HE SAYS "AM I INCORRECT." IT
10 DOESN'T REALLY MAKE A DIFFERENCE.

11 MR. WEGNER: I BEG YOUR PARDON.

12 PANEL MEMBER IKARI: AM I INCORRECT IN
13 INTERPRETING YOUR TESTIMONY AS MEANING THE
14 DEPARTMENT -- IF THE CURRENT FORMULA STAYED INTACT
15 AND LAND O'LAKES INCREASED ITS PRODUCTION, ARE YOU
16 KIND OF INDICATING TO US THAT YOU ARE GOING TO
17 MAKE INVESTMENTS IN BUTTER POWDER AND NOT CHEESE?

18
19 AT THIS POINT, THAT'S WHAT IT LOOKS THE BEST --

20 MR. ENGLISH: WAIT, WAIT, COULD YOU SAY THAT YOU'RE THE
21 ONE --

22 MR. WEGNER:

23 MR. WEGNER, RESPONSE: AT THIS POINT, THAT'S WHAT
24 LOOKS THE BEST, IF THE NUMBERS ARE WHAT THE
25 NUMBERS ARE IN TERMS OF RETURN INVESTMENT. AND

1 I'M NOT SPEAKING OUT OF SCHOOL HERE, BUT THAT'S
2 WHAT THE NUMBERS WOULD LEAD A RATIONAL PLANT
3 DECISION MAKER TO DO, I THINK.

4 BY MR. ENGLISH:

5 Q. AND, IN FACT, SO ABOUT THAT TIME, YOU WERE IN THE
6 PROCESS OF, MAY HAVE ALREADY DONE, BUT YOU CERTAINLY WERE IN
7 THE PROCESS OF SELLING THE ITALIAN CHEESE PLANT TO SAPUTO,
8 CORRECT?

9 A. CORRECT.

10 Q. AND THEN THEREAFTER, YOU CLOSED THE PLANT IN TULARE,
11 CORRECT?

12 A. YES, SEVERAL YEARS LATER, CORRECT.

13 Q. YOUR HONOR, I MOVE THE ADMISSION OF [EXHIBIT 37](#).

14 JUDGE CLIFTON: IS THERE ANYONE THAT WOULD LIKE TO ASK
15 QUESTIONS OF THE WITNESS BEFORE DETERMINING YOU HAVE AN,
16 WHETHER YOU HAVE AN OBJECTION? THERE IS NO ONE.

17 DOES ANYONE OBJECT TO THE ADMISSION INTO EVIDENCE OF
18 [EXHIBIT 37](#)? THERE IS NONE. EXHIBIT 37 IS ADMITTED INTO
19 EVIDENCE.

20 (THEREAFTER, [EXHIBIT 37](#) WAS
21 RECEIVED INTO EVIDENCE.)

22 MR. ENGLISH: YOUR HONOR, I'M MOSTLY DONE, BUT I WANT TO
23 SORT OF REVIEW THINGS, AND I AM A LITTLE TIRED AT THIS POINT,
24 AND I THINK I WOULD BE MORE EFFICIENT AND MORE LIKELY TO FINISH
25 MORE QUICKLY IF WE TOOK OUR LUNCH BREAK NOW, RATHER THAN TRYING

1 TO ORGANIZE IT AND FIGURE IT OUT. SO I WOULD -- I WOULD ASK
2 THAT WE TAKE OUR LUNCH BREAK AT THIS TIME.

3 JUDGE CLIFTON: IS THERE ANYONE THAT OBJECTS TO THAT? NO
4 ONE. PLEASE BE BACK READY TO GO AT 2:00. WE GO OFF RECORD AT
5 12:41.

6 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)

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1 THURSDAY, OCTOBER 1, 2015 - - AFTERNOON SESSION

2 JUDGE CLIFTON: WE'RE BACK ON RECORD AT 2:04.

3 MR. ENGLISH, YOU MAY RESUME.

4 MR. ENGLISH: THANK YOU, YOUR HONOR. CHIP ENGLISH. I HAVE
5 ONE MORE DOCUMENT.

6 JUDGE CLIFTON: MS. FRISIUS, WILL THIS DOCUMENT BE EXHIBIT
7 38?

8 MS. FRISIUS: YES.

9 JUDGE CLIFTON: THIS ONE WE'RE MARKING AS [EXHIBIT 38](#).

10 (THEREAFTER, [EXHIBIT 38](#) WAS MARKED
11 FOR IDENTIFICATION.)

12 MR. ENGLISH: YOUR HONOR, WHAT I HAVE ASKED TO BE MARKED AS
13 [EXHIBIT 38](#), IS ANOTHER HEARING TRANSCRIPT, STATE OF CALIFORNIA
14 DEPARTMENT OF FOOD AND AGRICULTURE, PUBLIC HEARING TO CONSIDER
15 AMENDMENTS TO THE STABILIZATION AND MARKETING PLANS FOR MARKET
16 MILK FOR THE NORTHERN AND SOUTHERN CALIFORNIA MARKETING AREAS,
17 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, SACRAMENTO,
18 CALIFORNIA, THURSDAY, JUNE 30TH, 2011.

19 I WOULD ASK THAT TO BE MARKED AS [EXHIBIT 38](#). AND
20 WHAT'S ATTACHED TO THE COVER SHEET ARE PAGES 32 THROUGH 69 OF
21 THE TRANSCRIPT. AGAIN, LIKE THE OTHERS, THIS IS AVAILABLE ON
22 THE WEBSITE. I'M SORRY, IS WHAT'S BEEN PASSED OUT BIGGER?

23 JUDGE CLIFTON: YEAH, BUT THAT'S NEVER A PROBLEM. SO WE
24 START WITH PAGE 26?

25 MR. ENGLISH: MINE STARTS WITH PAGE 32, BECAUSE THAT'S

1 WHERE MR. WEGNER'S TESTIMONY STARTS. BUT IF THE ACTUAL EXHIBIT
2 IS BROADER, THEN SO BE IT.

3 THE TESTIMONY OF MR. WEGNER STARTS ON PAGE 32 AND ENDS
4 ON PAGE 69, HE'S EXCUSED, AND THE NEXT WITNESS, A MR. MARSH,
5 FOR WESTERN UNITED DAIRYMEN WAS THEN CALLED TO THE STAND. SO
6 IT IS THE ENTIRE TESTIMONY OF MR. WEGNER FROM A DIFFERENT
7 HEARING.

8 BY MR. ENGLISH:

9 Q. SO, MR. WEGNER, DO YOU RECOLLECT A HEARING AT THE END
10 OF JUNE 2011?

11 A. I DO.

12 Q. AND BY THIS TIME IN THE CDFA PROCESS, DID THIS HEARING
13 RESULT FROM A PROPOSAL THAT LAND O'LAKES INITIATED WITH RESPECT
14 TO THE TREATMENT OF THE WHEY FACTOR?

15 A. I BELIEVE THAT'S THE CASE.

16 Q. AND, IN FACT, YOU INITIATED A CONCEPT FOR -- FOR WANT
17 OF A BETTER PHRASE -- BRACKETS; IS THAT CORRECT?

18 A. SLIDING SCALE OF SORTS, YES.

19 Q. SLIDING SCALE?

20 A. BRACKETS, THAT'S FAIR.

21 Q. AND THE DEPARTMENT, WELL, THE DAIRIES IN CALIFORNIA
22 AGREED WITH THE CONCEPT, IF NOT THE LEVELS, OF THE SLIDING
23 SCALE, CORRECT?

24 A. AGREED WITH THE CONCEPT, YES.

25 Q. AND CDFA ADOPTED THE CONCEPT, ALTHOUGH THEY ADOPTED A

1 DIFFERENT SLIDING SCALE THAN THAT WAS PROPOSED BY LAND O'LAKES,
2 CORRECT?

3 A. CORRECT. I BELIEVE THE TOP END WAS A LOT -- WHAT
4 HAPPENED AS MUCH AS WE PROPOSED, IF I RECALL CORRECTLY, 65
5 CENTS VERSUS A DOLLAR, SOMETHING LIKE THAT.

6 Q. NOW, THE REASON WHY YOU PROPOSED A SLIDING SCALE, OR
7 BRACKET, WAS, ON THE ONE HAND, YOU WERE LOOKING TO RETURN MORE
8 MONEY TO DAIRY FARMERS, CORRECT?

9 A. I GUESS THE WAY I'D CHARACTERIZE IT IS, THAT YES, WE
10 DEFINITELY HEARD FROM OUR MEMBERSHIP THAT THE VALUE OF WHEY AS
11 IT WAS PRESENTLY BEING ACCOUNTED FOR IN THE CLASS 4B FORMULA,
12 WAS NOT RETURNING A VALUE TO THEM THAT THEY FELT WAS FAIR BASED
13 ON WHERE MARKETS OF WHEY HAD GONE IN THE PRECEDING YEARS, AND
14 PROJECTED PROBABLY SO.

15 Q. BUT ON THE OTHER SIDE OF THE SLIDING SCALE BRACKET WAS
16 A RECOGNITION BY YOU OR YOUR ORGANIZATION OR BOTH, THAT PERHAPS
17 A LIMIT ON FINANCIAL EXPOSURE TO CHEESE PLANTS WOULD BE, OR
18 COULD BE APPROPRIATE WHEN THE WHEY MARKET REACHES A LEVEL
19 THAT'S HIGHER THAN SUSTAINABLE?

20 A. WELL, I THINK, I DON'T KNOW IF I WOULD PUT SUSTAINABLE.
21 I GUESS THE WAY I'D LOOK AT IT IS, THAT WE AS A COOP WERE
22 DEFINITELY LOOKING FOR SOMETHING THAT THE CDFA WOULD AGREE TO,
23 FOR ONE THING, AND WE RECOGNIZED THAT THEY WERE GOING TO PUT
24 SOME LIMITS ON IT. BUT I THINK BACKING UP JUST A MOMENT,
25 MR. ENGLISH, I THINK THE DILEMMA SOMETIMES THAT COOPS FACE IS

1 YOU HAVE GOT TWO WAYS OF BENEFITTING YOUR MEMBERSHIP; ONE IS
2 THROUGH THE MILK PRICE, AND THE OTHER HAS TO DO WITH YOUR
3 ASSETS. AND THE PERFORMANCE OF THOSE ASSETS IS A CRITICAL
4 FEATURE. AND I WOULD SAY THAT WE HAVE DEFINITELY HAD A CHANGE
5 IN THOUGHT WITHIN LAND O'LAKES AT THAT TIME, ABOUT WHERE THE
6 BENEFIT NEEDED TO GO IN TERMS OF THE MILK PRICE. IT NEEDED TO
7 COME OUT OF THE MILK PRICE AT THAT POINT.

8 Q. AND THIS IS IN 2011, CORRECT?

9 A. 2011.

10 Q. AND BY THIS TIME, YOU HAD SOLD THE ITALIAN CHEESE PLANT
11 TO SAPUTO, CORRECT?

12 A. YES, WE HAD.

13 Q. AND YOU HAD DISCONTINUED THE OPERATIONS OF THE OTHER
14 CHEESE OPERATION IN TULARE, RIGHT?

15 A. WE HAD DISCONTINUED THE OPERATIONS OF A VERY, VERY OLD
16 PLANT.

17 Q. YEAH. IS IT FAIR TO SAY THAT -- YOU STILL HAD THE
18 ORLAND PLANT, CORRECT?

19 A. WE STILL HAD THE ORLAND PLANT.

20 Q. BUT IS IT FAIR TO SAY THAT IN TERMS OF YOUR CHEESE
21 PRODUCTION IN CALIFORNIA, THE SALE OF THE SAPUTO OPERATION, THE
22 OPERATION TO SAPUTO, AND THE DISCONTINUATION OF THE OLD PLANT
23 IN TULARE ACCOUNTED FOR 80 OR 90 PERCENT OF YOUR CHEESE
24 PRODUCTION?

25 A. I DON'T HAVE AN EXACT FIGURE. I THINK IT IS FAIR TO

1 SAY THAT OUR CHEESE FOOTPRINT, SO TO SPEAK, HAD CONSIDERABLY
2 CHANGED, AND THAT HAD A LOT OF REASONS WHY WE DID IT AND WHY WE
3 CONTINUE TO INVEST THE WAY WE DO.

4 Q. SO IF YOU WILL TURN IN YOUR TESTIMONY HERE TO PAGE 50,
5 AND I'M GOING TO HAVE FAR FEWER AND HOPEFULLY SHORTER SECTIONS
6 TO READ. I WOULD LIKE YOU TO READ FROM PAGE 50, AND I COULD
7 HAVE YOU INTERRUPT AND SKIP A PARAGRAPH, BUT I THINK THAT IN
8 FAIRNESS YOU OUGHT TO READ A PART THAT MAYBE I DON'T WANT TO
9 HEAR, BUT THERE IT IS, PAGE 50, LINE 3, THROUGH PAGE 51, THE
10 END OF THE PAGE. IF YOU COULD READ THAT ENTIRE SECTION RATHER
11 THAN SKIPPING THE PARAGRAPH, BECAUSE PARAGRAPH LINE 14 TO 22 ON
12 PAGE 50.

13 A. VERY GOOD. I WILL READ THAT.

14 OUR ORLAND CHEESE PLANT HAD BEEN CONDENSING AND
15 TRUCKING THE WHEY TO OUR TULARE PLANT FOR FURTHER
16 PROCESSING. THIS ENDED IN 2010 WHEN WE CHOSE TO
17 IDLE OUR CHEESE AND WHEY PROCESSING FACILITY IN
18 TULARE. WE CONTINUED TO CONDENSE ORLAND'S WHEY
19 INTO WHEY PROTEIN CONCENTRATE AND ESTABLISHED A
20 NEW RELATIONSHIP WITH A CHEESE MANUFACTURER IN
21 CALIFORNIA FOR THE PROCESSING. WE DON'T CAPTURE
22 THE FULL VALUE OF THE LACTOSE IN THE PERMEATE,
23 WHICH IS SOLD TO AREA DAIRY FARMERS, BUT WE HAVE
24 FOUND AN OUTLET FOR OUR CONDENSED WHEY.

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WE ALSO RESPECTFULLY ENCOURAGE THE DEPARTMENT TO
ASK LARGE CALIFORNIA CHEESE MAKERS HOW THEIR WHEY
ENTERPRISES HAVE PERFORMED SINCE DECEMBER 2007 AND
TO COMPARE AND CONTRAST THEIR CALIFORNIA PLANTS TO
CHEESE PLANTS OPERATING IN FEDERAL ORDER MARKETS.
ON THE SURFACE, IT APPEARS THAT THE CALIFORNIA
CHEESE PLANTS HAVE HAD A SIGNIFICANT ADVANTAGE
OVER CHEESE PLANTS OPERATING IN FEDERAL ORDER
MARKETS BECAUSE OF THE FIXED WHEY FACTOR.

PROCESSING CAPACITY HAS CHANGED SINCE 2007 AND
2008. IN 2007, WE RAISED CONCERNS ABOUT THE LACK
OF PROCESSING CAPACITY IN CALIFORNIA. THIS
DEVELOPED BECAUSE NEW PLANTS WERE NOT COMING
ONLINE FAST ENOUGH TO ACCOMMODATE THE GROWTH IN
MILK PRODUCTION. WE TESTIFIED THAT THROUGH AUGUST
2007, MILK PRODUCTION HAD INCREASED YEAR-TO-DATE
BY 4.7 PERCENT, AND WE STATED THAT IF MILK
PRODUCTION INCREASES CONTINUED AT THAT PACE, THERE
WOULD BE FIVE MILLION POUNDS OF ADDITIONAL MILK
PER DAY IN 2007 COMPARED TO THE PREVIOUS YEAR. AS
A RESULT, THE STATE'S PROCESSING CAPACITY WAS
BEING PRESSURED, AND, IN FACT, MILK HAD TO BE
SHIPPED OUT-OF-STATE, AND IN SOME CASES, LESS
ATTRACTIVE ALTERNATIVES WERE INSTITUTED. THE

1 SITUATION IN 2007 THROUGH 2008 WAS PRECARIOUS.
2 CERTAINLY ONE COULD ARGUE THAT CALIFORNIA'S
3 MS. MILK PROCESSING CAPACITY WAS IN DEFICIT.
4
5 THINGS HAVE CHANGED SINCE 2007 AND 2008.
6 CURRENTLY, THERE IS ADEQUATE CAPACITY TO HANDLE
7 AND PROCESS CALIFORNIA'S MILK SUPPLY. THIS DOES
8 NOT MEAN THAT THERE COULD BE SHORT-TERM PROBLEMS
9 ON CERTAIN WEEKENDS OR HOLIDAYS WHEN MILK BACKS UP
10 OR WHEN ONE OF THE LARGE MANUFACTURING PLANTS GO
11 DOWN FOR MAINTENANCE. BUT EVEN IN THOSE CASES,
12 WHILE SOME OUT-OF-STATE SHIPMENTS MAY BE
13 NECESSARY, WE ARE NOT AWARE OF MILK FINDING ITS
14 WAY TO LESS ATTRACTIVE ALTERNATIVES, NOR BEING
15 SHIPPED OUT-OF-STATE ON A REGULAR BASIS. THE
16 CURRENT MARKET CONDITIONS DIFFER SIGNIFICANTLY
17 FROM MARKET CONDITIONS OF 2007 AND 2008.

18 Q. STOP THERE FOR THE MOMENT. NOW, OBVIOUSLY YOU WERE
19 TALKING A POINT IN TIME IN 2011 ABOUT CAPACITY. ISN'T IT TRUE
20 THAT IN 2012 THERE IS A NEW ISSUE WITH PLANT CAPACITY IN
21 CALIFORNIA?

22 A. AS I RECALL, LAND O'LAKES HAD AN ISSUE WITH PLANT
23 CAPACITY, AND I BELIEVE IT PROBABLY MEANT THAT THE REST OF THE
24 STATE WAS SHORT IN CAPACITY, AS SIGNIFICANT VOLUMES OF MILK
25 WERE MOVED OUT IN THE EARLY PART OF THE YEAR, AS I RECALL.

1 Q. AND WAS IT AFTER THAT THAT THE BASE PLANS THAT HAD BEEN
2 DISCUSSED, SOME IN THIS HEARING, WERE ADOPTED?

3 A. NO, THE BASE PLANS WITHIN LAND O'LAKES WERE ADOPTED
4 EARLIER THAN THAT, MR. ENGLISH. I DON'T KNOW WHERE HILMAR,
5 DFA, AND CDI'S WERE, THOSE WERE THE OTHER BASE PLANTS THAT I
6 WAS AWARE OF.

7 Q. SO YOU ALREADY ADOPTED A BASE PLAN. WAS THE REASON
8 BASE PLANS WERE ADOPTED, IN ORDER TO ADDRESS THESE CAPACITY
9 ISSUES TO SOME EXTENT?

10 A. YES.

11 Q. OKAY. SO EVEN THOUGH YOU HAD ADOPTED A BASE PLAN PRIOR
12 TO 2012, YOU STILL HAD SOME PROBLEMS IN 2012 AND MILK HAD TO
13 MOVE OUT OF THE STATE IN EARLY 2012, CORRECT?

14 A. CORRECT.

15 Q. THANK YOU. AND LET ME JUST MOVE BACK TO PAGE 50 FOR A
16 MOMENT. I JUST WANT TO UNDERSTAND, AND I WANT THE RECORD TO
17 UNDERSTAND, IF POSSIBLE, WHAT YOU ARE SAYING THERE IN THE TOP
18 HALF OF THE PAGE WITH RESPECT TO YOUR ORLAND OPERATION.

19 YOU -- IS THIS TRUE TODAY, YOU STILL CONDENSE THE WHEY
20 AT ORLAND?

21 A. YES.

22 Q. OKAY. AND YOU STILL CAPTURE THE FULL VALUE OF THE
23 LACTOSE AND THE PERMEATE?

24 A. AS FAR AS I UNDERSTAND, I HAVEN'T CHECKED LATELY, BUT
25 I'M PRETTY SURE THAT IS THE CASE.

1 Q. AND SO THAT IS STILL SOLD TO YOUR AREA DAIRY FARMERS?

2 A. I BELIEVE SO.

3 Q. SO YOU DON'T, OTHER THAN CONDENSING AND SELLING WHAT
4 YOU CAN'T GET VALUE OF TO THE DAIRY FARMERS, YOU DON'T ACTUALLY
5 TRY TO SELL THE WHEY FROM THAT FACILITY?

6 A. WE CONDENSE THE WHEY --

7 Q. YES.

8 A. -- AND THEN WE SELL IT. SO WE ACTUALLY ARE SELLING THE
9 WHEY, MR. ENGLISH.

10 Q. YOU ARE SELLING IT -- OKAY. I GOT YOU.

11 A. I'M NOT QUITE SURE WHAT DISTINCTION YOU ARE MAKING.

12 Q. I'M NOT SURE, EITHER. SO TURNING TO PAGES 59 AND 60.

13 AND AGAIN, AT THIS POINT IN THE PROCEEDING YOU ARE BEING
14 QUESTIONED, I BELIEVE BY THE PANEL, CORRECT?

15 A. MR. EASTMAN APPEARS TO BE ASKING ME A COUPLE OF
16 QUESTIONS.

17 Q. WHO IS MR. EASTMAN?

18 A. HE IS A CDFA ECONOMIST WHO SERVES ON THE PANEL.

19 Q. OKAY. SO AGAIN, RECOGNIZING IF YOU COULD, YOU KNOW,
20 POINT OUT IN THE TRANSCRIPT WHEN THE QUESTION IS ASKED AND WHAT
21 THE ANSWER IS, IF YOU COULD READ ON PAGE 59, FROM LINE 10,
22 THROUGH PAGE 60 AT LINE 25, SO THE END OF PAGE 60?

23 A. OKAY. YES, I CAN.

24 MR. EASTMAN ASKING THE QUESTIONS: THANKS, I HAVE
25 JUST A COUPLE OF QUESTIONS.

1 SO PIGGYBACKING ON WHAT -- SO PIGGYBACKING ON WHAT
2 VANETTA JUST ASKED, YOU MENTIONED YOU STILL MAKE
3 CHEESE. AND HOW WILL YOUR PROPOSAL AFFECT YOU AS
4 A PROCESSOR OF CHEESE? OBVIOUSLY LAND O'LAKES IS
5 A PROCESSING COOPERATIVE, SO YOU KIND OF WEAR DUAL
6 HATS WHERE YOU HAVE INTERESTS ON DAIRY FARMERS BUT
7 THEN YOU ARE A -- BUT THEN ALSO YOU ARE A
8 PROCESSOR OF BUTTER, POWDER, AND CHEESE. HOW DOES
9 YOUR 4B FORMULA AFFECT YOU AS A PROCESSOR IN
10 MARKETING, A MARKETER OF CHEESE?

11
12 MR. WEGNER: ANSWER: WELL, IT WILL CERTAINLY
13 IMPACT OUR ORLAND FACILITY. WE'RE WELL AWARE OF
14 THE IMPACT THERE IT WOULD BE. BUT AGAIN, FROM A
15 COOPERATIVE MEMBER-OWNER PERSPECTIVE, THE INEQUITY
16 BETWEEN THE CLASS III AND THE 4B IS A VERY
17 IMPORTANT POINT FOR OUR MEMBER-OWNERS. WE
18 UNDERSTAND THE IMPACT, THE NEGATIVE IMPACT ON OUR
19 PLANT BUT A VERY POSITIVE IMPACT TO OUR PRODUCERS,
20 OUR PRODUCER-OWNERS, SO WE'RE WELL AWARE OF THAT.

21
22 MR. EASTMAN: QUESTION: ALL RIGHT. AND AS A
23 NATIONAL ORGANIZATION, YOU DO MENTION THAT YOU
24 MAKE CHEESE IN CALIFORNIA BUT YOU ALSO MAKE CHEESE
25 IN THE UPPER MIDWEST, OTHER AREAS OF THE COUNTRY.

1 WHEN YOU LOOK AT THE PRICE ALIGNMENT ISSUE THAT
2 YOU HAVE RAISED IN YOUR TESTIMONY, AND YOU HAVE
3 MENTIONED THAT POSSIBLY CALIFORNIA CHEESE
4 PROCESSORS, DUE TO THAT PRICE ALIGNMENT ISSUE, HAD
5 SOME SORT OF MAYBE ADVANTAGE. DO YOU FEEL THAT
6 YOU HAVE BEEN ABLE TO TAKE ADVANTAGE OF THAT IN
7 THE SENSE THAT YOU HAVE MENTIONED IN YOUR
8 TESTIMONY, YOU PAY THE CLASS III OR ABOVE
9 CLASS III PRICE IN -- OUTSIDE OF CALIFORNIA, BUT
10 YOU'VE HAD A LOWER PRICE IN CALIFORNIA.
11 HAVE YOU BEEN ABLE TO LEVERAGE THAT?

12
13 MR. WEGNER: ANSWER: WELL, NO SECRET, WE HAVE A
14 MUCH SMALLER FOOTPRINT IN CHEESE AT THIS POINT AND
15 A LOT OF THAT CHEESE THAT WE USE OUT OF ORLAND IS
16 WITHIN AN INTERNAL PROCESS WITHIN OUR OWN PLANTS.
17 IT CERTAINLY HAS HELPED, I WON'T DENY THAT FACT.
18 WHETHER IT'S BEEN A BIG ADVANTAGE WITH THE SMALL
19 STAKE WE HAVE IN CHEESE, I WOULDN'T SAY IT HAS
20 BEEN.

21 Q. AND, IN FACT, WHATEVER THAT ADVANTAGE WAS, WAS NOT
22 SUFFICIENT FOR YOU TO KEEP THE TULARE PLANT OPEN, WAS IT?

23 A. WELL, AS I SUGGESTED BEFORE, MR. ENGLISH, THAT PLANT
24 WAS A 1909-BUILD, IT HAD ROLLER DRIVE WHEY CAPABILITY. WE
25 LOOKED AT THAT AND LOOKED AT THE INVESTMENT, MYRIAD OF FACTORS

1 COME INTO PLAY. BUT PRIMARILY, THE DATE OF THE PLANT, THE
2 TECHNOLOGY USED IN THE PLANT DIDN'T MAKE SENSE FOR US TO INVEST
3 IN IT.

4 Q. NONETHELESS, THE ANSWER IS, YOU CLOSED IT, CORRECT?

5 A. WELL, MAYBE YOU SHOULD RESTATE YOUR QUESTION. I JUST
6 WANT TO MAKE SURE.

7 Q. WELL, YES OR NO, YOU CLOSED THE PLANT, RIGHT?

8 A. WE CLOSED THE PLANT, YES.

9 Q. AND NOW, YOU HAVE TALKED ABOUT THAT BEING A VERY OLD
10 PLANT. ON THE FLIP SIDE, THE CDI PLANT WHEN YOU BUILT IT WAS,
11 NEW AS OF WHAT, 2005, 2006?

12 A. YEAH, MAYBE A LITTLE EARLIER THAN THAT, BUT, YES, IT
13 WAS NEW.

14 Q. AND IT WAS STATE-OF-THE-ART?

15 A. STATE-OF-THE-ART.

16 Q. NONETHELESS, YOU DECIDED AS AN ECONOMIC MATTER, IT
17 WOULD BE BETTER TO SELL IT TO SAPUTO, CORRECT?

18 A. WE CHOSE TO USE THE CAPITAL SOMEWHERE ELSE, CORRECT.

19 Q. I HAVE NO FURTHER QUESTIONS OF THIS WITNESS. I MOVE
20 THE ADMISSION OF [EXHIBIT 38](#).

21 JUDGE CLIFTON: DOES ANYONE WISH TO QUESTION THIS WITNESS
22 ABOUT [EXHIBIT 38](#) BEFORE YOU DETERMINE WHETHER YOU HAVE ANY
23 OBJECTIONS? ARE THERE ANY OBJECTIONS TO [EXHIBIT 38](#)? THERE ARE
24 NONE. [EXHIBIT 38](#) IS ADMITTED INTO EVIDENCE.

25 (THEREAFTER, [EXHIBIT 38](#) WAS

1 RECEIVED INTO EVIDENCE.)

2 MR. ENGLISH: THANK YOU, MR. WEGNER.

3 MR. WEGNER: YOU'RE WELCOME.

4 MR. VETNE: JOHN VETNE, V-E-T-N-E, APPEARING FOR HILMAR
5 CHEESE COMPANY.

6 CROSS-EXAMINATION

7 BY MR. VETNE:

8 Q. GOOD AFTERNOON.

9 A. GOOD AFTERNOON.

10 Q. I HAVE A VERY FEW QUESTIONS ABOUT YOUR PREPARED
11 TESTIMONY, MAYBE A LITTLE BIT MORE ABOUT YOUR CONTINUED DIRECT
12 BEYOND YOUR TESTIMONY.

13 YOU STATED EARLIER ON THAT LAND O'LAKES NATIONAL
14 MEMBERSHIP POOLS MILK ON FIVE DIFFERENT FEDERAL ORDERS. BUT
15 DID YOU IDENTIFY THOSE? CAN YOU, PLEASE?

16 A. I WOULD BE HAPPY TO. FEDERAL ORDER 30.

17 Q. UPPER MIDWEST?

18 A. UPPER MIDWEST. CENTRAL, FEDERAL ORDER 32; FEDERAL
19 ORDER 1.

20 Q. NORTHEAST?

21 A. FEDERAL ORDER 5.

22 Q. APPALACHIAN?

23 A. FOUR FOR FOUR. FEDERAL ORDER 7.

24 Q. SOUTHEAST.

25 A. CORRECT.

1 Q. DID YOU SAY 33, ALSO?

2 A. I DID NOT SAY 33 AT THIS POINT, JOHN.

3 Q. OKAY. YOU DO NOT -- SO YOU'RE SPEAKING IN THE PRESENT
4 TENSE, AND YOU DO NOT CURRENTLY POOL MILK IN THE MIDEAST?

5 A. WE DO NOT CURRENTLY POOL MILK IN THE MIDEAST.

6 Q. AT WHAT TIME -- YOU USED TO POOL MILK IN THE MIDEAST,
7 CORRECT?

8 A. WE HAVE POOLED MILK IN THE MIDEAST.

9 Q. AND AS OF WHAT TIME DO YOU NO LONGER DO SO?

10 A. I'LL HAVE TO THINK A MOMENT AND IT IS GOING TO BE A
11 ROUGH ESTIMATE. I THINK WE DISCONTINUED POOLING MILK IN THE
12 MIDEAST, I WOULD SAY, SOMEWHERE AROUND 2011, MAYBE '12, AND WE
13 NO LONGER HAVE PRODUCERS AFFILIATED WITH THAT ORDER, ASSOCIATED
14 WITH THAT ORDER.

15 Q. BY PRODUCERS ASSOCIATED WITH THAT ORDER, YOU MEAN DAIRY
16 FARMERS WHOSE MILK IS POOLED IN THAT ORDER, AS OPPOSED TO
17 MEMBERS WHOSE FARMS ARE LOCATED WITHIN THE GEOGRAPHY OF THAT
18 MARKETING AREA?

19 A. THE FORMER.

20 Q. THANK YOU. OF THE 200 CALIFORNIA LAND O'LAKES MEMBERS,
21 I CAN FIGURE THE PERCENTAGE OF THE MEMBERSHIP, BUT I CAN'T SEE
22 FROM YOUR TESTIMONY WHAT PORTION OF THE MEMBERSHIP MILK SUPPLY
23 THEY REPRESENT. ARE YOU WILLING TO SHARE THAT IN INFORMATION?

24 A. NO, I'M NOT.

25 Q. AND WOULD THAT BE TRUE FOR THE FIVE FEDERAL ORDER

1 MARKETS, ALSO?

2 A. YES.

3 Q. I'M GOING TO PAGE 4 OF YOUR STATEMENT. YOU PROBABLY
4 WANT TO LOOK AT IT HERE. THE FULL PARAGRAPH BEGINNING AT THE
5 BOTTOM OF PAGE 4 THAT BEGINS WITH THE WORD "ROOT DISPOSITION."
6 ONE LINE BELOW THAT YOU USE THE WORD "HANDLER'S DISTRIBUTION
7 POINTS," THE SENTENCE SAYS, "IT DOES NOT INCLUDE DELIVERY OF
8 FLUID MILK PRODUCTS TO A HANDLER'S DISTRIBUTION POINT."

9 DID YOU MEAN TO USE THAT IN THE POSSESSIVE OWNERSHIP
10 SENSE, DISTRIBUTION POINTS OWNED BY THE HANDLER, OR IN THE
11 POSSESSIVE USE SENSE, DISTRIBUTION POINTS USED BY THE HANDLER
12 WHETHER OWNED OR NOT?

13 A. I WOULD ASSUME THE LATTER. NOT NECESSARILY OWNED BY
14 THE HANDLER.

15 Q. SO DISTRIBUTION BY A HANDLER TO A CISCO WAREHOUSE IN
16 FURTHER DISTRIBUTION -- C-I-S-C-O -- AND FURTHER DISTRIBUTION
17 BY CISCO TO SOME BUYER WOULD BE ROUTE DISPOSITION OF THAT
18 HANDLER TO THE ULTIMATE CISCO BUYER?

19 A. I BELIEVE SO.

20 Q. OKAY. YES. I'M ON PAGE 9 NOW, WHICH VERY
21 COINCIDENTALLY DISCUSSES SECTION 9. AND LOOKING DOWN AT WHAT
22 WE PREVIOUSLY REFERRED TO AS THE DEFINITION OF A 9(C) HANDLER,
23 WHICH APPEARS AT 1051.9(C) THE LAST PARAGRAPH OF SINGLE SPACED
24 TEXT IN YOUR TESTIMONY.

25 JUDGE CLIFTON: WOULD YOU TELL ME THAT NUMBER AGAIN? I

1 DIDN'T FOLLOW YOU.

2 MR. VETNE: 1051.9(C).

3 JUDGE CLIFTON: THANK YOU.

4 BY MR. VETNE:

5 Q. FOR THE PORTION OF LAND O'LAKES MILK SUPPLY THAT IS
6 WITHIN THE FEDERAL ORDER SYSTEM, 9(C) PROVIDES TWO KINDS OF
7 TRANSACTIONS THAT YOU MIGHT HAVE WITH A DISTRIBUTING PLANT
8 EITHER DELIVERING TO THE PLANT ON YOUR ACCOUNT OR HAVING THE
9 OPERATOR OF THE POOL MILK RECEIVE THE MILK ON ITS ACCOUNT AND
10 REPORT TO THE MARKET ADMINISTRATOR.

11 DO YOU HAVE BOTH? DO YOU USE BOTH KINDS OF
12 TRANSACTIONS IN YOUR SYSTEM?

13 A. I BELIEVE WE DO, MR. VETNE.

14 Q. AND DO YOU UNDERSTAND WHAT I MEAN BY THAT DISTINCTION?

15 A. VAGUELY ENOUGH. THAT'S WHY I HAVE PEOPLE WHO
16 UNDERSTAND THE ORDER WORKING WITH ME A LITTLE CLOSER.

17 Q. IN SOME CASES, IF YOU SELL, FOR EXAMPLE, TO A CLASS I
18 PLANT, YOU FILE A POOL REPORT, YOU INCLUDE THAT AS YOUR
19 PRODUCER MILK AND YOU ACCOUNT TO THE POOL FOR THE CLASS I
20 VALUE?

21 A. I UNDERSTAND THAT, YES.

22 Q. AND IN SOME CASES, YOUR BUYER --

23 A. YEP.

24 Q. -- SIMPLY PAYS YOU THE BLEND PRICE AND ACCOUNTS TO THE
25 POOL FOR THE CLASS I VALUE AND PAYS INTO THE POOL FOR THE

1 DIFFERENCE.

2 A. CONCEPTUALLY, I'M WITH YOU.

3 Q. OKAY. MY QUESTION HAD TO DO WITH YOUR USE OF BOTH KINDS
4 OF TRANSACTIONS, IT'S -- OKAY. I HAVE SKIPPED ALONG WAYS TO
5 PAGE 16. AND THIS IS WHERE YOU START YOUR DISCUSSION ON SOLIDS
6 FORTIFICATION CREDIT RELATED TO CALIFORNIA FLUID MILK
7 STANDARDS. YOU WERE ASKED SOME QUESTIONS BY MR. ENGLISH ABOUT
8 SEASONALITY OF THE COMPONENT CONTENT OF PRODUCER MILK. YOU
9 ANSWERED IN THE AFFIRMATIVE THAT YES, THERE IS SOME VARIATIONS,
10 NOT ONLY BY SEASON, BUT MONTH-TO-MONTH, AND SOMETIMES IN SOME
11 FARMS, DAY-TO-DAY. CORRECT?

12 A. THAT WAS A QUESTION?

13 Q. IS THAT A QUESTION? YES, THAT IS A QUESTION. IS THAT
14 CORRECT?

15 A. YEAH, THERE'S VARIATION IN COMPONENTS, I AGREE.

16 Q. OKAY. DO YOU HAVE ENOUGH EXPERIENCE TO CONFIRM AN
17 OBSERVATION THAT WARMER CLIMATES SUCH AS SOUTHERN CALIFORNIA,
18 COMPONENT CONTENT, SOLIDS NOT FAT, BUTTERFAT, TEND TO BE LOWER
19 THAN COMPONENT CONTENTS IN COOLER CLIMATES, SUCH AS NORTHERN
20 CALIFORNIA?

21 A. I CAN'T CONFIRM THAT FOR YOU. I DO NOT HAVE THAT
22 EXPERIENCE.

23 Q. OKAY. IF THERE IS SUCH A VARIATION AND YOUR PROPOSAL
24 IS TO ADOPT CERTAIN THINGS FOR A CALIFORNIA FEDERAL ORDER, IF
25 THERE IS SUCH A VARIATION, AND THE CEILING ON FORTIFICATION

1 ALLOWANCE IS NOT SUFFICIENT TO A PLAYING FIELD THAT'S LEVEL FOR
2 A SOUTHERN CALIFORNIA BUYER THAT RECEIVES MILK FROM A FARM
3 THAT'S LOW SOLIDS, DO YOU THINK THE CEILING OUGHT TO BE LOOKED
4 AT SO THAT THE PLAYING FIELD COULD BE LEVEL FOR ALL
5 TRANSACTIONS?

6 A. WELL, IT IS NOT SOMETHING THAT I, AS AN INDIVIDUAL OF
7 THE COOP PROPOSAL 1 COULD UNEQUIVOCALLY STATE, BUT I THINK WE
8 ARE OPEN TO HEARING WHAT THE PROPOSAL OF YOUR CLIENTS ARE
9 REGARDING THE FORTIFICATION ALLOWANCE. AND IF THAT IS THE
10 CASE, WE'RE INTERESTED IN HEARING ABOUT IT.

11 Q. FOR PURPOSES OF CREATING A LEVEL PLAYING FIELD IN
12 DISTRIBUTION OF FEDERALLY-REGULATED MILK WITHIN CALIFORNIA,
13 SHOULD NOT A COMPARABLE FORTIFICATION ALLOWANCE APPLY IN ANY
14 FEDERAL ORDER IN WHICH THERE IS A HANDLER THAT HAS DISTRIBUTION
15 WITHIN CALIFORNIA WITH RESPECT TO THAT CLASS I PORTION THAT
16 GOES TO CALIFORNIA?

17 MR. BESHORE: MAY I? THAT'S ASKING ABOUT CHANGES. THE
18 QUESTION ASKS HIM TO CONSIDER POSSIBLE CHANGES IN OTHER FEDERAL
19 ORDERS, WHICH IS NOT PART OF THE HEARING NOTICE, AND THAT'S
20 REALLY TOO FAR AFIELD, WE COULD GO ON FOREVER.

21 MR. VETNE: NO, YEAH, IT DOES ASK ABOUT CHANGES IN OTHER
22 FEDERAL ORDERS. BUT AS WE OBSERVED FROM BEGINNING OF THIS
23 HEARING, THIS HEARING WILL TAKE SOME NOVEL, AND PREVIOUSLY
24 UNUSED, AND TO SOME EXTENT EXPERIMENTAL, APPROACHES TO FEDERAL
25 MILK MARKETING REGULATION, WHICH OTHER AREAS WILL LOOK AT. AND

1 A QUESTION, A VERY RELEVANT QUESTION IN THIS HEARING IS, IS
2 WHAT IS THE EXPECTATION OF APPLICATION OF THAT CONCEPT IF
3 ADOPTED TO OTHER MARKETS?

4 THE LEVEL PLAYING FIELD GOES BOTH WAYS. HISTORICALLY
5 IN THE FEDERAL ORDER, APPLY HISTORY TO CALIFORNIA, ADOPTION IN
6 CALIFORNIA, APPLY THAT EXPERIENCE ELSEWHERE. IF THE WITNESS
7 HAS AN ANSWER, I THINK HE CAN ANSWER. IT'S A RELEVANT INQUIRY
8 FOR USDA WHEN THEY ARE CREATING NEW POLICY.

9 MR. ENGLISH: CHIP ENGLISH. I MAY TAKE SORT OF A
10 MIDDLE-OF-THE-ROAD APPROACH HERE, WHICH IS THAT, AND I THINK
11 THIS WITNESS SAID THAT HE WASN'T HERE TO TALK ABOUT 1000.76 OR
12 1051.76. WE CERTAINLY HAVE A SEPARATE -- WE DID NOT ADOPT
13 UNIFORM PROVISIONS UNDER DAIRY INSTITUTE OF CALIFORNIA, THE
14 IDENTICAL LANGUAGE FOR 1076 -- 1000.76, I APOLOGIZE. AND IT
15 SEEMS TO ME, THE QUESTION IS RELEVANT TO WHERE THAT MAY END UP,
16 BECAUSE YOU COULD HAVE PARTIALLY-REGULATED PLANTS COMING INTO
17 CALIFORNIA, SO I THINK THE QUESTION IS RELEVANT AT LEAST TO
18 THAT. I MAY NOT GO AS FAR AS MR. VETNE, BUT I THINK IT IS
19 RELEVANT AT LEAST TO THAT ISSUE.

20 MR. BESHORE: BUT THE QUESTION DID NOT ADDRESS THAT -- THE
21 QUESTION DID NOT ADDRESS THAT ISSUE, HOWEVER, THAT SECTION,
22 WHICH I WOULD AGREE WITH MR. ENGLISH THAT THAT'S PART OF THE
23 HEARING, THAT THAT SECTION. THE QUESTION DIDN'T ADDRESS THAT.

24 JUDGE CLIFTON: MR. VETNE, AS I UNDERSTAND YOUR QUESTION,
25 YOU ARE TALKING ABOUT WHETHER MILK THAT'S BROUGHT INTO

1 CALIFORNIA WOULD BENEFIT, LIKE CALIFORNIA MILK DOES, FROM THE
2 PROVISIONS THAT ARE CONTAINED ON PAGE 16?

3 MR. VETNE: NOT WHETHER THEY WOULD, BUT WHETHER THE CONCEPT
4 OF CREATING A LEVEL PLAYING FIELD, WHICH IS THE UNDERLYING
5 PHILOSOPHY ADVANCED BY THE PROPONENTS, IS SHOULD. WHETHER THAT
6 IS A REASON, WOULD BE A REASONABLE INQUIRY IN THE FEDERAL ORDER
7 POLICY, IF ADOPTED HERE. THAT'S MY QUESTION. AND THAT'S GOING
8 TO COME UP FOR A LOT OF ISSUES IN THIS HEARING.

9 JUDGE CLIFTON: WELL, I DON'T THINK YOU NEED HIM TO GIVE
10 YOU A YES OR NO ANSWER ON THAT -- THAT PARTICULAR QUESTION. IF
11 YOU WANT TO ASK HIM IF HE CONSIDERED THE IMPACT ON OUT-OF-STATE
12 PROVIDERS OF FLUID MILK, OR SOMETHING OF THAT LINE, YOU MAY.
13 I'M NOT SAYING IT'S NOT RELEVANT, I'M JUST ASKING YOU TO
14 TAILOR-MAKE YOUR QUESTION TO THIS WITNESS'S TESTIMONY.

15 MR. VETNE: OKAY. I'M GOING TO PUT THAT ASIDE FOR A
16 MINUTE.

17 BY MR. VETNE:

18 Q. I'M GOING TO PAGE 19, THE LAST LINE, FIRST WORD.
19 ANNUAL BASIS.

20 A. I'M SORRY, MR. VETNE.

21 Q. PAGE 19, VERY LAST LINE.

22 A. I SEE THAT.

23 Q. VERY LAST LINE, FIRST WORD.

24 A. ANNUAL BASIS.

25 Q. ANNUAL?

1 A. OKAY.

2 Q. I APOLOGIZE, SOMEHOW I GOT LOST IN MY COMPREHENSION OF
3 WHAT PROPONENTS PROPOSE TO DO WITH AN ANNUALIZED CALCULATION,
4 AND HOW THAT TRANSLATES INTO PRODUCER PRICES THAT FOLLOW ITS
5 ANNUAL CALCULATION, IF AT ALL. SO CAN YOU REDUCE THAT TO SOME
6 ENGLISH THAT I CAN UNDERSTAND?

7 A. I'LL DO MY BEST.

8 Q. THANK YOU.

9 A. THE CALCULATION IS, YOU'RE BASICALLY TRYING TO FIGURE
10 OUT HOW TO TAKE THE PPD AND INCORPORATE IT INTO THE COMPONENTS.
11 ARE YOU WITH ME?

12 Q. UM, I UNDERSTAND WHAT A PPD IS, AND I UNDERSTAND THAT
13 IT IS INCORPORATED IN THE COMPONENTS MONTHLY.

14 A. OKAY.

15 Q. IN THE FEDERAL ORDER SYSTEM.

16 A. IN THE PROPOSED CALIFORNIA SYSTEM, YES.

17 Q. WELL, MONTHLY IN THE FEDERAL ORDER SYSTEM AND THERE'S
18 AN ANNUAL VARIANT BEING INTRODUCED HERE.

19 A. YEAH, THE DIFFERENCE IS, WE'RE TAKING THE PPD VALUE AND
20 PUTTING IT INTO THE THREE COMPONENTS THAT WE PAY PRODUCERS ON,
21 SO WHAT YOU NEED TO DO IS FIGURE OUT HOW WOULD YOU ALLOCATE
22 THAT VALUE ON A MONTHLY BASIS TO THOSE COMPONENTS? ARE YOU
23 WITH ME SO FAR?

24 Q. THAT MUCH IS CONSISTENT WITH MY UNDERSTANDING.

25 A. OKAY.

1 Q. YES.

2 A. THE QUESTION BECOMES, WHAT ARE THE PERCENTAGES THAT YOU
3 ALLOCATE THAT VALUE ACROSS; WHAT PERCENTAGE OF BUTTERFAT, WHAT
4 PERCENTAGE OF PROTEIN, WHAT PERCENTAGE OF OTHER SOLIDS. SO YOU
5 NEED TO CHOOSE AND DETERMINE WHAT THAT WOULD BE.

6 WHAT WE'RE SUGGESTING IS TO TAKE THE VALUE OF THOSE
7 COMPONENTS IN PRODUCER MILK ON A MONTHLY BASIS FROM THE
8 PREVIOUS TWELVE MONTHS, THE FISCAL YEAR DECEMBER 1 THROUGH
9 NOVEMBER 30TH, IN THE CASE OF CALIFORNIA, AVERAGE THAT SO YOU
10 CAN FIND OUT WHAT IS THE PERCENTAGE OF THE VALUE REPRESENTED BY
11 BUTTERFAT POUNDS IN THE TOTAL CLASS III COMPONENTS PAID TO
12 PRODUCERS.

13 SO THAT'S WHERE -- AND THAT'S A SYNTHETIC NUMBER THAT I
14 CAME UP WITH, JUST AN EXAMPLE NUMBER. THAT'S WHERE THE 32
15 PERCENT CAME FROM, I BELIEVE, FOR BUTTERFAT; THE 55 PERCENT FOR
16 PROTEIN; AND THE 13 PERCENT FOR OTHER SOLIDS. WITH ME SO FAR?

17 Q. YES, I AM.

18 A. ALL RIGHT. NOW WHAT? HOW DO WE ALLOCATE IT?

19 Q. I DON'T KNOW. I SORT OF UNDERSTAND THAT. BUT WHY
20 BOTHER? WHY BOTHER TO DO IT ANNUALLY AND APPLY PROSPECTIVELY
21 BASED ON RETROSPECTIVE TWELVE MONTHS?

22 A. WE THOUGHT IT WOULD BE A LITTLE SMOOTHER, THAT WE
23 WOULDN'T HAVE THE VALUE MOVING AROUND PER MONTH, AS YOU HAVE
24 SUGGESTED, AS MR. ENGLISH HAS SUGGESTED. THAT THE COMPONENT
25 CONTRIBUTION TO THE CLASS III COULD CHANGE ON A MONTHLY BASIS.

1 WHAT WE'RE SUGGESTING IS, LET'S STICK WITH A TWELVE-MONTH
2 CALCULATION AS AN AVERAGE, AND THEN WE KNOW WHAT THAT
3 ALLOCATION IS GOING TO BE ON A MONTHLY BASIS.

4 Q. WELL, IN THE CALIFORNIA ORDER THAT YOU ENVISION BY YOUR
5 PROPOSAL, WILL THERE BE SOMETHING CALLED A PPD ANNOUNCED?

6 A. IT WILL BE ANNOUNCED FOR REASONS WE HAVE SPOKEN ON
7 EITHER -- THE PROVISION YOU SPOKE OF, 76, REQUIRES A PPD. IT
8 WILL BE ANNOUNCED, BUT IT WON'T BE PAID AS A PPD. IT WILL BE
9 PAID OUT IN THE COMPONENTS, AND THAT'S THE QUESTION THAT WE'RE
10 ADDRESSING HERE. HOW DO YOU PAY IT THROUGH COMPONENTS? SO YOU
11 ADJUST THE COMPONENT LEVELS UP PER THIS SHARING RATIO, THIS
12 RATIO OF REPRESENTATION OF VALUE, AND THAT'S HOW IT'S PAID OUT.

13 Q. OKAY. SO THE ANNOUNCED PPD WOULD -- LET'S SEE,
14 ESSENTIALLY, BE AN ANNUAL CALCULATION. SO ON AN ANNUAL
15 BASIS -- WELL, LET ME STOP THERE. IT WOULD ESSENTIALLY BE AN
16 ANNUAL CALCULATION?

17 A. NO, THE PPD IS CALCULATED ON A MONTHLY BASIS, AS ANY
18 OTHER ORDER THAT HAS A PPD. IT IS THE ALLOCATION THAT'S BASED
19 ON A PERCENTAGE FROM THE ANNUAL AVERAGING.

20 Q. AND ONE OF THE REASONS FOR DOING THAT, IF YOU HAVE
21 ANNUAL AVERAGING, YOU ARE LESS LIKELY TO HAVE, FOR EXAMPLE, A
22 NEGATIVE PPD?

23 A. NO, THE PPD IS COMPLETELY SEPARATE FROM THAT. I'M
24 TRYING TO THINK ABOUT HOW WE CAN TALK ABOUT THIS ANOTHER WAY.
25 MAYBE KEEP ASKING QUESTIONS. I TRIED TO EXPLAIN IT, IT DIDN'T

1 SEEM TO CATCH. SO MAYBE MORE QUESTIONS WOULD HELP. NO
2 PROBLEM, IT'S COMPLICATED.

3 Q. CONNECTING THE DOTS IN BETWEEN HERE IS MY PROBLEM.

4 A. YES.

5 Q. SO WHY ARTIFICIALLY CONSTRAIN THAT ALLOCATION OF VALUE
6 BASED ON AN HISTORICAL TWELVE MONTHS, WHEN, AT ONE POINT, MUCH
7 OF THAT DATA WILL BE A YEAR AND ELEVEN MONTHS OLD?

8 A. I THINK WHAT WE WERE CONSIDERING IS THE ABILITY OF THE
9 MARKET ADMINISTRATOR TO DO THIS ON A TIMELY BASIS, MR. VETNE.
10 I DON'T KNOW ENOUGH ABOUT THE STAGING OF HOW THE CALCULATION
11 HAPPENS, WHETHER YOU COULD GET A REALTIME PERCENTAGE ON THE
12 POOL ON A MONTHLY BASIS, OR IF YOU WANTED TO LOOK AT IT MORE
13 FROM THIS TWELVE MONTH PATTERN WHERE YOU WOULDN'T HAVE THAT
14 VARIATION, THE MARKET ADMINISTRATOR WOULD KNOW FOR THE NEXT
15 TWELVE MONTHS HOW TO ALLOCATE IT, AND YOU WOULDN'T HAVE TO
16 CONSTANTLY BE LOOKING FOR A NEW PERCENTAGE SHARE OF THAT
17 BUTTERFAT, THAT PROTEIN, OR THAT SOLIDS NONFAT.

18 THE WAY I HAVE LOOKED IT AND THE FEW TIMES I HAVE DONE
19 IT, YOU ARE NOT TALKING ABOUT A VERY BIG IMPACT ON THAT
20 COMPONENT AT THIS POINT.

21 Q. WELL --

22 A. VALUE.

23 Q. PRODUCERS IN THE FEDERAL SYSTEM EVERY MONTH LOOK AT
24 THEIR PPD.

25 A. I KNOW THAT.

1 Q. AND PRODUCERS IN CALIFORNIA, EVERY MONTH, LOOK AT THE
2 QUOTA PRICE AND THE OVER BASE PRICE?

3 A. AND THEIR COMPONENTS AND THEIR PREMIUMS, YES.

4 Q. COMPARING APPLES TO APPLES, HERE'S WHAT YOU LOOK AT,
5 THE COMPONENTS ARE BASED ON SOLIDS NOT FAT BASIS --

6 A. UH-HUH.

7 Q. -- IN CALIFORNIA. SO PRODUCERS LOOK AT -- AT THEIR
8 QUOTA PRICE FOR SOLIDS NOT FAT. AND PRODUCTION, THE BUTTER
9 PRICE IS THE SAME REGARDLESS -- AM I CORRECT -- THE BUTTERFAT
10 PRICE?

11 A. UH-HUH.

12 Q. ACROSS -- SO THE DIFFERENCE APPEARS IN HOW MILK IS PAID
13 FOR, QUOTA VERSUS OVER BASE IN THE SOLIDS NOT FAT PORTION OF
14 MILK, CORRECT?

15 A. YES.

16 Q. AND HOW WOULD THIS AFFECT, IF AT ALL, WHAT THE
17 PRODUCERS PERCEIVE IN THEIR QUOTA OR OVER BASE SOLIDS NOT FAT
18 PRICE?

19 A. BUT RECOGNIZE IF IT'S A FEDERAL ORDER PRICE, MR. VETNE,
20 IT'S GOING TO HAVE THE COMPONENTS REPORTED. IT'S GOING TO BE A
21 DIFFERENT REPORTING OUT TO THE PRODUCERS, SO THEY ARE GOING TO
22 LOOK AT THAT PRICE FOR THEIR COMPONENTS, AND YOU KNOW UNDER A
23 FEDERAL ORDER WITH MULTIPLE COMPONENT PRICING, THEY ARE GOING
24 TO BE PAID BASED ON THE POUNDS OF THEIR COMPONENTS. SO I'M NOT
25 QUITE SURE IF I CAN TELL YOU -- ARE YOU TRYING TO SAY WHAT

1 WOULD THE PRICE BE AND THE REPORT BE IF WE HAD A BUTTERFAT,
2 SOLIDS NONFAT, VERSUS THREE COMPONENTS? IS THAT WHAT YOU ARE
3 ASKING ME?

4 Q. NO. IF I'M A PRODUCER AND I GET A MILK CHECK UNDER THE
5 NEW SYSTEM AND I'M LOOKING AT IT, AND I HAVE SOME QUOTA AND
6 SOME NONQUOTA MILK, OR SOLIDS NONFAT?

7 A. UH-HUH.

8 Q. WITH RESPECT TO THIS PORTION OF THE PROPOSAL, ALL CLASS
9 UTILIZATION BEING PRETTY MUCH THE SAME, AM I GOING TO SEE, AS A
10 RESULT OF THIS ANNUALIZED ALLOCATION, SOMETHING DIFFERENT IN MY
11 OVER BASE PRICE, MY QUOTA PRICE, BOTH, OR IS -- AM I SIMPLY
12 GOING TO GET MORE INFORMATION ABOUT WHAT I'M DOING IN MY MILK
13 CHECK FOR THE DATA THAT COMES WITH MY MILK CHECK?

14 A. I'M THINKING IT IS THE LATTER. YOU ARE GOING TO GET
15 MORE INFORMATION. I'M NOT SEEING HOW THIS -- I MEAN, THE QUOTA
16 PRICE, YOU ARE GOING TO HERE MORE ABOUT THE SOLIDS NOT FAT BUT
17 THAT FITS TO LATER, BUT AS FAR AS THE OVER BASE WILL NOT BE AN
18 OVER BASE ANYMORE, IT WILL BE THE PRICE THAT THE PRODUCERS
19 RECEIVE BASED ON THEIR COMPONENTS.

20 Q. I HAVE A HARD TIME WITH THAT, I'M SORRY.

21 A. NO, IT'S COMPLICATED, BUT I --

22 Q. AND I --

23 A. -- MAYBE WE CAN HAVE AN OFFLINE DISCUSSION.

24 Q. I HAVE TO ASK THIS. WHY NOT USING A ROLLING TWELVE
25 MONTH AVERAGE?

1 A. I THINK THAT COULD BE A POSSIBILITY. AT THIS POINT,
2 WE'RE STARTING WITH THE TWELVE MONTH AVERAGE.

3 Q. ALL RIGHT. OKAY. NOW TO SOME DISCUSSION, LAND O'LAKES
4 HAS PLANS IN THE UPPER MIDWEST AND PENNSYLVANIA AND CALIFORNIA,
5 AM I CORRECT? CURRENT STATE OF AFFAIRS?

6 A. ON THE DAIRY SIDE, THAT'S CORRECT.

7 Q. AND OVER THE COURSE OF THE LAST 10 OR 15 YEARS, LAND
8 O'LAKES HAS BUILT PLANTS, CORRECT?

9 A. WE BUILT A PLANT, YES.

10 Q. A PLANT? THAT'S THE ONLY PLANT YOU BUILT IN THE
11 NATIONAL SYSTEM IN THE PAST TEN YEARS?

12 A. I'M TRYING TO THINK IF CPI IS THE ONLY PLANT. I
13 BELIEVE IT IS.

14 Q. AND YOU'VE SOLD PLANTS?

15 A. WE HAVE SOLD PLANTS.

16 Q. OKAY. AND YOU'VE STOPPED USING PLANTS, JUST SIMPLY
17 CLOSED THEM?

18 A. WE HAVE CLOSED PLANTS.

19 Q. AND TELL ME IF I UNDERSTOOD CORRECTLY, THE NET RESULT
20 IS THAT WHAT YOU REFER TO AS YOUR CHEESE FOOTPRINT IS A SMALLER
21 PART OF LAND O'LAKES OPERATION THAN IT HAS BEEN IN THE PAST?

22 A. THAT IS TRUE.

23 Q. AND IS THAT BECAUSE LAND O'LAKES CONSIDERED IT LESS
24 PROFITABLE TO OPERATE A CHEESE PLANT THAN BUTTER POWDER PLANTS?

25 A. WELL, YOU HAVE TO REALIZE THAT LAND O'LAKES IS MUCH

1 MORE THAN DAIRY. WE HAVE EQUAL STAKES IN CROP INPUTS AND IN
2 ANIMAL FEEDS.

3 Q. YES?

4 A. SO WE'RE TALKING ABOUT HOW WOULD YOU DEPLOY THE CAPITAL
5 IN A COMPANY IN A COOPERATIVE, THAT HAS OTHER USES FOR THE
6 CAPITAL THAN JUST SIMPLY DAIRY.

7 Q. SO?

8 A. SO I WOULD SAY, JUST TO REPHRASE, THAT WE THOUGHT WE
9 COULD USE THE CAPITAL IN A MORE PRODUCTIVE WAY FOR
10 MEMBER-OWNERS THAN TO INVEST IN A CHEESE PLANT.

11 Q. OR MAINTAIN A CHEESE PLANT?

12 A. OR MAINTAIN A CHEESE PLANT.

13 Q. AND IN DECIDING HOW TO ALLOCATE YOUR CAPITAL IN VARIOUS
14 INVESTMENTS, YOU HAVE CAPITAL IN BUTTER POWDER PLANTS, AND
15 CAPITAL IN CHEESE. WAS THERE SOMETHING ABOUT OPERATING CHEESE
16 PLANTS VERSUS BUTTER POWDER PLANTS THAT CAUSE YOU TO CHOOSE
17 CHEESE PLANTS AS A SOURCE OF YOUR CAPITAL FOR OTHER USES?

18 A. AS I MENTIONED BEFORE, IF WE WANT TO GET TO MORE
19 SPECIFICS AROUND TULARE, WHERE WE CLOSED THE CHEESE PLANT, THAT
20 WAS AN AGED PLANT, AND WE LOOKED AT THAT OPPORTUNITY WHERE WE
21 WERE TO MAKING LARGE -- EXCUSE ME -- LARGE BLOCKS, AS NOT THE
22 FUTURE. AND THAT WE CHOSE TO NOT INVEST IN THAT TULARE CHEESE
23 PLANT. THE SAPUTO PLANT WAS A SALE. IT FUNCTIONS QUITE WELL,
24 AS I UNDERSTAND, NOW. SO A MYRIAD OF FACTORS GO INTO THE
25 DECISION.

1 Q. OUTSIDE OF CALIFORNIA, HOW DOES YOUR FOOTPRINT, NONFAT
2 DRY MILK VERSUS CHEESE TODAY, COMPARE TO WHAT IT WAS, SAY, 15
3 YEARS AGO?

4 A. TOUGH FOR ME TO SPEAK TO 15 YEARS AGO.

5 Q. TEN THEN?

6 A. I'LL DO TEN. WE HAVE CONTINUED OUR FOOTPRINT IN CHEESE
7 IN THE UPPER MIDWEST, AND WE CONTINUED OUR PLANT, OUR CARLISLE
8 PLANT IN PENNSYLVANIA; CARLISLE, PENNSYLVANIA, THOSE HAVE NOT
9 CHANGED IN TEN YEARS. BEG YOUR PARDON, WE CLOSED THE DENMARK
10 PLANT, A SMALL ITALIAN, IN WISCONSIN LAST YEAR.

11 Q. ALL RIGHT. AND THE MILK THAT FORMERLY WENT TO THE
12 DENMARK PLANT, IS THAT PREDOMINANTLY GOING TO OTHER
13 MANUFACTURING USES NOW?

14 A. YES.

15 Q. LAND O'LAKES PLANTS OR OTHER CUSTOMERS OF LAND O'LAKES?

16 A. A LITTLE OF BOTH.

17 Q. YOU HAD SOME DISCUSSION WITH MR. ENGLISH, IN THE
18 DECISION-MAKING PROCESS OF LAND O'LAKES RELATING TO PRODUCERS,
19 MILK PRICE VERSUS ASSET PERFORMANCE, DO YOU RECALL THAT
20 DISCUSSION?

21 A. I DO.

22 Q. OKAY. LET ME SEE IF I CAN PUT THAT IN TERMS THAT I
23 UNDERSTAND. FEDERAL CLASSIFIED PRICES. IF A FEDERAL CLASS III
24 PRICE FAILS TO INCLUDE A MANUFACTURING ALLOWANCE, MAKE
25 ALLOWANCE THAT IS REASONABLE, IT PRODUCES A CLASS III PRICE

1 THAT'S HIGH TO THE BENEFIT OF YOUR PRODUCERS IN THEIR MILK
2 CHECK, CORRECT?

3 A. IT ALL DEPENDS ON YOUR OWN INDIVIDUAL PLANT PERSPECTIVE
4 HERE. YOU ARE WAVING YOUR HAND, IS THERE SOMETHING ELSE YOU
5 WANT TO SAY?

6 Q. I'M NOT TALKING ABOUT THE PLANT PERSPECTIVE. YOU
7 TALKED ABOUT PRODUCER PERSPECTIVE AND PLANT PERSPECTIVE, MILK
8 CHECK PERSPECTIVE VERSUS ASSET PERFORMANCE PERSPECTIVE. SO NOW
9 I'M TALKING ABOUT THE PRODUCER PERSPECTIVE AND THE MILK CHECK
10 PERSPECTIVE. HIGHER CLASS PRICES -- IT JUST GOES WITHOUT
11 SAYING -- PRODUCE HIGHER MILK CHECKS TO PRODUCERS?

12 A. YES.

13 Q. OKAY?

14 A. I THINK THAT'S WHAT WE'RE DISCUSSING IN THIS WHOLE
15 HEARING.

16 Q. YES, IT IS. AND BUT ON THE OTHER HAND, IF YOU OPERATE
17 A MANUFACTURING PLANT, BE IT BUTTER OR POWDER, TO WHICH YOU,
18 FOR WHICH YOU HAVE TO ACCOUNT TO THE POOL AT A PRICE THAT'S
19 HIGHER THAN YOU CAN GET FROM THE MARKETPLACE WHEN YOU SELL
20 THOSE PRODUCTS, THAT ASSET ISN'T PERFORMING WELL, CORRECT?

21 A. IN THAT SCENARIO, YES, IT MAY NOT BE PERFORMING WELL,
22 YES.

23 Q. AND YOU HAVE TO TAKE THAT LOSS OR NONPERFORMANCE, AND
24 PASS IT BACK TO YOUR MEMBERS IN LOWER PREMIUMS OR LOWER
25 DIVIDENDS. IN SOME WAY, YOUR MEMBERS WILL ABSORB THAT BURDEN?

1 A. YES, ASSET PERFORMANCE AFFECTS WHAT WE RETURN TO OUR
2 MEMBERS. I AGREE WITH THAT.

3 Q. OKAY. LET'S GO BACK A LITTLE BIT TO THE HISTORY OF
4 FEDERAL MARKETING ORDERS FROM THE 1930'S. FEDERAL MARKET ORDER
5 REGULATION AND STATE MARKET ORDER REGULATION, WE HAVE HEARD AS
6 RECENTLY AS BEFORE THE GONZALVES MILK POOLING ACT, POOLING
7 EVOLVED SO THAT SOME DAIRY FARMERS WOULD NOT UNFAIRLY SHARE THE
8 BURDEN OF SURPLUS OR LOWER VALUED MILK USES, WHILE OTHER
9 PRODUCERS GET THE BENEFIT OF CLASS I. AM I CORRECT HERE?

10 A. YEAH, I'M NOT AN EXPERT IN THE READING OF THE LAW, BUT
11 IT SEEMS LIKE THAT'S A FAIR UNDERSTANDING.

12 Q. I'M ASKING YOU ABOUT THE HISTORY, IF THAT'S WHAT YOU
13 UNDERSTAND.

14 A. YES.

15 Q. SO IF YOU HAVE TO PAY, IF YOU HAVE TO ACCOUNT TO THE
16 POOL FOR A CLASSIFIED VALUE THAT EXCEEDS WHAT YOU CAN RETURN,
17 OTHER PRODUCERS, NOT MEMBERS OF LAND O'LAKES, GET THE BENEFIT
18 OF A HIGHER CLASS I OR HIGHER BLEND PRICE, BUT LAND O'LAKES
19 PRODUCERS DISPROPORTIONALLY ABSORBED THE BURDEN OF THAT
20 INADEQUATE MAKE ALLOWANCE; IS THAT CORRECT?

21 A. I THINK THAT'S A POSSIBILITY.

22 Q. OKAY. IT IS NOT JUST A POSSIBILITY, WOULDN'T IT BE THE
23 CASE ALL THE TIME IF YOU -- IF THE MAKE ALLOWANCE IS TOO SMALL
24 AND YOU CANNOT RECOVER FROM THE MARKETPLACE, YOUR FARMERS HAVE
25 TO, HAVE TO BEAR THE BURDEN OF THAT INADEQUATE RETURN.

1 A. I THINK THERE'S TRUTH TO THAT.

2 Q. AND OTHER FARMERS GET THE BENEFIT WITHOUT THE BURDEN,
3 OF THE INCREASED PRICE, CORRECT?

4 A. THE HIGHER PRICE, YES.

5 Q. YOU USED THE CONCEPT, THE TERM FREE ON BOARD, FOB. DO
6 YOU RECALL THAT?

7 A. I RECALL THAT.

8 Q. OKAY. AND YOU DESCRIBED WHAT WORDS FOB MEANS, FREE ON
9 BOARD -- BUT THE RECORD DOESN'T REVEAL MUCH MORE THAN THAT.

10 FOR THOSE LISTENING, THERE'S BEEN A LOT OF SLAPPING.

11 THERE'S A FLY -- A ROGUE FLY.

12 FREE ON BOARD, TO CARRY IT ONE STEP FURTHER, POINT OF
13 ORIGIN, CORRECT?

14 A. CORRECT.

15 Q. ALL RIGHT. THAT IS -- THAT DIDN'T -- HADN'T BEEN
16 CONNECTED.

17 A. PRICING AT POINT OF ORIGIN.

18 Q. PRICING AT POINT OF ORIGIN. AND YOU ANSWERED SOME
19 QUESTIONS ABOUT DUMPED MILK, MAYBE YOU ARE NOT THE WITNESS TO
20 -- ON OCCASION IN CALIFORNIA, YOU SAID MILK, BECAUSE IT WASN'T
21 CAPACITY, HAD TO BE DUMPED.

22 A. OKAY. YOU ARE SPEAKING OF JUST IN GENERAL OR ARE YOU
23 SPEAKING OF LAND O'LAKES SPECIFICALLY?

24 Q. ACTUALLY, I WAS SPEAKING FROM YOUR DISCUSSION IN THE
25 TRANSCRIPTS OF TESTIMONY THAT --

1 A. IF I SAID IT IN THE TESTIMONY THAT THERE HAD BEEN MILK
2 DUMPED, I THINK I RECALL THE DISCUSSION WITH MR. ENGLISH. I
3 THINK IT WAS IN THERE, YES. I JUST WANTED TO MAKE SURE I KNEW
4 WHAT IT WAS YOU WERE ASKING ABOUT.

5 Q. HAS LAND O'LAKES EVER EXPERIENCED THAT PROBLEM?

6 A. DUMPED MILK?

7 Q. YES.

8 A. WE HAVE DUMPED MILK.

9 Q. IN CALIFORNIA?

10 A. THAT WOULD HAVE TO BE A QUESTION I WOULD HAVE TO
11 DOUBLE-CHECK ON. WE'RE VERY CAREFUL ABOUT NOT DOING THAT IF WE
12 CAN AVOID IT. JUST SOMETIMES WE SELL MILK TO CALF RANCHES.

13 Q. AND HAS THE LAND O'LAKES ELSEWHERE DUMPED MILK BECAUSE
14 THERE HAS BEEN AN INADEQUATE LOCAL CAPACITY AND IT COST TOO
15 MUCH TO SHIP IT ELSEWHERE?

16 A. I THINK IN OUR HISTORY WE HAVE, ONCE OR TWICE MAYBE.

17 Q. YOU WOULD ALWAYS, HOWEVER, TRY TO FIND A HOME FOR THAT
18 MILK AND TRANSPORT IT THERE IF YOU CAN RECOVER MORE THAN ZERO?

19 A. ABSOLUTELY. ABSOLUTELY.

20 Q. DO YOU KNOW WHETHER THERE IS A PROCESS WITHIN THE
21 EXISTING CALIFORNIA SYSTEM THAT ALLOWS MILK TO BE DUMPED TO BE
22 INCLUDED IN THE POOL, NONETHELESS, IF YOU GIVE ADVANCED NOTICE
23 TO CDFA?

24 A. I DON'T KNOW THE SPECIFICS ON THAT, I WOULD HAVE TO
25 DEFER TO CDFA.

1 Q. OKAY. DO YOU KNOW OF A SIMILAR PROCESS IN THE FEDERAL
2 ORDER SYSTEM?

3 A. I BELIEVE THERE IS THE NOTICE OF DUMPED MILK, I THINK.

4 Q. DO YOU KNOW WHETHER, IF NOTICE IS GIVEN, THAT MILK CAN
5 BE POOLED, ESSENTIALLY, AS IF IT'S BEEN DIVERTED TO THE GROUND?

6 A. NO, I'M NOT POSITIVE OF THAT, TO BE HONEST WITH YOU.

7 Q. OH, THE PLANT IN NORTHERN CALIFORNIA WHERE YOU STILL
8 MAKE CHEESE?

9 A. THE ORLAND PLANT, YES.

10 Q. THAT CHEESE IS MADE FOR INTERNAL USE BY LAND O'LAKES?

11 A. YES.

12 Q. AND THAT WOULD BE IN SOME KIND OF CUT-AND-WRAP
13 OPERATION?

14 A. 500-HUNDRED POUND BARRELS IS HOW WE MAKE IT.

15 Q. AND THE BARRELS WOULD GO TO OTHER LAND O'LAKES FACILITY
16 WHERE IT IS MADE INTO THE CONSUMER PRODUCTS OR -- OR FOR OTHER
17 COMMERCIAL USE?

18 A. YES.

19 Q. DO YOU KNOW WHERE THOSE BARRELS PREDOMINANTLY GO FROM
20 ORLAND?

21 A. OUR SPENCER PLANT IN WISCONSIN.

22 Q. AND WHAT HAPPENS TO THEM AT THE SPENCER PLANT?

23 A. THEY ARE MADE INTO A CONSUMER PRODUCT.

24 Q. LAND O'LAKES CHEESE AT THE DELI COUNTER AT THE GROCERY
25 STORE?

1 A. PROCESSED PRODUCT.

2 Q. PROCESSED PRODUCT? WHEN THAT BARREL CHEESE ARRIVES IN
3 THE MIDWEST, DO YOU KNOW FROM YOUR EXPERIENCE WITHIN
4 LAND O'LAKES, WHETHER IT'S COST AT POINT OF DESTINATION IS
5 GREATER OR LESSER TO LAND O'LAKES THAN COST OF LOCALLY --
6 THAT'S LOCALLY IN THE UPPER MIDWEST -- PRODUCED BARREL CHEESE?

7 A. I DON'T KNOW THAT SPECIFICALLY, BECAUSE EVERY YEAR WE
8 EVALUATE HOW MUCH CHEESE WE WANT TO BUY FROM A THIRD PARTY
9 VERSUS SOME OF OUR OWN INTERNAL.

10 Q. WOULD IT BE -- OKAY. SO WOULD IT BE CORRECT TO SAY
11 THAT A CONSTANT PART OF LAND O'LAKES DECISION-MAKING PROCESS
12 WITH RESPECT TO MANUFACTURING CHEESE OR NONFAT DRY MILK, IS
13 WHERE IS YOUR PRODUCTION CAPACITY, CORRECT? IF YOU HAVE
14 MULTIPLE PLACES?

15 A. SURE.

16 Q. AND AT WHAT PROCESSING FACILITY YOU CAN BEST SERVE THE
17 NEEDS OF YOUR CUSTOMER BASE?

18 A. YES.

19 Q. AND IT MAY INCLUDE SHIFTING CAPACITY FROM A PLANT IN
20 ONE REGION TO A PLANT IN ANOTHER TO TAKE ADVANTAGE OF WHATEVER
21 MARKET CONDITIONS THERE ARE AT THE TIME?

22 A. AT THIS POINT, THERE IS NOT A LOT OF DISCUSSION ABOUT
23 SHIFTING PRODUCTION CAPACITY. WE HAVE PLENTY OF MILK IN MOST
24 CASES. EXCEPT HERE, ACTUALLY, WE'RE A LITTLE SHORT.

25 Q. HERE IT'S SHORT FOR MANUFACTURING USES?

1 A. YES.

2 Q. THERE'S NO SHORTAGE HERE FOR CLASS I OR CLASS II USE,
3 IS THERE?

4 A. NOT THAT I'M AWARE OF.

5 Q. IN QUESTION, OR ACTUALLY IN ONE OF THE EXHIBITS, THERE
6 WERE YOUR FORMER, YOUR TESTIMONY WAS DISCUSSED, YOU TESTIFIED
7 PREVIOUSLY THAT IF THERE'S NO CHANGE, IT WOULDN'T BE SURPRISING
8 IF WE, IF THERE WAS AN ADDITIONAL LOSS OF PLANT CAPACITY.

9 DO YOU RECALL READING THAT OUT LOUD?

10 A. I DO.

11 Q. NOT SURPRISING. I INFER FROM THAT A JUDGMENT
12 CHARACTERIZATION BASED ON SOME EXPERIENCE OR EXPERTISE THAT YOU
13 HAVE. WHAT IS IT THAT WOULD MAKE IT NOT SURPRISING?

14 A. I THINK I WAS EVALUATING FROM THE STANDPOINT OF THE
15 COST ASPECT OF THE WHEY FACTOR. I DON'T REMEMBER EXACTLY WHERE
16 WE WERE AT IN TERMS OF THE 4B, THAT THAT WOULD HAVE AN IMPACT
17 ON THE ABILITY TO ATTRACT MORE CAPACITY IN TERMS OF THE MYRIAD
18 FACTORS THAT ARE CONSIDERED.

19 Q. OKAY. AND ATTRACTING CAPACITY OR LOSING CAPACITY IS A
20 JUDGMENT THAT MANUFACTURERS ENGAGE IN ALL THE TIME WHEN THEY
21 DECIDE TO BUILD A PLANT IN ONE REGION OF THE COUNTRY VERSUS
22 ANOTHER, SUCH AS THE DISCUSSION, TEXAS VERSUS CALIFORNIA, OR
23 NEW MEXICO VERSUS CALIFORNIA; IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. OKAY. THANK YOU.

1 JUDGE CLIFTON: THE WISCONSIN PLANT, THE SPENCER PLANT, HOW
2 IS SPENCER SPELLED, PLEASE?

3 MR. WEGNER: S-P-E-N-C-E-R.

4 JUDGE CLIFTON: THANK YOU. WHO ELSE HAS QUESTIONS FOR
5 MR. WEGNER?

6 CROSS-EXAMINATION

7 BY MR. SCHIEK:

8 Q. BILL SCHIEK WITH THE DAIRY INSTITUTE OF CALIFORNIA.

9 GOOD AFTERNOON, MR. WEGNER?

10 A. GOOD AFTERNOON, MR. SCHIEK.

11 Q. I JUST HAVE, I THINK, FOR THE MOST PART, JUST SOME
12 CLARIFICATION THINGS FROM THE QUESTIONING AND ANSWERING THAT
13 YOU HAD. I HEARD SOME DIFFERING THINGS, I JUST WANT TO MAKE
14 SURE THE RECORD'S CLEAR ON A COUPLE OF POINTS.

15 FIRST, THOUGH, I WANT TO THANK YOU FOR ALL THE WORK YOU
16 DID ON THE UNIFORM PROVISIONS, PART 1000. I THINK THAT WAS
17 VERY WELL PUT TOGETHER AND I APPRECIATE IT, AND I THINK, AS
18 MR. ENGLISH NOTED, WE'LL HAVE A LOT TO AGREE WITH ON A LOT OF
19 THOSE PROVISIONS, AND WILL PROBABLY MAKE MY TESTIMONY LESS
20 LIKELY ON THOSE ISSUES JUST BECAUSE YOU HAVE DONE A LOT OF THE
21 WORK, SO I APPRECIATE THAT.

22 I NOTE THAT YOU, IN GOING THROUGH THE UNIFORM
23 PROVISIONS, PART 1000 PROVISIONS, YOU QUOTE FROM, I BELIEVE
24 IT'S THE FINAL DECISION, USDA'S FINAL DECISION ON FEDERAL ORDER
25 REFORM FROM 1999. IS THAT -- AM I RIGHT ABOUT THAT?

1 A. YES, YOU ARE.

2 Q. AND YOU INCLUDE THOSE QUOTES AS, IN PART, AS
3 JUSTIFICATION FOR THE PROVISION THAT YOU ARE OFFERING. AND SO
4 MY INFERENCE IS THAT YOU WERE KIND OF AGREEING WITH USDA'S
5 QUOTE THAT, AS IT PERTAINS TO THAT PROVISION; IS THAT CORRECT?

6 A. YES, I FELT THAT USDA SAID IT BEST IN ARGUING WHY WE
7 NEEDED NEW FOUND PROVISIONS. DIDN'T HAVE ANY ADDITIONAL
8 THOUGHTS ON THAT, SO THAT'S WHY WE PRODUCED THOSE QUOTES.

9 Q. GOOD. THANK YOU. JUST FOLLOWING UP ON ONE OF
10 MR. ENGLISH'S QUESTIONS ON YOUR ORLAND PLANT AND THE CONDENSED
11 WHEY THAT YOU SELL. I WAS JUST CURIOUS IF, FIRST OF ALL, IS
12 THAT -- THIS IS A TECHNICAL QUESTION, BUT YOU PROBABLY KNOW THE
13 ANSWER -- IS THAT MADE WITH A TRADITIONAL CONDENSING PROCESS OR
14 IS IT DONE THROUGH MEMBRANE FILTRATION, CONCENTRATE THE WHEY?

15 A. I'M PRETTY CERTAIN IT'S A STANDARD CONDENSER, BUT I'M
16 NOT ABSOLUTELY POSITIVE ON THAT.

17 Q. DO YOU KNOW, IN TERMS OF THE CUSTOMER YOU SELL IT TO,
18 HOW IT GETS USED? IS IT MADE INTO DRY WHEY OR IS IT MADE INTO
19 SOME OTHER WHEY PRODUCT?

20 A. I DON'T KNOW WHAT THEY DO WITH IT, TO BE HONEST WITH
21 YOU.

22 Q. OKAY. THANKS. THIS IS A POINT OF CLARIFICATION.
23 THERE IS SOME DISCUSSION ABOUT, EXCUSE ME, IN THE CALIFORNIA
24 CLASS 4A AND 4B FORMULAS, SOME DISCUSSION ABOUT THE CME PRICES
25 FOR BUTTER AND FOR CHEDDAR CHEESE BLOCKS, AS WELL AS THE

1 CALIFORNIA WEIGHTED AVERAGE PRICE FOR NONFAT DRY MILK. I JUST
2 WANT, FOR CLARITY IN THE RECORD, I WANT TO -- IS IT YOUR
3 UNDERSTANDING THAT THE PRICES USED IN THE CLASSIFIED PRICING
4 FORMULAS, LET'S START WITH 4A, FOR FAT, USES A CME PRICE THAT'S
5 ADJUSTED FOR THE FOB ADJUSTER?

6 A. YEAH, YOU ARE SPEAKING OF SPECIFICALLY THE TWO PARTS OF
7 THE 4A, MR. SCHIEK?

8 Q. YEAH, SO STARTING WITH THE FAT PORTION.

9 A. THE FAT PORTION IS THE CME, BUTTER.

10 Q. OKAY. AND THE NONFAT PORTION IS WHAT PRICE AREA?

11 A. CWAP.

12 Q. WHICH IS?

13 A. CALIFORNIA WEIGHTED AVENUE PRICE SERIES.

14 Q. FOR NONFAT DRY MILK?

15 A. FOR NONFAT DRY MILK COLLECTED BY CDFA EVERY WEEK.

16 Q. THANK YOU.

17 A. SURE.

18 Q. AND FOR, IN THE 4B FORMULA, THE PRICE SERIES USED FOR
19 CHEDDAR CHEESE IS CME?

20 A. CME CHEDDAR.

21 Q. LESS WHATEVER THAT ADJUSTMENT IS.

22 A. WHATEVER THE FOB IS, YEAH. YOU FORGOT THE FOB ADJUSTER
23 ON THE BUTTER SIDE.

24 Q. DID I?

25 A. YOU DID.

1 Q. I'M SORRY.

2 A. DID YOU MEAN TO INCLUDE IT?

3 Q. YES, I DID. THANK YOU FOR REMINDING ME.

4 A. DO YOU WANT ME TO ASK -- SHOULD I ASK YOU OR SHOULD
5 YOU --

6 Q. I WOULD -- I THINK WE'RE GOOD. AND, YOU KNOW, I'M
7 SORRY TO DO THIS, BECAUSE I DO RECOGNIZE --

8 A. I'M SURE YOU ARE.

9 Q. NO, NO, I REALLY AM. I'M -- I FULLY RECOGNIZE THAT
10 PUTTING TOGETHER A COMPREHENSIVE PROPOSAL FOR A FEDERAL ORDER
11 IS AN ENORMOUS UNDERTAKING, AND THERE'S A LOT OF THINGS THAT GO
12 INTO IT, AND SO I'M RECOGNIZING THAT AND I'M APPRECIATIVE OF
13 ALL THE WORK YOU HAVE DONE.

14 I THINK WHEN I INITIALLY LOOKED AT YOUR PROPOSAL ON HOW
15 TO HANDLE THE PPD, PRODUCER PAYMENT DIFFERENTIAL, I HAD
16 SOMETHING IN MY MIND, AND WHAT YOU PRESENTED HERE WAS DIFFERENT
17 AND KIND OF, YOU KNOW, UNANTICIPATED BY ME. IT'S PROBABLY THAT
18 I DIDN'T READ IT PROPERLY THE FIRST TIME, SO I APOLOGIZE FOR
19 THAT, BUT I'M STILL TRYING TO UNDERSTAND IT.

20 A. PLEASE.

21 Q. SO, FIRST OF ALL, PRODUCER PAYMENT DIFFERENTIAL, AS
22 IT'S NORMALLY DESCRIBED, IS ESSENTIALLY THE DIFFERENCE OF THE
23 POOL VALUE VERSUS THE DIFFERENCE OF THE CLASS III PRICE WITH
24 ALL THE COMPONENTS OVER THE WHOLE ORDER. IF YOU APPLY THE
25 CLASS III VALUE OVER THE WHOLE ORDER, AND THEN YOU HAVE GOT THE

1 ACTUAL VALUE OF EVERYTHING THAT GETS PAID INTO THE POOL AFTER
2 ALL THE VARIOUS OTHER THINGS ARE NETTED OUT, THAT'S THE
3 PRODUCER PAYMENT DIFFERENTIAL? IT'S KIND OF THAT DIFFERENCE IN
4 VALUE, IS THAT --

5 A. JUST TO CLARIFY, IT IS THE PRODUCER PRICE DIFFERENTIAL.

6 Q. EXCUSE ME, THE PRODUCER PRICE DIFFERENTIAL.

7 A. AND THAT'S A FAIR CONCEPTUAL OVERVIEW OF IT. CLASS III
8 COMPONENTS FIRST, WHATEVER IS LEFT AFTER YOU DO THE ADJUSTMENTS
9 FOR SETTLEMENT AND SEVERAL OTHER THINGS, YOU HAVE THE, EXCUSE
10 ME, THE QUOTA -- EXCUSE ME -- THE PPD VALUE.

11 Q. OKAY. AND THE WAY YOU ARE DOING IT BY NOT MAKING THE
12 PPD REALLY AN EXPLICIT CALCULATION, IT IS, THE VALUE CHANGE IS
13 STILL THERE OR STILL REPRESENTED IN THE COMPONENT VALUE IS THE
14 WAY YOU APPLY IT?

15 A. YES, IN THE CALCULATION IS STILL THERE, BUT THE PAYMENT
16 DOES NOT GO OUT IN THE FORM OF A PPD, IT GOES ACROSS THE THREE
17 COMPONENTS OF CLASS III.

18 Q. OKAY. THANK YOU. WOULD THIS BE A TRUE STATEMENT THAT,
19 IN GENERAL, IN THE FEDERAL ORDERS WHERE YOU OPERATE, IF YOU
20 HAVE NEGATIVE PPD'S, THAT EVOKES A NEGATIVE REACTION FROM
21 PRODUCERS? MEANING, THEY ARE WONDERING WHY THEY -- WHY THE
22 PRICE IS BEING REDUCED --

23 A. I THINK THAT'S --

24 Q. -- IF YOU HAVE A NEGATIVE PPD?

25 A. I THINK THAT'S A FAIR STATEMENT, YES.

1 Q. SO YOU WERE EXPLAINING THIS TO MR. VETNE ABOUT THE USE
2 OF THE PRIOR YEAR VALUATION CALCULATION TO APPLY GOING FORWARD
3 IN CURRENT YEAR, LET'S SAY, USE THAT TERM, TO ASSIGN A SHARE OF
4 THAT TOTAL PPD DOLLARS TO THE VARIOUS COMPONENTS. I'M JUST
5 CURIOUS IF, DID YOU ASK ANY OF THE MA OFFICES, MARKET
6 ADMINISTRATOR OFFICES, IF THEY WOULD BE ABLE TO DO THAT SORT OF
7 CONCURRENTLY, LIKE ON A RUNNING MONTH BASIS? WAS THAT
8 SOMETHING THAT WAS GOING TO BE TECHNICALLY DIFFICULT FOR THE
9 MA?

10 A. I'M TRYING TO RECALL IF WE ASKED THAT SPECIFIC
11 QUESTION, AND I DON'T RECALL IF WE DID, NOR DO I RECALL THE
12 ANSWER. BUT WE DID SETTLE ON THIS, BECAUSE WE FELT IT WOULD BE
13 A LESS -- THAT WE KNEW THAT COULD BE DONE, PUT IT THAT WAY, AND
14 THAT YOU WOULDN'T HAVE THE MOVEMENT OF THE DIFFERENTIAL OR OF
15 THE ADJUSTMENT TO THE COMPONENTS IN AN UNEXPECTED FASHION. IF
16 WOULD BE A LITTLE MORE PREDICTABLE I THINK IS WHAT WE WERE
17 SOMEWHAT FEELING, IF I RECALL THE CONVERSATIONS CORRECTLY.
18 YEAH.

19 Q. I -- THAT'S, I MEAN THAT SOUNDS -- I CAN UNDERSTAND
20 THAT POINT OF VIEW. THE THING THAT CONCERNS ME, JUST IN
21 LOOKING AT IT, I'M JUST GOING TO ASK A QUESTION ABOUT IT.
22 AGAIN, I HAVEN'T LOOKED AT THE NUMBERS, SO I DON'T KNOW THE
23 ANSWER AHEAD OF TIME.

24 A. UH-HUH.

25 Q. BUT WE HAD QUITE A BIT OF VOLATILITY IN SOME OF OUR

1 COMMODITY PRICES, AND SO I AM JUST -- JUST TO THROW OUT AN
2 EXAMPLE NUMBER OUT THERE, AND I DON'T EXPECT YOU TO DO THE
3 CALCULATION, BUT LET'S SAY YOU HAD A YEAR WHERE THE BUTTER
4 PRICE AVERAGE IS \$1.50 A POUND, AND THEN THE NEXT YEAR IT WAS
5 \$3.50 A POUND -- I DON'T THINK WE HAVE HAD A \$3.50 A POUND
6 AVERAGE FOR A YEAR, BUT JUST TO ILLUSTRATE.

7 A. LET'S HOPE NOT.

8 Q. YEAH, THE BUTTER MARKET WOULD HAVE A HARD TIME WITH
9 THAT, MAYBE. BUT DID YOU LOOK AT THOSE KINDS OF SWINGS TO SEE
10 THEIR IMPACT ON -- ON THOSE -- HOW MUCH AN IMPACT THEY WOULD
11 HAVE ON THE PPD COMPONENT ALLOCATED ACROSS THE COMPONENTS, IN
12 TERMS OF MATCHING UP WITH THE ACTUAL VALUES IN THE, LET'S SAY,
13 THE CLASS III FORMULA?

14 A. WOULD HAVE BEEN A LOT OF CONSTRUCTION TO KIND OF FIGURE
15 OUT WHAT IT WOULD BE IN A CALIFORNIA SITUATION, ORDER 30 WITH
16 THE VOLUME, I MEAN, YOU CAN DO THE MATH FOR YOURSELF, IF YOU
17 LOOK, YOU SWING IT THE OTHER WAY 40 CENTS, WHICH HASN'T
18 HAPPENED FOR AWHILE, AND SEE WHAT HAPPENED THERE. IF YOU
19 DOUBLE IT TO A DOLLAR, YOU DOUBLE THE IMPACT.

20 GENERALLY, MR. SCHIEK, YOU ARE LOOKING AT THE CHANGES
21 HERE, IT'S A POSSIBILITY THAT IT COULD MOVE IT BY, UNLIKELY
22 THAT IT WOULD BE AN ENTIRE YEAR, BUT WE THOUGHT THAT'S -- YOU
23 MADE THE CASE ACTUALLY FOR WHY YOU WANT TO STAY AWAY FROM
24 MONTHLY'S, BECAUSE MORE OFTEN WE GET MONTHLY SPIKES IN THOSE
25 COMMODITY PRICES, AND THAT MIGHT SWING THE COMPONENT VALUES A

1 LITTLE RADICALLY THAN THE TWELVE-MONTH AVERAGE. BUT, NO, WE
2 DIDN'T. NO, I DIDN'T, THAT'S THE SHORT ANSWER.

3 Q. LET'S SUPPOSE I AM A DAIRY FARMER, I HAVE A JERSEY HERD
4 AND I HAVE HIGH COMPONENT MILK. LET'S SAY FOR ARGUMENT'S SAKE,
5 THAT THAT PARTICULAR MONTH THERE'S A NEGATIVE PPD OF 50 CENTS.

6 A. UH-HUH.

7 Q. ON A HUNDREDWEIGHT BASIS, IT WOULD BE 50 CENTS. UNDER
8 YOUR METHOD OF HANDLING THIS, THE PPD AND ALLOCATING IT TO A
9 COMPONENT, WOULD MY PRICE BE LOWER, HIGHER, OR THE SAME, VERSUS
10 GETTING PAID THE TRADITIONAL WAY THE PPD IS PAID.

11 A. EXCUSE ME, I THINK THAT YOUR ULTIMATE PAY PRICE
12 WOULDN'T HAVE CHANGED, IT WOULD HAVE BEEN HOW IT WAS
13 DISTRIBUTED. SO INSTEAD OF IT COMING TO YOU IN THE FORM OF
14 COMPONENTS AT THIS LEVEL AND A NEGATIVE PPD, IT WOULD COME AT
15 THIS LEVEL, AND NO NEGATIVE PPD. SO IT'S -- IT IS MORE HOW THE
16 MONEY IS DISTRIBUTED AND THAT THE RATIO AMONGST THE COMPONENTS,
17 I THOUGHT YOU WERE KIND OF GOING THAT DIRECTION, WOULDN'T BE
18 DISTURBED THAT MUCH SO YOU WOULD SEE -- THAT'S THE QUESTION
19 THAT CAME UP INITIALLY, OF WHAT ARE YOU GOING TO DO TO THE
20 COMPONENT RELATIVE TO VALUE. BY PUTTING IT IN THIS ANNUAL
21 AVERAGE, I THINK WE'RE GOING TO LIMIT HOW MUCH THAT WOULD
22 SWITCH IT AROUND. BUT VALUE WOULD STILL GO OUT TO THE
23 PRODUCERS, IT WOULD JUST COME OUT IN A DIFFERENT WAY IN TERMS
24 OF THE COMPONENT PAYMENT VERSUS THE COMPONENT PAYMENT PLUS PPD.

25 Q. OKAY. I AGREE WITH YOU, THE VALUE WOULD COME OUT TO

1 THE PRODUCERS IN TOTAL. THE CONCERN I HAVE, AND AGAIN, I'M
2 JUST TRYING TO DO MATH IN MY HEAD, AND I, AGAIN, DON'T KNOW THE
3 ANSWER.

4 A. UH-HUH.

5 Q. THE QUESTION IS, IF I'M A HIGH COMPONENT PRODUCER AND
6 THE PPD IS NEGATIVE, DO I ACTUALLY END UP WITH -- AND IF THE
7 PPD CALCULATED THE NORMAL WAY ON A HUNDREDWEIGHT BASIS WAS 50
8 CENTS, DO I END UP IN THAT PARTICULAR MONTH WITH LESS MONEY,
9 LIKE, AN EFFECTIVE PPD THAT'S MORE LIKE 60 OR 65 CENTS, BECAUSE
10 I'M A HIGH-COMPONENT PRODUCER?

11 A. I'M NOT THINKING YOU DO, BUT I DON'T KNOW FOR SURE. IT
12 WOULD HAVE TO BE RUN THROUGH EXAMPLES, AND THOSE ARE FAIR
13 QUESTIONS TO ASK. WE ENCOURAGE YOU TO -- WE CAN DO AN OFFLINE
14 DISCUSSION ABOUT IT, IT WOULD BE QUITE FUN, IN A DIFFERENT
15 VENUE.

16 Q. WITH A BEVERAGE, MAYBE?

17 A. MAYBE, GREAT IDEA, I'LL TAKE YOU UP ON THAT.

18 Q. GREAT. THANKS. THAT'S ALL THE QUESTIONS I HAVE.

19 A. THANK YOU.

20 JUDGE CLIFTON: I HAVE THIS DREAM THAT YOU ARE GOING TO
21 WORK OUT SOME AGREEMENT ON ALL THE PROVISIONS, TWO AT A TIME.

22 MR. ENGLISH: CHIP ENGLISH. NO COMMENT ON THAT DREAM, YOUR
23 HONOR, BUT -- AND I'M GOING TO ASK A COUPLE OF QUESTIONS, BUT
24 I'M GOING TO PREFACE IT WITH THE PARTICIPANTS WHO HAVE BEEN
25 ADDRESSING THIS ISSUE RAISED, HAVE BEEN TRYING TO WORK THROUGH

1 A STIPULATION AS TO HOW TO DEAL WITH THE QUESTIONS ABOUT THE
2 MARK STEPHENSON AND CHUCK NICHOLSON STUDY.

3 AND WHILE WE WERE CLOSE, WE HAVEN'T YET COME UP WITH
4 THAT IN FINAL FORM. WELL, I DON'T THINK IT IS IN FINAL FORM
5 BUT, SO --

6 MR. BESHORE: MAYBE IT WILL BE AFTER THE NEXT BREAK.

7 MR. ENGLISH: SO I NEED TO ASK THIS WITNESS WHILE HE'S
8 STILL ON THE STAND, AND HOPEFULLY THIS WILL BE THE LAST TIME,
9 AND I'M ONLY GOING TO ASK HIM TWO QUESTIONS.

10 CROSS-EXAMINATION (CONTINUED)

11 BY MR. ENGLISH:

12 Q. YOU ARE NO DOUBT AWARE THAT THE COOPERATIVES HAVE
13 REQUESTED A STUDY BY THE DAIRY ECONOMISTS MARK STEPHENSON AND
14 CHUCK NICHOLSON TO LOOK AT A FEDERAL MILK MARKETING ORDER AND
15 ITS IMPACTS FOR CALIFORNIA, CORRECT?

16 A. YES, I'M AWARE OF THAT.

17 Q. AND HAVE YOU SEEN THAT STUDY?

18 A. YES, I HAVE.

19 Q. THANK YOU.

20 JUDGE CLIFTON: SOMEONE WHO HAS SEEN IT. IS THERE ANY
21 OTHER CROSS-EXAMINATION OF MR. WEGNER?

22 MR. RICHMOND: BILL RICHMOND, USDA. THANK YOU, YOUR HONOR,
23 AND THANK YOU, MR. WEGNER, FOR YOUR TESTIMONY. WE REALLY
24 APPRECIATE IT. SO I THINK WHAT WE WOULD LIKE TO DO IS KIND OF
25 START AT THE BEGINNING, AND I APOLOGIZE FOR THIS BUT -- I THINK

1 YOU HAVE DONE AN EXCELLENT JOB IN BEGINNING YOUR STATEMENT AND
2 EXPLAINING THE REASON BEHIND WHY IN THE PROPOSED CALIFORNIA
3 FEDERAL ORDER YOU AND YOUR COOPERATIVE PARTNERS, WISH TO
4 MAINTAIN SOME OF THE UNIFORM PROVISIONS AS CURRENTLY PROVIDED
5 IN THE FEDERAL ORDERS. YOU HAVE BASED A LOT OF THE EXPLANATION
6 ON THE MAINTENANCE OF UNIFORMITY AND CONSISTENCY WITH RULES
7 THAT CURRENTLY EXIST ACROSS THE FEDERAL ORDER PROGRAM.

8 AND WHILE WE APPRECIATE THAT, WE NEED TO GO THROUGH
9 EACH OF THE PROVISIONS, AND I WOULD LIKE FOR YOU TO EXPLAIN TO
10 US, FOR EACH PROVISION, WHETHER OR NOT THE CONCEPTS OF
11 UNIFORMITY AND CONSISTENCY ARE THE ONLY REASONS THAT REALLY
12 APPLY FOR MAINTAINING THOSE PROVISIONS AS CURRENTLY CONTAINED,
13 OR IF YOU HAVE ADDITIONAL REASONS AS TO WHY YOU WANT TO KIND OF
14 MAINTAIN THEM AS THEY ARE CURRENTLY PROVIDED. SO IF WE COULD,
15 I WOULD LIKE TO START WITH 1051.1 GENERAL PROVISIONS.

16 JUDGE CLIFTON: WE'RE IN [EXHIBIT 34](#), PAGE 3.

17 CROSS-EXAMINATION

18 BY MR. RICHMOND:

19 Q. YES, YOUR HONOR.

20 SO I GUESS MY QUESTION IS, PAGE 3 AT THE BOTTOM STATES,
21 "ALL PART 1000 LANGUAGE REMAINS UNCHANGED." AND THEN MOVING
22 INTO PAGE 4, WE BEGIN THE PARAGRAPH WITH SOME DESCRIPTIONS ON
23 THE CALIFORNIA MARKETING AREA.

24 SO IN REGARDS TO 1051.1, ARE YOU OF THE OPINION THAT
25 THAT WOULD REMAIN UNCHANGED TO MAINTAIN UNIFORMITY AND

1 CONSISTENCY WITH WHAT IS CURRENTLY PROVIDED IN THE OTHER
2 FEDERAL MILK MARKETING ORDERS?

3 A. YES.

4 Q. OKAY. SO MOVING ALONG TO SECTION 1051.2 WHICH
5 DESCRIBES THE CALIFORNIA MARKETING AREA. THE PARAGRAPH ABOVE
6 THE BOLDED LANGUAGE DESCRIBES HOW IN THE, BASICALLY THE 2014
7 FARM BILL, THERE'S LANGUAGE IN THE BILL THAT PROVIDES, THAT IS
8 PROVIDED FOR US HOLDING THIS HEARING, THAT DESCRIBES THE
9 ABILITY FOR THE PROPOSED MARKETING AREA TO COVER "THE STATE OF
10 CALIFORNIA." AND IS IT YOUR OPINION THAT THIS IS WHAT LED TO
11 THE -- TO THE INCLUSION OF THE ENTIRE STATE OF CALIFORNIA AS
12 THE PROPOSED NEW FEDERAL MILK MARKETING ORDER? BASICALLY, DO
13 YOU HAVE ANY OTHER PREFERENCE TO PERHAPS HAVE A DIFFERENT
14 DIFFERENT BOUNDARIES FOR A NEW PROPOSED FEDERAL MILK MARKETING
15 ORDER, OR IS IT YOUR UNDERSTANDING THAT BECAUSE THIS IS THE
16 LANGUAGE THAT WAS CONTAINED IN THE BILL, THIS IS WHAT YOU
17 ARE --

18 A. WE ARE CERTAINLY PROPOSING THE ENTIRE STATE OF
19 CALIFORNIA AS THE MARKETING ORDER.

20 Q. OKAY.

21 A. AND THAT THE STATEMENT SPEAKS FOR ITSELF ABOUT THE AG
22 ADJUSTMENT ACT, OR THE AG ACT OF 2014.

23 Q. OKAY. AND DO YOU UNDERSTAND THAT TRADITIONALLY FEDERAL
24 MILK MARKETING ORDER BOUNDARIES ARE DERIVED ON ESSENTIALLY
25 COMPETITION FOR CLASS I SALES, AND BASED ON THAT UNDERSTANDING,

1 YOU CONTINUE TO SUPPORT THE ENTIRE STATE OF CALIFORNIA AS
2 ENCOMPASSING THE ENTIRE MARKETING AREA?

3 A. WE DO. I DO.

4 Q. THANK YOU. MOVING ALONG TO ROUTE DISPOSITION. DO YOU
5 AGREE THAT, AS WE HAVE PREVIOUSLY DISCUSSED, THAT THE IDEAS OF
6 MAINTAINING UNIFORMITY AND CONSISTENCY ARE THE PRIMARY REASONS
7 FOR RETAINING THE SAME LANGUAGE THAT'S CURRENTLY CONTAINED IN
8 THE FEDERAL MILK MARKETING ORDERS?

9 A. YES.

10 Q. AND WE'RE GOING TO KEEP MOVING ALONG THROUGH THIS.

11 A. VERY GOOD.

12 Q. SAME QUESTION FOR THE DEFINITION OF PLANT?

13 A. YES.

14 Q. DISTRIBUTING PLANT?

15 A. YES.

16 Q. SUPPLY PLANT?

17 A. YES.

18 Q. NONPOOL PLANT?

19 A. YES.

20 Q. AND HANDLER?

21 A. YES.

22 Q. OTHER SOURCE MILK?

23 A. YES.

24 Q. AS WE ARRIVED AT THE DEFINITION FLUID MILK PRODUCT
25 YESTERDAY, WE PROVIDED THE WITNESS TO ATTEMPT TO EXPLAIN SOME

1 OF THE CHANGES THAT MAY RESULT IN PRODUCTS HERE IN CALIFORNIA
2 THAT ARE CURRENTLY CLASSIFIED ONE WAY UNDER THE CALIFORNIA
3 STATE ORDER THAT COULD POTENTIALLY CHANGE UNDER A NEW FEDERAL
4 MILK MARKETING ORDER. DO YOU RECALL THE TESTIMONY?

5 A. I DO.

6 Q. AND DO YOU UNDERSTAND THAT THERE COULD BE POTENTIAL
7 IMPACTS TO PROCESSORS BASED ON THE CLASSIFICATION GUIDELINE
8 SHIFT, IF YOU WILL, FROM A STATE ORDER TO A POTENTIALLY A
9 FEDERAL ORDER?

10 A. YES.

11 Q. AND HAVE YOU CONSIDERED THE POTENTIAL IMPACT OF THE
12 SHIFT ON CONSUMERS IN THE STATE OF CALIFORNIA?

13 A. I'M NOT SURE IF WE HAVE GONE THROUGH THAT OR NOT.

14 Q. OKAY. I APPRECIATE THAT. UNDER SECTION 1051.16, ON
15 PAGE 12, FLUID CREAM PRODUCT. DO YOU UNDERSTAND THAT BASED ON
16 THE PREVIOUS LINE OF QUESTIONING IN REGARDS TO THE TESTIMONY
17 PRESENTED YESTERDAY, THERE COULD BE A POTENTIAL SHIFT IN WHAT
18 IS CURRENTLY UNDERSTOOD TO BE A FLUID CREAM PRODUCT IN THE
19 STATE OF CALIFORNIA?

20 A. YES.

21 Q. SECTION 1051.18, COOPERATIVE ASSOCIATION?

22 A. SAME QUESTION?

23 Q. SAME QUESTION, YES.

24 A. SAME ANSWER, YES.

25 Q. 1051.19, COMMERCIAL FOOD PROCESSING ESTABLISHMENT?

1 A. YES.

2 Q. ON PAGE 15, MIDDLE OF THE PAGE UNDER THE HEADING FOR
3 EXHIBIT 3A, THE EXHIBIT STATES, "WE ALSO PROPOSE TO ADOPT AS
4 THE EXISTING UNIFORM PROVISIONS FROM PART 1000 FOR ADJUSTMENT
5 OF ACCOUNTS SECTION 1051.77; CHARGES ON OVERDUE ACCOUNTS,
6 SECTION 1051.78; ASSESSMENT FOR ORDER ADMINISTRATION, SECTION
7 1051.85; AND DEDUCTIONS FOR MARKETING SERVICES SECTION 1051.86.

8 TO THE EXTENT THAT YOUR DESCRIPTION OF PROPOSING TO
9 ADOPT THE EXISTING UNIFORM PROVISIONS FOR PART 1000, THOSE FOUR
10 HEADINGS, WOULD YOU AGREE THAT IF THE DEPARTMENT NEEDED TO MAKE
11 MINOR CLERICAL ERRORS IN PROPERLY DESCRIBING YOUR PROPOSAL,
12 THAT WOULD BE OKAY WITH YOUR GROUP?

13 A. I ASSUME IT WOULD BE, IF THERE WERE ONLY CLERICAL
14 ERRORS.

15 Q. I HAVE AN EXAMPLE. IN THE PROPOSAL, UNDER THE SECTION
16 FOR ASSESSMENT FOR ORDER ADMINISTRATION SECTION 1051.85, THE
17 PROPER PROPOSAL INCLUDES A POTENTIAL MARKET ADMINISTRATOR
18 ASSESSMENT OF 8 CENTS. AND PART 1000, CURRENTLY, THERE'S A DE
19 FACTO LIMIT SET OF 5 CENTS FOR ORDER ADMINISTRATION.

20 DO YOU AGREE THAT IN THE EVENT THAT FOR SOME REASON THE
21 MARKET, POTENTIAL MARKET ADMINISTRATOR FOR CALIFORNIA ORDER
22 NEEDED TO, IN FACT, ESTABLISH AN ASSESSMENT BELOW THE 8 CENTS
23 LEVEL, THAT THAT WOULD BE OKAY?

24 A. YES.

25 Q. I APPRECIATE THAT.

1 A. MR. RICHMOND, DID YOU MEAN TO SPEAK TO 1051.25, .26,
2 .27, .28 AS WELL?

3 Q. YES, SIR. LET'S DO THE SAME THING AS BEFORE. SO FOR
4 1051.25, MARKET ADMINISTRATOR DEFINITION?

5 A. YES.

6 Q. FOR 1051.26, THE EXISTING UNIFORM DEFINITION FOR
7 CONTINUITY AND SEVERABILITY OF PROVISIONS?

8 A. YES.

9 Q. SECTION 1051.27, THE EXISTING UNIFORM DEFINITION FOR
10 HANDLER RESPONSIBILITY FOR RECORDS AND FACILITIES?

11 A. YES.

12 Q. AND FINALLY, 1051.28, WOULD BE THE EXISTING UNIFORM
13 DEFINITION FOR TERMINATION OF OBLIGATIONS?

14 A. YES.

15 Q. I APPRECIATE THAT. THANK YOU FOR ENTERTAINING ME
16 THROUGH THAT EXERCISE.

17 IF YOU WOULD LIKE TO MOVE ALONG NOW, TALK A LITTLE BIT
18 ABOUT SECTION 60, 61, AND 62.

19 JUDGE CLIFTON: WOULD THIS BE A GOOD TIME FOR A BREAK?
20 THIS IS GETTING -- THIS IS ABOUT TO BE STRENUOUS. WE HAVE BEEN
21 CONFINED FOR AWHILE. LET'S, IT IS ALMOST 3:30. PLEASE BE BACK
22 AND READY TO GO AT 3:45.

23 (WHEREUPON, A BREAK WAS TAKEN.)

24 JUDGE CLIFTON: WE'RE BACK ON RECORD AT 3:45.

25 MR. RICHMOND, YOU MAY PROCEED.

1 BY MR. RICHMOND:

2 Q. BILL RICHMOND, USDA. THANK YOU, YOUR HONOR. AND THANK
3 YOU, MR. WEGNER.

4 I UNDERSTAND YOU DON'T WORK FOR THE DEPARTMENT OF,
5 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, BUT I WOULD
6 REALLY APPRECIATE IT IF YOU COULD MAYBE, PERHAPS IN YOUR OWN
7 WORDS, DESCRIBE TO US THE FLUID MILK FORTIFICATION SCHEME THAT
8 EXISTS HERE IN CALIFORNIA. AND IF YOU DON'T FEEL COMFORTABLE
9 DOING THAT, THAT'S FINE, TOO.

10 A. YEAH, ACTUALLY, I DON'T FEEL COMFORTABLE. I'LL BE
11 STRAIGHTFORWARD THAT THE LANGUAGE WAS, THE INTENT OF THE
12 LANGUAGE CLEARLY WAS TO MIMIC THE FORTIFICATION TREATMENT IN
13 CALIFORNIA. AND I THINK AS HAS BEEN DISPLAYED HERE IN SOME OF
14 MY CROSS, THERE'S SOME PLACES WHERE IT'S PROBABLY NOT EXACTLY
15 THE SAME. AS I HAVE MENTIONED BEFORE, WE ARE OPEN TO THAT
16 DISCUSSION FROM THE FOLKS WHO KNOW THE FORTIFICATION ALLOWANCE
17 AND WHO WILL BE LISTENING TO THE PROPOSAL, TOO.

18 Q. OKAY. I WOULD LIKE TO WALK THROUGH JUST A COUPLE OF
19 QUESTIONS REGARDING FORTIFICATION IN YOUR PROPOSAL, AND IF YOU
20 CAN ANSWER, GREAT. IF NOT, THAT'S FINE, TOO.

21 A. FAIR ENOUGH.

22 Q. SO AS PROPOSED IN SECTION 60(A)(3) AND (4), IT APPEARS
23 TO CONTAIN CALCULATIONS OF FORTIFICATION CREDITS THAT SEEM
24 SIMILAR, AS YOU STATED, TO THE CALIFORNIA STATE ORDER. AS
25 WRITTEN, THESE CREDITS APPEARED ONLY -- SORRY, AS WRITTEN,

1 "THESE CREDITS APPEAR TO APPLY TO ALL CLASS I PRODUCTS
2 FORTIFIED, WHETHER OR NOT THE FORTIFICATION WAS MEANT TO MEET
3 CALIFORNIA STATE STANDARDS."

4 ARE YOU AWARE THAT NO OTHER FEDERAL ORDER GIVES CREDITS
5 FOR FORTIFICATION?

6 A. I'M NOT FULLY AWARE OF THAT, ACTUALLY.

7 Q. OKAY. CURRENTLY, FEDERAL ORDERS DO NOT PROVIDE ANY
8 KIND OF CREDIT FOR FLUID MILK FORTIFICATION, JUST FOR YOUR
9 INFORMATION.

10 DOES YOUR PROPOSAL INTEND TO GIVE CREDITS ON ALL
11 FORTIFICATION, WHETHER IT WAS DONE WITH THE INTENTION OF
12 MEETING STATE STANDARDS OR NOT?

13 A. I WOULD HAVE TO DEFER THAT TO SOMEONE WHO IS MORE
14 KNOWLEDGEABLE IN THE PROPOSAL TEAM.

15 Q. OKAY. I THINK THEN, PROBABLY AT THIS POINT, I -- WE
16 SHOULD PROBABLY WAIT UNTIL WE HAVE SOMEONE ELSE FROM YOUR TEAM
17 ON THE STAND TO ANSWER THE REMAINING QUESTIONS.

18 A. THAT'S A QUESTION? YEAH, THAT SOUNDS VERY REASONABLE
19 TO ME.

20 Q. I THINK THAT SOUNDS REASONABLE TO US, TOO. OKAY.

21 OUR PREVIOUS DISCUSSION WAS IN REGARDS TO ESTABLISHING
22 PROVISIONS FOR THE PROPOSED CALIFORNIA STATE ORDER THAT ARE
23 CONSISTENT IN UNIFORM WITH EXISTING FEDERAL ORDER PROVISIONS.
24 YET, THE CALCULATION OF THE PPD, AND FORGIVE ME, YOU HAVE GIVEN
25 EXCELLENT DESCRIPTION OF THE MECHANICS OF THE PROPOSED PPD

1 CALCULATION, WE JUST WANT TO GIVE YOU THE OPPORTUNITY TO
2 PROVIDE US WITH AN OVERVIEW OF, A LITTLE MORE ABOUT THE WHY.

3 A. SURE.

4 Q. IS IT A PRODUCER INCOME? IS IT A WAY TO INCREASE
5 PRODUCER INCOME? IS IT A WAY TO DECREASE VOLATILITY? IS IT AN
6 ACCOUNTING IMPROVEMENT? IS IT ALL THREE? HELP US UNDERSTAND
7 THE BEST WE CAN.

8 A. WELL, IN THIS -- IT'S FUNNY. WHEN TALKING ABOUT MILK
9 PRICING AND REDUCING COMPLEXITY, IT ALWAYS GET A LITTLE SMIRK
10 FROM MOST PEOPLE. BUT MY EXPERIENCE IN THE TEN YEARS BACK WITH
11 LAND O'LAKES, AND I THINK THE TEAM MEMBERS OF PROPOSAL 1, NO
12 HOW THE PPD HAS BEEN A CHALLENGE TO EXPLAIN TO DAIRYMEN IN
13 FEDERAL MILK ORDERS.

14 AND I THINK SOMEONE, I CAN'T REMEMBER WHO, BUT IN THE
15 CROSS, MENTIONED THE NOTION OF A NEGATIVE PPD, IS THAT SIMPLER
16 TO EXPLAIN? NO, THAT'S MORE DIFFICULT TO EXPLAIN. AND
17 INTUITIVELY, WHY AM I SEEING A NEGATIVE PPD ON MY CHECK. AND
18 GENERALLY, IRONICALLY, IT'S DURING THE TIMES WHEN YOU ARE
19 SEEING CHEESE INCREASING IN VALUE, SORT OF COUNTERINTUITIVE.

20 SO I THINK AS WE SAT DOWN AND THOUGHT ABOUT PUTTING THE
21 PPD TOGETHER, WE CAME UP WITH THE NOTION OR PUTTING THE PAY
22 PRICE SECTION TOGETHER TO PRODUCERS, WE THOUGHT, HERE'S A WAY
23 TO SIMPLIFY IT. AND IN DISCUSSIONS WITH MARKET ADMINISTRATOR
24 STAFF, SAW THAT IT COULD BE DONE WITHOUT TOO MUCH DIFFICULTY.
25 AND IT WASN'T AN ATTEMPT TO DO ANYTHING, SMOOTHING OUT, IT

1 WASN'T -- PPD IT IS A PAYMENT PER HUNDREDWEIGHT, AND WE SAW
2 THIS WRAPPING IT BACK INTO THE COMPONENTS AS FAIR A WAY TO
3 DISTRIBUTE IT AS WE THOUGHT POSSIBLE.

4 WE REALIZED THAT, I THINK I WAS NOT QUITE THERE WITH
5 THE DISCUSSION THAT PRODUCERS COULD SEE SOMETHING DIFFERENT IN
6 THE VALUE OF THEIR CHECK DEPENDING ON THEIR COMPONENT LEVEL
7 BECAUSE OF THIS CHANGE, BUT WE DIDN'T SEE IT WAS GOING TO BE
8 MATERIAL IN TERMS OF THE IMPACT ON INDIVIDUAL PRODUCERS. WE
9 KNEW IT COULD BE DONE, IT WAS MATH, AND IT WOULD BE ONE LESS
10 THING TO A MARKET WHERE THEY ARE NOT ACCUSTOMED TO SOMETHING
11 CALLED A PRODUCER PRICE DIFFERENTIAL, TO REALLY BRING THAT
12 EXTRA ELEMENT INTO OUR PRODUCER DISCUSSION.

13 Q. SO GIVEN THE SIGNIFICANT DIFFERENCES IN THE CALIFORNIA
14 MILK MARKETING WORLD, THIS WOULD BE A GREAT TIME TO PERHAPS
15 IMPROVE ON THE SOMETIMES MISUNDERSTOOD PPD THAT EXISTS IN THE
16 FEDERAL MILK MARKETING ORDER WORLD.

17 A. WE THOUGHT IT WAS AN IMPROVEMENT. WE USED IT AS AN
18 IMPROVEMENT, WE DIDN'T SEE IT AS A MATERIAL CHANGE TO THE PAY
19 PRICE METHODS.

20 Q. I THINK AT THIS POINT I WOULD LIKE TO TURN IT OVER TO
21 HENRY SCHAEFER FROM THE UPPER MIDWEST FEDERAL MILK MARKETING
22 ORDER STAFF, AND HE WOULD LIKE TO ASK SOME ADDITIONAL
23 QUESTIONS.

24 MR. SCHAEFER: HENRY SCHAEFER, USDA.

25 /////

1 CROSS-EXAMINATION

2 BY MR. SCHAEFER:

3 Q. GOOD AFTERNOON, TOM.

4 A. GOOD AFTERNOON, HENRY.

5 Q. I BELIEVE MR. VETNE ASKED SOMETHING ABOUT THE PPD NOT
6 BEING CALCULATED ANY LONGER. AND IN LOOKING AT YOUR ORDER
7 LANGUAGE, AND I BELIEVE YOU ALSO MENTIONED THIS, IT IS
8 CALCULATED IN THERE IN SECTION 61(E) AND THAT WOULD GIVE YOU,
9 WHAT THAT, BY THE TIME YOU GOT DONE WITH THAT CALCULATION, THE
10 CURRENT PPD AS WE KNOW IT IN OTHER FEDERAL ORDERS; IS THAT
11 CORRECT?

12 A. THAT'S CORRECT. IT WOULD STILL BE CALCULATED AND IT
13 WOULD STILL BE ANNOUNCED.

14 Q. AND THEN, REALLY ALL YOU ARE DOING BEYOND THAT IS
15 DISTRIBUTING ACROSS THE COMPONENTS IN THIS PARTICULAR CASE AND
16 THE RELATIONSHIP OF THEIR VALUE THAT THEY MAKE UP OF THE
17 CLASS III PRICE, IF I UNDERSTOOD IT CORRECTLY.

18 A. YOU ARE CORRECT.

19 Q. AND SO IN SOME RESPECTS, THE IMPACT THAT YOU WOULD SEE
20 ON PRODUCER'S CHECKS WOULD PROBABLY BE VERY MINIMAL, BECAUSE OF
21 COURSE THEY ARE GOING TO STILL GET PAID ON WHAT WOULD HAVE BEEN
22 THE ORIGINAL VALUE OF THE CLASS, OF THE FAT PROTEIN AND OTHER
23 SOLIDS, WITH IN ADDITION TO THAT, ADDITION OR SUBTRACTION TO
24 THAT VALUE?

25 A. YOU ARE CORRECT.

1 Q. THANK YOU. I'M SORRY -- I BELIEVE MR. VETNE OR
2 MR. ENGLISH ALSO INDICATED OTHER METHODS OF DOING THIS KIND OF
3 CALCULATION, DISTRIBUTING THIS VALUE ACROSS THE COMPONENTS. I
4 BELIEVE YOU MENTIONED THERE WERE SOME OTHER ONES THAT YOU HAD
5 TENTATIVELY LOOKED AT.

6 IF USDA OR THE SECRETARY FINDS THAT THERE MAY BE OTHER
7 ALTERNATIVES, ARE YOU ENTIRELY OPPOSED TO THEM LOOKING AT THOSE
8 AND/OR SUGGESTING THOSE?

9 A. NO, WE ARE NOT.

10 Q. THANK YOU.

11 CROSS-EXAMINATION (CONTINUED)

12 BY MR. RICHMOND:

13 Q. BILL RICHMOND, USDA. ONE ADDITIONAL QUESTION. COULD
14 YOU TALK A LITTLE BIT ABOUT WHY THE COOPS ELECTED TO NOT
15 INCLUDE AN ADJUSTMENT FOR SOMATIC CELLS IN THE PROPOSAL?

16 A. WELL, AS I RECALL THE DISCUSSION, WHEN WE, AS THE THREE
17 COOPS SPOKE WITH OUR PRODUCERS AND THEIR MEMBER-OWNERS ABOUT
18 THIS, THE PREFERENCE WAS TO NOT INCLUDE A SOMATIC CELL IN THE
19 REGULATED PRICE, SO WE AGREED AND MOVED WITHOUT IT.

20 Q. IS THAT SOMETHING THAT CURRENTLY EXISTS?

21 A. I BELIEVE THERE'S SOME SOMATIC CELL. YEAH, THERE'S
22 SOMATIC CELL PROGRAMS THAT ARE PAID WITHIN THE CALIFORNIA MILK
23 SYSTEM AS IT IS.

24 Q. OKAY. SO THIS WOULD BE A DEPARTURE FROM WHAT -- AND I
25 UNDERSTAND --

1 A. NOT -- I MISSPOKE. I MEANT TO SAY THAT THERE'S
2 INDIVIDUAL HANDLER SOMATIC CELLS, BUT THERE IS NOT A SOMATIC
3 CELL ADJUSTMENT IN THE CURRENT SYSTEM HERE.

4 Q. I UNDERSTAND.

5 JUDGE CLIFTON: SO JUST SO I'M FOLLOWING ALONG, WE'RE ON
6 PAGE 19 NOW, AREN'T WE?

7 MR. RICHMOND: YOUR HONOR, I WAS ACTUALLY REFERENCING
8 [EXHIBIT 35](#) THE LAST PAGE, BUT LET ME TURN TO PAGE 19.

9 JUDGE CLIFTON: OKAY. IN FACT, I WOULD ASK MR. WEGNER,
10 RIGHT NOW, PLEASE TO READ THE FIRST FULL PARAGRAPH ON PAGE 19.

11 MR WEGNER: BEGINNING IN THE CALIFORNIA ORDER?

12 JUDGE CLIFTON: BEGINNING "PRODUCERS WILL BE PAID."

13 MR. WEGNER: OH, I'M SORRY. UP HERE. I'M SORRY.

14 PRODUCERS WILL BE PAID TWICE PER MONTH BASED ON
15 MCP CALCULATIONS. THEY WILL BE PAID FOR POUNDS OF
16 BUTTERFAT, PROTEIN, AND OTHER SOLIDS. ALL
17 PRODUCERS IN THE FMMO WILL RECEIVE THE SAME
18 COMPONENT PRICES. THERE WILL BE NO SOMATIC CELL
19 COUNT ADJUSTMENTS INCLUDED IN THE REGULATED
20 PRICES. THERE WILL BE NO PRODUCER LOCATION
21 DIFFERENTIALS.

22 MR. RICHMOND: THANK YOU FOR THE REMINDER. I THINK WE HAVE
23 ONE ADDITIONAL QUESTION FROM THAT SAME PARAGRAPH WHILE WE ARE
24 HERE.

25 BY MR. RICHMOND:

1 Q. CAN YOU SPEAK TO A LITTLE BIT ABOUT THE FINAL SENTENCE
2 IN THAT PARAGRAPH REGARDING THE LACK OF PRODUCER LOCATION
3 DIFFERENTIALS?

4 A. YEAH, I THINK YOU ARE GOING TO HEAR MUCH MORE ABOUT
5 THAT WHEN WE DISCUSS OUR TRANSPORTATION CREDIT SYSTEM. WE FELT
6 IT WAS A MORE EFFICIENT WAY TO USE A TRANSPORTATION CREDIT
7 BASED ON MILES ACTUALLY MOVED AS OPPOSED TO A PRODUCER LOCATION
8 ADJUSTMENT APPROACH.

9 Q. WE LOOK FORWARD TO THAT. THOSE ARE ALL THE QUESTIONS
10 THAT WE HAVE AT THIS TIME. WE APPRECIATE IT VERY MUCH.

11 A. THANK YOU.

12 MR. ENGLISH: CHIP ENGLISH. I DON'T THINK HEARD THIS
13 DISCUSSED. PAGE 22, WITH RESPECT TO REFERENCE TO ANNOUNCEMENT
14 OF PRODUCER PRICES. YOU BOLDED IN THE FIRST SENTENCE, ON/OR
15 BEFORE THE 14TH DAY AFTER THE END OF THE MONTH.

16 AND I BELIEVE IT IS BOLDED, BECAUSE I GO BACK AND LOOK
17 AT THE INITIAL PETITION, BECAUSE THAT'S ACTUALLY A CHANGE FROM
18 WHAT YOU SUBMITTED THAT'S PART OF THE PROPOSAL 1; IS THAT
19 CORRECT?

20 MR. WEGNER: THAT'S CORRECT. I THINK MR. BESHORE HELPED
21 POINT THAT OUT.

22 MR ENGLISH: I APOLOGIZE. I DIDN'T HEAR IT. ALL RIGHT.
23 THANK YOU.

24 MR. WEGNER: UH-HUH.

25 MR RICHMOND: BILL RICHMOND, USDA. I APPRECIATE

1 MR. ENGLISH'S POINT, AND ALSO FOR REMINDING ME AGAIN, ONE
2 ADDITIONAL QUESTION FROM PAGE 22.

3 UNDER 1051.62, ANNOUNCEMENT OF PRODUCER PRICES. WE
4 UNDERSTAND WHERE: (A) THE PRODUCER PROTEIN PRICE; (B) THE
5 PRODUCER OTHER SOLIDS PRICE; (C) PRODUCER BUTTERFAT PRICE;
6 (D) WHERE THOSE PRICES COME FROM.

7 WE'RE A LITTLE UNSURE OF WHERE THE DESCRIPTION UNDER
8 (A.1) THE QUOTA PREMIUM FOR NONFAT SOLIDS COMES FROM AT THIS
9 POINT. WILL THAT BE ADDRESSED WHEN WE GET INTO THE DISCUSSION
10 ON QUOTA?

11 MR. WEGNER: WHEN I GET FINISHED, I KNOW SOMEONE WHO WILL
12 BE SPEAKING TO THAT DIRECTLY, AND THAT WILL BE COMING SOON.

13 MR. RICHMOND: PERFECT. THANK YOU.

14 MR. WEGNER: THAT'S A YES.

15 MR. RICHMOND: THANKS.

16 MR. VETNE: JOHN VETNE, FROM HILMAR, AND I JUST HAD ONE
17 SHORT SERIES OF QUESTIONS.

18 CROSS-EXAMINATION (CONTINUED)

19 BY MR. VETNE:

20 Q. I ASKED YOU A QUESTION BEFORE ABOUT YOUR MEMBERSHIP
21 POUNDS IN CALIFORNIA, AND YOU SAID YOU DIDN'T WANT TO REVEAL
22 THAT. I TOOK THAT AS A PRESENT TENSE DISINCLINATION.

23 I DON'T HAVE A PAPER COPY, BUT DO YOU RECALL A FEW
24 YEARS AGO AUTHORIZING AN ARTICLE TITLED "ASPECTS OF COMPLEXITY,
25 CURRENT AND EMERGING ISSUES IN THE AGRI-BUSINESS, TOM WEGNER,

1 LAND O'LAKES, JUNE 27, 2011?"

2 A. IN WHAT PUBLICATION WAS THIS?

3 Q. I'LL SHOW IT TO YOU.

4 A. I DON'T BELIEVE THIS IS A PUBLICATION, THIS IS A POWER
5 POINT SLIDE.

6 Q. OKAY. YOU ARE RIGHT.

7 A. AND I AM TRYING TO RECALL IF IT WAS WITH THE FARM
8 FOUNDATION PERHAPS.

9 Q. MY -- YOU RECALL A POWER POINT SLIDE; IS THAT CORRECT?

10 A. I RECALL A LOT OF POWER POINT SLIDES.

11 Q. AND IT WAS IN 2011, AND IT TALKS ABOUT YOU HAD MEMBER
12 FARMS IN THREE REGIONS; THE WEST, UPPER MIDWEST, AND EAST; IS
13 THAT CORRECT?

14 A. WE DO HAVE MEMBERS IN BOTH OF THOSE -- ALL THREE OF
15 THOSE REGIONS.

16 Q. THREE OF THOSE REGIONS?

17 A. THREE OF THREE.

18 Q. AND IN THIS POWER POINT YOU INDICATED YOUR POUNDS,
19 TOTAL POUNDS COOPERATIVE OF ABOUT 12.7 BY REGION TOTAL, IT SAYS
20 TOTAL POUNDS, MILLION POUNDS. IN THE WEST, 5.8; UPPER MIDWEST,
21 3.9; AND THE EAST, 2.9. AT SOME POINT PRIOR TO JUNE 11, IS
22 THAT AN ACCURATE CHARACTERIZATION OF HOW THOSE PRODUCT POUNDS,
23 ARE FARMED? MILK PRODUCTS ARE MIXED?

24 A. I THINK THAT WAS FAIR AT THAT POINT.

25 Q. OKAY. AND COWS PER FARM IN THE WEST AN AVERAGE OF

1 ABOUT 1,120; IN THE UPPER MIDWEST, ABOUT 190; AND IN THE EAST
2 ABOUT 90?

3 A. AND I BELIEVE ALL I DID WAS TAKE THE PRODUCTION PER COW
4 AND DIVIDE THAT VOLUME.

5 Q. AND IS THAT COWS PER FARM PRETTY CLOSE TO WHAT YOUR
6 AVERAGE IS NOW, OR HAS THAT CHANGED SIGNIFICANTLY?

7 A. I COULDN'T SPEAK TO IT. HAVEN'T DONE THE CALCULATION
8 SINCE THEN, ACTUALLY.

9 Q. THAT'S IT. I JUST WANTED TO FOLLOW UP. THANK YOU,
10 VERY MUCH.

11 JUDGE CLIFTON: ARE THERE OTHER QUESTIONS FOR MR. WEGNER?
12 MR. BESHORE?

13 REDIRECT EXAMINATION

14 BY BESHORE:

15 Q. THANK YOU. MARVIN BESHORE.

16 A COUPLE OF QUESTIONS ON REDIRECT, MR. WEGNER.

17 FIRST OF ALL, COULD YOU GO TO PAGE 21 OF [EXHIBIT 34](#)?

18 A. YES.

19 Q. THIS IS A TYPO THAT I -- I'M NOT SURE IT WAS CORRECTED.
20 I WANT TO CORRECT IT WHILE WE'RE HERE.

21 IN SUBPARAGRAPH (E) THERE'S A REFERENCE IN THERE
22 INTERNALLY TO PAREN (E), WHICH IS IMPOSSIBLE.

23 A. YEAH.

24 Q. OKAY. WOULD YOU AGREE WITH ME THAT THAT SHOULD REFER
25 TO THE PRIOR PARAGRAPH (D), BECAUSE THIS IS A SEQUENCE OF

1 MATHEMATICAL STEPS WHICH FOLLOW EACH OTHER IN SEQUENCE?

2 A. YES.

3 Q. OKAY. AND I WOULD REQUEST, YOUR HONOR, THAT THAT
4 CORRECTION BE APPROPRIATELY MADE ON THE RECORD EXHIBIT. RECORD
5 COPY OF [EXHIBIT 34](#).

6 JUDGE CLIFTON: ALL RIGHT. SO THE CHANGE THAT MS. FRISIUS
7 WILL MAKE IS ON PAGE 21 OF [EXHIBIT 34](#) ON THE RECORD COPIES, AND
8 IN THE SECOND TO THE LAST PARAGRAPH, THE SUBSECTION IS (E), AND
9 IN THE SECOND LINE IT REFERS TO PARAGRAPH (E), WHICH WAS A
10 MISTAKE. INSTEAD OF (E) -- (E) WILL BE STRICKEN AND A LITTLE
11 ARROW POINTING UP TO SOME SPACE TO WRITE IN, THERE WILL BE A
12 (D) LIKE DOG.

13 MR. BESHORE: THANK YOU, YOUR HONOR.

14 JUDGE CLIFTON: YOU'RE WELCOME.

15 BY MR. BESHORE:

16 Q. MR. WEGNER, WITH RESPECT TO THE QUESTION FROM THE
17 DEPARTMENT'S WITNESSES, DEPARTMENT'S STAFF ON SOMATIC CELL
18 COUNT, MAYBE THIS IS FROM MR. VETNE ALSO -- ANYWAY, JUST FOR
19 CLARITY, IN THE CURRENT FEDERAL ORDER SYSTEM, SOME MILK PRICING
20 ORDERS HAVE WITHIN THEIR REGULATORY PAYMENT PROGRAMS A SOMATIC
21 CELL COUNT ADJUSTER?

22 A. YES.

23 Q. AND SOME MULTIPLE COMPONENT PRICING ORDERS IN THE
24 CURRENT SYSTEM DO NOT HAVE A SOMATIC CELL COUNT ADJUSTER WITHIN
25 THEM?

1 A. YES, THAT'S CORRECT.

2 Q. FOR THE CALIFORNIA ORDER IT WAS THE COLLECTIVE WISH OF
3 THE PRODUCER COOPERATIVE PROPONENTS THAT YOU GO WITH THE NOT
4 HAVING IT PROGRAMMED?

5 A. THAT'S CORRECT.

6 Q. OKAY. ON THE PPD REPLACEMENT ISSUE, AND THE LAST PAGE
7 OF [EXHIBIT 35](#), AND JUST TO BE REAL SIMPLE, AND MAYBE CLEAR,
8 CURRENTLY THE PPD VALUE, WHICH ON YOUR TABLE WAS \$11,178 AND
9 SOME ADDITIONAL DOLLARS IN DECEMBER OF 2013 IN ORDER 30,
10 CURRENTLY THAT VALUE IS DISTRIBUTED TO THE PRODUCERS IN THE
11 ORDER ON A PER HUNDREDWEIGHT BASIS?

12 A. THAT'S CORRECT.

13 Q. CORRECT? OKAY. SO EVEN THOUGH IT'S A MULTIPLE
14 COMPONENT PRICING ORDER. AND THEY ARE ALL GETTING PAID SO MUCH
15 PER POUND OF PROTEIN, AND SO MUCH PER POUND OF OTHER SOLIDS,
16 AND SO MUCH PER POUND BUTTERFAT, THE PPD IS DISTRIBUTED ON A
17 PER HUNDREDWEIGHT BASIS?

18 A. CORRECT.

19 Q. SO IN OUR PROPOSED PROPOSAL 1, THE PROPOSAL, CALIFORNIA
20 FEDERAL ORDER, IF YOU HAVE RECOMMENDED A PROCEDURE WHERE THAT
21 VALUE WOULD BE DISTRIBUTED AMONG THE COMPONENTS AND NOT BE PER
22 HUNDREDWEIGHT BASIS?

23 A. CORRECT.

24 Q. OKAY. NOW, WITH RESPECT TO THE IMPACT ON A HIGH-SOLIDS
25 PRODUCER, IN GENERAL AND IN CONCEPT, IF PPD'S POSITIVE, WHAT

1 WOULD BE THE IMPACT ON THE HIGHER THAN AVERAGE MARKET SOLIDS
2 PRODUCER?

3 A. THEY WILL BENEFIT.

4 Q. IT WOULD BE A POSITIVE BENEFIT?

5 A. POSITIVE BENEFIT.

6 Q. AND FOR THE HIGHER THAN AVERAGE SOLIDS PRODUCER WHEN
7 THE PPD, IN A SITUATION WHERE THE PPD HAPPENED TO BE NEGATIVE,
8 WHAT WOULD THE IMPACT BE?

9 A. BE A LARGER NEGATIVE.

10 Q. SO IS IT FAIR TO SAY THAT WHILE THERE ARE -- WHILE
11 THERE ARE NEGATIVE PPD'S IN FEDERAL ORDERS SUCH AS ORDER 30,
12 THAT'S THE EXCEPTION. AND THE RULE IS THAT THE PPD'S ARE
13 POSITIVE?

14 A. MORE TYPICALLY THEY ARE POSITIVE SINCE THE CHANGES.

15 Q. SO ASSUMING THAT WOULD BE THE CASE IN THE CALIFORNIA
16 FEDERAL ORDER, MORE OFTEN THAN NOT THE HIGHER-SOLIDS PRODUCER
17 WOULD HAVE SOME SLIGHT BENEFIT FROM DISTRIBUTING THE PPD DOLLAR
18 VALUE ON A SOLIDS BASIS OR A COMPONENTS BASIS, RATHER THAN A
19 PER HUNDREDWEIGHT BASIS?

20 A. I THINK THAT'S REASONABLE.

21 Q. OKAY. NOW, THERE'S BEEN REFERENCE TO FOB PRICING
22 ADJUSTERS IN FORMULAS, PRESENTLY IN SOME OF THE CDFA FORMULAS,
23 OR IN SOME OF THE CDFA CLASS 4A AND 4B PRICE FORMULAS OVER THE
24 YEARS. ARE THERE ANY FOB ADJUSTERS IN PROPOSAL, ON THE
25 MANUFACTURING PRICE, CLASS III AND IV PRICES IN PROPOSAL NUMBER

1 1?

2 A. NO, THERE ARE NOT.

3 Q. ARE THE VALUES REPRESENTED OR SORT OF EMBEDDED IN THE
4 FOB ADJUSTERS, NEVERTHELESS REFLECTED IN THE FORMULAS IN
5 PROPOSAL 1 FOR CLASS III AND IV?

6 A. YES.

7 Q. CAN YOU JUST TELL US WHAT HOW THAT IS OR WHY THAT IS?

8 A. CALIFORNIA IS INCLUDED IN THE CURRENT SURVEY FOR, I
9 GUESS THE NDPSR, THAT GOES INTO THE CLASSIFIED PRICING
10 FORMULAS, SALE PRICES OF CALIFORNIA PRODUCT APPEARS IN THOSE.

11 Q. SO PRODUCT MANUFACTURED IN CALIFORNIA, SOLD IN
12 CALIFORNIA, IS INCLUDED IN THE -- IN THE PSR SURVEY FOR BUTTER?

13 A. FOR BUTTER, FOR CHEESE, AND FOR --

14 Q. AND FOR MILK POWDER? NONFAT DRY MILK?

15 A. NONFAT DRY MILK, CORRECT.

16 Q. AND THEREFORE, SINCE THOSE PRICES ARE ACTUAL PRICES,
17 FOB PLANTS, CORRECT?

18 A. CORRECT.

19 Q. BY REGULATION, BY DEFINITION?

20 A. CORRECT.

21 Q. AND, THEREFORE, THE FOB CALIFORNIA PRICES ARE ALREADY
22 BILLED IN?

23 A. THEY ARE.

24 JUDGE CLIFTON: MR. WEGNER, WHAT DOES NDPSR STAND FOR?

25 MR. WEGNER: NATIONAL DAIRY PRODUCT SALES REPORT.

1 JUDGE CLIFTON: THANK YOU.

2 BY MR. BESHORE:

3 Q. YOU WERE ASKED SOME QUESTIONS AND PROVIDED SOME
4 TESTIMONY REGARDING YOUR ORAL AND CHEESE PLANT IN CALIFORNIA.
5 DO YOU CARE, AND IT REFERENCES TO THAT AREA OF THE MILK SHED,
6 ETCETERA, DO YOU CARE TO GIVE US ANY INFORMATION ON THE SIZE OF
7 THAT PLANT?

8 A. THAT'S -- THAT PLANT TAKES IN ABOUT A MILLION POUNDS A
9 DAY.

10 Q. WITH RESPECT TO BASIS RISK, AND YOUR PROPOSED ORDER
11 THERE'S SOME QUESTIONS WHETHER THE PPD CALCULATION MIGHT
12 INCREASE BASIS RISK PERHAPS.

13 DO YOU REMEMBER THAT?

14 A. I DO RECALL THAT.

15 Q. OKAY. NOW, ONE OF YOUR MEMBERS IN CALIFORNIA,
16 MR. FERNANDEZ, TESTIFIED EARLIER THIS WEEK TO HIS STRUGGLES
17 WITH BASIS RISK AND RISK MANAGEMENT UNDER THE CURRENT SYSTEM.
18 DO YOU RECALL THAT?

19 A. YES, I DO RECALL THAT.

20 Q. ALL RIGHT. SO WHAT WOULD BE THE -- IN TERMS OF THE
21 ABILITY OF CALIFORNIA DAIRY FARMERS TO UTILIZE RISK MANAGEMENT
22 TECHNIQUES, WOULD IT BE A NET POSITIVE OR A NET NEGATIVE FOR
23 THE ADOPTION OF PROPOSAL 1?

24 A. I THINK IT WOULD BE A NET POSITIVE AS I UNDERSTAND FROM
25 MY MEMBERS, HOW THEY LOOK AT THE BASIS OF CLASS III VERSUS

1 THEIR OWN PAY PRICE, THAT THEY ANTICIPATED, EXCUSE ME, MR.
2 BESHORE.

3 Q. IN YOUR EVALUATION, WOULD BE SPREADING OF PPD OVER THE
4 COMPONENTS HAVE ANY MATERIAL ADVERSE EFFECT UPON THAT?

5 A. I AM NOT SEEING IT HAVING A MATERIAL IMPACT.

6 Q. YOU WERE SHOWN AND ASKED QUESTIONS AND ASKED TO READ AT
7 LENGTH BY MR. ENGLISH, SEVERAL EXAMPLES OF TESTIMONY THAT YOU
8 PROVIDED AT CDFA HEARINGS OVER THE YEARS SINCE 2006.

9 DO YOU RECALL THAT?

10 A. I DO RECALL THAT.

11 Q. OKAY. AND THE MOST RECENT, YOU WERE SHOWN THREE
12 TRANSCRIPTS, 2006, 2007, AND 2011. WAS LAND O'LAKES POSITION
13 IN 2011 THE SAME AS IT WAS IN 2006?

14 A. NO, IT WAS NOT.

15 Q. WHY NOT?

16 A. WELL, THINGS CHANGED. WE MADE CONSCIOUS DECISIONS TO
17 CHANGE WHAT WE DO HERE IN CALIFORNIA. I MENTIONED EARLIER, THE
18 DECOMMISSIONING OF THE CHEESE PLANT IN TULARE, AN AGED FACILITY
19 THAT WOULD HAVE REQUIRED SIGNIFICANT REINVESTMENT. WE CHOSE
20 NOT TO MAKE THAT REINVESTMENT. WE ALSO SOLD THE CPI PLANT.
21 AGAIN, WE THOUGHT WE COULD DEPLOY THE CAPITAL IN A DIFFERENT
22 WAY FOR THE BENEFIT OF MEMBER-OWNERS.

23 I BELIEVE, ALSO, THAT THE PRICING SITUATION CHANGED
24 QUITE A BIT HERE. WE SAW WHEY PRICES AT HISTORIC HIGHS, AND
25 FRANKLY, OUR MEMBER-OWNERS CAME TO US IN A PRETTY EXPLICIT

1 MANNER. YOU HEAD FROM MR. KASBERGEN, MR. MACHADO,
2 MR. FERNANDEZ, AND MR. CONTENTE, SPEAKING TO THE IMPACT THAT
3 THE WHEY PRICING HAS HAD ON THEIR BUSINESSES. AND WE FELT THAT
4 WE NEEDED TO MOVE OUR POSITION TO A MEMBER BENEFIT DISCUSSION
5 AROUND AN EQUITY DISCUSSION, AROUND THE 4B PRICING AND THE
6 COMPONENTS THAT MAKE UP THAT 4B.

7 Q. DO YOU HAVE [EXHIBIT 38](#)?

8 A. I DO.

9 Q. THIS IS YOUR 2011 TESTIMONY AT CDFA?

10 A. IT IS.

11 Q. OR A PARTIAL TRANSCRIPT OF THE -- A TRANSCRIPT OF YOUR
12 TESTIMONY AT THE 2011, JUNE 30, 2011, CDFA HEARING.

13 I WANT TO DIRECT YOUR ATTENTION TO PAGE 37, STARTING AT
14 LINE 13, THROUGH PAGE 38, LINE 21. AND I WANT YOU TO READ
15 THAT. BEFORE YOU READ IT, I WANT -- I'M GOING TO ASK YOU, IS
16 LAND O'LAKES POSITION IN THIS HEARING TODAY ESSENTIALLY THE
17 SAME THAT IT WAS IN 2011, AS IT REMAINED?

18 A. YES.

19 Q. SAME SINCE THAT TIME?

20 A. YES.

21 Q. OKAY. WOULD YOU READ YOUR TESTIMONY THERE ON, STARTING
22 AT PAGE 37, LINE 13, THROUGH PAGE 38, LINE 21?

23 MR. WEGNER:

24 WHY UPDATE THE WHEY FACTOR? IN SHORT, THE
25 CLASS 4B PRICE IS OUT OF ALIGNMENT WITH THE

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FEDERAL ORDER CLASS III PRICE. AS A RESULT,
CALIFORNIA PRODUCERS ARE NOT BEING TREATED FAIRLY
COMPARED TO PRODUCERS SHIPPING TO PROCESSORS
REGULATED UNDER FEDERAL MILK MARKETING ORDERS.
ADOPTING THE LAND O'LAKES PROPOSAL WILL HELP TO
BRING THE CLASS 4B PRICE INTO BETTER ALIGNMENT
WITH THE FEDERAL ORDER CLASS III PRICE AND REDUCE
THIS PRICE INEQUITY.

AS YOU KNOW, THE CALIFORNIA FOOD AND AGRICULTURE
CODE SECTION 62(O)(62), STATES, WITH RESPECT TO
CLASSIFIED PRICES INCLUDING CLASS 4B, THAT, QUOTE,
'THE METHOD OR FORMULAS SHALL BE REASONABLY
CALCULATED TO RESULT IN PRICES THAT ARE IN A
REASONABLE AND SOUND ECONOMIC RELATIONSHIP WITH
THE NATIONAL VALUE OF MANUFACTURED MILK PRODUCTS.'

CURRENTLY, WHEY PRODUCTS HAVE BEEN TRADING AT
NEARLY 50 CENTS PER POUND, ADDING OVER -- AND HERE
I HAVE A CHANGE -- \$1.00 PER 80, PER
HUNDREDWEIGHT, TO THE FEDERAL ORDER CLASS III
PRICE -- INSTEAD OF \$1.50.

BY STARK CONTRAST, EVEN THOUGH WHEY MARKETS HAVE
BEEN TRADING AT NEARLY 50 CENTS PER POUND, THE

1 CONTRIBUTION OF WHEY'S VALUE TO THE CALIFORNIA
2 CLASS 4B PRICE REMAINS FIXED AT 25 CENTS PER
3 HUNDREDWEIGHT. CLEARLY THE RELATIONSHIP BETWEEN
4 THE FEDERAL ORDER CLASS III PRICE AND THE
5 CALIFORNIA CLASS 4B HAS NOT, IS NOT, AND WILL NOT,
6 MEET THIS REQUIREMENT OF THE FOOD AND AGRICULTURAL
7 CODE, IF THE 25 CENT FIXED FACTOR REMAINS IN
8 PLACE. THUS, CALIFORNIA PRODUCERS ARE NOT BEING
9 TREATED EQUITABLY WHEN COMPARED TO PRODUCERS
10 SHIPPING TO PROCESSORS REGULATED UNDER FEDERAL
11 MILK MARKETING ORDERS OR WHEN COMPARED TO CHEESE
12 PROCESSORS WHO BUY MILK FROM HANDLERS WHO
13 TYPICALLY POOL THIS MILK ON FEDERAL ORDERS.

14 BY MR. BESHORE:

15 Q. THANK YOU. MR. WEGNER, IN THAT HEARING, DID YOU ALSO
16 PROVIDE TESTIMONY WHICH ADDRESSED SOME OF THE ISSUES THAT HAVE
17 COME UP IN THIS HEARING, AND CONTINUE TO COME UP IN THIS
18 DIALOGUE, SUCH AS WHETHER DEPOOLING OF MILK PROVIDES FEDERAL
19 ORDER PLANTS SUCH AN ADVANTAGE THAT CALIFORNIA SHOULD HAVE A
20 MUCH LOWER PRICE?

21 A. I BELIEVE I SPOKE TO THAT AS WELL.

22 Q. OKAY. DID YOU SPEAK TO WHETHER FEDERAL ORDER PLANTS,
23 WHETHER THERE ARE SUBSTANTIAL AMOUNTS OF MILK SOLD IN THE
24 FEDERAL ORDER SYSTEM BELOW CLASS III PRICES, GIVING THAT THOSE
25 PLANTS MAKING THOSE PURCHASES, AN ADVANTAGE OVER WHAT WOULD BE

1 THE SITUATION IN CALIFORNIA?

2 A. I BELIEVE I SPOKE TO THAT AS WELL.

3 Q. OKAY. ON THAT POINT, LET'S LOOK AT PAGE 39?

4 JUDGE CLIFTON: BEFORE YOU GO THERE, I JUST WANT MR. WEGNER
5 TO READ AGAIN, JUST AFTER HE SAYS, NEAR THE TOP OF PAGE 38,
6 JUST AFTER HE SAYS, "AND HERE I HAVE A CHANGE."

7 I JUST WANT HIM TO READ TO THE END OF THAT SENTENCE.

8 MR. WEGNER:

9 AND HERE I HAVE A CHANGE, \$1.80 PER HUNDREDWEIGHT,
10 TO THE FEDERAL ORDER CLASS III PRICE, INSTEAD OF
11 \$1.50.

12 JUDGE CLIFTON: THANK YOU.

13 BY MR. BESHORE:

14 Q. THANK YOU, YOUR HONOR. LET'S GO, THEN, TO PAGE 39, AND
15 LINE 17 THROUGH 24. COULD YOU READ THAT REGARDING THE SALES
16 OF, SALES BELOW CLASS PRICE OF FEDERAL ORDER MARKETS?

17 A. LAND O'LAKES SELLS CLASS III -- I THINK I HAVE GOT IV
18 THERE -- THAT SHOULD BE ROMAN NUMERAL III --

19 MILK TO CHEESE PLANTS NOT REGULATED UNDER FEDERAL
20 ORDERS, AND ALSO BUYS MILK FROM COOPERATIVES AND
21 NONMEMBER PRODUCERS, FOR USE IN OUR OWN CHEESE
22 PLANTS LOCATED IN THE UPPER MIDWEST. TYPICALLY,
23 IN ALMOST EVERY CASE, THE PRICE CHARGED FOR MILK
24 SOLD TO UNREGULATED CHEESE PLANTS EXCEEDS THE
25 FEDERAL ORDER CLASS III MINIMUM PRICE.

1 Q. NOW, WHEN YOU -- WHEN YOU REFER TO UNREGULATED CHEESE
2 PLANTS THERE, IS THAT SYNONYMOUS WITH NON POOLED PLANTS?

3 A. YES.

4 Q. AND TURN, THEN, TO PAGE 40. AND IN THE MIDDLE OF THE
5 PAGE, LINE 14, I BELIEVE YOU BEGIN YOUR DISCUSSION OF DEPOOLING
6 AND HOW ITS DYNAMICS IN THE FEDERAL ORDER MARKETS VERSUS
7 CALIFORNIA. DO YOU SEE THAT?

8 A. LINE 14 PERHAPS?

9 Q. YES. AND JUST -- JUST LOOKING AT IT, HOW -- HOW FAR
10 DOES YOUR DISCUSSION OF THE DEPOOLING ISSUE GO?

11 A. IF I HAVE TO LOOK HERE A MOMENT. I THINK I GO TO
12 DISCUSS THIS UP THROUGH THE TOP OF PAGE 42, LINE 5.

13 DOES THAT LOOK RIGHT? I THINK THAT'S WHAT IT IS. I
14 SEE THAT ON LINE 6, PAGE 42, I START TO TALK ABOUT UPDATING THE
15 COST ALLOWANCES.

16 Q. I REALIZE THIS IS A LITTLE BIT OF MATERIAL, BUT I WOULD
17 LIKE YOU TO READ THAT TESTIMONY THAT YOU GAVE IN 2011 REGARDING
18 THE DEPOOLING ISSUE, MR. WEGNER.

19 A. ALL RIGHT.

20 PREVIOUS HEARINGS HAVE ALSO INCLUDED STATEMENTS
21 ABOUT THE ADVANTAGES OF DEPOOLING OR THE VOLUNTARY
22 CHOOSING BY HANDLERS TO REMOVE A PORTION OF THEIR
23 MILK FROM A FEDERAL MILK ORDER. LET ME OFFER
24 ANOTHER PERSPECTIVE ON HOW DEPOOLING IMPACTS
25 PRICES PAID TO PRODUCERS.

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FIRSTLY, THERE'S BEEN AN ASSERTION THAT PROCESSORS WHO DEPOOL MILK HAVE AN ADVANTAGE OVER CALIFORNIA PROCESSORS. LAND O'LAKES AND OTHER HANDLERS WHO DEPOOL MILK, MUST CONTINUE TO COMPETE FOR MILK SUPPLIES. THEY MUST REMAIN COMPETITIVE IN THEIR MARKETS TO RETAIN THEIR MILK SUPPLY. PLANTS BUYING MILK DEPOOLED BY A FEDERAL ORDER HANDLER, MUST STILL PAY THE GOING MARKET VALUE, WHICH IS AT LEAST THE FEDERAL ORDER CLASS III PRICE.

BY DEPOOLING, HANDLING FOREGO -- I THINK IT'S SUPPOSED TO BE HANDLERS FOREGO RECEIPT OF THE PRODUCER PRICE DIFFERENTIAL, THE PPD, BUT MUST STILL TYPICALLY PAY THE CLASS III MINIMUM PRICE FOR MILK SOLD TO AND PROCESSED AT CHEESE PLANTS.

SECONDLY, THE VOLUME OF DEPOOLED MILK HAS DROPPED CONSIDERABLY IN RECENT YEARS, IN PART RESULTING FROM AMENDMENTS PROPOSED BY PROCESSORS AND COOPERATIVES, AND ADOPTED BY PRODUCERS IN THE UPPER MIDWEST, CENTRAL, AND MIDEAST FEDERAL ORDERS.

THESE ARE THE THREE FEDERAL ORDERS, FEDERAL ORDER MARKETS, WHERE THE VAST MAJORITY OF DEPOOLING HAS

1 OCCURRED. THE AMENDMENTS LIMIT THE VOLUME OF MILK
2 A HANDLER MAY POOL DURING MOST MONTHS TO 125
3 PERCENT OF THE VOLUME OF MILK POOLED IN THE
4 IMMEDIATELY PRECEDING MONTH. HANDLERS CAN STILL
5 DEPOOL MILK, BUT THE VOLUME A HANDLER CHOOSES TO
6 DEPOOL WILL DIRECTLY LIMIT THE VOLUME THAT THE
7 HANDLER CAN POOL IN THE FOLLOWING MONTH. EVIDENCE
8 OF THIS DECREASING VOLUME OF DEPOOLED MILK CAN BE
9 FOUND BY COMPARING VOLUMES DEPOOLED IN 2009 UNDER
10 THE FEDERAL ORDERS, TO VOLUMES DEPOOLED IN 2010.

11
12 FOR EXAMPLE, IN 2009, USDA ESTIMATED THAT HANDLERS
13 CHOSE TO DEPOOL, 4.4 BILLION POUNDS OF MILK,
14 REPRESENTING JUST OVER 3.3 PERCENT OF THE TOTAL
15 VOLUME OF MILK POOLED AND PRICED UNDER FEDERAL
16 ORDERS.

17
18 IN CALENDAR YEAR 2010, USDA ESTIMATED THAT
19 HANDLERS CHOSE TO DEPOOL 2.8 BILLION POUNDS OF
20 MILK, REPRESENTING JUST OVER 2 PERCENT OF THE
21 TOTAL VOLUME OF MILK POOLED AND PRICED UNDER
22 FEDERAL ORDERS.

23 Q. ONE OTHER ISSUE THAT YOU MENTIONED, I WANT TO GO TO IN
24 THIS TESTIMONY, AND THAT'S ON PAGE 52. THIS CONCERNS WHAT HAVE
25 BEEN CALLED, SOMETIMES REFERRED TO AS BASE PLANS.

1 DO YOU RECALL THAT? SO YOU ARE TALKING ON PAGE 52,
2 WITH RESPECT TO WHAT'S CHANGED SINCE 2007 AND 2008, I BELIEVE,
3 IF YOU LOOK BACK ON PAGE 51, AND THAT'S PERTINENT HERE BECAUSE
4 YOUR TESTIMONY FROM 2006 AND 2007 WAS QUOTED IN CONTRAST WITH
5 2011.

6 SO TALK ABOUT NUMBER 1 THERE IN TERMS OF WHAT HAS --
7 COULD YOU JUST READ WHAT YOU HAVE NOTED AS NUMBER 1 IN TERMS OF
8 WHAT CHANGED IN CALIFORNIA, POST-2007?

9 A. CERTAINLY.

10 Q. LINES 2 THROUGH 7?

11 A. YES. EXCUSE ME. "NUMBER 1" --

12 JUDGE CLIFTON: I'M SORRY, MR. BESHORE, LET'S HAVE HIM BACK
13 UP AND LET'S HAVE HIM START ON PAGE 51, LINE 14.

14 MR. BESHORE: SURE.

15 MR. WEGNER:

16 THINGS HAVE CHANGED SINCE 2007 AND 2008.
17 CURRENTLY, THERE'S ADEQUATE CAPACITY TO HANDLE AND
18 PROCESS CALIFORNIA'S MILK SUPPLY. THIS DOES NOT
19 MEAN THAT THERE COULD BE SHORT-TERM PROBLEMS ON
20 CERTAIN WEEKENDS AND/OR HOLIDAYS WHEN MILK BACKS
21 UP OR WHEN ONE OF THE LARGE MANUFACTURING PLANTS
22 GOES DOWN FOR MAINTENANCE. BUT EVEN IN THOSE
23 CASES, WHILE SOME OUT-OF-STATE SHIPMENTS MAY BE
24 NECESSARY, WE ARE NOT AWARE OF MILK FINDING ITS
25 WAY TO LESS ATTRACTIVE ALTERNATIVES, NOR BEING

1 SHIPPED OUT-OF-STATE ON A REGULAR BASIS. THE
2 CURRENT MARKET CONDITIONS DIFFER SIGNIFICANTLY
3 FROM MARKET CONDITIONS OF 2007 AND 2008.

4
5 WHAT HAS CHANGED? NUMBER 1. DURING THE PEEK OF
6 THE CRISIS, A LARGE PROPORTION OF THE
7 COOPERATIVES, AND SOME PROPRIETARY FIRMS WITH
8 DIRECT SHIPPERS, ADOPTED A BASE PLAN AND IN SOME
9 CASES PRODUCERS WERE ASSESSED FOR THE COST OF
10 DISPOSING OF MILK IN EXCESS OF THE THEIR BASE
11 PRODUCTION.

12 BY MR. BESHORE:

13 Q. YEAH, WHY DON'T YOU JUST CONTINUE WITH YOUR RECITATION
14 OF YOUR NARRATION AND DESCRIPTION OF WHAT CHANGED IN POST-2007
15 AND '08 THROUGH THE END OF YOUR DISCUSSION ON THAT.

16 MR. WEGNER:

17 NUMBER 2. MILK PRODUCTION HAS DECLINED IN
18 CALIFORNIA SINCE 2008. IN FACT, AVERAGE MILK
19 OUTPUT PER DAY WAS 4.3 MILLION POUNDS LESS IN 2009
20 THAN IT WAS IN 2008. THIS OCCURRED FOR AT LEAST
21 TWO REASONS; ONE WAS THE BASE PLANS THAT WERE PUT
22 IN PLACE; SECONDLY, THE MILK PRICES DECLINED
23 SHARPLY FROM THEIR PEAK IN 2007 AND 2008. IN
24 FACT, THE AVERAGE OVER BASE PRICE IN 2007 WAS
25 1727, AND BY JULY OF 2009 --

1 JUDGE CLIFTON: GO AHEAD AND EXPRESS THAT IN DOLLARS,
2 PLEASE.

3 MR. WEGNER: BEG YOUR PARDON.

4 IN FACT, THE AVERAGE OVER BASE PRICE IN 2007 WAS
5 \$17.27, AND BY JULY OF 2009, THE OVER BASE PRICE
6 DROPPED TO \$9.67, AND THE AVERAGE FOR 2009, WAS
7 ONLY \$10.81 PER HUNDREDWEIGHT. FROM AUGUST OF
8 2007 TO JULY 2009, THE OVER BASE PRICE DROPPED BY
9 52 PERCENT.

10
11 NUMBER 3. MILK PROCESSING CAPACITY ON A NET BASIS
12 IS SIGNIFICANTLY LARGER TODAY THAN IT WAS IN 2007
13 AND 2008. THERE WAS AN EXPANSION IN CHEESE
14 PROCESSING CAPACITY ON THE PART OF TWO FIRMS FOR A
15 TOTAL OF 67 LOADS OF MILK PER DAY, AND A
16 COMBINATION OF NEW POWDER PLANTS, EXPANSION OF
17 CURRENT CAPACITY FOR LAND O'LAKES, AND A REOPENING
18 OF AN OLD PLANT THAT PROCESSES POWDER, CONDENSED,
19 AND CREAM CHEESE, WHICH ADDED A TOTAL OF 287 LOADS
20 A DAY.

21
22 THERE WERE ALSO SOME LOSSES IN PROCESSING
23 CAPACITY. LAND O'LAKES IDLING A CHEDDAR PLANT AND
24 ANOTHER LARGE CHEESE PLANT WAS CLOSED, FOR A TOTAL
25 LOSS IN PROCESSING CAPACITY OF 145 LOADS OF MILK

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PER DAY.

IN SUM, THIS MEANS THAT CALIFORNIA HAS EXPERIENCED A NET INCREASE IN PROCESSING CAPACITY OF ABOUT 209 LOADS OF MILK PER DAY THAN AT THE TIME OF THE FALL OF 2007 HEARING. IT'S TRUE THAT IN 2007 AND 2008, THE CALIFORNIA MILK SUPPLY EXCEEDED PROCESSING CAPACITY, SO WE HAD DEFICIT PROCESSING CAPACITY. BECAUSE THE PROCESSING CAPACITY WAS DEFICIT IN 2007 AND 2008, IT WOULD BE INACCURATE TO SAY THAT WE HAVE EXCESS PROCESSING CAPACITY OF 209 LOADS PER DAY.

TAKING INTO ACCOUNT THE DEFICIT PROCESSING CAPACITY AND THE GROWTH IN PROCESSING CAPACITY AND THE GROWTH IN PROCESSING -- TAKING INTO ACCOUNT THE DEFICIT PROCESSING CAPACITY AND THE GROWTH IN PROCESSING CAPACITY ON A NET BASIS, AND BASED UPON INDUSTRY SOURCES, WE BELIEVE CALIFORNIA HAS EXCESS PROCESSING CAPACITY OF AN ESTIMATED 80 TO 90 LOADS OF MILK PER DAY AS OF APRIL OF 2011. WE BELIEVE THIS TO BE A CONSERVATIVE ESTIMATE. AT THIS POINT IN TIME, THE MANUFACTURING CAPACITY IN CALIFORNIA CAN ADEQUATELY HANDLE AND PROCESS CALIFORNIA'S MILK OUTPUT.

1 MR. BESHORE: THANK YOU, MR. WEGNER. YOUR HONOR, MAY I
2 HAVE JUST A MOMENT TO CONFER WITH CO-COUNSEL? I MAY NOT HAVE
3 ANY FURTHER QUESTIONS.

4 BY MR. BESHORE:

5 Q. I ONLY HAVE ONE FURTHER QUESTION ON REDIRECT.
6 MR. WEGNER, YOU ARE NOT GOING TO BE HERE TOMORROW, YOU HAVE
7 PLANS TO EXIT?

8 A. I WILL BE HERE UNTIL 11:15, BUT I COULD LEAVE EARLIER.

9 Q. BUT YOU HAVE GOT A LOT OF PACKING TO DO, RIGHT?

10 A. I DON'T HAVE ANY OTHER QUESTIONS.

11 MR. ENGLISH: YOUR HONOR, I PROMISE MY RECROSS IS DIRECTLY
12 RELATED TO THE REDIRECT WE JUST HEARD.

13 RECCROSS-EXAMINATION

14 BY MR. ENGLISH

15 Q. SO LET ME START WITH THE LAST PIECE, WHICH WAS THE
16 SECTION THAT YOU READ. SOME OF WHICH YOU ALREADY READ, IN
17 ADDITION, DISCUSSION ABOUT CAPACITY ISSUES. AND WHEN I ASKED
18 YOU QUESTIONS EARLIER, YOU INDICATED THAT YOU ALREADY
19 IMPLEMENTED A BASE PLAN BY THE TIME THIS TESTIMONY WAS GIVEN,
20 CORRECT?

21 A. THE 2011 TESTIMONY?

22 Q. YES.

23 A. YES.

24 Q. OKAY. BUT AS I ASKED YOU WHEN YOU HAD SOME PROBLEMS IN
25 2012, I MAY HAVE ASKED THE QUESTION SORT OF INACCURATELY. THE

1 BASE PLAN, I'M SORRY, YOU DID HAVE SOME CAPACITY ISSUES IN
2 2012, CORRECT?

3 A. YES.

4 Q. NOTWITHSTANDING ALL THIS TESTIMONY WHICH YOU SAY YOU
5 HAVE TAKEN CARE OF THE CAPACITY PROBLEMS, BY 2012 IT TURNED
6 AROUND, YOU HAD A CAPACITY PROBLEMS, CORRECT?

7 A. IN THE EARLY PART OF 2012 THERE WAS A CAPACITY PROBLEM,
8 I AGREE WITH YOU.

9 Q. AND IT WASN'T JUST FOR LAND O'LAKES, IT WAS GENERALLY
10 IN CALIFORNIA AND IN THE WESTERN PART OF THE UNITED STATES,
11 CORRECT?

12 A. AS I UNDERSTAND, IT WAS MORE THAN JUST LAND O'LAKES.

13 Q. AND INDEED, AS A RESULT OF THAT, NOTWITHSTANDING THE
14 FACT THAT YOU HAD A BASE PLAN, YOU HAD TO SUPPLEMENT YOUR BASE
15 PLAN AND MAKE CHANGES TO IT IN ORDER TO ADDRESS THAT
16 OVERCAPACITY, CORRECT?

17 A. WE DID THINGS BEYOND THE BASE PLAN, IF THAT'S WHAT YOU
18 MEAN, YES.

19 Q. THAT IS TO SAY YOU SENT A LETTER TO YOUR MEMBERS IN
20 MARCH OF 2012, AND I'M PERFECTLY HAPPY TO MAKE -- WE ARE UP TO
21 39, YOUR HONOR?

22 JUDGE CLIFTON: THANK YOU. WE WILL LABEL THAT DOCUMENT.
23 IT IS A ONE-PAGE DOCUMENT, AS [EXHIBIT 39](#).

24 (THEREAFTER, [EXHIBIT 39](#) WAS MARKED
25 FOR IDENTIFICATION.)

1 BY MR. ENGLISH:

2 Q. AND IT'S LABELED, LAND O'LAKES, WESTERN INITIATING
3 SUPPLEMENTAL BASE REDUCTION MEASURES, AND BELOW THAT THERE IS A
4 SHARE FOR INTERNET, AND THEN IT SAYS, "FROM LETTER ADDRESSED
5 LAND O'LAKES DAIRY MEMBERS FROM PETE GARBANI, DIRECTOR OF MILK
6 SUPPLY, WESTERN REGION, DATED MARCH 16, 2012."

7 DO YOU RECOGNIZE THE TEXT THAT APPEARS BELOW FROM THE
8 LETTER?

9 A. YES.

10 Q. THAT'S AN ACCURATE DEPICTION?

11 A. AS FAR AS I KNOW, YES.

12 Q. SO IN THE MIDDLE OF THE FIRST PARAGRAPH IT READS, "AS
13 OF THIS WRITING, PRODUCTION WITHIN BOTH THE STATE OF CALIFORNIA
14 AND YOUR COOPERATIVE CONTINUES IN UPWARD TREND." CORRECT?

15 A. YES, THAT'S WHAT IT SAYS.

16 Q. "MORE SPECIFICALLY, WE HAVE RECEIVED OR SOLD OVER 17
17 MILLION POUNDS PER DAY IN EARLY MARCH, AND VOLUMES ARE STILL
18 GROWING." CORRECT?

19 A. THAT'S CORRECT.

20 Q. WHY DON'T YOU READ THE NEXT TWO SENTENCES?

21 A. "AS SUCH" THAT PIECE, MR. ENGLISH?

22 Q. YES.

23 A. "AS SUCH, WE CONTINUE TO SEEK ALTERNATIVE MARKETS FOR
24 YOUR MILK. OUR EFFORTS THUS FAR HAVE RESULTED IN DEEP
25 DISCOUNTS TO CLEAR THE MARKET, AND AS PRODUCTION CONTINUES TO

1 GROW, THESE ALTERNATIVES WILL BECOME INCREASINGLY LESS
2 ATTRACTIVE."

3 Q. SO IN ORDER TO DISPOSE OF THE SURPLUS MILK IN 2012, YOU
4 HAD TO REACH OUT IN THE MARKET AND PROVIDE DEEP DISCOUNTS,
5 CORRECT?

6 A. IN THE FIRST QUARTER OF 2012.

7 Q. WHICH IS LESS THAN A YEAR AFTER YOUR TESTIMONY IN
8 JUNE 30TH OF 2011, WHEN YOU SAID CAPACITY ISSUES HAD BEEN
9 RESOLVED, CORRECT?

10 A. CORRECT.

11 Q. AND THEN YOU LIST THE, SORT OF THE CONSEQUENCES, I
12 DON'T THINK WE HAVE TO READ INTO IT. BOTTOM LINE IS, YOU
13 INCREASED, YOU HAD TO PUT IN ADDITIONAL MEASURES TO TRY TO SLOW
14 DOWN PRODUCTION, CORRECT? FINANCIAL MEASURES?

15 A. YES, WE DID.

16 Q. I MOVE THE ADMISSION OF THIS [EXHIBIT 39](#).

17 JUDGE CLIFTON: DOES ANYONE WISH TO QUESTION MR. WEGNER
18 BEFORE YOU DECIDE WHETHER YOU HAVE AN OBJECTION? NO ONE. IS
19 THERE ANY OBJECTION TO THE ADMISSION INTO EVIDENCE OF EXHIBIT
20 39? THERE IS NONE. [EXHIBIT 39](#) IS ADMITTED INTO EVIDENCE.

21 (THEREAFTER, [EXHIBIT 39](#) WAS
22 RECEIVED INTO EVIDENCE.)

23 BY MR. ENGLISH:

24 Q. NOW, MR. BESHORE ALSO HAD YOU READ SOME MATERIAL WITH
25 RESPECT TO DEPOOLING. CORRECT?

1 A. CORRECT.

2 Q. AND ON PAGE 40 HE SPECIFICALLY HAD YOU READ THE LINES
3 STARTING PAGE 14 WHERE YOU REFER, "PREVIOUS HEARINGS HAVE ALSO
4 INCLUDED STATEMENTS ABOUT THE ADVANTAGES OF DEPOOLING OR THE
5 VOLUNTARY CHOOSING BY HANDLERS TO MOVE A PORTION OF THEIR MILK
6 FROM A FEDERAL MILK ORDER." CORRECT?

7 A. CORRECT.

8 Q. AND, IN FACT, AS WE DISCUSSED FROM [EXHIBIT 36](#), ONE OF
9 THE STATEMENTS ABOUT THE ADVANTAGES OF DEPOOLING THAT APPEARED
10 IN PRIOR TESTIMONY WAS YOUR OWN STATEMENT FROM 2006, CORRECT?

11 A. THAT'S CORRECT.

12 Q. NOW, YOU INDICATED IN YOUR TESTIMONY FOLLOWING THAT,
13 THAT YOU SAY, "LAND O'LAKES AND OTHER HANDLERS WHO DEPOOL MILK
14 MUST CONTINUE TO COMPETE FOR MILK SUPPLIES." AND THAT'S A TRUE
15 STATEMENT, CORRECT?

16 A. IT IS A TRUE STATEMENT.

17 Q. BUT ISN'T THE DIFFERENCE THAT WHEN YOU DEPOOL, AS YOU
18 STATED IN 2006, THAT YOU DON'T HAVE TO SHARE THE CLASS III
19 REVENUE WITH OTHER PRODUCERS WHEN YOU DEPOOL THE MILK?

20 A. CORRECT. BUT YOU WOULD STILL NEED TO RETAIN YOUR MILK
21 SUPPLY.

22 Q. BUT YOU ARE NOT HAVING TO SHARE THAT MONEY WITH OTHER
23 DAIRY FARMERS, CORRECT?

24 A. CORRECT. BUT YOU STILL NEED TO RETAIN YOUR MILK
25 SUPPLY.

1 Q. I UNDERSTAND. BUT WHEN YOU SHARE THE MONEY -- IF YOU
2 DON'T HAVE TO SHARE THE MONEY WITH OTHER FARMERS AND YOU GET TO
3 USE IT FOR YOURSELF, DOESN'T THAT ADD TO YOUR ECONOMIC BENEFIT,
4 VIS-A-VIE, THE ENTITIES WHO ARE STILL IN THE POOL?

5 A. THESE VALUES ARE SUCH SMALL MARGINAL MILK SUPPLIES THAT
6 THEY ARE NOT A SIGNIFICANT ECONOMIC BENEFIT. THEY ARE A
7 BENEFIT, BUT YOU STILL NEED TO RETAIN YOUR MILK SUPPLY BY
8 PAYING A COMPETITIVE PRICE.

9 Q. THEN WHY DO PEOPLE DEPOOL AT ALL IF IT'S SUCH A SMALL
10 BENEFIT?

11 A. BECAUSE IT MAKES SENSE TO DEPOOL CERTAIN TIMES, AND YOU
12 STILL NEED TO -- I MEAN, IT'S AN OPPORTUNITY WITHIN THE
13 REGULATION. YOU ARE MAXIMIZING THE OPPORTUNITY WITHIN THE
14 REGULATION.

15 Q. AND NO ONE IS CRITICIZING YOU FOR DOING SO?

16 A. I'M NOT TAKING IT AS A CRITICISM.

17 Q. AND YOU SHOULDN'T.

18 BUT THE FACT OF THE MATTER IS, PEOPLE DO IT BECAUSE IT
19 PROVIDES ECONOMIC ADVANTAGE, CORRECT?

20 A. THAT'S A STRONG WORD. IT MAKES A DIFFERENCE, IT'S A
21 BENEFIT, I AGREE.

22 Q. IT PROVIDES AN ECONOMIC ADVANTAGE?

23 A. IT'S A BENEFIT, I AGREE.

24 Q. SO YOU ALSO, IN YOUR STATEMENT AND RESPONSE TO
25 MR. BESHORE, INDICATED THAT THESE CHANGES IN FEDERAL ORDERS

1 HAVE REDUCED THE POOLING, CORRECT?

2 A. CORRECT.

3 Q. HAVE YOU LOOKED AT TABLE 9 OF EXHIBIT 9, THAT WAS
4 PRESENTED BY THE DEPARTMENT WITNESSES?

5 A. I DON'T HAVE IT IN FRONT OF ME, BUT I HAVE LOOKED AT
6 IT.

7 Q. AND FOR 2014, THE TOTAL VOLUME FOR ALL ORDERS, UPPER
8 MIDWEST AND OTHER, WAS A 11 BILLION POUNDS THAT WAS ELIGIBLE
9 MILK NOT POOLED FOR 2014?

10 A. I'LL TAKE YOUR WORD FOR IT.

11 Q. OKAY. WOULD YOU TAKE MY WORD FOR THAT, YOU KNOW, IS
12 THE FOURTH LARGEST MONTH SINCE 2000?

13 A. WELL, IF THE NUMBERS SAY THAT, I WOULD TAKE THAT AS
14 YOUR -- I WOULD AGREE WITH THAT ASSERTION.

15 Q. I HAVE NO FURTHER QUESTIONS OF THIS WITNESS.

16 JUDGE CLIFTON: ARE THERE ANY OTHER QUESTIONS FOR
17 MR. WEGNER? YOU HAVE BEEN ON THE STAND ALMOST ALL DAY
18 MR. WEGNER, IT'S 4:38, YOU MAY STEP DOWN. THANK YOU SO MUCH.

19 MR. WEGNER: THANK YOU.

20 MR. BESHORE: I'M NOT CERTAIN IF EXHIBITS 34 AND 35 WERE
21 MOVED INTO EVIDENCE, BUT I WOULD ASK THEM BE RECEIVED IF THEY
22 HAVE NOT BE RECEIVED.

23 JUDGE CLIFTON: I'M SURE THAT THEY WERE, BUT IN AN
24 ABUNDANCE OF CAUTION, I WILL REITERATE THAT ALL OF THOSE
25 EXHIBITS THAT WE HAVE COVERED TODAY I HEREBY ADMIT INTO

1 EVIDENCE, IF I HAVE NOT. THAT'S [EXHIBIT 34](#), 35, 36, 37, 38,
2 AND 39.

3 MR. ENGLISH: YOUR HONOR, I NOTE IT IS ALMOST 4:40, AND I
4 DON'T THINK MR. BESHORE WANTS TO PUT ANOTHER WITNESS ON. BUT
5 AS IT HAPPENS, WE HAVE WHATEVER YOU WANT TO CALL IT,
6 HOUSEKEEPING OR SOMETHING ELSE. WE HAVE A RARITY IN FEDERAL
7 MILK ORDER HEARINGS, WHICH IS A STIPULATION.

8 AND MR. VETNE FOR HIS CLIENT, AND MR. BESHORE FOR
9 PROPONENTS PROPOSAL 1, AND WE, DAIRY INSTITUTE OF CALIFORNIA,
10 PROPOSAL NUMBER 2, HAVE REACHED A RESOLUTION SO THAT WHILE
11 THERE MIGHT BE -- WELL, THERE WILL BE A LEGAL DISCUSSION AT A
12 LATER DATE, WE CAN STOP ASKING QUESTIONS OF WITNESSES AT THIS
13 TIME WITH RESPECT TO THE STEPHENSON AND NICHOLSON STUDY. AND
14 SO WE HAVE A ONE-PAGE STIPULATION, WHICH I'LL QUICKLY READ INTO
15 THE RECORD, AND THEN SOME ATTACHMENTS.

16 AND IT HAS THE CAPTION OF THE CASE WITH ALL OF THE
17 APPROPRIATE DOCKET INFORMATION. CLOVIS, CALIFORNIA, DATED
18 SEPTEMBER 22ND, 2015, THAT'S THE DATE OF THE HEARING, NOT
19 TODAY.

20 IN JUNE 2013, THE THREE PROPONENT DAIRY FARM
21 COOPERATIVE ASSOCIATIONS GAVE PUBLIC NOTICE BY PRESS RELEASES
22 ATTACHED, OF THE STUDY PREPARED BY DAIRY ECONOMIST MARK
23 STEPHENSON AND CHUCK NICHOLSON. INFORMATION ABOUT THE STUDY
24 FROM THE PRESS RELEASE OR RELEASES, WAS RECORDED AND PUBLISHED
25 BY PRINT AND WEB-BASED MEDIA. HOWEVER, THE STUDY ITSELF HAS

1 BEEN PROVIDED ONLY TO SENIOR MANAGEMENT OF THE COOPERATIVE
2 PROPONENTS, AND IT, AND ANY AND ALL COPIES THEREOF IN ANY
3 FORMAT ARE CONSIDERED BY THE COOPERATIVES AS CONFIDENTIAL
4 PROPRIETARY INFORMATION.

5 IN JUNE 2015, A REQUEST WAS MADE OF COUNSEL FOR THE
6 PROPONENT COOPERATIVES TO MAKE A COPY OF THE STEPHENSON,
7 NICHOLSON STUDY AVAILABLE TO ALL, I'M SORRY, TO OTHER
8 INTERESTED PARTIES. COOPERATIVE COUNSEL PROMPTLY RESPONDED
9 "NO."

10 AS THE HEARINGS PROGRESSED, QUESTIONS HAVE BEEN ASKED
11 OF WITNESSES CONCERNING STEPHENSON, NICHOLSON STUDY, TO WHICH
12 COUNSEL FOR THE PROPONENT COOPERATIVES HAS OBJECTED.

13 IT IS THE POSITION OF THE COOPERATIVE ASSOCIATION
14 PROPONENTS THAT THE STEPHENSON, NICHOLSON -- SHOULD SAY STUDY
15 -- IS FOR THE PRIVATE USE OF THE COOPERATIVES, AND COOPERATIVES
16 WILL CONTINUE TO OBJECT TO QUESTIONS CONCERNING ITS CONTENT AND
17 WILL INSTRUCT WITNESSES NOT TO ANSWER QUESTIONS CONCERNING ITS
18 CONTENT.

19 I WOULD PROPOSE THAT WE MAKE THIS AN EXHIBIT, AND MR.
20 BESHORE CAN AGREE, AND MR. VETNE CAN AGREE THAT THERE'S A
21 STIPULATION OF THE THREE.

22 JUDGE CLIFTON: WELL, NOW, YOU'VE CREATED ALL THIS APPETITE
23 TO SEE WHAT'S IN THERE, AND NOW THE STIPULATION SAYS I DON'T
24 GET TO SEE IT?

25 MR. BESHORE: THAT'S CORRECT.

1 MR. ENGLISH: THERE'S GOING TO BE A LEGAL ARGUMENT ABOUT
2 THAT AT A LATER TIME, YOUR HONOR, BUT WE'RE TRYING TO MOVE THE
3 HEARING FORWARD. BUT WE APPRECIATE YOUR CURIOSITY AND WE
4 AGREE.

5 MR. BESHORE: WE HAVE ENTERED INTO THE STIPULATION THAT HAS
6 BEEN READ, AND PERMIT THE INTRODUCTION OF THE NEWS RELEASES
7 WHICH ARE ATTACHED, WITH THE EXPRESS UNDERSTANDING THAT THAT
8 WILL END THE DIALOGUE ON THE RECORD, NOT IN THE BRIEFS, I
9 UNDERSTAND, ON THE RECORD OF THIS HEARING, AND WE CAN MOVE ONTO
10 SUBSTANTIVE THINGS.

11 JUDGE CLIFTON: WHAT COULD BE MORE SUBSTANTIVE THAN AN
12 ARALDITE STUDY?

13 MR. VETNE: YOUR HONOR, THIS IS A STIPULATION NEGOTIATED
14 BETWEEN COUNSEL FOR THE THREE COUNSEL, OR REPRESENTATIVES,
15 COUNSEL AND REPRESENTATIVES OF THE PARTIES. WE DON'T WANT TO
16 ENCUMBER THE RECORD WITH REPEATED QUESTIONS OF PROPONENT
17 WITNESSES AND REPEATED OBJECTIONS. YOU KNOW, SIMPLY IN ORDER
18 TO PRESERVE THE ISSUE. SO THIS WILL PRESERVE THE ISSUE WITHOUT
19 UNDULY BURDENING THE FUTURE RECORD. SO THANK YOU MR. BESHORE,
20 AND EVERYBODY THAT WAS INVOLVED FOR THIS. MY APPETITE IS NOT
21 QUENCHED, HOWEVER.

22 JUDGE CLIFTON: DO WE WANT TO MARK THIS STIPULATION AS AN
23 EXHIBIT? IT IS THE ACTUALLY THE EASIEST WAY TO HANDLE IT.

24 MR. ENGLISH: I THINK IT IS, YOUR HONOR, I WOULD HAVE IT
25 MARKED [EXHIBIT 40](#), AS LONG AS MEREDITH AGREES.

1 MS. FRISIUS: I WOULD AGREE.

2 JUDGE CLIFTON: ALL RIGHT. I'M MARKING MINE AS EXHIBIT 40,
3 THAT'S 40.

4 (THEREAFTER, EXHIBIT 40 WAS MARKED
5 FOR IDENTIFICATION.)

6 JUDGE CLIFTON: AND EVEN THOUGH THERE'S NO NEED FOR ME TO
7 ASK IF THERE ARE ANY OBJECTIONS, I'M GOING TO DO IT ANYWAY JUST
8 OUT OF FORM. ARE THERE ANY OBJECTIONS TO MY MAKING THIS AN
9 EXHIBIT? THERE ARE NONE. THE STIPULATION OF COUNSEL AND
10 REPRESENTATIVE ARE ACCEPTED AS PART OF THE RECORD AND WILL BE
11 FOUND AMONG THE EXHIBITS AS EXHIBIT 40.

12 (THEREAFTER, EXHIBIT 40 WAS
13 RECEIVED INTO EVIDENCE.)

14 MS. FRISIUS: HOW WOULD YOU LIKE THIS TO BE TITLED?

15 MR. ENGLISH: STIPULATION OF COUNSEL FOR THE COOPERATIVES
16 AND PROPONENTS OF PROPOSAL 2, AND REPRESENTATIVE FOR HILMAR.
17 PUT HIM FIRST.

18 JUDGE CLIFTON: AND MR. VETNE, I ASSUME THAT BECAUSE YOU
19 ARE CAREFUL TO CALL YOURSELF A REPRESENTATIVE, IT IS BECAUSE
20 YOU ARE RETIRED AS A LAWYER; IS THAT CORRECT?

21 MR. VETNE: THAT IS CORRECT, YOUR HONOR.

22 JUDGE CLIFTON: THANK YOU. ALL RIGHT. I KNOW WE DIDN'T
23 GET TO WITNESS TWO FOR TODAY, BUT I ASSUME HE'LL PROBABLY BE ON
24 THE AGENDA FOR TOMORROW; IS THAT CORRECT, MR. BESHORE?

25 MR. BESHORE: THAT IS CORRECT.

1 JUDGE CLIFTON: AND WHAT ELSE -- LET'S SEE -- WE ARE GOING
2 TO HAVE -- WOULD YOU, MR. RICHMOND, TALK TO US ABOUT WHAT ELSE
3 WE MIGHT EXPECT FOR TOMORROW?

4 MR. RICHMOND: BILL RICHMOND, USDA. WE WOULD LIKE TO TRY
5 TO RECALL MR. CLIFFORD CARMAN SOMETIME TOMORROW MORNING JUST
6 FOR A COUPLE OF MOMENTS TO ADDRESS THE QUESTIONS FROM
7 MS. TAYLOR FROM LEPRINO FOODS FROM YESTERDAY. WE COULD, IT
8 SHOULDN'T TAKE TOO LONG.

9 JUDGE CLIFTON: MR. BESHORE AND MR. ENGLISH, WHICH SHOULD
10 GO FIRST, MR. CARMAN OR DR. ERBA? I GET CONFUSED BECAUSE I
11 REMEMBER ERIC.

12 MR. ERBA: YOU CAN STICK WITH DR. ERIC, THAT WOULD BE FINE.

13 MR VLAHOS: YOUR HONOR, IT DEPENDS HOW LONG THE TESTIMONY
14 WILL BE FROM MR. CARMAN.

15 MR. RICHMOND: WE DON'T ANTICIPATE IT TAKING VERY LONG AT
16 ALL, HOPEFULLY LESS THAN TEN MINUTES.

17 JUDGE CLIFTON: I AGREE. LET'S HAVE MR. CARMAN BE OUR
18 FIRST WITNESS OF THE DAY AND THEN WE'LL GO ON FROM THERE.
19 ALL RIGHT. I NEED NOT REMIND YOU THAT TOMORROW IS CASUAL
20 FRIDAY, SO NO ONE IS REQUIRED TO DRESS AS IF YOU WERE APPEARING
21 IN COURT, RATHER, YOU MAY COME VERY COMFORTABLE.

22 I KNOW THAT PROBABLY MR. SCHAEFER WILL CONTINUE TO WEAR
23 HIS TIE AND HIS JACKET. ALL RIGHT. ANY QUESTIONS?

24 MR. BESHORE: COULD WE GO OFF THE RECORD?

25 JUDGE CLIFTON: ALL RIGHT. SO THIS WILL CONCLUDE OUR

1 RECORD FOR TODAY.

2 WE'RE GOING OFF RECORD AT 4:46 P.M.

3 (WHEREUPON, THE PROCEEDINGS CONCLUDED FOR THE DAY.)

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COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO)

I, MYRA A. PISH, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 11613, issued by the Court Reporters Board of California and which is in full force and effect.

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties.

I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

DATED: October 11, 2015

FRESNO, CALIFORNIA



MYRA A. PISH, CSR
Certificate No. 11613

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