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

Monday, October 5, 2015
9:01 a.m.

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

TRANSCRIPT OF PROCEEDINGS
VOLUME 10

Reported by:
Myra A. Pish CSR
Certificate No. 11613

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DEAN FOODS COMPANY: ROB BLAUFUSS

HILMAR CHEESE COMPANY: JOHN VETNE JAMES DEJONG

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

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JUDGE CLIFTON: We're back on record. It is 9:01 in the morning on Monday, October 5, 2015. This is the milk hearing. This is Day 10. My name is Jill Clifton, I'm a United States Administrative Law Judge, and my assignment is to take evidence at this hearing.

I'll be taking the appearances of other USDA employees first, and then the participants who are here, first from the teams who are backing one proposal or another, or opposing the proposals, and then from other participants, including those who would like to testify today.

So let us begin, please. I would like the groups to come to the podium and identify yourself, and please include your spelling of your name. And state, if you will, what your ordinary work is, and if you have a special function in this hearing, if you will state what that is.

MR. FRANCIS: Good morning, William Francis, F-R-A-N-C-I-S, USDA, Agricultural Marketing Service, I'm a Dairy Marketing Specialist.

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

MS. MAY: Good morning, Laurel May, with USDA, AMS Dairy Program. I'm a Rule Writer on the Order Formulation and Enforcement Division.

MS. FRISIUS: Good morning, Meredith Frisius,
M-E-R-E-D-I-T-H, F-R-I-S-I-U-S, and I'm with USDA, Order Formulations, and I am keeping charge of all of the exhibits and anyone who would like to testify.


MS. BECKER: Good morning, Lauren Becker, USDA Office of the General Counsel.


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

MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson, Megan is M-E-G-A-N, I'm an attorney with the law firm Hanson Bridgett, H-A-N-S-O-N, B-R-I-D-G-E-T, co-counsel for proponents of Proposal Number 1.

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

MR. HOLLON: Good morning, Elvin Hollon, E-L-V-I-N,
H-O-L-L-O-N, Dairy Farmers of America.

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

MR. ENGLISH: Good morning, your Honor, Day 10.

My name is Chip English, C-H-I-P, E-N-G-L-I-S-H, and I'm with the law firm of Davis, Wright, Tremaine, and I'm here on behalf of the Dairy Institute of California, proponents of Proposal 2.


MR. BLAUFUSS: Good morning, Rob Blaufuss, B-L-A-U-F-U-S-S with the Dean Foods Company.

MS. TAYLOR: Good morning, Sue Taylor with Leprino Foods, L-E-P-R-I-N-O.


MR. VETNE: John Vetne, V-E-T-N-E, representative for Hilmar Cheese.


JUDGE CLIFTON: And how do you spell Shehadey?


MR. MILTNER: Good morning, Ryan Miltner, M-I-L-T-N-E-R, attorney with Select Milk Producers, Inc.


I'm also a representative from California to the National Farmers Union. For the California Farmers Union, elected by farmers here in California to represent ourselves at the National Farmers Union. I'm also sitting on the Executive Board of the California Dairy Campaign. But I am a producer, and I'm a producer-distributor foremost to testify today.

JUDGE CLIFTON: And what's your availability time-wise today?

MR. McAFEE: As soon as possible. Thank you.

JUDGE CLIFTON: All right. You're welcome.

MR. GOULE: My name is Chandler Goule, C-H-A-N-D-L-E-R, G-O-U-L-E, I'm the Senior Vice President of Programs for the National Farmers Union. I'm here to testify today on behalf of Proposal 1 by California, Inc., DFA, and Land O'Lakes. And if
I could testify as soon as possible so I could catch my flight back to DC.

JUDGE CLIFTON: All right. When did you need to leave this room?

MR. GOULE: Before noon.

JUDGE CLIFTON: Good.


JUDGE CLIFTON: And what's your timeframe of availability.

MR. VANDENHEUVEL: I hesitate to say -- I'm as flexible as we need to be. I'm here for a couple of days.

JUDGE CLIFTON: Wonderful. So if you wanted to testify today, but you were willing to wait until the other two gentleman testify.

MR. VANDENHEUVEL: We've already worked that out. Yes, they will be going ahead of me.

JUDGE CLIFTON: All right. Great. Is there anyone else who would like to be identified who has not yet come forward? I would like now to turn to preliminary matters. Any that anybody would like to present?

MS. FRISIUS: Meredith Frisius. Good morning, everybody, happy Monday.

I'm Meredith Frisius. I work with the USDA. I just wanted to let all of you know that we're glad to have you here.
and thank you for participating. You can identify USDA staff, many of us have name badges, and if you would like to testify, you could ask any of us, but I'm actually the one in charge of that. So if you can come find me, I'll get you on the list and then we will be able to notify the Judge.

When you come, please provide me with a business card so I can provide it to the court reporter. And USDA's role here at this hearing is to be able to get a complete record for us to be able to continue forward and make a decision with. So please feel welcome to contribute to the record.

If you are an audience member and you have a question for any witness, you are welcome to come up and approach the microphone and do so. Is you do, just identify yourself.

We are broadcasting this as a live audio feed, but it is not being recorded. You can listen to this at tinyurl.com/californiamilkhearing -- I had Laurel write that one down. And then the court reporter --

JUDGE CLIFTON: Let me -- California milk hearing sounds different from what I heard before.

MS. FRISIUS: Oh, camilkhearing, yes, camilkhearing, that was incorrect even reading it. Anyway -- the court reporter is recording an official transcript and they will be available about two weeks after the end of each week's hearing, so we should be seeing the first one, I think, at the end of this week I believe.
And then exhibits are numbered in the order they are presented. And there will be copies available at the back of the room.

And then as always, there's refreshments and food. Please enjoy. At the end of Friday we ended with Dr. Eric Erba getting, finishing cross-examination --

JUDGE CLIFTON: No, not finishing.

MS. FRISIUS: I was going to say finishing with John Vetne finished, but I'm not sure. Working on cross-examination. But today we will return to Dr. Eric Erba after we hear from the producers that are here today. Thank you.

JUDGE CLIFTON: Thank you so much.

I see we have another preliminary issue. I'm going to just put the docket number into the record now, and then I'll ask for additional preliminary matters.

The docket number is in brackets, [AO], that just stands for Agreements and Orders, it's a type of case for which the Hearing Clerk of United States Department of Agriculture maintains the record file. The docket number is 15-0071. Again, that's the Hearing Clerk's designation. There are other numbers that the Agricultural Marketing Service has, and so forth.

The case caption is In Re: Milk in California. The transcript pages from today will be numbered in sequence to those that we have already had. And now I would like to take
other preliminary matters.

MR. BESHORE: Marvin Beshore. In terms of the scheduling, your Honor, as Ms. Frisius had indicated, of course Dr. Erba was on the stand when we adjourned Friday at cross-examination. Among our team, Mr. Vlahos has had the lead in presenting Dr. Erba. He's not able to be here until middle of the afternoon today. So it's our preference if Dr. Erba could continue when Mr. Vlahos is here. But if that's not possible, we do understand.

But with that condition, that circumstance, we're more than happy to have Mr. McAfee and Mr. Goule and Mr. Vandenhuevel testify this morning, or as long as necessary, and when that's completed, any other producers, of course. But when they are completed, Dr. Erba would then resume cross-examination or perhaps Mr. Vlahos is able to be here.

JUDGE CLIFTON: Do you have someone, if we finish all of the people who are not Dr. Erba, do you have someone else you could call that would be questioned by someone other than Mr. Vlahos?

MR. BESHORE: No, we do not. But we'll proceed with Ms. Thompson and myself with Dr. Erba, if time requires.

MR. ENGLISH: Chip English. Mr. Beshore and I had a conversation off the record before the hearing began. We are certainly happy to accommodate this issue. We assume we're going to have some accommodation issues when we're on, but
absolutely, first of all, the dairy farmer witnesses and dairy farm representative witnesses who will necessarily go first, and as long as they are happy to do it this way, we certainly are. So we have no issues of any kind with respect to this kind of procedure.

JUDGE CLIFTON: Are there other preliminary matters?

MR. ENGLISH: Chip English. Your Honor, on Friday the USDA read a statement into the record with respect to CDFA coming Thursday, and I think we agreed that they would do that again as part of the preliminary matters this morning.

JUDGE CLIFTON: I would like that to be repeated. There are people who may be listening today who don't know this yet.

MR. HILL: Brian Hill. The statement is as such:

"CDFA will be present on October 8th for the limited purpose of entering reports into the hearing record, developed in response to requests from interested parties. CDFA will only answer questions regarding the compilation of the data contained in these reports, in order to remain neutral and avoid being associated with the particular proposal."

That's the entirety of the statement.

JUDGE CLIFTON: Thank you, Mr. Hill. A couple of other preliminary matters I have. I did announce a change in schedule for this week. Normally we go 9:00 to 5:00 each day. This Friday we will go only until noon, no later than noon we will stop.
I was in error when I said every one of those days would be here in the Liberty Room. Does anybody want to comment about that now or shall we save that for later?

MS. MAY: Laurel May. On Wednesday we will be in the Independence AB room, which is where we were for the last two days last week, and then Thursday and Friday we'll be back in here. So feel free to come for the whole taping and moving thing.

JUDGE CLIFTON: It is a lot of work to break down and move, but nevertheless to have a facility of this wonderful caliber for as many days as we have got it is amazingly good. So it's a small price to pay -- and it's easy for me to say that since you, Ms. May, and you Tyler, are the main shakers and movers.

Other preliminary matters I have are, anybody is welcome to record the proceeding. You may want to use it for your own use, although the transcript will be available to you on the website for free, there's a delay, since it won't go up for at least two weeks after you have heard it. So for that reason, you may want to record it, whether you are listening from home or whether you are here in this room. You are welcome to do that.

We also have a photocopy machine in the back, if you have brought a written statement that you would like to have marked as an exhibit and you didn't bring enough copies for all of us, you are welcome to make those copies. We don't know
what number your written statement would be until we know in
what order you are testifying, because we just do them in
sequence. And so whoever's going to go first today, if you
have such a written statement, you may want to let it be marked
with its number before you make additional copies. And we can
take a break while you make copies.

That's all I can think of right this minute. Are there
any other preliminary matters? There are none.

The two gentlemen who both want to testify as soon as
possible, have you worked it out as to who goes first?

MR. McAFFEE: Yes, ma'am.

JUDGE CLIFTON: Good, you may come forward.

MR. McAFFEE: Good morning.

JUDGE CLIFTON: Good morning. Now, do you have a written
statement?

MR. McAFFEE: I do. Mark McAfee, I do have a 40 copies.

JUDGE CLIFTON: All right. Before you start to distribute,
let's determine what number it is.

MS. MAY: It is number 48.

(Thereafter, Exhibit Number 48 was marked
for identification.)

JUDGE CLIFTON: Number 48. So when you get your copy of
this, you will mark it as number 48. And if you brought 40
copies, that may be enough. So the first thing you do, you
will give Mr. Carman three, those will be the record copies,
well, two of them will be record copies. Then I have one and
the court reporter has one, and so we have already used up five
of your copies, Mr. McAfee.

For your testimony when it comes time for you to
testify, you are welcome to have a seat in the witness stand.

Raise your hand if you want a copy and do not have one.
We're putting the extras on the table that's over to the right
side of the room from the perspective of the majority of the
people in the room. All right, then.

I'll swear you in. Would you raise your right hand,
please? Do you solemnly swear or affirm under penalty of
perjury, the evidence you will present will be the truth?

MR. McAFEE: Yes, I will.

JUDGE CLIFTON: Did you already testify once?

MR. McAFEE: I tried to. I was the first to speak, and I
said that I would want to be called as a PD, and I just kind of
shared a little bit of the content of my position. But I was
the first to speak on the first day.

JUDGE CLIFTON: I thought so. So I could have said you
remain sworn. But --

MR. McAFEE: You didn't swear me in.

JUDGE CLIFTON: Then I'm glad I swore you in today. Very
good. Then please again, state and spell your name.

MR. McAFEE: My name is Mark M-A-R-K, M-c-A-F-E-E.

JUDGE CLIFTON: And that A is capital?
MR. McAFFEE: Correct.

JUDGE CLIFTON: But there's no space?

MR. McAFFEE: No.

JUDGE CLIFTON: All right. Now, you said something in your introduction, you used the word small. And I wondered why you used the word small. Could you explain that before you get into your testimony?

MR. McAFFEE: I think that's a relative term. It could be very large to some and small to others, so maybe that's taken out of context. From my perspective it's small.

And when I mean the word small, I'm talking about producer-distributors here in the San Joaquin Valley that loosely associated themselves with one another, namely Dairy Goddess, Top of the Morn, Rosa Brothers, and Organic Pastures Dairy, who are all subject to the California dairy milk pool, but use their own milk for their own products, at the same time pay a tremendous amount of money into the milk pool but reap no benefit from it.

And under the Federal milk pool, would have a tremendous advantage to be treated like the rest of the producers in America that do brand themselves and reach out to consumers and create their own food chain, and don't buy milk from others, who would not have to pay the milk pool up to 11,000 gallons of milk per day. And I guess that's the relative term "small". Because if you made more than 11,000
gallons a day, then perhaps you would be in a different class or category and be treated differently.

JUDGE CLIFTON: That's a very helpful introduction. Now, do you want to tell us a little bit more about yourself before you get into the statement that has been marked as Exhibit 48?

MR. McAFEE: Yes, your Honor, that would be great. Although I'm here testifying mostly for Organic Pastures Dairy, I'm the founder and CEO of Organic Pastures who is a distributor of organic milk throughout California, and it's a producer-distributor.

I also am aligned with other producer-distributors in Central Valley that make other products; cheese, butter, cream, ice cream. And those branded products are branded Dairy Goddess, Top of the Morn, and Rosa Brothers, and maybe others, but those are the ones I can officially speak for today. And we all have alignment that we belong, would be better fit to be in the Federal Milk Pool than under the California regulatory process of the California Milk Pool.

I also, just as an aside, have been elected to represent California to the National Farmers Union as a California Farmers Union Representative for the last three years, and this will be the fourth year there, representing California in formulating national dairy regulations for farming that become part of policy that the National Farmers Union then uses to work in the national front in terms of
policy for all farming. So I do -- I'm elected to represent California in the National Farmers Union.

I'm also part of, sit on the Executive Board for the California Dairy Campaign, which is roughly 300 farmers, organic conventional farmers that are dairymen and work together in the loose knit organization or California Dairy Campaign.

So I do have some political roots, but there's no misalignment between any of those groups. They all believe we belong in the Federal Milk Pool. So there's no conflicts in terms of my position today that I'm representing.

JUDGE CLIFTON: Thank you. That's excellent. You may proceed.

MR. McAFFEY: I submitted two letters today. One of them is actually dated June 23rd of 2014, which actually kind of speaks to the long ballad that we have had with the California Dairy, the California Milk Pool, where the four producer-distributors, the smaller distributors here, the newcomers that have been around for let's say ten years or so, fifteen years, collected their opinions together and asked our Secretary of State or Secretary of Agriculture, Karen Ross, to please find a way for us to get under the Federal Milk Orders.

There's been a lot of discussion in California in CDFA, there's been a lot of hearings, and even some litigation, and we associate ourselves, this is over a year-and-a-half ago, and
so I just wanted to share, your Honor, and put as part of this
dialogue and this process, the fact that these four dairymen
have really been struggling and having a hard time for quite
sometime. And I just as a matter of reference to the time.

And then the second letter is dated this year in
February, to the USDA, again stating that these four
organizations, these four dairymen, definitely would support
being involved with the Federal Milk Pool. And specifically,
the Proposal Number 1, the DFA, Land O'Lakes proposal.

It is really tough as a producer to go outside of the
milk pool system here in California and struggle to survive.
At $14.50 per hundredweight, you can't pay your bills.

These four producers and others have reached out and
connected to consumers through their own brand process, and get
a higher per hundredweight return because they take the risk to
create jobs and create brand and create products outside of the
normal food chain.

And when you are -- I'll just speak for my own self --
when you are asked to pay $50,000 in one month, December of
2014, into the milk pool when I didn't get one drop of milk
from the milk pool, that is a very, very, very hard thing to
have to do. And we did that. We paid over a million dollars
in the last few years into the California Milk Pool, but yet we
only bottle our own milk.

We don't think it is just plain unjust, it's not right,
and I could go on and on with a litany of descriptors of how we feel this is not right. I think the Federal Milk Pool has it right, and has it right for all dairymen in the United States, but somehow the California Milk Pool will not permit producer-distributors to be exempt, at least under the current regulatory scheme, and allow them to use their own milk without tithing into the greater pool.

So we would very much support the transition of California into the Federal Milk Pool system, not only for ourselves, but also those that participate in the standard food chain process, whether it be compensated at a higher rate because the price discovery is a different structure than currently is used by California.

That's basically my testimony, and I'm certainly interested in answering any questions anybody might have.

JUDGE CLIFTON: Who would like to be the first to question Mr. McAfee?

MR. McAFEE: We like that.

JUDGE CLIFTON: No, we're not done yet. You know they all want to, nobody wants to go first.

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore. Good morning, Mr. McAfee. Just a couple of questions, I think, for you.

Can you tell us just a little bit more about Organic
Pastures Dairy? What size operation do you have? How many cows and that sort of thing?

A. This morning we're milking 540 cows. We're certified organic by the USDA. We have our own on-farm processing facility that makes butter, cream, cheese, milk. We serve California for the most part. We do a little bit of interstate shipment for our cheese, but for the most part serve just California in 700 stores.

Q. And are you familiar -- I think from your testimony I gather you would be -- but are you familiar with the terms of the producer-handler exemption as reflected in Proposal 1, and as generally in the Federal system in terms of ownership that's required? Common ownership for production, and of the cattle, and the processing, and the distributing system -- that sort of thing?

A. I am generally familiar with that. I'm not an expert in it, but I have done enough research to understand that a family operation owning a dairy that has its own on-farm creamery can sell into its local markets and not be subject to the milk pool up to 11,000 gallons a day, and that's a pound basis per month, but roughly.

Q. Okay. And you would qualify under that category?

A. From my -- what I understand, yes.

Q. Okay. Is your -- is Organic Pastures owned by yourself as one entity or yourself and family members as one operating
entity?

A. Yes.

Q. Can you -- and what products do you process?

A. The word process is kind of interesting because our milk is not processed. We actually make certified organic raw milk, and that's why it is limited to the State of California distribution. But our products are unpasteurized, unhomogenized, unstandardized. All we do is test it intensively, and filter it, chill it, and deliver it. We do make a cheese which comes into the Federal Code and the PMO, which is permitted to be transported and sold across state lines. Cheddar cheese, and that's sold in many different states.

Q. So fluid milk, and take back the word process with products you distribute, but fluid milk products and cheese?

A. Yes.

Q. Do you purchase any inputs, any milk from other sources, from other dairies?

A. We have, but only for Class 4b purposes for cheese and on rare occasion. We're talking about maybe two truckloads a year.

Q. The one million dollars paid into the pool in the last two years -- did I hear that right?

A. No, the last ten years.

Q. Ten years.
A. Yeah. And it is actually much more than a million dollars, I was just throwing out some round numbers just to share.

Q. Okay. Good. So the pay, those payments, are they net payments after you're credited with the overbase price or the quota and overbase price on your production?

A. They are based on the four classes of milk, and the fact that we bottle a lot of our milk in Class 1. And just to throw an interesting point in, that consumers have told us, anecdotally and testimonially, they have no problem digesting raw milk. And so there's been a very big trend towards consuming our milk in raw fluid form, versus being used in other classes.

And as you know, there's kind of a sliding scale and there's a changing structure of how these classes compensate each other in the milk pool system. But because we bottle so much of our milk fluid, we are overburden by this huge weight of extra financial burden on the Class 1 because we don't have a demand in our market for other products. They want it raw and they want it fluid, and that's where we get this imbalance.

But yet, by state law we're not allowed to make some Class 2 and 3 products, which may allow us to offset, because we can't do it raw, and everything has a standard identity associated with it. So we are in a kind of a legislative regulatory corner we can't get out of, and that's just my
perspective from my business.

If you look at the other businesses here, Top of the Morn, Rosa, and Dairy Goddess, they have a similar issue with their own problems with the milk pool.

Q. Do you have any -- do you have knowledge or can you estimate how many producer-distributors of fluid milk there are in California that would be under the 3 million pound limit as proposed in the Proposal 1, in addition to yourself?

A. I can't really estimate. I don't know that number. I just know the ones I know of, and I'm sure there's more.

Q. How many do you know of?

A. Five.

Q. Thank you very much. That's all I have.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good morning, sir, my name is Chip English and I mostly have some clarifying questions, and pardon me if some of these get a little technical. If I don't do it, the Department may ask one of those questions anyway.

With reference to small business, you responded to Mr. Beshore that you're milking 540 cows; is that correct?

A. That's correct.

Q. Okay. So for purposes of a small business for the farm, USDA, for whatever reason, just take this, uses an annual gross revenue of less than $750,000. Now, I'm not looking for
confidential information from you, I don't want to know your number, but with 540 cows I think you are certainly well over $750,000, correct?

A. Correct.

Q. Thank you. Do you own quota?

A. I do not own quota.

Q. Now, are you aware that under Federal Orders there is also, in addition to the 3 million pound producer-distributor, producer-handler exemption, are you aware that there is also an exemption for plants that receive less than 150,000 pounds of milk?

A. I'm not familiar with all of the structure.

Q. Okay. Would any of these entities that you have mentioned qualify for that other exemption?

A. One might.

Q. Okay.

A. One or two might.

Q. And I take it with respect to the producer-handler exemption that you say is 11,000 gallons and works out to be roughly 3 million pounds, you are okay with that?

A. I'm okay with that, and it's certainly more fair than where we are today in California. And I also like the process by which it is managed and handled.

We have not had a good process in California by which we could appeal or seek fairness in terms of what we thought
was an injustice.

Q. Now, you said, I believe on your testimony that was varying from these letters, that you were in particular support of Proposal Number 1.

A. Correct.

Q. And you are just looking to be exempt, correct?

A. No, I think there's more to being exempt. I think that being exempt under the right program is better than being exempt under a program which perhaps wouldn't be so good. Exempt is what I'm looking for, but I think exempt with the best program is what we're looking for, optimally.

Q. Now, are you aware that from what you have said that, that one of the places where the Dairy Institute of Proposal 2 is largely in agreement with the coop Proposal 1, you would be exempt under the Dairy Institute proposal as well?

A. I can't really specifically respond to that because I have not read all the proposals in depth, I'm only familiar with Proposal Number 1. And I am just basically familiar with the rest. I can't speak to the particulars.

Q. Are you aware that within the Federal Orders there are some differences with respect to how the exemption language is written beyond the 3 million pound limit?

A. I'm not intimately familiar.

Q. I have no further questions of this witness.

MR. VETNE: John Vetne, representative of Hilmar Cheese
CROSS-EXAMINATION

BY MR. VETNE:

Q. Good morning, Mr. McAfee.

A. Good morning.

Q. You indicated that you process or package, in addition to fluid milk, butter, cream, and cheese at your on-farm processing facility, correct?

A. Correct. We also make kefir.

Q. Kefir?

A. Yes.

JUDGE CLIFTON: You say it again the way you say it, Mr. McAfee.

MR. McAFEE: Kefir.

MR. VETNE: KEFER or KIEFER.

MR. McAFEE: KEFIR.

BY MR. VETNE:

Q. Okay. Kefir?

A. Kefir is fine.

Q. Is a cultured milk product, correct?

A. Yes, it is.

Q. Do you make any other cultured beverage products?

A. No.

Q. I infer from your testimony about your facility, that you balance your own milk requirements by use of cheese, butter
primarily?

A. That is correct.

Q. Have you ever had occasion to market your milk to another manufacturer because you had temporary surplus above your own needs?

A. Yes, specifically skim milk, sold off into the organic markets.

Q. And when you sell skim milk, to what kind of facilities does that skim milk go?

A. A bulk processing plant that pasteurizes and uses it for who knows. I really don't have any transparency into what they do with it. It could be dry powdered milk, could be milk.

Q. It would be a facility that uses skim milk to make further processed products that are labeled organic; is that correct?

A. Yes.

Q. What is that facility?

A. There are several that we sell to. It is sold through a broker, TTT Organics, Heritage Stremicks in Los Angeles sometimes buys some. The broker may send it to different locations.

Q. Do you have your own bulk tank trucks that are used for that purpose or do you use some other vehicle?

A. We do have one small bulk tank truck, but we do not use it for that purpose. It's generally a service provided by the
broker and then other bulk tanks are used.

Q. Okay. You indicated that your milk, excluding kefir, is not pasteurized, standardized, or homogenized. When you package milk for sale to consumers, is it something in addition to whole milk? Do you have, for example, skim milk?

A. Yes. None of our products are pasteurized, homogenized, or standardized per se. There's a little bit of standardization that goes on with cream to make sure it is thick enough, but none of those products are pasteurized.

Q. Do you sell skim milk in package form?

A. We do.

Q. Do you sell reduced fat milk, 2 percent, 1 percent, in package form?

A. Unfortunately, the standard identity in California prohibits the sale of raw milk unless it's skim or whole, and there's no intermediate 1 or 2 percent allowed.

Q. Okay. With respect to whole milk and skim milk, you indicated you do test your milk, so you do test for solids content, correct?

A. We do.

Q. And have you ever had the need to add solids to your milk to meet the standard of identity for whole milk and skim?

A. It's my understanding -- it's been a few years since I have had to go through this process -- that in California there is no requirement to fortify a raw milk product to meet
standards, because what comes out of the cow is what comes out of the cow, you don't change it.

Q. For skim milk and whole milk only?
A. From what I understand, yes.

Q. Okay. You indicated that you don't own quota. When you account to the California Milk Pool you are credited, in effect, with having paid yourself the overbase price; is that correct?
A. I'm not familiar with that terminology.

Q. Okay. Let me try to put it a different way. The amount that you send to the milk pool, is that based on the classification value at your facility?
A. Yes, and that's adjusted on a monthly basis, and I would also go further to say that it's extremely confusing and we spent years to figure out how to do the reports, and we're audited several times a year on these reports. And we have a person who actually is an expert in reporting this, and I don't even understand it.

Q. Okay. That spares you several questions.
A. Well, I will say that I went through a class at CDFA when I started the milk pool process back in 2002, and it was two days in Sacramento, and every Department I went to conflicted with the other Department and said, no, they had it wrong. They didn't even understand it. So I'm sure they understand it better now because we fought over it for awhile.
But it was extremely confusing, and even to this day you can get various different complete opinions on exactly what happens. It's not an easy process.

Q. For your own farm production and its various uses, what percentage approximately is in fluid beverage form?

A. 80 percent, 83 percent.

Q. Okay. It varies monthly, correct?

A. We are demand-driven, and so whatever the market wants, we provide.

Q. And you also have variations in your own farm milk production by season, by month?

A. Yes, we do.

Q. And does that follow the normal, Spring you get a little bit more, Fall you get a little bit less?

A. Yes, it does.

Q. Okay. And on your farm what's that difference between the Spring and the Fall, the flush and the deficit?

A. We can see up to 12, 15 percent more during the Spring than we do during Summer when we have the heat. Every year's a little different.

Q. Okay. The months of lowest milk production you said were summer on your farm?

A. June is general, June/July are generally our lower milk production months.

Q. And the higher ones are?
A. March and April.

Q. Okay. Is the butter that you make also limited in its distribution to in-state?

A. Yes.

Q. Is that packaged in consumer one-pound packages or something like that?

A. Yes, it is.

Q. Do you market your butter to anybody else?

A. Only under our own brand for distribution to retail markets and farmer's markets, and buyer's clubs in our own brand.

Q. For further distribution within the state?

A. Correct.

Q. With respect to the other three producer-distributors for whom you speak, Dairy Goddess, Top of the Morn, and Rosa, do they pasteurize, homogenize, and standardize their products or do they do something similar to you?

A. I can't specifically speak to each of them individually because I'm not them, but from what I understand, they all pasteurize. I don't know whether they homogenize or not.

Q. Do you know whether any of them also have on-farm manufacturing, like you, making products other than fluid milk?

A. All of them have processing plants. I know two of them do an on-farm and there's one that's off-farm, but owned by the same family, just physically located a few miles away.
Q.  Processing what kind of products?
   A.  Ice cream.

Q.  Do any of them make cheese or powder?

Q.  Cheese, yes. Which one makes cheese?
   A.  Dairy Goddess makes cheese.

Q.  Okay. And Top of the Morn and Rosa do not as far as you know?
   A.  Top of the Morn, I believe, makes some butter, and I'm not familiar with the rest of the products.

Q.  Okay. And on your farm, in terms of volume, what is your average monthly volume production?
   A.  Well, it's 5.5 gallons per day, times 550 cows, so we're talking 21,000, 20,000 gallons a week, which is 80,000 gallons or 90,000 gallons a month.

Q.  Okay. And that would be an average, and that would be a number from which we can adjust the seasonality that you testified concerning?
   A.  I think that's fair.

Q.  Okay. Thank you, very much.
   A.  You're welcome.

CROSS-EXAMINATION

BY MR. FRANCIS:

Q.  Will Francis, USDA. Just a couple follow-up quick questions on the small business aspect.
You testified you're representing three additional organizations, Top of the Morn, Rosa Brothers, and Dairy Goddess. Just wondering if you are aware whether they would fit a small business definition. And again, just to remind you, we're using $750,000 annual gross sales, and we have estimated that to be approximately 315,000 pounds per month production. If you know if they are higher or lower?

A. My best guess is that all of them are not small, but one might be. One is on the borderline. Dairy Goddess might be now that they sold their herd, and all they have is the surviving smaller heard to make their own products, because they couldn't survive in the California Milk Pool, so they kind of downsized to the place that did make money, which was their own brand. And I don't know whether they meet that threshold or not.

Q. Okay. Those are all of questions we have. But I just, before I stop, I wanted to thank you very much for your testimony here today. It's important that we hear from dairy farmers, and we appreciate you taking the time out of your day to do so.

A. It's my pleasure. I would like to add one last thing if I could. It might be news to you, I'm not sure, it may be valuable. There is a movement to get raw butter permitted to be transported across state lines, and there is a citizen petition sitting with the IPA right now in that regard. It was 1969
interesting that on FOIA, on Freedom of Information Act
requests from the Department of Health Services in California,
CDFA in California, the CDC, there could not be found one
illness or death from raw butter in 50 years, but yet it was
included in the interstate ban for raw milk. So because it's a
Class 4 product, we believe that raw butter could soon perhaps
maybe, hopefully flow to more people across the United States,
because people are just really, really wanting it, and it is
restricted just to California.

Thank you very much. I appreciate the time to testify.

JUDGE CLIFTON: Don't leave yet.

MR. McAFEE: I'm not going anywhere.

JUDGE CLIFTON: Are there any other questions for
Mr. McAfee? Mr. McAfee, with regard to Exhibit 48, do you want
to read it into the record or is it sufficient to have it in as
a document?

MR. McAFEE: I think it would be very boring to say what I
have already said again, so we'll just leave it alone. Leave
it as it is. Thank you.

JUDGE CLIFTON: Is there anyone who wishes to question
Mr. McAfee about Exhibit 48 before determining whether you have
any objection to it being admitted into evidence? There's no
one. Is there any objection to Exhibit 48 being admitted?
There are none. Exhibit 48 is admitted into evidence.

(Thereafter, Exhibit Number 48 was

1970
received into evidence.)

JUDGE CLIFTON: Mr. McAfee, you referred to Triple T Organics. How would that look written out?

MR. McAFEE: TTT Organics.

JUDGE CLIFTON: All right. So three capital letters, all together.

MR. McAFEE: Yes.

JUDGE CLIFTON: No periods.

MR. McAFEE: I believe so.

JUDGE CLIFTON: Okay. And then you mentioned Heritage. What was that whole name?

MR. McAFEE: Heritage, is a processor in Los Angeles, and, excuse me, I just don't know, the other brand is Stremicks.

JUDGE CLIFTON: All right. And we have had the spelling of Stremicks before, but if you happen to know it, if you would state it again.

MR. McAFEE: I don't know.

JUDGE CLIFTON: Okay. We do have it in the record. All right. Now, I wanted to ask another question. You have heard some of the testimony in this hearing, I believe. Were you present when there was some questioning about an-all-or-nothing exemption for producer-handlers?

MR. McAFEE: I have not been present for the hearing except for the first couple of hours, and then I did not hear the content you are referring to.
JUDGE CLIFTON: All right. So have you considered with the companies with which you are associated, whether if you lost your exemption for a month for having more than 3 million pounds in that month, how that would work with what you are objections are, and if you lost it for more than a month how that would fit with what you hope will happen for your businesses?

MR. McAFFE: The nuances and particulars of operations under the Federal exemption at this point are largely unknown to us. All we know is that there's 11,000 gallons which appears to be an upheld number, courts have upheld that number on the exemption, and that would give each and every one of us breathing space to strive under that limitation.

Above that limitation we know that there would be a participation requirement, and there's a question right now whether that means all would be subject to, or just the amount above 11,000. And I don't know how that works. Obviously we prefer to have just that milk above the 11,000 be subject to.

JUDGE CLIFTON: You are not the only one.

MR. McAFFE: The free market is wonderful, it really is, when it is free.

JUDGE CLIFTON: What other questions does anyone have of Mr. McAfee? Mr. McAfee, thank you very much.

MR. McAFFE: Thank you very much.

JUDGE CLIFTON: You're welcome. You may step down.
I see that Mr. Goule also has a document. That will be Exhibit 49 and we'll be -- we won't be off record, but we'll be silent for just a moment while those documents are distributed among us. Please raise your hand if you still would like a copy of Exhibit 49.

(Thereafter, Exhibit Number 49 was marked for identification.)

JUDGE CLIFTON: You have left over, which we are putting on the table to the right of most people who are seated in the room.

I'll swear you in in a seated position. Would you raise your right hand, please? Do you solemnly swear or affirm under penalty of perjury that the evidence you will present will be the truth?

MR. GOULE: I do.

JUDGE CLIFTON: Please state and spell your name.

MR. GOULE: My name is Chandler Goule, C-H-A-N-D-L-E-R.

Last name Goule, G-O-U-L-E.

JUDGE CLIFTON: Thank you. Please tell us about the National Farmers Union and yourself, and anything else you would like preliminary to turning to Exhibit 49.

MR. GOULE: Sure. Thank you, your Honor.

The National Farmers Union, before I begin my testimony, is the second largest general farm organization in the United States. We were founded in 1902. We represent
approximately 200,000 family farmers, ranchers, and fishermen across the country. We have membership in all 50 states. We are organized in 33 states. And so with California, we do have a California Farmers Union, as well as many others, Minnesota, Wisconsin, New England Farmers Union, Texas Farmers Union, so other major states that have large dairy production.

Before my time of working at the National Farmers Union, I spent 11 years working on Capital Hill; 7 of those years I worked for the House Agriculture Committee. And during that 7-year tenure, I always was the Livestock Staff Director whether we were the minority or the majority. The last 5 years on the committee I was the Staff Director for the Subcommittee on Livestock Dairy and Poultry. And at the end of my testimony that's been handed out, I will go into many of the hearings that we held in 2008 and 2009 as the dairy crisis started working its way across California, and why it is so important for California to join the Federal Milk Marketing Order.

Though I am here today on behalf of the National Farmers Union, have been working in dairy policy on the national level for more than a decade.

JUDGE CLIFTON: Do you want to read your statement into the record?

MR. GOULE: Yes, ma'am.

JUDGE CLIFTON: All right. Now, as you go through it, if you want to add to it you are sure welcome to -- I almost
frightened Dr. Erba off of doing that -- but if there's a deviation from the words here and you want us to change your statement accordingly, let us know that. Okay.

MR. GOULE: Okay. If there's a deviation, it's because I'm from Texas and mispronounced it.

I want to thank you, your Honor, the staff from USDA, and everybody here from the dairy industry. And thank you for the opportunity to speak on behalf of the National Farmers Union and our 200,000 members. NFU -- as you will hear me refer to National Farmers Union throughout my testimony -- is a grassroots organization that is guided by a policy book written and approved entirely by our members. The mission of NFU staff is advocate for policies -- for the policy prescriptions contained within that handbook.

This hearing is of a particular importance to our California members, but also to our organization as a whole. As part of our 2015 policy, members set expectations over the Federal Order system. NFU believes that the order should be maintained and expanded to include all areas within the Continental United States. A national milk marketing order and pricing reform should emphasize maximum return to its producers. Our policy also holds that the establishment of a Federal Milk Marketing Order should include California so that California dairy producer prices are brought in line with the prices paid in the Federal Order, which will benefit all dairy
producers nationwide. We support the dairy proposal that is
being put forward by California Dairies, Inc., Dairy Farmers of
America, Inc., and Land O'Lakes to establish a Federal Milk
Marketing Order here in California.

As I mentioned, this is an important issue for our
California members, but I would like to also stress this is
important to our members outside of this state. Our
organization has a strong presence in Minnesota, Wisconsin, and
major dairy producer regions, and continuing growing presence
in New England historically, but still significant dairy
producing area. In each of those, members support the efforts
of the dairy farmers here today.

As many here are aware, since 2010, certain California
and Federal Milk Marketing Orders -- or FMMO -- classified milk
prices have shown a much wider divergence that has resulted in
lower prices to California manufacturers, thereby providing a
cost advantage for their business, while at the same time,
producers have seen a drop at the farm gate price. Dairy
producers in California have seen the cost of feed purchases
for their operations increase dramatically. Lower milk prices
and higher purchase feed costs have combined to pinch the dairy
margin in the state and have contributed to the closures of
dairies across the state. In the past five years, that has
totaled over 400 operations.

The significance of California dairies is well known.

1976
As the top producer in a number of products, it is the most important region that is not part of the Federal Order system. In recent years, we have witnessed changes in the U.S. milk markets, and as such, the FMMO regulations have evolved to fit those changes. The system in California can not say the same thing. It has become more and more difficult for California dairies to operate under the California system. In fact, a recent submission by the California Cooperatives to the USDA Agricultural Marketing Service, shows that California’s failure to establish minimum prices to producer, which reflects the national value for classified milk, has cost the state dairy farmers more than $1.5 billion since 2010.

As we all know, the differences between the Federal system and the California system has resulted in -- has resulted in disorderly marketing and inverse goals of the Federal system. The most pronounced problem with the CDFA's Class 4b price system as it relates to the Federal Milk Marketing Order Class III pricing formula. 4b and Class III have rarely equalled, and in recent years have created a delta that is different and negatively impacting producers. The difference in that average continues to this day.

As a general farm organization, we count dairy producers from all of the major dairy producer regions as members. A member of Wisconsin or a member in Minnesota experiences vastly different regulatory minimum prices with the
milk used to produce cheese and whey products than those
members in California. That's reflected whenever there are
significant downward pressures within the dairy pricing. It is
our California members that are always calling us first because
their income over feed cost margins are the thinnest. These
producers need a system that prevents or at least softens this
harsh cycle.

This cycle has, in part, played a role in the
shuttering of dairies -- in the shutting of dairies -- across
the state. In 2005, this state was home to 2,043 dairies.
Today, according to CDFA, California only has 1,435 dairy
farms. While correlation does not imply causation,
California's dairy pricing structure deserves substantial blame
for its role in these closures. We can be for certain that
drought impact has played a significant role. After all,
producers without water are paying for additional wells to be
drilled or paying astronomical sums for water to be delivered.
Feed cost continues to increase as more land has to be fallowed
which previously grew alfalfa, and more and more feed grain
comes in from out of the state. The cost of production, which
would be challenged by these increases in a normal scenario,
are all made worse because producers have been underpaid for
their products. Years of underpayment have left producers much
more susceptible to the impact of drought and lower prices due
to the recent slump in demand.

1978
The latest cost of production data available from CDFA is a second quarter of 2015, which reports that an average cost to produce milk in the state totaled $18.74 per hundredweight. The California mailbox price for May was $14.72 per hundredweight, indicating the income that month was nearly 25 percent below the average cost -- below the average production cost. Since then -- since then, prices paid to producers have continued to remain substantially below production cost.

The federal government, through the 2014 Farm Bill, continued to alter the dairy safety net. As such, dairy farmers are increasingly utilizing risk management strategy as a critical component of survival. As producers gathered here today know, the dairy safety net is not very thick. Each tool is of utmost important in ensuring each tool is available to every producer across the country is critical. Unfortunately, due to the divergence of Class III and Class 4b, California's ability to utilize the future's market to hedge is severe impaired. The difference in settling prices do not offset on a one-to-one basis, making this tool's effectiveness questionable. Its questionable use only takes a tool out of the toolbox that is already -- that is already stocked.

California dairies are in a much less competitive position to bid for land, cattle, feed, labor, and other services of those operating within the Federal system. This led our California members to work with us and the Senate and
the House Agriculture committees beginning in 2011 as we worked
to craft legislation that ultimately became the 2014 Farm Bill.

The 113th Congress saw the introduction of two
standalone bills; one bill in the House of Representatives, and
one bill in the Senate, which would allow California to enter,
after a referendum, the Federal Order system. These bills
included wide and bipartisan support from the State's
Congressional delegation. The standalone bills were ultimately
rolled into the 2014 Farm Bill, which reinstituted the language
first passed in the 1996 Farm Bill, authorizing the California
Milk Marketing Order. And I quote:

"Upon the petition and available -- upon the
petition and approval of California dairy
producers in the manner provided in Section 8c of
the Agricultural Adjustment Act, re-enacted with
amendment by the Agricultural Marketing Agreement
Act of 1937, the Secretary shall designate the
State of California as a separate Federal Milk
Marketing Order. The order covering California
shall have the right to reblend and redistribute
other receipts to recognize quota value."

JUDGE CLIFTON: I want you to re-read that last sentence,
because I'm not sure your pronunciation was adequate to get the
right word in for the transcript

MR. GOULE: Sure. The last sentence?
JUDGE CLIFTON: Yes, please.

MR. GOULE: "The order covering California shall have the right to reblend and distribute order receipts to recognize quota value."

I think I said reorganized -- to recognized quota value. Sorry about that.

JUDGE CLIFTON: Well, actually I was worried about the pronunciation of the word "order."

MR. GOULE: NFU was proud to support this legislation and the process it established, which brought us here today. NFU is thankful for the ability to testify. We would urge voting members of the referendum to vote in favor of joining the Federal system for the benefit of the State's dairy producers. We believe this step will increase minimum prices paid to producers, which in the end, could prevent the ongoing closures of dairies that we have seen over the last ten years in this state.

And the last part of my testimony is clearly California milk production prices received between 2013 and 2015.

Your Honor, that concludes my written statement, but I would like to expand upon some additional personal experiences that I have had.

So I started working for Congress, started working on the House Representatives back in 2000 and spent 11 years there. In 2003, I started to work for Congressman Collum P.
Peterson from Minnesota, clearly a large milk producing state. And then in 2005, I joined the House Agriculture Committee, where I continued to work on dairy policy through my tenure there when I left in 2009.

During the crafting of the 2008 Farm Bill, I was a Livestock and Dairy and Poultry Subcommittee Staff Director. We held three hearings, specifically on dairy, three weeks in a row as the dairy crisis began to emerge in 2008, '09, and '10. On all three of those panels, we always had someone from California.

During my time period on the House Agriculture Committee when I held, when I was specifically was in charge of dairy policy, you could always tell when we were going to have a turn down, or at we which realize milk prices are cyclical. But they always hit California first, they always hit California the hardest, and California was always the last to come out of that cycle. And I can bear witness to that because I was the one that took all those phone calls. But you can also look through the hearing transcripts from each of the dairy producers during 2008, '09 when we had those hearings specifically looking at the crisis at that time.

So I think between that and the fact that National Farmers Union represents dairymen across the country, California is the most and top producer in dairy products and fluid milk, it only makes sense for them to join the Federal
Milk Marketing Order through the Proposal 1, as I outlined in my statement from DFA, Land O'Lakes, and California, Inc., and the National Farmers Union, of course, wants to lend its name to that.

Congress has even noticed that there's a problem here in California and that this needs to be fixed, and that is why we were able to work with the Senate and the House to get this language in the 2014 Farm Bill to allow producers the opportunity to rejoin the Federal Milk Marketing Order. And with that, I will be happy to take any questions.

JUDGE CLIFTON: We are very fortunate to have someone with your experience here. Who would like to be the first to question Mr. Goule?

CROSS-EXAMINATION

BY MR. McAFFEY:

Q. Mark McAfee. When you received phone calls from California regarding crisis, did that include farmer suicides?

A. Yes, it did. During the time period which actually set off the main reason we started to have those three hearings that were back to back, one each week, I believe there had been six suicides within about six-week period here in the State of California.

Q. Thank you. I appreciate it.

CROSS-EXAMINATION

BY MR. BESHORE:
Q. Marvin Beshore. Thank you for your testimony, Mr. Goule, and for traveling coast to coast here, I guess, to present it.

I have just a couple of questions. There's a chart at the, on the last page, a graph of your testimony which is marked as Exhibit 49, your prepared testimony.

The copy I have is in gray scale or black and white. Is that a colored chart? And I wonder if the record copies are in color. If it is, because I think -- I think it probably is. And it's somewhat difficult to read in gray scale to fully understand.

A. So the copies that were distributed were also in gray scale. I do have an electronic copy that I can e-mail that is in color, but as you also can see, the source is from NASS, from USDA.

Q. Is it a NASS -- is the full -- I understand the data is NASS data, is the chart or graph itself a NASS-prepared graph?

A. I'm going to have to be honest, my staff prepared this for me, I don't know.

Q. Okay. Can you interpret in gray scale, just -- for me, if you look at the first set of bars to the left, Production 2013, there are three bar columns there for January, and I guess I'm wondering what they are.

A. You know, you are right. I am going to have to pull that back up on my color version to look at that. Oh. There
we go.

Q. Maybe you could check if we have a break here before he's done, your Honor, if you can check and if it is a NASS sourced document, if it is actually published by NASS, and we can just find the NASS publication that it's in and identify that for the record, that would be sufficient for my purposes, if we knew that it was a NASS, a NASS prepared, published chart and we could just identify that.

A. All I need to do is call the office. How do I have that sent? I can have it e-mailed to the USDA or do we have it e-mailed here.

Q. If you can just get the information and we can give, put that we can state that information for the record, I'm satisfied with that.

A. I will do that as soon as --

Q. Now, I have one -- on the second -- second page of the text. As you -- as you read -- as you read the text, I didn't, at least I didn't hear one word that I thought probably wanted to -- wanted to make clear. And this is the first, the second paragraph from the bottom, the last sentence and the next to the last word, you talked about the toolbox. And I think what I heard you say is that out of a toolbox that is already stocked, and there's a modifier there, at least in my copy, that says weakly stocked.

A. Hang on, mine's double-spaced, supposedly so I could 1985
read it better. But you are correct, it says "weakly stocked."
And by that what we meant is the toolbox for dairy producers is
already weakly stocked and California has even less
availability to use that toolbox because of your current
system.

Q. Gotcha. Okay.

JUDGE CLIFTON: And for those listening, spell weakly.

Which kind of weakly, meaning once a week or --


JUDGE CLIFTON: Yes. Thank you.

MR. BESHORE: Those are all the questions I have. Thank

you very much, Mr. Goule.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good morning, Mr. Goule.

A. Mr. English.

Q. Chip English.

So I want to talk a little bit about the second
paragraph and policy and some of your testimony with respect to
this proceeding.

In the second sentence it says, "part of our 2015
policy, members set expectations of a Federal Order system."

Was that 2015 policy adopted at your annual meeting in March of
this year?

A. Yes, sir, it was.
Q. Okay. And just to be clear for the record, the National Farmers Union has an annual meeting every year, either in late February or early March, correct?

A. Correct.

Q. Was this your meeting in Washington DC?

A. No, it was not, it was in Wichita, Kansas.

Q. Wichita. And at that policy meeting, did the organization expressly adopt a policy supporting the Cooperative proposal that had been submitted a couple of weeks prior to that?

A. At that annual meeting, which is where we set our policy for the year, the National Farmers Union delegates went above and beyond what our normal policy is on Federal Milk Marketing Orders, by passing what is called a special order of business. Meaning, we already have policy on Federal Milk Marketing Orders, but pulled a section out and specifically wrote that we support California rejoining the Federal Milk Marketing Order that was before, to my knowledge, or neither proposal had been brought forward. It was -- it was more of a general statement that was unanimously voted on by the entire delegate body that California rejoin the Order, but no proposal was mentioned.

Q. Okay. So in the next to the last sentence you say that, "our policy code holds that the establishment of a Federal Milk Marketing order should include California so the
California dairy producer prices are brought in line with prices paid in the Federal Order, which will benefit all dairy producers nationwide."

Do you see that?

A. Yes, I do.

Q. Is that an important part of the policy that all dairy farmers benefit nationwide?

A. Yes. That is one of the main reasons why National Farmers Union felt the importance to come and testify at this hearing for, not only to support Proposal 1, but for California to rejoin, to help basically balance the playing field, because I represent dairy procedures in all 50 states.

Q. And what, based upon that policy, if adoption of a California Federal Order did not benefit dairy farmers nationwide, how would that fit into the National Farmers Union policy?

A. The special order of business which highlights our policy or brings something forth for us to work on more specifically that year, is directed towards California dairymen. But due to the economic impact that California and dairy production has on the rest of the country, a proposal that would make the current system better for producers and help increase the farm gate price, would be beneficial, and through, since the proposals 1 and 2 were not available at the time when we held our annual convention, this testimony was

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written within the last two weeks. And by our evaluation, Proposal 1 would still be the best direction to go, and would benefit California producers and would still help US dairymen across the country.

Q. So since your testimony was written and the decision was made within the last two weeks, did you review USDA's preliminary economic impact analysis that was issued in August of this year?

A. I personally did not.

Q. Did you know whether your staff reviewed it?

A. Yes, it did.

Q. Did anyone in your staff point out that according to USDA's preliminary impact analysis, dated August 2015, that in the Federal Orders, that in fact, while California statistical uniform price would go up, that in all other Federal Orders that particular price would go down?

A. So as we also know milk price --

JUDGE CLIFTON: Before you explain --

MR. GOULE: Answer his question. No, I didn't. No, that was not pointed out.

JUDGE CLIFTON: Okay. Now you may explain.

MR. GOULE: Thank you. We all know that milk prices are cyclical. We, luckily over the past couple years, the states that are in the Federal Milk Marketing Order have seen good dairy prices, but when you compare it with the prices that have

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been here in the State of California, California is still lower than the rest of the states that are currently participating in the Federal Milk Marketing Order.

BY MR. ENGLISH:

Q. So I just want to go back to your statement on page 1 where your policy is that "California a Federal Order, which will benefit all dairy procedures nationwide." Is that statement, "which will benefit all dairy producers nationwide," consistent with the USDA preliminary economic impact analysis that says that statistically uniform prices, blend prices, and tests, and producer revenues, with the exception of Arizona which would just be zero, would be negatively impacted if the Cooperative proposal is adopted?

A. Could you repeat the question?

Q. So taking into consideration your policy statement on page 1 with the clause that says "which will benefit all dairy producers nationwide," how is that consistent with USDA's preliminary economic impact analysis from August of 2015 that says that for statistical uniform prices or the existing Federal Orders, they will all be down. That the blend prices that test for existing federal prices, they will all be down -- Federal Orders, I'm sorry, and that as to producer revenue changes, with the exception of Arizona which is a net of zero, that they will all be down?

A. So I think we need to focus on the word preliminary and
the fact that we do not know exactly what is going to happen until one of the proposals is adopted.

But through our justification, and our looking at the proposals, Proposal Number 1 is still the best for dairy farmers here in California.

Q. So the bottom line is you just didn't consider USDA's preliminary economic analysis in this testimony?

A. When we look at preliminary, we look at the word exactly what it is, is preliminary. A lot of times we look at policy that comes out of the USDA, just like with any economics, we don't know exactly what's going to happen until the policy is put in place.

Q. So what if the final economic analysis by USDA, indicates that producer prices outside of California and the existing Federal Order system will be down?

A. Then in 2016 that will give our delegates an opportunity to rethink about their policy, but this is currently where our policy stands.

Q. Thank you. So at the bottom of page 1 you say, "as you all know," I think you might have actually said "as we all know," but I think your statement in the -- what has been marked as Exhibit 49 is, "as you all know, the differences between the Federal system and the California system has resulted in disorderly market."

So first I want to focus on the differences, and that's
a plural word. You have then referred to pronounced problem is
the California 4b pricing. What are the other differences that
that sentence is referring to? And I'm sorry, I keep saying
bottom of page 1 and your testimony is double-spaced
A. No, no, that's my problem to deal with, not yours.
Q. Well, no, it's identifying the issue, so it is both our
problems. So do you know -- do you see where I am?
A. Yes, I do.
Q. Okay. So you have used the plural word "differences"
after that your focus has been on the Class 4b comparison to
Federal Order Class III. When you use the plural differences,
what are you referring to in addition to the 4b, Class III
issue?
A. So in the 2008 Farm Bill we had a margin. We had the
Dairy Product Price Support Program, which basically set prices
for dairy products. And then when we went to 2014, we moved to
a Margin Revenue Insurance Program, which is what a lot of the
different commodities have moved to.
And the way the California Federal -- or the way the
California marketing system is set up, it hinders California
dairies from being able to fully utilize the margin revenue
system, and to hedge based off the open market because of the
way your system is set up. So between the differences between
Class III and Class 4b, that is one difference; and weakening
the tool that we put the 2014 Farm Bill of Margin Revenue

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Insurance, that would be a second difference making it more difficult for dairy producers here in California.

Q. Okay. I'm going to come back to that in a moment. So you have the 4b, Class III issue, and then its relationship to the Margin Insurance Protection Program and the further relationship to risk management, correct?

A. Yes.

Q. Okay. What other differences, if any, are there other than those three?

A. Those would be the two main ones that we focused on.

Q. Okay. It was, just to be clear, and we have done this exercise recently, so just to be clear, you said main ones. But any others that you want to inform this record about?

A. I mean, you can look at the testimony, it also talks about the fact that rarely, you know, if you are in the Federal Milk Marketing Order, rarely is Class III and 4 equal. But when you come to California, you got 4b that have been, that have caused a negative impact on our producers. So you have basically got two competing systems here with a state that produces 80 percent of our milk in the United States, that is directly in conflict with all the other large dairy producing states that are in the Federal Milk Marketing Order.

And so by the time you break the Class III and the 4b issue out of the toolbox, because that weakens your ability, when you make the Margin Revenue Insurance Program, which is
the only safety net available to dairy producers right now, and you weaken that or make it more difficult to use, and then you talk about the Class III and Class 4b being equal or being close together, making a negative impact on dairy producers, all of which lower the farm gate price for dairy producers in California, reduce their ability to use risk management tools, and again, that's why I go back to the Cooperative proposal to help and bring dairy producers back into the Federal Milk Marketing Order.

Q. Okay. And any other differences that you want to put in the record?

A. No.

Q. So I'm going to skip ahead and come back to this series of sentences, because you brought up the risk management issue, and you have referred to the weakly stocked toolbox, and the inability, or the lack of ability, to use the futures market. Are you aware of sophisticated risk management tools that California producers can use to create effectively a synthetic overbase futures product?

A. I would not be able to speak to that specifically.

Q. So now go back to where we were with respect to the differences. And your statement is, as you know, the differences between the Federal system and the California system has resulted in disorderly marketing. So what is your definition of disorderly marketing for this record?
A. Per capita, when you look across the country, and by state that is, by states that are currently in the Federal Milk Marketing Order and how many dairymen have gone out of business in those states compared to the percentage of how many have gone out of business in the State of California, clearly the system here is not working as efficiently. I would personally say it's broken.

Q. Do you have that data for the record?

A. Not in this testimony. But I do from my years on the Hill as Livestock Dairy and Poultry Staff Director. And I do know that the USDA has the ability and does have the data from the ag system of how many dairies have gone out of business or left each of the states. That would not be difficult to obtain.

Q. Give me a second. If the record evidence later showed that that is an inaccurate statement, how would you revise your testimony?

JUDGE CLIFTON: You don't have to answer that. You can try. I mean, if you don't know what it is you would be looking at. So --

MR. BESHORE: Well, I object to that question. He has no idea what he's looking at, how can he possibly answer that? I object.

MR. GOULE: I prefer not to -- I prefer not to answer that question.

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MR. ENGLISH: Just give me a second, your Honor.

MR. GOULE: First objection of the day, I must be doing something right. Just teasing.

MR. ENGLISH: I'm trying to find one thing, your Honor, why don't we take a break, probably be more efficient that way.

JUDGE CLIFTON: I like that plan. I'd like two assignments during the break. You do whatever you are going to do, Mr. English. And if you, sir, would contact your office and teach us what we see in this chart.

MR. GOULE: Yes, ma'am. Yes, your Honor.

JUDGE CLIFTON: This chart has a lot of information so I think it will be very helpful if you explain it to us.

MR. GOULE: Yes, ma'am.

JUDGE CLIFTON: All right? We normally take 15 minutes. I would like to do that. It is now 10:40. Please be back ready to go at 10:55.

(Whereupon, a break was taken.)

JUDGE CLIFTON: Let's go back on record. We are back on record now at 10:59.

Mr. English, you may resume your cross-examination of Mr. Goule.

BY MR. ENGLISH:

Q. So during the break I took the opportunity to talk with the court reporter and look at the answer, so I just want to go back over the answer that gave rise to my remaining questions.
Because I think, I want to see if I can rephrase your answer just to make sure I have got it correct, because you were talking about sort of efficiencies and things like that. But were you saying in your comparison of the loss of California farms, that it is your testimony that that loss is greater in California on a percentage basis than in other parts of the country?

A. Yes.

Q. Okay. And that is one, I want to explore others, but that is one basis for your response to my question of what is disorderly marketing, correct? That -- that fact to you presents evidence that there's disorderly marketing; is that correct?

A. Yes.

Q. So putting that aside for a moment. What, if any, other definitions do you have for disorderly marketing to describe?

A. Disorderly market is a adjective or a description of how the California system is perceived. It does not have actual parameters around how the market should function. So we're using it as adjectives.

Q. So what is it that it is or isn't doing that makes it not functioning correctly?

A. I think you're actually using a better word, it is dysfunctional better than disorderly. And I think we have
outlined the differences of weakened or less number of tools
the dairy farmers can use for risk management; the lower farm
grade prices here in California compared to other countries;
and the staggering number of dairies that have closed. So
maybe disorderly is not the best word, but dysfunctional
compared to the rest of the Federal Milk Marketing Order would
be a better description.

Q. Okay. And that, in summary, is what your testimony is
about with respect to that particular sentence?

A. Yes.

JUDGE CLIFTON: When you said California has lower farm
gate prices than other countries?

MR. GOULE: Counties, I meant states, sorry.

JUDGE CLIFTON: Okay.

MR. ENGLISH: Thank you for catching that, your Honor.

MR. GOULE: I meant states.

BY MR. ENGLISH:

Q. So I do want to turn last to Figure 2, and so I guess
it would be appropriate to, if you have the information of
where that came from, as far as I'm concerned, your Honor, then
now would be a good time to talk about that so that we, just
there's no point in me asking questions about it and his not
knowing responses.

A. And I also went and got a record copy of the testimony
so we are all on the same page.
Figure 2 that is entitled "California Milk Production and Prices Received, 2013 through 2015," it was published by EIS using NASS data under a title called ERS-California Drought Farm and Food Impact. It was last updated June 25th of 2015. Alex Milton at the USDA is the key contact for the chart. And your Honor, I actually have the website, it is rather long, I'm happy to cite it for the record.

JUDGE CLIFTON: Yes, slowly please, so we can capture it.

MR. GOULE:


And if your Honor would like, I'm happy to give this to the court reporter if she would need it. That's a long title.

JUDGE CLIFTON: She nodded yes, so afterwards you can do that.

So when I was copying just hearing you, I wrote down the wrong spelling of livestock because I put a B where it's obviously supposed to be a V like Victor. Okay. Well, that website certainly describes what's depicted.

MR. GOULE: Yes, ma'am.

Further describing the chart, the first -- and I'm sorry that it was not in color, so let's talk about the bars. The first bar is clearly the production for 2013; the darker bar in the middle is the production for 2014; the next
bar is the production for 2015.

The top price line is 2014; the lower price line or the middle, I guess it would be middle price line would be 2013; and the shortest price line clearly going only from January to April is the price for 2015.

That's all the information I have on the chart.

BY MR. ENGLISH:

Q. Okay. Well, I attempted to duplicate that and it says the shrink is broken, but that's probably just me. All right. So it's published by ERS but ERS is relying on NASS data, correct?

A. That is our understanding from the way that it is sourced.

Q. Fair to say that you, in your work on Capital Hill and otherwise, don't have a high opinion of NASS data?

A. NASS can have its challenges depending on what is having producers fill out their forms and return the information back to them.

Q. In fact, in a different setting, one of my colleagues recently examined you on a deposition, correct?

A. Correct.

Q. And that was back on July 23, 2015, correct?

A. Correct. Yes.

Q. And in that examination did you not say as to NASS, "garbage in, garbage out?"
MR. BESHORE: Your Honor, I would like to object to the interrogating the witness about testimony given at another, somewhere else, another venue, another place. Quite tangential to, if at all relevant to what he gave here.

JUDGE CLIFTON: No, not tangential, clearly relevant. If this is based on NASS statistics and there's some difficulty with NASS statistics, we'd all need to know that. The objection is overruled. You may answer.

MR. GOULE: That is what I said during that other deposition.

MR. ENGLISH: Thank you, I have no further questions.

JUDGE CLIFTON: You have already partially explained that, Mr. Goule, by saying that NASS can have its challenges depending on how many producers fill out their farms and send them back in. Are you aware of any other potential, what shall I say, inaccuracies that might result in relying on NASS statistics? And you can limit it just to this chart, that's what we're dealing with now.

MR. GOULE: Sure. So this chart is clearly a snapshot in time of what they have covered. What I don't know, and I think would be a question that the USDA would be able to answer, is if ERS goes back and reuses data from a different agency, is it peer reviewed and checked? I don't know the answer to that.

I know that the source where we found it from was the Economic Research Service and not the National Agricultural

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Statistics Service, and my former comments from a completely
different situation was based strictly on NASS, which relies on
producers returning information back into them and ERS is not
set up the same way. So there is a possibility that this
information could be more accurate.

JUDGE CLIFTON: Who next has questions for Mr. Goule?

CROSS-EXAMINATION

BY MR. VANDENHEUVEL:

Q. Good morning. Rob Vandenheuvel, Milk Producers
Council.

I wanted to follow up on a couple of questions you had
responded to by Mr. English, and I'll start with the study or
the preliminary analyses that USDA conducted. I understand
that you haven't read it, but I would like to ask you some more
general questions, and then also some questions specifically
about the study, and what you might, what your action might be.

In your time at the House Agriculture Committee, did
you deal with macroeconomic simulation models, estimates, or
forecasts of what would happened under this policy or that
policy?

A. Yes, I did.

Q. So farm bills, what would be the impact going forward
the next five or ten years under this policy versus a different
version of that language or what not?

A. Yes.

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Q. Okay. And as you know, or would you agree that those models are limited to, they don't necessarily think, but rather respond to data that's inputted and what the model calculations assume the outputted activity would be pursuant to what you put into the model? Kind of a complicated way of asking the question. They don't -- they are very straightforward is what I'm trying to ascertain. They don't -- they don't -- they can't consider every variable, they are limited to what the model is designed to predict?

A. Yes, I would agree with that. I think that's why I specifically emphasized the word preliminary, and I think you also need to emphasize the word it is a model, so it is not reality.

Q. Okay. Fair point. Fair point. We had some discussion about this particular model earlier in the hearing on days that you were not able to attend, but there was a lot of discussion about the baseline of this model. And you understand that any model, they have to create a baseline by which to compare the future projections to. It was identified that in this baseline model of California's milk production, assuming no changes, assuming a baseline, would increase from 41.3 billion pounds of production in 2013, to 66.6 billion pounds of production in 2024. That is 61 percent in 12 years.

Do you have experience in other agriculture commodities besides dairy in your portfolio of issues?

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A. Yes, I do.

Q. Given your knowledge of California, are you aware that California is in the process of having some of our dairies sold to permanent tree crops and torn down, likely never to be a dairy again, but be producing acres for tree crops, almonds, pistachios, etcetera?

A. Yes, I am aware of that situation.

Q. So given what you know about that, given what you know about the regulatory climate in California, would you, as someone analyzing this particular study, have a lot of question as to whether we would actually see 61 percent increase in California milk production over the next 12 years?

A. I would find that to be an extremely difficult goal to reach and highly unlikely.

Q. And that's the baseline under the model that Mr. English questioned you on, or that you had acknowledged that you hadn't a chance to fully review. It is assumed that California dairy producers would be paid a higher overall blend price as a result of Proposal Number 1, and that as a result of that, California producers would increase production over this baseline that I just mentioned, by an additional 500 million pounds of milk per year, would your feeling of caution or questions about the baseline also apply to those assumptions that we would not only meet these baseline figures, but go above that based on your knowledge of, you know, the dairy
industry's outlook for land use competing with the current
crops?

MR. ENGLISH: Your Honor, I object. The question said that
a model assumes certain things. And I think that's a
restatement of what the model does. And I think the question
is not a fair question, given what we have heard is the
testimony about the model.

JUDGE CLIFTON: Well, just a minute, Mr. English, come
back. There are assumptions in any kind of an economic
analysis, are there not?

MR. ENGLISH: But this one assumed price issues, and I
think that given the proposals, it wasn't assuming price
issues, it was actually using real prices built into the model.
So that was -- his underlying statement very early on in that
very long question, tied assumption to prices. And the
proposals have impacts on prices that are built into them that
are not assumptions, that's the part I object to.

JUDGE CLIFTON: Understood. Your objection is noted.
Mr. Vandenhuevel, you may either reword your question or not,
and I'll ask the witness to field the question.

BY MR. VANDENHEUVEL:

Q. All right. In a model, an economic model, trying to
predict what would happen under a given set of circumstances,
not -- scratch that.

Well, I think -- I think I have made my point, your
You would agree that it's very difficult to predict, using a model, exactly what would happen, when we know that there's an element of uncertainty with any given model. The data, though, that is derived from these models can be subject to change based on different assumptions built into the model. You would agree with that? As the assumptions change, the models, the results would change, correct?

A. Correct. As you add or subtract any variable, the outcome of any model would change.

Q. So, you know, this particular model has built into it a feature that predicts that additional revenue generated for California producers would result in significant additional milk production, and that's just the way the model, as we understand it, is written. But if that production did not actually end up occurring, you would get different results expected out of that policy change, correct?

A. That's correct. And I am actually going to break one of my own rules and elaborate on that.

With what we know that is going on here in California, as these dairies go out of business and are moving to other predominantly specialty crops, having worked in agriculture for 15 years in Washington, once you go out of business in dairy, you usually don't come back. So the chances of you picking up additional dairy producers back to even where you were just
five or six years ago, I think is going to be quite difficult.

Q. So going back to my original point, your statement at
the question that Mr. English had asked was had you considered
these things. And, you know, you admitted you had not read the
study. But given what you know about the limitation of
macroeconomic modeling, is it entirely possible, if not likely,
that you would have still supported Proposal Number 1 because
of your past experience dealing with models and the uncertainty
that surrounds them?

A. Yes.

Q. All right. Thank you. And then the other question I
wanted to ask is, you had responded to some questions about
disorderly marketing, and I know that you changed the
terminology to dysfunctional. But you are aware that
California's Class 2 and Class 3 have a different price
discovery mechanism and different schedules of announcements
with regard to how advanced they are versus the California II
class, and that that creates month-to-month, as was talked
about earlier in this hearing, gaps that vary and that could
create some disorderly marketing amongst those handlers and
those purchasers of milk?

A. I am aware of that. And it not only produces gaps, but
it definitely decreases transparency and harmony of what's
actually happening here in your market in California.

Q. And you're aware that California's State Order is
unable to regulate interstate transactions due to previous
court decisions, and that that also could potentially create
disorderly marketing conditions having some products brought to
market under a no regulatory scheme, as opposed to under the
California State Order?

A. I am. California is surround by several states that
are not in the Milk Marketing Order.

Q. And you are aware that this morning we heard about
producer-handler provisions in the Federal Orders around the
county that differ from the way we do producer-handler
regulations here in the State of California, and that that also
could create some differences or disorderly marketing
conditions amongst handlers?

A. Yes.

Q. Thank you, very much.

CROSS-EXAMINATION

BY DR. SCHIEK:

Q. Good morning, William Schiek, S-C-H-I-E-K, for the
Dairy Institute of California.

Mr. Goule, I just, I think I have a number of
clarifying questions, for the most part. I was -- and I may
have missed this in your opening statement, if I do -- if I
did, I apologize. But how many dairy farmers does NFU
represent in California?

A. So we are a federation, National Farmers Union, so we
are made up, we have a California Farmers Union that has 1250 members. Their membership and what they produce is actually held at the state level, so I don't know specifically how many are in their California Farmers Union.

Q. Okay.

A. I just know we have 1250 members here in the state.

Q. So you would not know, then, how the size of your members in California compares to either the average for California or National average of your members?

A. That are dairymen?

Q. Yes.

A. No.

Q. Okay.

A. Within my own organization?

Q. Right. And am I also correct in assuming you wouldn't know how the cost of production of the NFU dairy farm members in California would compare to the average cost of production for dairy farms in California, or the average cost of production for the nation as a whole, or for members, say, in Wisconsin or other parts of the country?

A. Not from my position that I currently hold at National Farmers Union, but the years I spent on the House Agriculture Committee, and we didn't just have those three hearings after the dairy crisis, we had hearing on the Farm Bill for 2008, so throughout my tenure on the Hill, I'm going to estimate that I
put, organized myself, and pulled together at least 10 to 15
hearings specifically on dairy, where we had each of the five
major regions represented at each of those hearings, and cost
of production was always brought up. So though I may not know
that information for National Farmers Union, I am acutely aware
of the differences in cost of production across the country in
California is by far the highest.

Q. Highest cost of production in the country?
   A. Across the average.

Q. Okay.

JUDGE CLIFTON: I want to make sure I understand what you
are saying. Can you start by telling me what the five regions
are?

MR. GOULE: Well, we broke them down. So the House Ag
Committee, the way we did it was, we would have someone from
the Northeast, and just to be very honest, I mean, it is
Congress so there's not a lot of rules. Sometimes Northeast
included New England and Pennsylvania, sometimes it didn't.
And then we always had someone from the Upper Midwest, from
Minnesota, Wisconsin, so ones of those states. We always had a
California witness, we always had someone usually either from
Texas or New Mexico. We usually had someone from the Southeast
because they have a lot of different problems due to humidity
and heat and size of the herd, they also have a fluid milk
issue. And then someone from the Northwest, I'm sorry, I
should have said six regions.

But every hearing I can guarantee, whether we had two
witnesses or five witnesses, California was always invited
because -- because of the unique system that you have out here
and the fact that the prices out here were always lower than
what we were experiencing across the country. But that all,
again, goes back to my time on the House Ag Committee, not as
my current position at National Farmers Union

JUDGE CLIFTON: So when you talked about the cost of
production and then you said California is by far the highest,
and then you said on average. What are you averaging?

MR. GOULE: Well, you are currently facing one of the worst
droughts that you have ever had, so, I mean, it is even higher
now than it was say ten years ago, when your fields were in
alfalfa, or if you moved to closer to Minnesota and Wisconsin,
closer to the grain belt, you have shorter transportation cost,
you have got the availability of forage. So the cost of
production as you move to the Midwest and closer to the
Mississippi, it's clearly lower due to the availability of feed
stock. That's just one prime example.

The Eastern side of the United States is not currently
going through a drought, so of course your cost of production
here is even higher. But even when you are in normal years,
you, California still has had a higher cost of production. Or
from my experience, when we were taking testimony on the House
Agriculture Committee, when comparing it to dairy producers across the country, the California number was always higher.

JUDGE CLIFTON: Thank you.

BY DR. SCHIEK:

Q. So if I can follow up on that a little bit more. You have mentioned feed, feed costs are higher in California than other parts of the country. Are you familiar with some work done by ERS that shows how cost of, total cost of production on a per hundredweight of milk basis varies with farm size or herd size? Are you familiar with that?

A. I mean, if you are asking about a specific study, no. If you are asking about those who produce their own forage and feed rather than purchase it, yes, I am aware of that does affect your cost of production.

Q. Okay. Just generally, would you agree with the statement that on average, dairy farms of under a hundred dairy cows, on average, have higher cost of production, total cost of production per hundredweight of milk than dairy farms with a thousand or more cows? Would you agree with that statement?

A. I would agree with that statement only with a caveat, though. When you start talking about dairy farms with a hundred or less cattle, or cows, you are moving into New England and a very niche market that are in the Federal Milk Marketing Order and are receiving a much higher farm gate price than what you are receiving here in California.
Q. I understand. I'm just asking about cost.
A. The cost would be higher.
Q. In smaller farms?
A. In smaller farms.
Q. Thank you. You mentioned some CDFA data on cost of production, dairy cost, milk cost of production, for the second quarter of 2015. And you report that the average cost to produce milk in the state is $18.74 per hundredweight. And I pulled up that second quarter CDFA data. I'm just, again, this is a clarification. I find the $18.74 number that I believe you used. And were you aware that that number includes allowances for return on investment and return on management, things that we normally pay out of profits? So there is also a number for the total cost of production, which is lower. Were you aware of that?
A. I was not.
Q. Okay. You mentioned the mailbox price for May, which is only one of the three months, excuse me, one of the three months in the second quarter of the year. Is that -- would you agree with that?
A. Yes.
Q. May is only one month?
A. Yes.
Q. So you know it is $14.72 per hundredweight. Were you also aware that the mailbox price has marketing costs, like
hauling and assessments for promotion and those kinds of things already deducted from it?

A. Yes.

Q. Okay. And were you aware that the cost of production number you cite actually has those costs in it, too?

A. No, I did not know. I did not know the difference. I did, all -- not all. Farm gate prices across the country already have those things taken out as well. That's why I'm more familiar with the farm gate price than I was the $18.74.

Q. So would you agree that in order to get an apples to apples comparison, you either have to add back into the price the marketing costs, or you have to take them out of the cost of production to avoid double counting?

A. Yes, you would need to use the same variables.

Q. Okay. In looking at the second quarter, 2015, did you look at similar data for 2014? Just similar, the cost of production data in California versus the mailbox price in 2014?

A. No, I did not.

Q. Okay. If I told you that during that period prices were higher than the cost of production by a significant margin, would that surprise you?

A. No, the chart, figure number 2 which we have now figured out where that's at, actually demonstrates that. But if you look at 2013, you also see August, September, October, November, and a little bit of December, where -- I'm sorry, I'm
backing up on that. January, February, March, April, May, where you are actually losing money. So the back -- the back chart does agree with that.

Q. I'm having trouble understanding that chart, because it appears to be a chart that plots production against price. I don't know that I can see any margin or relationship to cost here. So I'm wondering how I would know that you are losing money from this chart.

A. Well, I can tell you for the first half of 2015, I haven't had any phone calls from California, but all through 2013 my phone rang everyday.

Q. Okay. But you would agree this chart doesn't show anything?

A. Probably not the best chart.

Q. Okay. You mentioned some information about the impact of the drought in terms of dairy farmers, dairy farms exiting the business. I guess my question is there, do you have any sense in terms of -- I think you talk about price being an impact and the drought being an impact, do you have any sense of the relative difference in terms of the importance of those impacts?

A. Well, I mean, it's not just dairy that's being impacted by the drought. You were losing dairies back in, I mean, really you started losing dairies back in 2002, 2003. But the significant part of the loss was -- from what I have understood
from listening to the hearing a little bit, everybody is throwing out a different date. But really we started noticing it in Congress in 2007, 2008, 2009, 2010, when California was not in a drought. So that was based on other circumstances predominantly the marketing order that you have here that was driving producers out of the business.

Now, in 2015, you are in the middle of your third or fourth year of a severe drought that is complicating things even further. So they, even though we're, you are trying to ask me to compare the two things, but we have got years where were you losing dairymen, had suicide, and low dairy prices when you did have not a drought.

Q. Is it also true that in that period you reference, 2007, 2008, 2009, that feed prices spiked to levels that were, hadn't been seen in a long time?

A. Feed costs in certain commodities did go up.

Q. Corn, for example?

A. Corn did go up across the country, not just here in California.

Q. Right. They did. And would you say corn is a pretty large part of the California dairy ration?

A. Corn is a large part of dairy rations, but it could be substituted for cheaper other commodities that were not seen, the significant increase that we saw in corn.

Q. Such as?
A. I grew up on a dairy replacement, I grew up in Erath County, Texas, the largest dairy producer county in the State of Texas. You can use cottonseed hulls. There's, of course we used to use different varieties and versions of scillas, and some that did and did not use corn.

So there -- and then with all the specialty crops and things that you have here in California, there are multiple ways to balance the dairy ration using less corn when corn is at a higher price.

I think it is important to note, too, that Minnesota, Wisconsin, Texas, Portales, New Mexico, all these other states that have significant dairy production, also use corn and still yet we're able to manage through that crisis, yet they may have lost some dairies, but still -- so to say that that was a key issue here in California, it was experienced across the country.

Q. Okay.

A. And corn prices have also gone back down. As a matter of fact, we're almost about to hit the target price in the Farm Bill in many states that had dairy production, so I don't think we can really point to corn as a production, cost of production factor as much as we used to.

Q. Okay. Thank you. That was a very complete answer. I was just asking about those years. All right. I think that's all the questions I have for this witness.
JUDGE CLIFTON: Dr. Schiek, I love your questions. They are so practical. Thank you. Who else has questions for Mr. Goule?

CROSS-EXAMINATION

BY MR. SCHAEFER:

Q. Henry Schaefer from USDA. Just a couple questions.

I noticed in your, some answers to Mr. English's cross-examination, that you talked about the Federal Order returning to the, or California returning to the Federal Order. Do you know for sure that they had ever been in a Federal Order?

A. I may have misspoke there. I know this is the second time we have put in a Farm Bill for California to have the opportunity to rejoin the order. I also know that California could rejoin the order through a referendum process on its own, but we have worked with Congress to put this in two separate farm bills to start this process.

Before, so before the year 2000, no, I do not know if California was ever in the marketing order itself, the Federal.

Q. Thank you. I believe, and we're going to follow up on this, that they have never been in a Federal Order. We believe that they may have had some licenses back in the '30's, and there was also some marketing agreements that may have been possible. But as far as the Federal Order as currently constructed, I don't believe they have ever been in there.

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I also believe that in one of the responses to one of the questions, you indicated that California had 80 percent of the milk production in the U.S.?

A. I said that, yes.

Q. That seems a little high. And I believe the number is closer to 20 percent to 25 percent.

A. I'm sorry, I must have had them inverted. It is the largest dairy producing state, that's probably a better way to say it.

Q. Thank you very much, sir.

A. Yes.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Just a follow up question or two, Mr. Goule.

Thanks for the info on Figure 2 and its source. I think it is -- it is very useful, and I just want to look at one set of information provided on Figure 2 of Exhibit 49. And that's 2015 Milk Production in California.

I believe you indicated that the third bar to the right on the monthly information is 2015 for California; is that correct?

A. Yes, sir.

Q. Okay. And if I'm reading it right, in each case there are, it just goes through April, so in each case, California's production in 2015 is less than in 2014; is that correct?
1     A. That's how I read the chart, yes.
2     Q. Okay. So in noting that the preliminary, the impact analysis of the USDA that Mr. English asked you about was preliminary, as you probably noted. Were you aware that in that preliminary study, the production baseline that had been used as reflected in Exhibit number 7 provided by USDA showed an increase from 2014 to 2015 for California milk production of 6.5 percent, plus 6.5 percent in 2014 to 2015 was the baseline data input in the model. Were you aware of that?
3     A. I was not.
4     Q. But so that's -- would that be just an example of how when anybody's doing these models, when they are in advance of actual data, you might not always get it right.
5     A. Yes, I would agree with that.
6     Q. And have you observed that from time to time in your Congressional experience?
7     A. Very much so.
8     Q. So one question Mr. Vandenheuvel asked you with respect to prices for Class 2 and 3 versus II and III, do you remember that question?
9     A. Yes.
10     Q. And I think he just misspoke, I want to make sure the record's clear. He was comparing, you were comparing California, which calls it Arabic 2 and 3, versus the Federal system, which is Roman numeral II.
A. Correct.

Q. Okay. And then just?

JUDGE CLIFTON: Roman numeral II or Roman numeral III?

MR. BESHORE: II in that case, Federal Roman numeral II basically matches Arabic 2 and 3 in California.

BY MR. BESHORE:

Q. Just one final question. So Mr. English asked you about the Farmers Union, the National Farmers Union position taken at its convention, and the fact that economic projections might suggest that a policy could have a, may have a somewhat slightly negative impact in one area, and a positive impact in another. Would it be correct that, you know, your membership, first of all, is evaluating things from the farmer perspective, not necessarily from the perspective of running the economic models themselves?

A. Most definitely. Our entire organization is made up of just, not just, family farmers and ranchers, so they are evaluating this from the milk check of what comes to their dairy and cost of production and their personal experience is what they bring to the policy to debate.

Q. And when they look at things as a national organization at a national convention, is it fair that they are looking for the, they would be voting on a policy that they believe is best collectively for the nation?

A. At the annual convention, yes. It is by majority, and
it is best for what -- so all 33 of our organized states get to vote, and I would agree with that statement, yes.

Q. Okay. Thank you very much for, again, for coming.
A. Thank you.

Q. The other side of the country to be here.

JUDGE CLIFTON: I'll allow other questions. There are a couple of little things I want to make sure I don't forget.

Does anyone want to question Mr. Goule with regard to Exhibit 49 before you determine whether you object to its being admitted into evidence? There's no one. Are there any objections to Exhibit 49 being admitted? There are none.

Exhibit 49 is admitted into evidence.

(Thereafter, Exhibit Number 49 was received into evidence.)

JUDGE CLIFTON: How do you spell the name of the place in Texas that you are from?


JUDGE CLIFTON: What do you want to add to what you have provided us so far?

MR. GOULE: I think it's important -- I think that I bring very unique view to this hearing. Not only did I grow up in a very large predominant dairy producing county with dairies all around me, we raised dairy replacement heifers, so we were not
a dairy, let me be very clear. We raised replacement heifers. Then I went to Texas A and M, got a degree in Animal Science, and worked in Washington DC for 15 years, and specifically agriculture policy, and with a very strong emphasis on livestock and dairy for seven years. And then I have now been with NFU for six years where I have had an even broader experience.

So though I am not a dairy Economist, I have worked with dairy, with national dairy federal policy, I have fielded phone calls from dairymen from California almost my entire professional career.

I can tell you when, as I have said earlier, we know that milk prices are cyclical, it's almost sinusoidal, but I can tell you more about the start of the downturn because California starts calling me three months before any other state, and California also stops calling me six months after every other state has stopped. And so I know that's not a very technical answer, that's my experience coming from, working on the Hill, the House Agriculture Committee, and the National Farmers Union, and having a good basic understanding of the safety nets and the programs out there for dairymen, and having grown up around dairies my entire life.

JUDGE CLIFTON: You mentioned that you worked for Congressman Collin Peterson. Would you spell his name, please?

MR. GOULE: Sure. C-O-L-L-I-N, P-E-T-E-R-S-O-N. And he is
currently the ranking member of House Agriculture Committee.
And from Minnesota's 7th Congressional District.

JUDGE CLIFTON: When you were talking about cyclical
changes, you used a word I have never heard before. It sounded
like sinusoidal.

MR. GOULE: Sinusoidal?

JUDGE CLIFTON: What are you saying there?

MR. GOULE: It's a Trigonometry term. It is a wave, it's a
wave equation, where there's always peaks and valleys.

JUDGE CLIFTON: Do you know how to spell it?

MR. GOULE: Trigonometry? No, I do not know how to spell
sinusoidal.


JUDGE CLIFTON: Before the AL, what letter?

MR. ENGLISH: D as in dog.

JUDGE CLIFTON: Okay. Good. Well, I took that course, but
I don't remember that term.

MR. GOULE: And again, I was using it as an example, it is
not exact art in dairy pricing.

JUDGE CLIFTON: All right. You have given us plenty of
reason to understand the plight of California producers, but
isn't it true that very often a number of farms goes down, but
production doesn't go down? Now, you have shown us some
figures that show production going down, but what factors are
important besides numbers of farms?
MR. GOULE: That's a very subjective question. For us, the National Farmers Union, the more farmers we have out there, the more family farmers that we have out there, the more people you have going in and buying trucks', and the more people you have, more families you have going to the hardware store; and the more families you have going to the grocery store. And as you continue to put you dairies out of business, you are going to see larger and larger and larger dairies, and you are going to get to the point where you have caused such an increase in concentration in your dairy production by having so few dairies actually producing this 20 percent of the national average, correct my statement there, you are decreasing competition.

And when you look across agriculture as a whole, we're seeing significant concentration not only in dairy, but also in meat processing and biotech trades, and things along those lines. And so, your Honor, you are correct in some instances where you may be losing dairymen, but, and this graph here, of course just went through the first part of 2015, you may see an increase in production, but what you are seeing is a decrease in family farmers and a decrease in jobs, which we find very troubling. Which will hurt California's overall economy, not just your dairy production and dairy industry.

JUDGE CLIFTON: Are there any questions for Mr. Goule?

Mr. Goule, it's 11:52. It worked out well. Thank you very much. You may step down.
We begin with the testimony of the third witness or would you prefer that we take a lunch break? Begin? Everyone is saying keep it going, we're good.

Mr. Vandenhoevel, you may come forward.

Ms. Frisius, shall we mark this one as Exhibit 50?

MS. FRISIUS: Yes.

JUDGE CLIFTON: We shall. This will be Exhibit 50.

(Thereafter, Exhibit Number 50 was marked for identification.)

JUDGE CLIFTON: If you want a copy of Exhibit 50 and do not yet have one, would you raise your hand? That's good. It appears that we have an adequate number, and some left over for the table that is to the right of most of the participants here. Thank you very much for providing those, Mr. Vandenhoevel.

I'll swear you in in a seated position. If you would raise your right hand. Do you solemnly swear or affirm under penalty of perjury that the evidence you will present will be the truth

MR. VANDENHEUVEL: Yes.

JUDGE CLIFTON: Thank you. Please state and spell your name.

MR. VANDENHEUVEL: My name is Rob Vandenhoevel, V-A-N-D-E-N-H-E-U-V-E-L.

JUDGE CLIFTON: Would you like to make preliminary remarks
before you go directly to Exhibit 50?

MR. VANDENHEUVEL:  Any preliminary remarks I have included in the text of Exhibit 50.

JUDGE CLIFTON:  All right.  You may proceed.

MR. VANDENHEUVEL:  Thank you.

Thank you for the opportunity to provide testimony today at this critical hearing impacting not only today's California dairy families, but the generations to come.  My name is Rob Vandenhauvel and I am the General Manager of Milk Producers Council -- later I'll refer to it MPC -- a producer-funded nonprofit trade association that has been representing the interests of our member dairy families since 1949.  Our membership is currently made up of approximately 120 dairies throughout California, accounting for about ten percent of the state's milking herd.  The positions I'm testifying to today have been affirmed by our Board of Directors.

My experience in the industry goes back to my childhood, growing up on a dairy farm in Chino, California -- that's in Southern California.  I worked on my family's dairy as I attended college, obtaining my Bachelor's degree in Business Administration from California State Polytechnic University in Pomona.  Upon graduating from college, I moved to Washington DC, where I worked from 2002 to 2007 in the U.S. House Representatives Ways and Means Committee, most recently serving as Press Secretary.  In 2007, I moved back to
California and took over as General Manager of MPC, where I have been the past eight years.

In my role at MPC, I have been closely involved in the issues surrounding California's Milk Marketing Order. I have testified on behalf of MPC at every one of the minimum price hearings held by the California Department of Food and Agriculture, or CDFA, during my tenure, and have participated in either authoring or co-authoring multiple proposals and alternative proposals.

Need for a Federal Milk Marketing Order

In the notice of hearing, USDA identified the purpose of this hearing, including a determination of whether there is a need -- whether there is need for a marketing agreement or order regulating the handling of milk in the area. Mr. Elvin Hollon from Dairies Farmers of America -- that's America, not American, that's a typo -- has laid out the expansive data demonstrating a clear lack of orderly milk marketing in California. And while USDA's preliminary regulatory impact analysis of proposals to establish a California Federal Milk Marketing Order is a forward-looking analysis, the figures represented in that report also speak volumes as to the financial impact on California milk producers of continuing to operate under the current state order, compared to the Federal, proposed Federal Milk Marketing Order.

In addition to the lack of orderly milk marketing
within the State of California, this hearing also has great importance to the orderly milk, marketing of milk throughout the country. Contrary to the characterization Mr. English made in his opening that the "only reason" we're holding this hearing is related to a dry whey factor disparity in recent years. The market disrupting problems of operating a separate California state order have long been identified.

Nearly 30 years ago, pursuant to the 1985 Farm Bill, USDA established the "National Commission on Dairy Policy."

In fact, I would note here, Mr. George Mertens, who previously testified in this hearing, mentioned his participation in that committee or that commission.

Resuming the text. This commission, which was made up of 18 dairy producers from around the United States, including two producers from California, was directed to "study and make recommendations concerning future operation of the Federal program established to support the price of milk marketed by producers in the United States." -- and that is from the Legislative language of the 1985 Farm Bill.

In its final report and recommendation --

JUDGE CLIFTON: Wait, you haven't read yet what's in parentheses after the quote ends.

MR. VANDENHEUVEL: Yes. (The 1985 Farm Bill can be found in a search of Public Law 99-198.)

In its final report and recommendation submitted to
then Secretary Richard Lyng -- Secretary of the USDA -- which
was unanimously endorsed by the 18 participating producers, the
commission specifically noted the market disrupting issues
related to having a separate California State Marketing Order,
going so far as to recommend that "Federal law should prohibit
California or any other state from using a greater allowance to
establish a Grade A price for milk for manufacturing butter,
nonfat dry milk, and cheese."

My point in bringing this up is that the issue of
operating a California State Marketing Order that discounts the
regulated price of milk relative to comparable regulated prices
used in Federal Milk Marketing areas, whether you use make
allowances or any other feature --

JUDGE CLIFTON: I'm sorry, may not make a difference, but I
would like to you read again beginning with "comparable
regulated prices."

MR. VANDENHEUVEL: Absolutely. I'll start that sentence
over.

My point in bringing this up is that the issue of
operating a California State Marketing Order that discounts the
regulated price of milk relative to comparable regulated prices
used in Federal Milk Marketing Orders, whether due to make
allowances or any other feature of the various end product
pricing formulas, is a long-standing concern by dairy farmers
in California and throughout the United States.
Having said that, it is true that California dairy producers, through their cooperatives and trade associations, have aggressively pursued remedies in recent years to address the significant deficiencies of the California State Marketing Order that have been outlined in testimony during this hearing. Included in those efforts were numerous Administrative Hearings before the California Department of Food and Agriculture.

Below is a list of those hearings from the past five years.

Administrative Hearings Held in the Past Five Years

Number 1. June 30 to July 1, 2011, was a hearing on Class 4a and 4b minimum milk pricing formulas.

Number 2. May 31 to June 1, 2012, was a hearing on Class 4b minimum milk pricing formula.

Number 3. December 21, 2012, was a hearing on temporary adjustments to minimum price, minimum milk pricing formulas for all classes.

Number 4. April 4, 2013, was a hearing on transportation credits and allowances.

Number 5. May 20, 2013, was a hearing on temporary adjustments to minimum milk pricing formulas for all classes.

Number 6. September 12, 2013, was a hearing on temporary adjustments to minimum milk pricing formulas for all classes and proposals on the whey components of the Class 4b minimum milk pricing formula. And;

Number 7. June 3, 2015, a hearing on temporary
adjustments to Class 4b, minimum milk pricing formula.

Of the seven hearings listed above, six included significant testimony and discussion on minimum milk price formulas, with producer testimony focused on bringing closer alignment between California's monthly milk prices and those announced in the Federal Milk Marketing Orders.

JUDGE CLIFTON: Now, you have read it somewhat differently than you have written it, so do you mean to say California's monthly milk prices, or do you mean to say California's monthly minimum prices?

MR. VANDENHEUVEL: Milk could be added in there, but either one is acceptable. Monthly minimum milk prices.

JUDGE CLIFTON: Good. Thank you.

MR. VANDENHEUVEL: This list does not include the six hearings that were requested and denied during that same period.

Despite the extensive time and effort invested over the years and aggressively pursuing meaningful change to the minimum price formulas, 2014 actually saw the widest gap in recent history between California's Class 4b minimum price, which accounts for the largest volume of milk among the five classes, approximately 45 percent of milk produced and sold within California, and the Federal Order Class III -- Class Roman Numeral III price, an average gap of $2.41 per hundredweight throughout the year. To put it bluntly, the
efforts by producers and the representatives have failed, and after exhausting our options over the years to address this with CDFA, we are excited to have the opportunity to present testimony in support of a California Federal Milk Marketing Order.

MPC Supports Proposal Number 1 -- Cooperative Proposal

The Board of Directors for Milk Producers Council on behalf of the dairy families we represent, voted to fully support the proposal for a California Federal Milk Marketing Order submitted by California Dairies, Incorporated; Dairy Farmers of America; and Land O'Lakes -- referred to as Proposal Number 1 in the hearing notice.

This endorsement came after analyzing the details of the proposal. My testimony today will outline some of the key components of that proposal that led MPC to take the strong position of support.

First, Proposal Number 1 establishes orderly milk marketing in California.

Proposal Number 1 would result in California handlers being required to pay regulated minimum prices in alignment with regulated minimum prices paid throughout the other ten Federal Milk Marketing Order areas. While the estimated impacts are indeed significant, such as the projection by USDA Economists that California's all milk price would increase by an average of $1.03 per hundredweight over the baseline from 2033.
2017 to 2024 under the Cooperative proposal, that really merely highlights just how significant the California State Order has discounted the regulated minimum prices in California.

It is worth noting -- as this will likely get lost in future testimony given in this hearing -- that nothing in Proposal Number 1 suggests establishing California minimum prices above those regulated prices used in the other ten Federal Milk Marketing Orders, but rather that prices be established equal to those used in the other Federal Milk Marketing Orders.

In addition, Proposal Number 1 restores orderly milk marketing in California by using the Constitutionally-given authority to regulate interstate commerce. California's State Marketing Order is simply incapable of establishing regulations that apply to transactions outside of California, even if those transactions result in unequal raw product cost among handlers competing for markets within California. Proposal Number 1 directly addresses the shortcoming by establishing definitions of a "Pool Plant" that apply to any handler distributing dairy products in California markets, regardless of what state that plant is located.

Second, Proposal Number 1 respects and retains unique elements of California's dairy industry.

California's dairy industry -- like any dairy industry
around the country -- has certain unique characteristics. Proposal Number 1 prioritizes several of those items of importance to our producer members.

1. California's quota program

   Since market-wide pooling was introduced in California in the 1960's, the California Department of Food and Agriculture has maintained a quota program. This program has undergone various modifications over the years, but in its current form -- which has been stable since 1994 -- the program provides a fixed premium payment for specific volumes of milk sold by producers who own this quota. Approximately $12 million of pool revenues are devoted to paying the premiums associated with California's quota program.

   It is important to note that the quota program is essentially an agreement amongst the family of the California producers on how our monthly pooled revenues are distributed. It has no impact on the minimum prices paid for raw milk by California handlers. The quota holders receive the first roughly $12 million per month from the pooled revenues. After that, the monies needed to fund the transportation subsidy system -- which I will discuss in more detail later -- are accounted for. The remaining dollars are reblended across all milk in the pool. To put that $12 million into perspective, in the first seven months of 2015, the total pooled -- the total pooled revenue in California has averaged a little more than 2035
$497 million per month.

While it is true that the quota program has no impact on the minimum prices paid by handlers -- by California handlers -- I would actually argue that the program has a positive impact on supporting a reliable local milk supply for some of our handlers in areas that might otherwise be uncompetitive for a modern dairy. For instance, the historic milk shed of the Chino Valley -- located approximately 40 miles east of Los Angeles -- continues to be the hope of a shrinking, but significant, milk supply. Those dairies, which were built decades ago, do not allow for expansions needed to capture economy to scale. They are all also unable to produce much, if any, of their forage and grain needs locally. One way in which those dairies have coped with the competitive disadvantage that they might otherwise face, is by purchasing and owning quota, thereby increasing revenues to their dairy without expanding their operation. This is just one example of how handlers in those regions that need milk, are actually benefitting from the convenience and lower cost of a local milk supply due to a program that is producer run and producer funded.

Furthermore, the provisions of the 2014 Farm Bill specifically give the USDA the "right to reblend and distribute order receipts to recognize quota value." MPC worked our California Congressional representatives to secure that opportunity, and are strongly supportive of its inclusion in
Proposal number 1.

2. Strong pooling regulations

California's State Marketing Order requires that handlers pay classified minimum prices for all Grade A milk that is purchased. This is not a requirement to buy all Grade A milk that is produced, but whatever Grade A milk a handler chooses to purchase must receive the minimum classified price regardless of pool participation. MPC strongly supports the provisions of Proposal Number 1 that define California plants that purchase California Grade A milk as pool plants in addition to the other categories of pool plants.

MPC recognizes that other Federal Milk Marketing Orders have various requirements for handlers to be classified as pool plants, and we support the rights of the producers and those orders to vote in favor of that language. Milk Producers Council believes that the goal of orderly milk marketing in California is best served by a system of stable participation in the pool. Voluntary depooling on a month-to-month basis as is being proposed in Proposal Number 2 by the Dairy Institute of California is potentially destabilizing and threatens the comprehensive approach toward orderly marketing taken by the Cooperatives in Proposal Number 1.

3. California's uniform blend prices for all producers

Earlier I spoke about the basic accounting of the monthly pool revenues under the California State Marketing
Order, with the monies needed to fund the quota and transportation subsidy programs accounted for and the remaining dollars rebled across all pooled milk sold that month. The prices calculated after that reblanding is called "base" and "overbase milk." Under the current regulations, both of these prices are identical and they both apply equally to every producer selling pooled milk, regardless of where that, where the dairy is located or where the milk is first delivered.

MPC supports a continuation of this policy, as outlined in the Cooperatives' Proposal Number 1. We recognize that other Federal Milk Marketing Orders have elected to establish producer location differentials which aid in the facilitating the movement of milk to deficit areas through higher differentials. However, as I will discuss momentarily, Proposal Number 1 takes a much more direct approach in facilitating that movement of milk in the form of a focused producer-funded transportation subsidy program. In the interest of orderly marketing -- orderly milk marketing -- MPC believes that is a much more efficient policy for a California Federal Milk Marketing Order.

4. Transportation subsidies to facilitate movement of milk into California's deficit markets

As California's milk production has shifted away from urban regions into the Central Valley, we have seen significant milk deficits in the areas of Los Angeles, San Diego, and the
Bay Area. In order to facilitate movement of milk for Class 1, 2, 3 use in these regions, California producers have historically supported a system of transportation allowances that provides pool-funded direct subsidies to producers and cooperatives who serve the qualifying Class 1, 2, 3 plants in that area.

JUDGE CLIFTON: Your text says in "these" areas rather than in "that" area, which would you prefer?

MR. VANDENHEUVEL: In "these" areas of Los Angeles, San Diego, and the Bay Area, so these areas would align with that.

While MPC has advocated in recent CDFA hearings to have a surcharge added to the Class 1 minimum price in order to partially fund this transportation subsidy program, we nonetheless have supported its use as a focused and efficient method of facilitating the movement of milk into deficit regions, and agree with Cooperatives' decision to include a very similar system in Proposal Number 1.

5. California's enhanced standards for fluid milk products

California's enhanced standards for fluid milk products sold in the state were established by the California Legislature and are protected by Section 144 of the 1996 Farm Bill -- and that's 7 USC 7254, is the citation.

While the issue of California's authority to maintain the separate standards is outside of the scope of this hearing, it is still a very relevant topic as the current State
Marketing Order, as well as both the Cooperatives' Proposal Number 1 and the Dairy Institute of California's Proposal Number 2 include a fortification credit in the calculation of a fluid milk handler's pool obligation providing a partial offset for the cost of purchasing the condensed skim or nonfat dry milk needed to meet the enhanced standard. MPC supports the inclusion of this credit in California Federal Milk Marketing Order.

A comprehensive approach

In summarizing MPC's support for Proposal Number 1, I believe the five points above are a glimpse at what MPC would describe as a sound comprehensive approach for a California Federal Milk Marketing Order. The items do not stand on their own, but rather, represent various interrelated pieces of an overall approach to achieve specific policies objectives. And in the case of MPC, our policy objectives include (in no particular order):

- Integrity of the California market-wide pool;
- A level playing field for producers -- and by that I mean minimum milk prices that are aligned with national prices for comparable milk;
- A level playing field for processors -- and by that I mean equal raw product costs within classes, nationally competitive minimum prices, and support for producer-funded initiatives to assist processors.
in securing an adequate milk supply; and
- The protection of California's historical quota program.

MPC believes Proposal Number 1 put forth by dairies, California Dairies, Inc. -- California Dairies, Incorporated, Dairy Farmers of America, and Land O'Lakes, uniquely meets all of these objectives resulting in orderly marketing of milk in California.

That concludes my written testimony.

JUDGE CLIFTON: I'm going to begin, Mr. Vandenheuvel, by confirming with you that we will make just little changes in the document, Exhibit 50.

On page 1, where Dairy Farmers of America has an "N" in American, we'll strike the N. Is that correct?

MR. VANDENHEUVEL: Yes. They are very American, but the name is Dairy Farmers of America.

JUDGE CLIFTON: That's under the heading, "need for a Federal Milk Marketing Order" and it is the third line down. All right. We'll make that change on the record copies.

The next change we discussed was at the bottom of page 2. You compare California's monthly minimum prices, and those announced in the Federal Milk Marketing Orders. We're going to insert the word "milk" in the phrase "California's monthly minimum milk prices" is that where we want it?

MR. VANDENHEUVEL: That is fine. To my knowledge, I think
those are the only minimum prices that are announced monthly by
Federal Milk Marketing Orders, but including "milk" in between
minimum and prices would be an appropriate insertion.

JUDGE CLIFTON: Excellent. So the record copies will do
that. They will insert the word "milk" in between "minimum"
and "prices" on the third line up from the bottom of page 2.

And the only other change that you noted as you went
through this, is on page 4, under the heading "California's
quota program" the third paragraph, the top line says, "while
it is true that the quota program has no impact on the minimum
prices paid by" and I believe you want to insert the word
"California" before "handlers;" that correct?

MR. VANDENHEUVEL: Yes.

JUDGE CLIFTON: All right. So that will be done on the
record copies. "California" will be inserted between the word
"by" and the word "handlers" in the top line of the third
paragraph under "California's quota program."

Does anyone want to question Mr. Vandenheuvel just with
regard to Exhibit 50? Are there any questions that you want to
ask just to determine whether you object to it being admitted
into evidence?

MR. HILL: Brian Hill. Just one small change on the first
page as well. I think if you look at the last paragraph he
read it a little bit differently, I think he corrected himself.
"In addition to the lack of orderly milk marketing" it is
written differently, but he read it properly, but it is written differently on the copy, striking the "AL" he said "in addition to the lack."

JUDGE CLIFTON: Oh, thank you. I didn't even see it. Good. Thank you. So it is the second word in that last paragraph on page 1, it's, the word is supposed to be "in addition" and we strike now the "AL." Thank you, Mr. Hill.

MR. VANDENHEUVEL: Mr. Bill Gates doesn't correct my spelling my takes when it is an appropriate word.

JUDGE CLIFTON: Spell check, it's a perfectly good word.

All right. Good. Thank you, Mr. Hill.

Does anyone object to the admission of Exhibit 50 into evidence? There are no objections. Exhibit 50, that's 50, is admitted into evidence.

(Thereafter, Exhibit Number 50 was received into evidence.)

JUDGE CLIFTON: Who would like the ask the first questions of Mr. Vandenheuvel?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore. Thank you for your testimony, Mr. Vandenheuvel.

I have just one question not directly related to your statement per se, but there's been testimony in this hearing about the so-called California discount. Have you ever heard
of that?

    A. Yes.

Q. Is that a term that has been used by your organization?

    A. Yes. In our communications to members in a weekly newsletter we have referenced the California discount.

Q. Can you just describe generally what it means and the extent to which you put dollar figures on it, and how generally those were determined?

    A. Absolutely. The California discount has been something we have calculated in our weekly newsletter on a monthly or near-monthly basis. It is a calculation of the difference between California's Class 4b and the Federal Order Class III prices. Not just the difference per hundredweight, but applying that difference to the actual milk production figures in California, the milk production that is sold to cheese manufacturers in the State of California. And so what that figure per hundredweight equates to in dollars to the California pool.

    And through July of this year we had calculated that since 2010, that calculation had added up to more than $1.8 billion over that five-year period, five and a half year period.

Q. Did you start in January 2010?

    A. January of 2010 is where that particular class, we started to note a wider gap, which is why we had to pick a
start period. So for that calculation, yes. I did not include it in this testimony because we do have quite a bit of other statistical data that are calculating the difference, and the data that we have included in the record already looks at all five classes. And since this was very focused on 4(b) versus Federal Order Class III, it seemed more appropriate to use the more inclusive data that's already been inserted in the record.

Q. Okay. So your use of the California discount in your newsletter is focused solely on 4(b) and not on any price differences between other classes of utilization in California and the Federal system, or the proposed prices in Proposal 1?

A. We have written articles on other classes, but this particular label so-to-speak of the California discount is specific to these price areas.

Q. Thank you. That's the only question I have for Mr. Vandehuvel at this time, your Honor.

CROSS-EXAMINATION

BY MR. ENGLISH

Q. Chip English.

Good afternoon, sir.

A. Good afternoon. Is it afternoon?

Q. Yeah. So first, in the opening paragraph when you talk about your membership --

A. Yes.

Q. -- of the 120 dairies throughout California that
account for about ten percent of the State's milking herd, would it be fair to say that some of those dairies are also members of one or more of -- well, not more -- one of the Cooperatives?

A. Actually, one or more. We have some dairies that have multiple membership in the Cooperatives.

Q. Thank you for correcting me. So, but would it be fair to say that some of those dairies are members of one or more of the Cooperatives?

A. That's right.

Q. Do you have a breakdown approximately of how many would be members of DFA, CDI, and Land O'Lakes?

A. I do not. We'd also have -- we do have members, I know we have members that are also independent, not shipping their milk through a Cooperative.

Q. That's a fair answer, thank you. Now, under the first heading, you testified about Mr. Hollon having provided "expansive data demonstrating a clear lack of orderly milk marketing in California."

Let me ask a few predicate questions. You have been here during parts of the hearing; is that correct?

A. Yes, I have been physically here and tried to listen in while doing my day job while I'm gone.

Q. So did you actually either attend or listen to Mr. Hollon's direct and cross-examination?
A. I believe it went on for more than a day. I listened to much of that testimony, I can't say I hit every single minute. But some of the testimony related to how California's Class 2 and Class 3 compared to Federal Order Class II was included in the sections that I was able to listen to, as well as other differences between the price series of California 4(b) and Federal Order Class III, those were other portions that I heard in his testimony and cross.

Q. Do you have any additional information -- based on what you heard, do you have any additional information that is different or add-on or what Mr. Hollon testified about that constituted a lack of orderly milk marketing in California?

A. Anything in addition to Mr. Hollon's testimony that I have not included already in this testimony?

Q. Yes.

A. No. I -- those are the items that I had specifically highlighted.

Q. On the top of page 2 you reference the '85 Farm Bill on a commission and a recommendation "that Federal law should prohibit California or any other state from using a greater allowance to establish a Grade A milk for -- Grade A price for milk for manufacturing butter, nonfat dry milk, and cheese." Do you see that?

A. Yes.

Q. Did Congress, in fact, adopt provision along those
lines at one time?

A. Yes. There was a -- there was a provision in a subsequent Farm Bill that included language to that effect.

Q. And that was called Section 102?

A. Correct.

Q. That was then in a later Farm Bill, repealed, correct?

A. Correct. I don't believe it was ever actually implemented fully by USDA.

Q. So there was a recommendation, Congress passed something, USDA didn't implement it fully, and ultimately Congress repealed it; is that correct?

A. Yes.

Q. Now, there's been a fair amount of testimony in this record about milk production and its impacts, so on the top of page 3 when you are discussing a 2014, and this widest gap, is it also true that California dairy farmers were paid their highest prices ever in 2014?

A. I believe the data I have seen is that the, yeah, the average prices paid were higher.

Q. Were the highest ever; is that correct?

A. Correct.

Q. And is it also the case that California milk production was the absolute highest it ever was in 2014?

A. I will take your word for that, but it would not surprise me. I don't have that data in front of me.
Q. So under Proposal 1, your first two paragraphs, you are talking about what California handlers would be required to do, and you discuss that it's worth noting that Proposal 1 would establish California minimum prices. There's actually nothing in Proposal 1 suggests establishing California milk prices above those regulated prices used in the other ten Federal Milk Marketing Orders, but rather, the prices be established equal to those used in the other Federal Milk Marketing Orders. Do you see that?

A. Yes.

Q. Now, that statement is true as far as it goes under other Federal Milk Marketing Orders, not all plants outside of Class 1 have to actually pay regulated prices, correct?

A. No. That's correct. Or yes, that's correct. That is correct.

If I could real briefly, I am aware of data that demonstrates that there is milk that is eligible to be pooled and not pooled, I'm not aware of any data set that shows what that unpooled milk, what the price paid for that unpooled milk is, but I am aware that milk doesn't have to be pooled under the Federal version.

Q. But the reason why there is no data with respect to what the price is, is since it's not pooled, it isn't subject to regulation, correct?

A. Correct.
Q. And if it is not subject to regulation, USDA simply doesn't enforce a minimum price as to that milk, correct?

A. Correct. And to expand that, we also don't have data in that data series because, as you noted, it's not regulated as to who is making that transaction. Is it a Cooperative serving as the handler on behalf of the dairy or is it an independent producer selling direct to a plant? So there's some data we're not able to gather.

Q. But nonetheless, you recognize from that exhibit that that milk eligible to be pooled that is not pooled is simply not part of a minimum regulated price, correct?

A. Correct.

Q. Other than testimony you may have heard from Mr. Hollon, on the bottom of page 3, when you talk about the proposal addressing potential for unraw product cost by handlers, do you have any actual examples?

A. I'm sorry, what page?

Q. I'm down at the bottom of page 3, same page, the next paragraph from where we have been. And you are discussing the ability for a Federal Order to regulate interstate commerce.

A. Uh-huh, uh-huh.

Q. And you talk about the shortcoming. And I'm asking first, you have, other than any testimony you might have heard from Mr. Hollon, any examples of those shortcomings causing disruption in the California market since the adoption of the
Milk Regulatory Act?

A. I am aware of milk that is moved across state lines in bulk and package form, and that those transactions, because they are not under the minimum pricing system that California operates, that there would be an unequal raw product cost, and that is an indication of disorderly marketing. But I do not have any direct knowledge, as I am not a participant in those transactions.

Q. Now, you just said they have an equal raw product cost, but, in fact, if California doesn't -- you don't actually know they have a equal raw product cost, you just don't know what the cost; is correct?

A. That's correct.

Q. Thank you. Over on page 4, you inserted, and Judge Clifton made sure that it ended up in Exhibit 50, in that paragraph in the middle of the page you inserted "California" in front of "handlers" while it is true the quota program has no impact on the milk prices paid by California handlers. Was there any particular significance in inserting the word California?

A. Because it's a California program. As I was reading, I just made it clear that the impacts, the prices paid by California handlers as we just talked about a minute ago, there are handlers that out-of-state that participate in the California market that we don't have a minimum price for them.
So in my line of thinking, I included California in my statement.

Q. All right. And again, where you say we don't have minimum price, California doesn't have a minimum price, correct?

A. California doesn't.

Q. But that doesn't mean, for instance, that if the milk is produced in Nevada and received in the Nevada plant, that Nevada has an established minimum price, correct?

A. Correct.

Q. Under strong pooling provisions, pooling regulations, and this relates to some questions I already asked, but to be clear, carried over from page 4 to page 5, you say, "but whatever Grade A milk a handler chooses to purchase must receive the minimum classified price regardless of pool participation."

A. Correct.

Q. Now, that statement, again, would be different from any other Federal Order, correct?

A. This statement is specific to California's Milk Marketing Order --

Q. And --

A. -- currently.

Q. Do you agree that under existing Federal Milk Marketing Orders, handlers purchasing milk that do not participate in the
pool, are not required to pay a minimum classified price?

A. I'm aware of that, yes.

Q. Okay. And so just so the record is clear, in California today, if a Cooperative, Cooperative A, is the importing handler on the milk, and for some reason an isolated transaction sells that milk to a cheese plant and processing cheese, not only is the cooperative handler obligated to account to the California pool at the Class 4b price, but also, so; is that correct?

A. Yes.

Q. That far. But also, that transaction between the Cooperative and the Class 4b plant, the cheese plant, that plant must, under California, pay the 4b price, correct?

A. Yes.

Q. Okay. And under existing Federal Milk Orders, that second transaction, if that milk is received at a nonpool plant, would not be subject to minimum price regulation, correct?

A. As I understand it, that is the way the other orders operate. They are not required to pay it. We don't know exactly what they are paying, but they are not required to pay it.

Q. Now, as an observer of the dairy industry with Milk Producers Council, and that's to say your day job, do you look at dairy market news weekly publications on a regular basis?
A. I do.

Q. And are you aware during this year there had been transactions reported, sales in the Upper Midwest for instance, where the ultimate price paid is X dollars below class?

A. Yes. If I can expand on that.

Q. Of course you can.

A. We have had that situation in California in the past, when dealing with any kind of live animal where your production, you can't scale down a machine -- or scale down a cow like you would a machine. We have a periods of imbalance and California has had distressed milk or surplus milk production in the past as well. And in those cases, they must find alternative markets, and I think it's worth noting that the cost of finding those alternative markets, transporting the milk to those markets, is borne exclusively in California by the Cooperative and the producer members, or the individual producer, if that be the case. Not the handlers, i.e., the private proprietary plant in purchasing the milk volumes that they need and only what they use.

Q. But let's explore that example -- and thank you for that example. It's a lengthy example, so I have to break it down. When that has occurred, that imbalance --

A. Yes.

Q. -- what you are saying is the milk is moved out-of-state, correct?
A. In some cases it's moved out of the state. In other cases, the alternative markets within the California, within the State of California such as a calf ranch, could be a purchaser of milk as well.

Q. Regardless, yes, if it's a Cooperative who is the reporting handler, they are going be, because of the way the California system works, obligated to pay or account to the pool for the classified price, correct?

A. Yes.

Q. And as you say, that is cost borne by the dairy farmer members in that Cooperative, correct?

A. Correct.

Q. But whether or not it is delivered to what you call alternative marketing outlet in California such as a calf operation, or shipped out-of-state, a reason for that is that because if it's received at a cheese plant, the cheese plant has to pay the regulated price regardless, correct?

A. They do.

Q. And if the cheese plant can't recover the cost of that, instead, it's says, no, we don't want the milk, correct?

A. That may or may not be a calculation of whether they can absorb the cost, it maybe an operational decision that they cannot handle any more milk than they are currently buying.

Q. So is the situation where a Cooperative and its members must bear the cost of handling distressed milk, is that a
disorderly marketing condition that is a consequence of the pooling system in California, and the pricing system that requires everyone to pay a minimum regulated price?

A. It's a result of running an operation or a business where you are dealing with a live animal that cannot, that is not producing a predictable amount of milk relative to the demands for that milk. Cooperatives provide the service of balancing milk supplies all the time. We have heard from Cooperatives in this hearing that have built manufacturing plants to assist in that balancing, but sometimes those plants are, even those plants are not capable when various conditions, weather conditions, or other conditions result in surplus milk production beyond what the demand is in the state. And in those cases, alternative outlets for that milk must be found at the cost of the producer and the Cooperative. That's correct.

Q. So on page 5, in the full paragraph, the first full paragraph on page 5, you discuss the Dairy Institute of California's proposal, and you say "voluntary depooling on a month-to-month basis as being proposed in Proposal Number 2 by the Dairy Institute."

Do you understand that on the Dairy Institute's proposal, that like, in fact, identical to the language in Order 30, that if milk is depooled one month, that there are limits on how much milk can be depooled in the following month?

A. I am aware that the decision, while monthly, has
ramifications potentially in future months, yes.

Q. And you understand that post-Federal Order reform, there were a number of proceedings in the Federal Order system, with respect to pooling issues, correct?

A. I don't have direct knowledge of those, but I know it is an issue of interest among the various parties.

Q. And as a result of that, if there were two hearings in the Upper Midwest that there were changes made to make the economic consequences of depooling for purposes of repooling different, correct?

A. I will take your word for it. I'm not directly aware of the history there.

Q. Thank you very much. That concludes my cross-examination.

JUDGE CLIFTON: Who next will ask questions of Mr. Vandenheuvel?

CROSS-EXAMINATION

BY MR. VETNE:

Q. John Vetne for Hilmar Cheese Company.

Mr. Vandenheuvel, I want to expand a little bit on your knowledge of existing treatment within the California system of distressed milk. Okay? When a Cooperative association, for example, is unable to process California produced milk at California locations, and sends it to an out-of-state manufacturer, under the California system, must that milk be
reported to the pool and included in pool calculations? Or is there an option to include it or not include it?

A. My understanding of distressed milk in that situation, is that there is an option to report to the pool, but that given the, given the fact that it is likely reporting that milk to the pool at the manufacturer class price would result in a pool draw, that there's an incentive to report that milk to the pool. That's my understanding.

Q. Okay. So a choice can be made based on price variables in the given month?

A. You know, I would have to consult the California Regulations, which I can do and get back, not right now.

Q. And the same question, if milk is marketed within California to a replacement heifer farm, for example, which is not a plant, again, if included in the California pool, is that a mandate of the pool or pricing regulations or an option available to include it or not include it?

A. Again, my -- my understanding has been that that milk does get reported to the pool, I believe at the lower of Class 4a or 4b, and thereby almost ensuring that there will be a pool draw, so as an incentive to report it to the pool, but if there is an option to not report it, I would have to look into that.

Q. Are you aware that when milk is sold, disposed of within California, whether there is a requirement to notify
state authorities in advance of the transaction or maybe concurrently with the transaction?

A. I'm not aware of that, no.

Q. And with respect to proposed Proposal Number 1, if you know or have an understanding, would the option to pool or not pool distressed milk sold out-of-state or to distant locations be available in Proposal Number 1 as you understand it now exists in California?

A. I would have to consult with the regulations or the proposal language, as I'm not a hundred percent sure.

MR. HILL: This is Brian Hill. It is about ten minutes to one now, if they are going to be out there blowing, it might be a good time to take a break or take a lunch.

MR. VETNE: And the reference is to leaf blower, not to Mr. Vandenhuevel's actual voice.

JUDGE CLIFTON: Mr. Vandenhuevel, were you planning to come back after lunch?

MR. VANDENHUEVEL: Yes.

JUDGE CLIFTON: Okay. Good. Then let's do take a break. So please be back and ready to go at 2:05. 2:05. Please be back and ready to go.

(Whereupon, the lunch recess was taken.)

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JUDGE CLIFTON: We are back on record at 2:10. Thank you for waiting for me.

Mr. Vetne, you may resume cross-examination of Mr. Vandenheuvel.

BY MR. VETNE:

Q. Thank you. Mr. Vandenheuvel, I'm looking at the bottom of page 4 of your testimony, the end of the paragraph beginning with "while it's true," the last sentence refers to an example how handlers in those regions that need milk are benefitting from the convenience of lower cost of a local milk supply, through a program that's producer-run, producer-funded.

The example that you are referring to, does that mean, or does -- does it incorporate the fact that quota owned by farms in Southern California such as Chino Valley, are entitled to a regional quota adjuster when they own quota?

A. I'm not sure that that's a totally accurate statement. There is no regional quota adjuster in Southern California is perhaps what you meant.

Q. Well, I guess that's true. All the adjustments elsewhere provide for a lower quota price or you are looking at relative quota price. The highest quota price available is to Southern California, correct?

A. Yes.

Q. Okay. And is that what you are referring to?
A. No. I'm referring to a general, this -- the fact that the quota system creates an opportunity for dairy farmers in that region to enhance their revenue per hundredweight without expanding their herds. As I mentioned in that paragraph, expansions to meet economies of scale are not available in that area, and so the quota -- and I have heard the same thing in the North Coast region of the state, so this was an example I'm very familiar with, I grew up in that area. And I would say that quota is only one program that's producer-funded, that provides that benefit to handlers. The Transportation Subsidy Program is another producer-funded program, which I believe benefits the handlers in the Southern California area. And I can expand on that briefly, but I don't want to take you on a different tangent than your question.

Q. Don't forget the tangent you were about to embark on because you may want to discuss it later.

In the markets, in the Federal Order markets, with which I have a little bit greater familiarity, producers are responsible for the cost of transportation from the farm to the plant of first receipt. Is that not the case in California?

A. That is the case in California.

Q. It is the case in California?

A. Yes.

Q. Okay. So how, then, would it be a benefit to the handler?
A. How would what be, the quota program?

Q. How would the quota program or the transportation credit be a benefit to the handler since milk is, since the producer bears the cost of transportation to the plant of first receipt?

A. There is a general practice in California that the producer pays the cost of transportation. But that does not preempt the buyer of that milk from offering assistance and providing additional premiums or subsidies to help offset some of the that transportation cost. And what I am talking about in this particular paragraph, is the fact that if there was theoretically no milk in the area, didn't make sense to dairy there, and they didn't have an opportunity to increase their revenue, but there was still a plant locally in that area that needed a milk supply, it's entirely possible and likely that they would have to offer a premium to be competitive with bringing milk from further away, into their plant.

And the same goes for the Transportation Subsidy Program. But, yeah, that is the point I was making, is that by having a local milk supply, it makes those producers willing to haul the milk to that plant. If that plant had to bring in milk, say, from the Central Valley, a couple hundred, 150 miles away, and those plants have a closer alternative, it would be much more difficult to secure that regular milk supply and they would likely have to offer premiums of some of sort.
Q. When you said those plants have a closer alternative, you mean those producers have a closer alternative?

A. Yeah, I must have misspoke. The producers in the Central Valley, if a plant in Southern California was seeking milk from the Central Valley, and this was not a Class 1, Class 2, or Class 3 plant, which has the transportation subsidies I mentioned, this was a cheese, whey, butter, powder plant, they would likely be competing for milk from a dairy producer that had a cheaper option to haul its milk to more locally and so that would cost the Southern California handler more money.

Q. Cost the Southern California Class 4 plant.

A. Yes. That's the point I was making in that paragraph.

Q. I see. In the last sentence, you refer to "benefit to handlers from a lower cost of a local milk supply."

What lower cost does the handler benefit from?

A. The example that I just gave, fortunately for our handlers in Southern California, it is only a hypothetical at this point. We do have local milk supply in that area. In the absence of that local milk supply, they would have to compete for milk. That handler in the Southern California would have to compete for milk from a milk shed further away, and it's entirely possible, and I would say likely, that they would have to be significant premiums to help cover that transportation cost to attract that milk into that Southern California location.
Q. Okay. Are you aware whether handlers in Southern California start their -- are paying, and a history of paying, premiums, significant or otherwise?

A. I believe I -- I'm not -- I don't run a trade association, we don't market milk, but my knowledge of the industry is that there are premiums that are paid, service premiums of some sort.

Q. Do you have any source that you can recommend that I go to to determine what those premiums are, and the magnitude and quantity of milk they cover?

A. I would suspect that those are proprietary in nature, but you could talk to folks that are selling milk in Southern California, producers or Cooperatives.

Q. Okay. Are you aware of any documentation such as those previously provided in the exhibit concerning CMPC premiums? Is a similar document available for perusal in California?

A. I lost you at CMPC premiums.

Q. CMPC was an early exhibit concerning premiums in the Upper Midwest. You weren't here that day apparently.

A. Fairly possible.

Q. You don't remember that?

A. I don't remember that particular reference.

I would like to expand on the transportation issue that we talked about before you move onto another topic, if that's all right with you.
Q. Sure. This is what you had in mind when you said you would like to go off on a tangent?

A. Well, it is a related issue. It is the issue of a producer-funded program that helps facilitate a milk supply. We have had numerous hearings in the past in California about our Transportation Subsidy Program, and what you hear and what you would read in transcripts of those hearings, is that milk from the Central Valley is shipped down into Southern California, it’s a Class 1, 2, and 3 plants, to meet those needs, because those hauls, those transfers of milk are eligible for a transportation subsidy from the pool. Whereas, milk shipments to a manufacturing plant 4a, 4b is not eligible for that subsidy draw. So what ends up happening is, to the extent that milk from the Central Valley is drawn down to meet the needs of the Class 1, 2, and 3 plants, that leaves more of the local milk supply available to the local cheese manufacturers that operate in Southern California.

Absent that transportation, absent that producer-funded transportation subsidy, that milk in Southern California, Chino Valley, and San Jacinto region, would be attracted to the Class 1 markets likely, because those are the highest paying plants, and that would leave less milk, or maybe no milk available for the manufacturing plants locally.

So that is another case where local manufacturing plants get a benefit from having a milk supply due to a
producer-funded program called the Transportation Allowance Program.

Q. Referring to Southern California, what local manufacturing plants do you have in mind?

A. I don't know all of them. There are approximately, I think 60 or 55 to 60 plants spread throughout the state. Some of the larger ones you hear in Southern California are Farmdale Creamery, Cacique Cheese, and I'm sure there are more -- Los Altos Cheese. But I -- I -- perhaps that's a question of the Dairy Institute where the break down of their members, their cheese making members is, but I know there are some significant buyers in Southern California that buy milk for cheese making purposes.

Q. So that one may compare the relative use of Class 4b in Southern California versus Northern California, is that data normally published by CDFA?

A. I do not believe they publish a regional breakdown of the plants or the regions and what the milk purchases are. If they do, I'm just not aware of that publication. To those individual plants, however, the ability to secure milk and secure a local affordable milk supply is very important regardless of the magnitude in the larger pool.

JUDGE CLIFTON: If I might get a couple of spellings. In addition to Chino, you mentioned, I think you called it San Jacinto.

JUDGE CLIFTON: And then you named, I believe, three cheese plants that are fairly large in Southern California. Can you help me with those again?


MR. VETNE: C-A-C-I-Q-U-E.

JUDGE CLIFTON: C-A-C-I-Q-U-E. Looks more French than Spanish, but I'll take your word for it. Thank you.

BY MR. VETNE:

Q. You and other witnesses have referred to the California system as the California Milk Order.

A. Uh-huh.

Q. For milk that is processed and sold in California, there are, however, three different sets of regulations, not a single set, like there is in Federal Orders. There is a Southern California marketing and stabilization plant which fixes class prices in Southern California, correct?

A. Yes.

Q. And there is a Northern California marketing stabilization plant, a separate set of regulations, which fixes
prices in Northern California, correct?

A. Yes, with a lot of similarities to the Southern California system, but with some differences on particularly Class 1 and Class 2.

Q. Yes. Just like there are a lot of similarities among the federal markets. And there's a third set of regulations called the California Pooling Plant --

A. Correct.

Q. -- which is a separate regulation, separate from the classified pricing plants?

A. It is a separate document, yes.

Q. So there are, in essence, three marketing orders having different functions or different places?

A. Yes, the two stabilization marketing plans have the same function but different regions, and the pooling plant has different functions.

Q. And CDFA organizationally within the dairy unit has a marketing branch which is devoted to the two stabilization plans, the classified pricing plans and a pooling branch, which is devoted to the statewide distribution of statewide revenues, correct?

A. Correct.

Q. I'm looking for it here, but I think you made reference someplace to the federal system of adjusting producer prices by lowering prices by a dollar?
A. Page 5.

Q. What order is that?

A. Item number 3 there, California's uniform balloon prices for all producers.

Q. Oh, yeah, first sentence in the second paragraph under that. So you are familiar with the way the Federal Milk Market system works in that respect, that producer prices are adjusted by location at the same rate as Class 1 prices?

A. Generally, where I believe at the, depending on the location of the plant of handler first receipt.

Q. Okay.

A. Or plant of first receipt.

Q. What -- would it be fair to say that a combination of price, classified price differences in Northern California, plus the transportation adjustments available to producers in California, have essentially the same function of value and producer milk, depending on where it's delivered?

A. I definitely think the Transportation Subsidy Program carries out that feature. It carries out the task of directing milk to the Class 1, 2, and 3 uses through that subsidy program. Equal, basically equalizing producers, whether they send milk to those plants, further away, or to a local manufacturing plant. And I know to a smaller extent, but the Southern California differential of approximately, I think Class 1 is about 27 cents a hundredweight difference, Southern
California plants must pay above what Northern California Class 1 plants pay. That may have a smaller impact. The Transportation Subsidy is by far the larger driver of moving milk where we need to in deficit regions.

Q. My question was whether those two combined, function similarly to the producer blend price differential in Federal Orders?

A. I think that's a probably a fair statement. It is captured in my comments that that's why we support a uniform blend price, because we feel the Transportation Subsidy Program is a more direct method by which to achieve that goal.

Q. Thank you. Thank you, your Honor.

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Nicole Hancock for the California Producer Handlers Association in Ponderosa Dairy. If we could turn to page 3 of Exhibit 50 in your statement. The last paragraph starts with "in addition to the Proposal Number 1," can you help me understand what you are saying in that paragraph?

A. Sure. Under, and we had some extensive discussion about this in previous testimony when there was a witness here from Nevada. But under the current California State Order, transactions that occur across state lines, so milk that is produced outside of California and sold into California for manufacturing purposes, or for any purpose, any of the classes,
is not subject to the minimum pricing and pooling regulations in the California State Order, and there's, I'm sure, a long history of that, but it basically has to do with only Congress has the ability to regulate interstate commerce, the state does not. So that's the point that I'm making there, that there are transactions that occur across state lines that a Federal Order is capable of capturing in the regulation, whereas a state order is not.

Q. So you are not purporting to provide any type of legal opinion there, you are just recognizing the fact that other Federal Orders have regulated instances where milk has crossed over state lines?

A. Correct. They are capable of it, state is not, as far as I understand the law. But I'm not an attorney, you are, correct?

Q. I wasn't trying to make sure that it was clear that you are not an attorney, but my point is, you are not saying anything beyond the fact that a Federal Order has the capability of regulating milk across the state lines?

A. To the extent I'm saying anything above that, it's that I see an impediment, the milk producer counsel sees that inability to regulate transactions across state lines as a disorderly feature of our State Marketing Order. That's what, I was purporting there. But no, I'm not making any legal claims beyond that.

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Q. Would you agree that if a Federal Order were to regulate milk that crossed over a state line, that it should do so in a fair and equitable manner?

A. Yes.

Q. Can you turn to page 4 of your statement? And this is where you discuss your support for California's quota program to be preserved in the instance, in the event that a Federal Order is implemented California; is that correct?

A. Yes.

Q. Okay. And would you agree that that would be implementation of the entire quota system?

A. You know, we were asked to -- well, we decided to take a position on the Proposal Number 1 that was put forth. Proposal Number 1 doesn't -- I think as you heard testimony from previously Dr. Erba, it focuses on the traditional quota. I don't believe it is specific on the historical producer-handler exemption in California, the producer-handler quota. So I would probably echo Dr. Erba's statements that it is not part of the proposal at this point. We didn't take a position, therefore, on that. I mean, I don't believe producer-handler amendment has specific language for us to review yet. At some point later in this hearing, we will have that chance.

Q. Okay. So when you say traditional quota, what do you mean by traditional quota?
A. In my explanation of traditional quota, I'm talking about the quota that, in California, a dairy producer can access, can purchase, can own, which I do see as a distinction from Option 70, producer-handler quota, which is now restricted to just the four families that hold it. I mean, there were more and now they are down to four. Not casting a judgment on one or the other, that's -- when I say normal or traditional quota, I meant that the quota that is accessible to any California producer.

Q. And you would agree, though, that exempt quota is historically been part of the quota system since its inception in 1967?

A. Unlike Dr. Erba, he mentioned he graduated in 1983, I was three years old back then, so I can't go back to 1967. My personal understanding of producer-handler exemption is that it is a separate unique section of the pooling plan. Whether the state has historically seen it, I have heard from producers that it was seen initially as part of the quota program, and so I -- I can attest to that only in general. But I know it's a separate section of the pooling plan in California, and therefore, we weren't asked to, it wasn't part of the Cooperatives' proposal at this point.

Q. So you haven't had a chance to evaluate that?

A. I have had a chance to evaluate the letter that was submitted by your clients seeking some recognition of the
producer-handler exemption as part of the quota program, but we haven't had a chance to address language yet because we haven't gotten to that part of this hearing.

Q. Okay. And you remain open to evaluating the language that the California Producer Handlers will propose in this hearing?

A. Yes.

Q. Thank you.

CROSS-EXAMINATION

BY DR. SCHIEK:

Q. Good afternoon, Mr. Vandenheuvel.

Bill Schiek with the Dairy Institute of California.

A. Good afternoon.

Q. I had some questions of clarification to show if I understand, and for the record, and MPC's position on a couple of things.

In page 1, on page 1 under the section "Need for a Federal Milk Marketing Order" AND this is Exhibit 50, your statement. Second half of the first paragraph of that section you say, "while USDA's preliminary regulatory impact analysis of proposals to establish a California Federal Milk Marketing Order, is a forward-looking analysis, the figures represented in that report also speak volumes as to the financial impact on California milk producers continuing to operate under the current State Order compared to the proposed Federal Milk
Marketing Order." I am assuming you are talking about Proposal 1 or Proposal 2 there.

A. Yes.

Q. And -- Proposal 1?

A. Proposal 1 is what I'm referencing.

Q. Okay. And based on that statement of looking at that analysis and saying that "it speaks volumes," do I take it from that that you agree with USDA's analysis under the preliminary economic impact?

A. Well, as I stated in some questions this morning as the cross-examiner, I recognize the limitations of any model, but it was the general tone and the general direction trends, I think models are capable of perhaps identifying trends. And, therefore, what is significant in that study is that it was reported -- and I'm not going to name the study because it's one of the longest study names I have ever seen, but in that study it was -- it was reported that the impact on California's producers from Proposal Number 1 would be somewhere in the $700 million a year range in additional pooled revenues. And whether that number is correct or not correct, that definitely shows a significant shift in money going into the pool of some sort.

My questions about the model were primarily in my line of questioning earlier in this hearing, were the next step, taking those dollars and converting them into what impact does
that have on production, which I think brings in a whole lot of topics that dairymen, a lot of issues dairymen consider when deciding whether or not to increase production. But that was what the -- where I really questioned the model and our ability to rely on it.

Q. So when the model predicts under Proposal 1, that average milk prices will fall in other regions of the country. Do you agree with that analysis?

A. It's not a matter of agreeing or disagreeing with the numbers on the page. It's taking it in context. That impact on other regions of the country is not a result of the higher milk prices in California. It is a result of what the model assumes producers will do with those higher revenues.

Q. Would you agree, though, that the model doesn't create that impact out of whole cloth, it is using evidence of historical data to arrive at that?

A. I know that I have no doubt that the, that the creators of that model tried very diligently to create a model that uses a historical relationship between increased revenue or decreased revenue and the impact that that has on milk production. What I was -- what I believe, however, with that analysis, is that there are certain non-pricing features and characteristics of the California dairy industry, such as competition for land that dairy has, that permanent tree crops like pistachios and almonds have developed into. They compete
for land. You see dairies actually torn down and turned into these permanent tree crops, that as the impacts of regulatory issues that will put a choke-hold on future expansions in the dairy production in California. Those non-price related items cannot be included in the model of this type, and so as long as you recognize those limitations to a model, I have no problems with the model, I just think that there are other things that need to be considered in context.

Q. So I guess the question then, I would have for you is, given the actual historical evidence of the impact of price on production, your concern is that the model doesn't accurately reflect what would happen relative to a baseline or relative to current the current marketplace?

A. I think both. The baseline assumption, there was a question this morning by Mr. Beshore questioning the difference of the baseline assumption that production would go up six percent in California from 2004 -- 2014 to 2015, whereas we have actually seen a negative. And I think that that, while way too small of a period of time to call a trend, does speak volumes to the fact that this is not the California dairy industry of old. Where after a year like 2014, with as acknowledged earlier, in earlier questions was a very profitable year for dairymen in California and throughout the country, where we actually in the first quarter of the following year, saw year-to-year reductions in milk price.
This is a different California than history. And I think the model is somewhat relying on the historical relationship of price impacts and production.

Q. Would you say that part of the reason it is different is the unprecedented drought we have experienced in the last few years?

A. I think that that plays a role, but I don't believe that that plays a significant role in explaining the year-over-year drops.

JUDGE CLIFTON: If I could have you go back. You were talking about the baseline in terms of production --

MR. VANDENHEUVEL: Uh-huh.

JUDGE CLIFTON: -- that is was expected in the model to go up, it went down.

MR. VANDENHEUVEL: Yes.

JUDGE CLIFTON: But you just now referred to what happened to price after 2014.

MR. VANDENHEUVEL: I meant, if I said price, I meant production. Production in the first quarter of 2015 was down year-over-year production, despite very strong prices in 2014.

JUDGE CLIFTON: Thank you.

BY DR. SCHIEK:

Q. Typically when we see an economic impact of dairy farms under stress, what we see is the climbing cow numbers. And at least according to the USDA's Milk Production Report, the drop

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in production in California is almost totally due to milk per
cow. How -- what's your explanation for that? Do you feel
like that's a direct economic result of farm operator's margins
or is there something else going on?

A. You know, as we go forward in the months and years to
come, we'll probably be able to look back with a clearer head
and see trends. I do worry, as I mentioned just a few minutes
ago, that while it's interesting to show 2015 down
year-over-year, and I think it speaks to the baseline issues
and impacts on the model. I don't think we can completely
answer the questions yet of exactly what's driving, you know,
the production. If it is production per cow, I know those
number get corrected in future reports, maybe there are less
cows. I think it's too soon to tell, but I don't have any
economic explanation for why the drops have been.

Q. Have you followed what's been going on in the hay
markets and hay, alfalfa availability to dairymen in
California?

A. Very, very generally. I am in no way an expert. I
know prices are lower than they have been in the years past.

Q. Is there a quality diminish to that?

JUDGE CLIFTON: I'm sorry, prices have of what are lower?

MR. VANDENHEUVEL: Prices of alfalfa are lower. Alfalfa is
a feed that dairies buy, and in 2015, my reports, I don't grow
alfalfa nor do I buy it, but the reports that I see have
indicated that market prices for alfalfa are lower than they have been in years past.

Q. And so my next question is, have you heard from your members that there's a quality dimension to that lower price?
A. No. No.

Q. So it's -- it's a lower price for supreme alfalfa?
A. You know, I'm not sure if it is the price is for various qualities have all gone down by the same ration, but my understanding was just in general, prices have come down. Perhaps there are some qualities that have not come down as much as others, I'm not sure.

Q. Do you know if the supreme alfalfa that is quite often purchased by California dairy farmers is available this year as it's been in years past?
A. I would not be the right person to provide expert testimony on that.

Q. Okay. Thank you.

Moving on to page 2. You mentioned, I think in the first paragraph at the end, you are talking about this National Commission on Dairy Policy.

A. Yes.

Q. And I'm just going to the quote at the end of that paragraph, "Federal law should prohibit California or any other state from using the greater allowance to establish a Grade A price for milk, for manufacturing butter, nonfat dry milk, and
cheese." Given that this was from the 1985 Farm Bill, and Secretary Lyng, I'm not sure when he left office, but I'm gathering it was before 2000. And 2000 was the first time there was end product pricing in Federal Order formulas. What, when it says "greater allowance" what, in reference to what? What are we talking about there?

A. The California was operating in guilty product pricing at that time and did have make allowances included in the end product pricing formulas. You know, how that was being compared at that time to the manufactured prices, manufactured milk prices in Federal Order system, I'm not totally sure, but the concepts that that commission identified that was disrupting, was having a California system operating independently that discounted the California milk price through higher make allowances, and the impact that had on dairy markets throughout the country.

Q. Okay. But it's -- there is a reference to something else operating there using a greater allowance. Is it possible what they are talking about is the allowance used to establish the CCC purchase prices under the support program?

A. I know that the CCC purchase prices were, were, in fact, an issue of interest, and that in that particular commission, so it's possible that they were talking about that.

Q. So if they were, would you agree that that's not exactly an apples to apples comparison?
A. No, no, I wouldn't. The general concept remains very clear that when regardless -- I mean, at that time we had a support price program, and there was concerns about California's participation in the California milk dairy products that were being purchased by that CCC, or support price program, but the idea of operating a state system independently of the federal system, which -- which incentivized additional processing capacity through increased make allowances, was seen as a problem, and a problem that identified, a problem they turned into legislation and approved in a subsequent Farm Bill. And while that language was ultimately repealed in the future Farm Bill --

Q. And never implemented.

A. -- and never implemented, it does not change the fact that the 18 member dairymen panel, Milk Producers Council and other producer groups, strongly supported that. And my reason for including that in this particular piece of my testimony was to demonstrate this is not an issue that producers have only recently come to think about a Federal Order, but the idea of having a discounted price in California is a long-standing concern by California producers, partly by Milk Producers Council and some of our producer colleagues.

Q. Wasn't the position, though, opposed by the Cooperatives? Your position on this issue, opposed by the Cooperatives here in California?
A. I can't speak to what the Cooperatives, what their position was or wasn't back then, they may be able to. But regardless of what their position was, this is has been a concern of producers. What you are seeing now in 2015 is that regardless of what history was, regardless what positions each Cooperative or producer group had at that time, we're all in lockstep at this point, saying that we believe this California Federal Milk Marketing Order is the right approach for our industry, for our producers in the state.

Q. Okay. Also on page 2 of your statement, you note the Administrative hearings held in the last five years. And on page 3 you say, "to put it bluntly, the efforts by producers" this is the top of the page, first paragraph, midway down, "to put it bluntly, the efforts by producers and their representatives have failed."

How did that happen? How did you fail in your efforts?

A. Well, as I noted in the previous paragraph, our producer testimony at those hearings that focused on minimum milk pricing formulas, was to bring better alignment between California's regulated minimum prices and the Federal Order minimum prices. And looking at our largest class of utilization, Class 4b, making about 45 percent of the milk produced and sold in California, we saw the largest gap in 2014 that we had seen in recent history. I don't know how, going back, if there's a month or a period of time or year that saw
larger than that, but at least in recent history that was the largest gap. When you go into these hearings and advocate for better alignment, and you end up with worse alignment than you have had, that's a failure in our books.

Q. Doesn't CDFA, though, give a panel report where they review evidence from the hearing and evaluate it in light of the statutory requirements?

A. They do. They are required to put together a panel report. That doesn't mean that producers have to agree with what evidence they weighted in that panel report.

Q. Would you agree, though, that one of the statutory requirements is fostering the orderly marketing and intelligent production of milk? Have you heard that phrase before from the statute?

A. In the statute, that particular item is listed as a general goal of the dairy milk pricing regulations, among other things. There are other provisions that state that in establishing these milk prices or formulas to establish milk prices, that the Secretary shall calculate prices that result in a sound and economically reasonable, I might get that verbiage a little bit off, but economically sound and reasonable relationship with the national value of milk products.

We could look to different sections of the Code, I believe that CDFA, to the extent that they weighted that
general goal that you just cited of orderly marketing, above
the other provisions in the California Food and Agricultural
Code, that they erred in that interpretation, and that they
gave undue weight to that section, which I don't believe
provides near the direction of some other sections that we did
point to as producers in those hearings.

Q. Your comment about reasonable relationship to the
national value of manufactured milk products, you would agree
that that is not the same thing as the manufacturing regulated
price for Class III or regulated price for Class IV, it doesn't
say, it doesn't reference those Federal Order prices, does it?

A. It references manufactured milk products which, product
is not defined an where in the Code as meaning only a wrapped
and cut block of cheese, it is the manufactured milk products
milk sold for manufacturing purposes. We believe that the
Federal Order Class III and Class IV provide a very clear
indicator of the national value of milk sold at those plants.

But, you know, if there was an alternative, we're happy to
consider it. But we presented evidence at those hearings that
the Federal Order Class III and Class IV was an appropriate
benchmark price for determining what the value, national value
of milk turning, being turned into those products was. And we
advocated a price relationship with California that was more
aligned with those price series.

Q. Are there manufactured milk products prices in the
current California formulas?

A. There may be.

Q. 4a and 4b, are there manufactured milk product prices in those formulas?

A. You could call them manufactured milk products. There are four end products identified in the California formula as the variable features of those formulas; block cheddar cheese, Grade AA butter, nonfat dry milk, and dry whey, those are end products. They are not at all the only manufactured milk products nor is that the way they are described. They are end products used in an end product pricing formula.

Q. But would you agree that they are manufactured milk products?

A. And I think that we could probably talk back and forth. They -- they are products made from milk, deemed for manufacturing purposes. But whether that is -- the law is not clear in the California statute, and of course we're not here to debate the California statute, but there's no definition of manufactured milk products in the California statute that says that it's the end product that a manufacturer makes.

And there's a -- and it is clear that the intent, it is my opinion, because I'm not an attorney, that the statute is clear that the intent is to have a reasonable relationship between California's milk prices and National values of milk for manufacturing use. Otherwise, the statute wouldn't make
much sense comparing milk prices to an end product. So I believe it is, the intent of the statute is quite clear and we made that case, as I noted in that paragraph, we failed. But we continue to move forward.

Q. Okay. So one of those times you made that case was at the hearing you referenced on page 2, May 31 through June 1, 2012, hearing on Class 4b minimum milk pricing formula; is that right?

A. Yes.

Q. As a result of that hearing and the decision in that hearing, did some producer groups sue CDFA in state court?

A. Yes.

Q. What was the result of that suit?

A. That suit was a lawsuit that was filed in San Bernadino County Superior Court, I believe. Milk Producers Council was a party to that lawsuit. It was challenging the Secretary's discretion and stating, asking for relief from the judge because our price, Class 4b price resulting from that hearing, was not going to maintain a reasonable relationship with National prices for comparable milk. And after a hearing with the judge, the judge ruled that he was not prepared to overstep or he rejected our Writ or our claim, and stated that he believed the Secretary had widespread or broad discretion to make the decision.

Q. So he didn't find your argument compelling enough to
overturn the Secretary?

A. He did not, that would be correct. And it ended there. It was not appealed. And so it that particular case ended there. There are provisions in the California law that do give the Secretary in California broad discretion in carrying out those provisions. Now, we don't have to agree with her use of that discretion, Secretary Ross or previous Secretaries, but that is in the law. And that's what you are up against in the California system.

Q. I'm looking at page 6 of your statement. "Proposal 1 establishes quarterly marketing in California," that's the section I guess where it says first Proposal 1 establishes orderly marketing in California?

A. Page what?

Q. Page 3.

A. Page 3. I was on page 6.

Q. 3 of 6.

A. All right.

Q. You make a statement of, "nothing in Proposal 1 suggesting that California minimum prices, establishing" -- I'm sorry -- "nothing in Proposal Number 1 suggests establishing California minimum prices above those regulated prices used in the other ten Federal Milk Marketing Orders, but rather, the prices be established equal to those used in the Federal Milk Marketing Orders."
A. Yes.

Q. So were you here when Mr. Hollon made his first statement, when he read his statement into the record? Were you here?

A. I don't believe -- I was not here and I don't believe that I was able to listen into the whole reading of that statement.

Q. So he talked about the regulated price differences between California and Federal Milk Marketing Orders. And I would say, I guess I'm saying inherent, I'm asking you if inherent in that kind of comparison, is the assumption that, making that comparison sort of apples to apples type comparison is valid? Do you believe that it is valid?

A. Yes.

Q. Another witness, Cornell Kasbergen, when he was on the stand, was talking about California pricing, and pricing in Wisconsin. And he, I believe, said, they were like apples and oranges. If he's right, isn't it the case that making a direct comparison doesn't really reveal everything that's going on in terms of orderly marketing?

A. I did not hear -- well, I was here for Mr. Kasbergen's testimony. You would have to enlighten me as to the apples to oranges comment, whether he was comparing price levels, because he has dairies in both areas, or whether he was comparing regulation. I suspect that he was comparing price levels for
his dairy, but -- but I don't remember that exact line. But I
was here so I must have missed the fruit reference.

Q. We talk about fruit a lot. Okay.

Well, since you weren't here, I won't ask anymore on
that, or since you don't remember, I won't ask anymore on that.
I don't have anymore questions, thank you.

A. Thank you.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Ryan Miltner with Select Milk Producers.

Good afternoon, Mr. Vandenheuvel.

A. Good afternoon.

Q. You say in your statement that MPC has 120 members
approximately throughout California?

A. Yes.

Q. Geographically, how far north do they extend?

A. I believe our furthest north member is a city who
actually testified in this hearing, Wheatmen, that's north of
Sacramento, and we have members down in San Diego.

Q. Nobody up by Humboldt County or that far?

A. No.

Q. Are you generally familiar with how your members milk
is marketed?

A. Generally. Without -- without talking too much
specifics, and we don't reveal where our members milk is
marketed, whether it is marketed through a coop or independent. But I have general awareness, you know, on what coops we have membership into.

Q. And I'm purely interested in those general, general aspects of it. And in particular, I was wondering if you could help me understand how their milk travels from the farm?

A. By truck.

Q. Is that a 50,000-pound truck or can we go larger in California?

A. The State of California, I think you got some limits.

Q. Okay. In terms of the distance those trucks travel, can you expound on that at all? Do your members milk, does your members milk stay relatively close to the farm or does it travel a fair distance?

A. I would generally put it that it's -- it's a range depending on the farm. I know that there are farmers that, dairy farmers that are members of ours, that live, you know, in the Central Valley and bring milk into Southern California, service that market. There are other dairy farmer members in the northern part of the valley that bring milk into the Bay Area. You know, it was longer hauls into Class 1, 2, or 3 uses, and then I'm sure there are other plants that have more of a local home, whether that be, could still be a Class 1, 2, or 3 plant, but it also could be a manufacturing plant, but that's about as much as I can say.
Q. Would it be, I don't want to say common, but would your members perhaps have an instance where milk produced, say, in the North Sacramento Valley, North Bay Area, could go and have to travel as far south as, you know, Los Angeles to get milk to a plant?

A. That seems like a long way to haul milk. I believe that the South valley, I, first of all, a disclaimer, I'm not in the business as a Trade Association General Manager, of facilitating the haul of milk to any location. My expertise is as an observer and as a party in hearings where these regulations are shaped. But -- but California Department of Food and Agriculture does put together an analysis on I believe a semi-annual basis of the milk that is traveling to Class 1, 2, and 3 plants in the Bay Area, Los Angeles, and San Diego, and which regions that milk is coming from. So I would reference that particular report, which I think is in April and October, rather than anything that I could say independently.

Q. Thank you. That's helpful. I believe it was in response to Mr. English, but I won't, don't hold me to that, he asked you if the prices California dairy farmers received in 2014 were the highest ever. And I believe you answered that they were. Is that, my recollection correct?

A. Yes.

Q. However, during that same period you were still being paid on formulas that paid you less than the federal formulas
per return. Is that also correct?

A. That is correct and it is an important distinction that I should have clarified at that point, and it goes to the fundamental core of this hearing and these individuals that we have been discussing. The market prices in California in 2014, the milk prices, based on market values of the various dairy commodities, was higher than previous years. It does not mean that we didn't still have a discount in our regulated prices compared to other regions which, in turn, make a year like 2015 much more difficult, because you leave revenues that producers believe should have been paid through the pool and then producers pockets going into a year like 2015, and they aren't there. We are an industry that does deal with peaks and valleys. You try to save up in the peaks to make it through the valleys, makes it very difficult when these peaks are arbitrarily reduced by regulatory system, and therefore, puts you in a weaker position going into the next valley.

Q. You noted in your testimony that you and Milk Producers Council have been working on the equity, creating more or equitable situation for your producers for awhile. Just my knowledge going on ten years or so, at least, would that sound right to you?

A. That my history starts in 2007, but I know I was not the first manager there that fought the good fight.

Q. So, since you have been there, you have worked on one
or two Farm Bills?

A. There was two. 2008, I believe there was one, and 2014.

Q. So two since you have been there?

A. Yes.

Q. On the latest Farm Bill in particular, there was a change to focus less on producer prices and more on producer margins. I know you were a part of that. Could you give us a little bit of that for the record and why the focus on margins is more important than focus on price?

A. Yeah. A focus on margin brings into the debate the extensive feed costs that we have faced. And we could probably spend a long time in this hearing -- which we don't need to -- but on the impact of ethanol and the impact it's had on the ethanol and renewable fuels, and the mandates that the Federal government has instituted, and the impact that's had on corn prices. But historically, we had programs, safety net programs in the Federal government that were driven solely by price. And I want to say 2008, but it might have been before that, for the first time, the Milk Income Loss Contract Program incorporated a feed cost adjuster. And so you, they incorporated -- they being Congress -- incorporated a feed cost adjustment to recognize that a dairy isn't just a milk price, but rather a milk price relative to the cost of producing that milk.
And in 2014, the Farm Bill discussions took that a step further and had a specific formula milk price minus feed cost as the driver of the safety net programs.

Q. So in 2014, you just said that was an extraordinary year for dairy farmers across the country, correct?

A. It was. It was.

Q. Now, looking just at the margins, how did the margins in California compare to the rest of the country?

A. Without having the data in front of me, I can't speak too much in specifics. But in general, without exception, the California blend prices that are paid to dairy farmers or that drive the ultimate prices that dairy farmers are paid, is lower than the U.S. all milk price which is used in that formula that the USDA uses in that margin protection program. And so that certainly, that certainly means that our margins are not the same in California as they are in the U.S. scenario, the national average so-to-speak. And therefore, we have tighter margins traditionally than that U.S. margin.

Q. I think just one more question about your California discount.

A. Uh-huh.

Q. And you stated in response to a question that you have written about that in your MPC newsletters?

A. A couple of times.

Q. I think you may have mentioned it in your most recent
newsletter. Could you just, based on your analysis of the California discount and recognizing that CDFA recently changed their formula, the whey factor and their formula, your last article, last time you looked at it, what was the effect of CDFA's change on the California discount?

A. The effect was zero. It was no difference between the 4b price as a result of the Secretary's change versus before that change.

Q. I don't have anything else, your Honor.

JUDGE CLIFTON: Who else has questions for Mr. Vandenheuvel? Mr. Beshore?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Just a couple questions, Rob.

Does Milk Producers Council have members who are not members of the three proponent Cooperatives?

A. Yes.

Q. So that, with Milk Producers Council's support, that is additive in terms of the California dairy farm population in total to the support represented by the proponents of the proposal?

A. Correct.

Q. You probably asked this indirectly, if not directly, but just directly, how long, if you know, has Milk Producers Council supported a Federal Order in California? How long?
For how many years?

A. You know, in my time here, which is really all I can speak of, when I came into this position in 2007, we were working on an effort at that point to try to answer some of these questions about what California Federal Milk Marketing Order would look like. We drafted a letter to then Federal Milk Marketing Administrator Jim Daugherty of the Arizona and Northwest Orders. That did not result in any action. Tough enough managing an order that's split, there are two Orders that are not next to each other. But I, the interest goes at least to that point. And certainly the idea of having alignment between California and what's going on in the rest of the country is something that MPC has had a long history of.

The first producer I mentioned on that commission back in the 80's was George Mertens. The second producer was a guy by the name of Fred Douma who served on the Milk Producers Council Board, so we have been involved going back a lot of years prior to me.

Q. You were asked, you made some comments in your statement about the ability of Federal Order to capture and regulate interstate transactions the way the current state system cannot. And I think Mr. English asked you, do you know, you know, the terms of those transactions that are ongoing. But of course you are not involved, so you don't know the terms per se.
My question is, do you nevertheless, not know that the minimum, there are not uniform minimum regulated terms involved in those transactions?

A. Do I know that there are not regulated? I feel like there's a double negative of some sort.

Q. Well, you do know that those transactions do not have minimum regulated terms?

A. Correct. Correct.

Q. Okay?

A. Yes.

Q. Whatever the terms are, there is no minimum regulated floor?

A. That's right.

Q. So just one question about your thoughts on the impact analysis and projections going forward. Knowing, knowing California milk, the dairy situation in California, and your membership, and conditions in the industry, what impact -- what result do you see in terms of production in California if, in general terms, if Proposal 1 were to be adopted?

A. In general terms, I would -- I would expect that we could possibly see a slow up in the attrition of producers and milk production here in the State of California. It would make dairy farming appear to be a better investment and use of property than it is now.

Right now, the difficulty in competing for acreage with
permanent trees is, permanent trees have a more stable and
proven revenue and income stream for that property. And, you
know, milk is certainly capable of generating enough revenue to
make use of property as a dairy farm, a profitable venture, a
venture that as dairymen, is worth investing in.

I see a lot of barriers to dramatic growth over where
we are at today, but I think it could be very helpful in
protecting the dairy farmer assets that we have currently in
the state.

Q. Would it be fair to say that you don't, you know, in
your view, with all your knowledge base and your experience,
you don't -- you wouldn't consider your six percent growth year
after year to be in the future of California milk production?
A. I think that is an assumption. An assumption that is
based on a history, not what I, where I see this industry going
based on my knowledge of our producers and the state conditions
that have an impact on future growth. No, I would agree.

Q. Thank you very much. No further questions.
JUDGE CLIFTON: Did you know how to spell Daugherty?
Well, that's what we'll use. We have already mentioned
Mr. Mertens. Now you have added Fred Douma.
MR. VANDENHEUVEL: D-O-U-M-A.
JUDGE CLIFTON: Thank you. Mr. Vandenheuvel, did you have
any ideas so many people would ask so many questions?

MR. VANDENHEUVEL: Never know on this crew.

JUDGE CLIFTON: Does USDA have additional questions for
Mr. Vandenheuvel?

CROSS-EXAMINATION

BY MR. FRANCIS:

Q. Will Francis, USDA. Just a clarification.

You mentioned Bay Area in both your written testimony
and in response to some questions. We want to make sure we
understand what the deficit market area is. I think that's the
area surrounding San Francisco? Would you happen to know what
counties comprise that region?

A. I could get that. There is a publication that
California Department of Food and Agriculture identifies, and
it is based on counties. They have a list of counties, and --

Q. Yeah, I --

A. If I get a nod from the coops, it could be the same
counties we identified in Area 1 of the Cooperative proposal,
but I don't see Mr. Hollon give me the nod. But the
Cooperative proposal also identifies two regions, the Southern
California and Northern California region. I would expect that
they would be strikingly similar if not identical in the
counties they identify.

Q. I'm sorry, you said Northern California and Southern
California?
A. So the Los Angeles and San Diego areas would be Southern California, the Bay Area would be, like you said, the region around San Francisco, which is the Northern part of the state. And give me just a second. Transportation zone number 3 is listed in the Cooperatives' proposal. I don't know if it's identical to a zone identified in Proposal Number 2. But it is listed as the counties of Alameda, A-L-A-M-E-D-A; Contra Costa, C-O-N-T-R-A, C-O-S-T-A; Marin, M-A-R-I-N; Napa, N-A-P-A; Santa Clara, S-A-N-T-A, C-L-A-R-A; San Francisco, S-A-N, F-R-A-N-C-I-S-C-O; Santa Cruz, S-A-N-T-A C-R-U-Z; San Mateo, S-A-N M-A-T-E-O; Sacramento, S-A-C-R-A-M-E-N-T-O; Solano, S-O-L-A-N-O; and Sonoma, S-O-N-O-M-A.

Q. Thank you.

JUDGE CLIFTON: Are you content to have your reference to Bay Area include those counties?

MR. VANDENHEUVEL: Yes.

JUDGE CLIFTON: Good. Now, you mentioned something else, Mr. Vandenheuvel, that you would be willing to get, and I don't know whether we still need you to do that for us. Do you remember what that was?

MR. VANDENHEUVEL: Sounds like homework, so, no.

JUDGE CLIFTON: Mr. Vetne?

MR. VETNE: Your Honor?

JUDGE CLIFTON: Yes, Mr. Vetne?

MR. VETNE: I think that was our discussion concerning the
option of California Cooperatives or producers to include in
the pool or not include in the pool, distressed milk that is
sent out-of-state or delivered to heifer replacement farms,
that kind of transaction, that does not go to a California,
current California Milk Pool plant. And I'm content with
looking it up and referencing the regulation. I have been
there before, I can probably do it again, I was just hoping to
safe myself a little homework.

JUDGE CLIFTON: I think you are right, you were asking him
of his knowledge of the California Regulation. So if he
doesn't remember it as he sits here, we can look it up.

MR. VETNE: I can. I know how to do that, thank you.

JUDGE CLIFTON: That's right.

MR. VANDENHEUVEL: And I'm okay with Mr. Vetne looking it
up. I will look it up for my own knowledge, if not for this
hearing. It really is a different issue. I mean, it's a
tangent issue, but my point in the testimony with regard to
that issue was that the cost of selling and marketing
distressed or surplus milk is a cost borne by producers and
their Cooperatives, not a cost borne by proprietary plants that
are purchasing their milk, and only purchasing the milk that
they need under contract. So it was a statement on who is
responsible for paying those costs. Now, the issue of whether
it gets reported to the pool is a tangential issue, and I'm
happy to look it up and provide data, but it wasn't really the
point I was trying to make.

JUDGE CLIFTON: I would like you to look it up. You said you would be here for a few days; is that right?

MR. VANDENHEUVEL: Today and tomorrow.

JUDGE CLIFTON: If you do find it and would like to be recalled, that would be great. It may be a little detail that needs to be addressed in whatever happens in the proposed order. Okay.

Are there any other questions for Mr. Vandenhuevel?

Thank you so much. I appreciate very much your testimony. You may step down.

Should we do a break before we recall Dr. Erba? Is there anyone else who has arrived who wants to testify today? I see no one.

All right. Why don't we take a break until 3:40. Be back and ready to go at 3:40 when we will expect Dr. Erba to take the stand.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 3:40. Slight change of hands, we have an additional witness before we recall Dr. Erba, and that's a gentleman who will only take, as he explained it, two to three minutes. Now, he may not know about cross-examination, how long it can take. Would you please state and spell your name for us?

MR. DOORNENBAL: Okay. My name is Rien Doornenbal. The
spelling of my first name is R-I-E-N. Doornenbal is spelled, D-O-O-R-N-E-N-B-A-L.

JUDGE CLIFTON: Thank you. Now, you have some notes in front of you, but that's not something you want to have photocopied and distributed to all of us; is that correct?

MR. DOORNENBAL: That's correct. And I wrote it out longhand, I don't think there's anyone else in the room that could read it.

JUDGE CLIFTON: Before you go to your note, would you just tell us a little bit about your connection to milk and your connection to the geography in California to get us oriented?

MR. DOORNENBAL: I would be glad to. In fact, my note starts out that way. I'm a dairy producer from Escalon, California, that's due north of here about 120 miles, near the town of Modesto. I plan to testify at a later date in favor of the Cooperatives' proposal which I have come to know as Proposal Number 1.

One of the reasons I'm here today is to help prepare for that testimony. If you will allow me to tell a short but humorous story from my past that relates to why we're here. As close to ten years ago, while I was a Board Member at Western United Dairymen, we were at a board meeting in Modesto, and representative Collin Peterson was in town and he paid a short visit to our Board. And we had a nice little chat. And, of course, he's on a strict time schedule, and his entourage was
tugging at his shirt sleeve and saying, "Come on, we have got
to get going," and they are practically dragging him out of the
room. And he shakes his finger at us and he says, "One of
these days I'm going to get you into the Federal Milk Marketing
Order." And us dairymen in that room that were on the Board of
Directors at that time with Western United Dairymen, we were
just totally taken aback by that statement. We didn't know
what to make of it. And I remember thinking, "Yeah, sure, when
pigs fly."

In my wildest dreams I couldn't have imagined being
part of this process we are witnessing today. Even though we
as dairymen knew that the California system was not perfect,
back in those days we couldn't imagine thinking about change.

The fact that we are here, that we have gotten to this
point in the process of moving towards a Federal Milk Marketing
Order for California, is a witness to the disgust the producers
have for the current system in California. Thank you.

JUDGE CLIFTON: That got our attention. You will be back?
Do you know when you will be back?

MR. DOORNENBAL: I will be back when my testimony is
prepared.

JUDGE CLIFTON: All right. Would anyone like to ask
Mr. Doornenbal questions today about what he's told us so far?
They are going to wait. I appreciate very much your coming and
sharing that. It was very timely. You may step down.
We're now at 3:45. And Dr. Erba, you remain sworn.

Would you again state and spell your name?


JUDGE CLIFTON: You have already been cross-examined for hours last Friday, but we didn't finish, we ran out of time and we'll resume now. And I'm sure people have thought of additional questions. Mr. Vetne, you may resume.

CONTINUED CROSS-EXAMINATION

BY MR. VETNE:

Q. John Vetne, Hilmar Cheese Company representative.

Dr. Erba, I'm hoping you can spare me my homework. Do you know the answer to the questions that I put to Rob Vandenhuevel concerning distressed milk sold out-of-state or to a heifer replacement farm here, whether it is optional to include it or not include it in the pool, whether advanced notice has to be given?

A. I don't know precisely and I think you would be better off to research that than rely on my word. I really don't know it that well.

Q. Okay. I'm going to hand you a document entitled "Dairy Situation and Outlook 2010, Authored by Eric M. Erba." I'll ask you if you recognize it, I'll ask it be marked. Mr. Dejong is going to hand out copies according to protocol.

JUDGE CLIFTON: Will this be Exhibit 51?

MS. FRISIUS: It will be.
JUDGE CLIFTON: I've marked mine and I'm going to ask that you mark your exhibit as Exhibit 51, that's 51.

(Thereafter, Exhibit Number 51 was marked for identification.)

JUDGE CLIFTON: If you want a copy of Exhibit 51 and do not yet have one, will you raise your hand?

BY MR. VETNE:

Q. Dr. Erba, do you recognize this document?
   A. Yes, I do.

Q. And it's a report that you authored and presented at proceedings in Visalia, California in 2010?
   A. It was not in Visalia.

Q. No?
   A. I thought it was down south. I'm pretty sure it was down south.

Q. Okay. It's a document you authored?
   A. Yes.

Q. And presented to an audience of Western Dairymen perhaps others, correct?
   A. Yes.

Q. Okay. And in the introductory paragraph you refer to "the model in California causing 25 years of extraordinary growth in milk production and processing capacity."
   Do you see that? The first four or five sentences?
   A. Are you in the abstract?
Q. Pardon?
A. The abstract?
Q. No, the introduction, sorry.
A. I'm sorry. Yes. Yes, I'm there.
Q. I'll read it to you.

Starting on the fifth line down, sentence starting towards the end of the line:

Only recently have the vulnerabilities of this business model been exposed. Milk processing capacity became a limiting factor, cost and feed skyrocketed, and milk prices plummeted.

JUDGE CLIFTON: It may not make a difference, Mr. Vetne, but will you read that again, please?

MR. VETNE: Okay.

Only recently have the vulnerabilities of this business model been exposed -- milk plant processing capacity be a limiting factor, the cost of feed skyrocketed, and milk prices plummeted."

MR. VETNE: Do you see that, Dr. Erba?
DR. ERBA: Yes.

BY MR. VETNE:
Q. You are in -- in that sentence, referring the vulnerabilities that you are referring to, that's vulnerability to dairy farmers?
A. Yes, it's a vulnerability of the, basically the dairy
farming operation and the related aspects of dairy farming, including plant processing capacity that were built over a period of seven years, if not decades.

Q. And what -- what is the vulnerability to dairy farmers with respect to plant processing capacity, either adequate or inadequate? How does that affect farm vulnerability or invulnerability?

A. The -- on the plant processing capacity side, the ability of plants to accept adequately, and process milk so it has a place to go.

Q. So if there's no place for farm milk to go, farmers are vulnerable because they may have to absorb costs, as we discussed a little bit with Rob Vandenheuvel, of transporting milk out-of-state, or dumped, or feed lots, heifer replacement farms in California, among other disposition alternatives, correct?

A. I suppose underlying what I said was that a reasonable return to the dairymen, and the options that you went through do not result in reasonable returns. If you had to dump the milk, take it to a calf ranch, take it out-of-state, the returns there would not be what they are inclined to believe they are entitled to.

Q. Okay. All right. And on page 5 of the report that you prepared, there is additional specific information on processing plant capacity. Do you see that? I'm sorry, I
numbered the pages in my copy, and they weren't numbered as they came off the printer, but I numbered the bottom of my copy and the bottom of the witness' copy so that we could quickly refer to the pages. So it's a chart, figure 5, which appears on the fifth page of this document.

Dr. Erba, you prepared an estimate of California plant processing capacity and put in paragraph form, correct?

A. Yes.

Q. Okay. And when you presented this paper in 2010, those are your best estimates of processing capacity at that time, correct?

A. Yes.

Q. Okay. Has California plant processing capacity for any of these uses, changed significantly since you prepared this paper in 2010?

A. That I couldn't tell you. I have not tried to redo using the same type of data, same type of procedure with current data that I did in this chart.

Q. Okay. Are you aware since 2010 of any significant net expansion of either butter powder or cheese processing capacity?

A. Not on butter powder. On cheese, I couldn't tell you exactly.

Q. Okay. And there are three other categories, fluid milk, which is California class -- or I think one soft dairy,
which is California Class 2 and ice cream which is Class 3, would it be correct to say that those three categories are processing capacity do not ordinarily provide a reasonable place for the marketing of excess milk supplies?

A. I think that's accurate.

Q. Because they have uses based, basically on local or state demand for those products, and simply giving them more milk doesn't mean that more product will be consumed; is that correct?

A. I believe that's accurate.

Q. And on the following page, which is the sixth page of the publication, top of the page, with the heading California Supply Management. The middle paragraph on that page, towards the bottom of the sentence that says, "it did not take long for a proliferation of milk supply management programs to merge across California."

Do you see that sentence?

A. Yes.

Q. Okay. When I read the word "proliferation" I infer a variety. Can you describe characteristics of variety among various plans of which you are aware?

A. Well, I suppose if you asked me at the time I wrote this I could tell you, but as of today I can't tell you very much about what those programs are. I do know that at the time they were all different. They are all their own set of rules,
none of them operated exactly the same way, but they all were
released or implemented with a very short window of time.

Q. Okay. And they were stimulated, correct me if I'm
wrong, because in 2007, 2008, there was insufficient capacity
during some months to handle California's production, and there
was, in fact, milk that was shipped out-of-state in order to
find a home, correct?

A. Yes, I think in general that is true, although the
specifics that we just eluded to, my knowledge of what happened
and are accompanied CDI.

Q. Your current recollection of the supply management
programs emerging after 2007, 2008. Do you have a memory
enough to say that at least one thing they had in common was a
deep discount in the price paid to dairy farmers for milk
produced in excess of a certain volume in the event of a
certain occurrence?

A. I wouldn't say that, because I don't know that. But
even in our own situation, I would not describe it that way.

Q. You would not?

A. No.

Q. Okay. What about the first component payment to dairy
farmers of a significant discount?

A. That's the part I'm not agreeing with.

Q. Oh, okay. What -- you don't agree with the word
significant?
A. No, I don't.

Q. Would discount be accurate, however?

A. There would have been a discount, but at least, again, I don't know the other programs, I don't know how they operated, but in our case, it was on a fixed number. It was something that fluctuated with the ability for the Cooperative to find homes for the milk, and sometimes it was a discount, but on a smaller variety, and sometimes got to be quite large, but it was not consistently large discount.

Q. Okay. Got it. Is that true for the current supply -- well, first of all, there is a supply management program within CDI at the current time?

A. Yes, it is operated continuously since it was implemented in 2008.

Q. So you have a current recollection of what exists in CDI today?

A. Yes.

Q. Okay. And that is what you described are discounts, varying amounts in varying circumstances?

A. We have only had a charge back to the membership on milk shipped over production base, once in the last four years. One month.

Q. One month. That's a description of a current, so the discount -- is there a formula or policy applied that would serve as a visual disincentive for overproduction?
A. No. There is a policy that was approved by the Board, Board of Directors, and that is proprietary, and I will not share that today, but there is a policy that it is known to at least the Board of Directors that manage California Dairies.

Q. Okay. If you turn to the next page, which is the seventh page of the dairy situation and outlook paper. The third line sentence, "most, if not all, of these programs remain in place, but penalties are not being administered."

Do you see that?

A. Yes.

Q. Okay. You indicated that as a truth in 2010. Has it continued to be a truth through 2015, penalties are not being administered?

A. Not sure about anything other than our own program, and as I said, we haven't administered a penalty for overbase shipments of milk, other but one time, one month in the last four years. Not sure about the other programs.

Q. And in the following sentence you refer to, well, why don't you read the following sentence out loud, "other factors?"

A. "Other factors have surfaced in the last two years that have effectively limited milk production in California, as would any of the supply management programs, namely profitability."

Q. As I understand what you are saying there is, that
producers cut back on production as producers in the aggregate have less profitability, correct?

A. I think that's generally true. And again, I can only speak as an authority on what's happening at California Dairies. The profitability was a major deterrent to overproduction of milk.

Q. Okay. Was a newspaper article once that quoted Mark Stephenson as saying, "The solution to low prices is low milk prices." Is that basically the same thing?

A. It may be, but you probably should talk to Dr. Stephenson about what he meant there.

Q. Okay. I'm going to the eighth page of your report. There's a chart figure down there, just for reference to the page.

On the third line there's a term used on the following sentence:

Bear in mind that prices for almost all feeds have increased simultaneously. The so-called sympathetic price increases are of evidence across all feed stuffs when the price of one major commodity increases suddenly.

I'm not sure I understand sympathetic price increases, maybe sort of like sympathetic labor pains that husband's feel.

A. I think you are on the right track.

Q. Okay. So would it be correct to say then, that if a
necessary and significant feed stuff ingredient increases in price, suppliers of other feed stuffs see an opportunity to price their alternative feeds accordingly?

A. There may be some actual reasons to do that, so if you have a significant weather event that affected corn, it might have affected other crops as well. But I think, again, I think you are on the right track.

Q. Okay. And then the balance of your presentation before you conclude, you make a comparison of "cost of production relative to milk income for California dairy farms." Your source there for cost of production would be CDFA cost of production data; is that correct?

A. I think so, but I'm trying to read through this as you are asking the question. I think that's right.

Q. They provide quarterly information to CDFA?

A. Yes, yes.

Q. And the milk income data would -- what's the source of that, if you remember, in this report?

A. I do not remember. Although, I have to think that it also came from the Department since I put them on the same chart, but I don't remember exactly.

Q. Okay. Is it true that CDFA's cost of production include like -- includes like most milk cost of production data, a feed component, correct?

A. Yes.
Q. And then is it true that that feed component uses a derived or imputed value for some things such as the value of alfalfa grown on the farm, giving it the same value as purchased alfalfa?

A. There is a way -- there's a method that they use to reconcile the difference between buying it, a feed, and growing it at a producer growing it themselves, but I do not know what that is.

Q. Okay. Do you know if it includes innovative alternative feed sources such as have been discussed occasionally here from other agriculture outputs in California, such as almond hulls, or beef pulp, or other agriculture byproducts that might be available from nearby farming operations?

A. I don't know. I think so. I think it's when they do the surveys of the individual producers, I believe it's representative of each of those producers and it doesn't follow a specific formula, so-to-speak, but I couldn't tell you exactly if that's true or not. I believe that's correct.

Q. Okay. And the CDFA cost of production data includes some imputed costs like owner, owner-family, labor return on investments, correct?

A. Yes, I have got some adjustments in there for that.

Q. Okay. Thank you.

Your Honor, I ask that Exhibit 51 be received?
JUDGE CLIFTON: Does anyone have any questions for Dr. Erba about Exhibit 51 before you decide whether you have any objections? No one.

Is there any objection to the admission into evidence of Exhibit 51? There is none. Exhibit 51 is admitted into evidence.

(Thereafter, Exhibit Number 51 was received into evidence.)

MR. VETNE: Next I'm going to ask the witness to identify a letter petition dated June 16, 2014.

JUDGE CLIFTON: Ms. Frisius, should we mark this one as Exhibit 52?

MS. FRISIUS: This is marked as Exhibit 52.

(Thereafter, Exhibit Number 52 was marked for identification.)

JUDGE CLIFTON: We have run just shy. Shall we make a couple more copies? Please raise your hand if you want one and didn't get one. All right. You may proceed.

BY MR. VETNE:

Q. Okay. Dr. Erba, do you recognize this letter?
A. I do.

Q. It's a letter petition that you authored for California Dairies, Inc., and submitted to CDFA Secretary Ross for a Class 4a hearing; is that correct?
A. Yes.
Q. Rob Vandenheuvel had a list of recent hearings on page 2 of his testimony, and I'm not sure I saw a hearing approximate to June of 2014. Did a hearing result from your petition?

A. No.

Q. Okay. And in this -- you made this request because the cost of converting milk to butter and nonfat dry milk had increased; is that correct?

A. The Department conducts manufacturing costs studies every year, publishes results, and what we are, what we are paying attention to, and will be normally pay attention to every year, is the relative difference between the current manufacturing cost allowances that are in the pricing formulas, and what the cost data results say. And if there's a wide enough gap, there would be normal way to bring that to the Board's attention, our Board, CDI's Board, and ask them for direction, and then they would further direct us as to what to do.

Q. Okay. So in this case, the Board directed you to petition CDFA for a modification of the manufacturing allowance, make allowance in the formula, correct?

A. For the Class 4a formula, yeah.

Q. Okay. And I think you and I had a conversation before we ended on Friday, and a reason that that's important is so that all farmers share equally in the burden of disposing of
surplus products, and they are not disproportionately borne, in
the case of 4a, by CDI producers, more than other producers
generally in the pool, correct?
A. I think that's generally correct, but I don't know that
our board and CDI staff discuss it that way. We discuss it as
the Department has a core group that goes out -- they are
experts -- they go out and collect information on cost studies.
They take the time to do that, they publish the results, and
then the results end up sitting on a shelf unless you do
something with them. And that was our, the reason for our
action is, we want to see the information that was being
collected and published was actually being used.

Q. Okay. On page 2 of your letter, middle paragraph,
where -- the next paragraph there, fourth line down, it is the
sentence, I'll read it.

Simply, the manufacturing cost allowances should
be consistent with actual cost for processing. In
the butter commodity price, it should be adjusted
by a factor that reflects what California plants
actually receive for the products they market.

Do you see that?

A. Yes.

Q. Okay. By a reflection of what California plants
actually receive for the products they market, are you there
referring to, in this case, the price of butter FOB California
origin source?

A. Right. So that would be the, as the CDFA staff goes out and audits the plants for their cost, part of the information they pick up is how much were they paid, or in this case, bulk butter that was sold in specific months.

Q. Okay. Is there any different economic rationale, other than, look at the price reflecting what California plants actually receive for the products they market, when one is referring to a product other than butter, such as cheese or nonfat dry milk?

A. I'm not sure I follow you here.

Q. My question, you were specifically here referring to a butter?

A. Yes.

Q. FOB adjustment?

A. Right.

Q. That you referred in the plural to plants and products. Would what you say for butter also be true for other products that in setting the price, look at California plants can get for them?

A. In the case of powder, I suppose you could do it. But because the pricing system in California already references a California base price, there's probably no reason to do that.

Q. For nonfat dry milk, the Western nonfat price is, in effect, a California FOB price, correct?
A. I -- well, except for the Dairy Gold, but, yes, they do an internal California assessment of what that price is, and there's probably no reason to adjust it. But from what I have said on butter, you can also make the same argument for cheese, in fact, that's what CDFA does, they do it for both butter and cheese.

Q. And not only do they do it, but there's rational economic basis for doing it whether CDFA does it or not, correct?

A. I think it is always good to have the information available, yes.

Q. Now, if a Federal Marketing Order is adopted and sets a Class 3 price, a reference price, it doesn't bear a reflection of the price that, in the case of Federal Class III, California cheese plants can get for the products they sell in California?

A. Just as with our butter producing operations, we report that to USDA, as I'm sure the cheese plants do, so we do become part of that national survey.

Q. Actually, I wasn't -- that's part of the survey. Okay. Let me get back to my other question.

It's your understanding that when USDA surveys, it surveys a cross-section of plants and transactions across the country in that product, in the case of cheese, cheddar cheese? In the case of powder, powder nonfat dry milk? A cross-section of plant's various transactions at various places in various
plants, correct?

A. I think so, but I'm not exactly sure how they split that up.

Q. Okay. To ascertain whether -- whether those surveys are weighted spatially, geographically to one region or another, one could surmise from dairy products report as produced by NASS, be that good or bad, that relatively speaking, a portion of more cheese is produced in the Midwest in proportion to more NFEM is produced in the West, correct?

A. If you said quality, I would say I'd probably agree with you, but I don't know what those exact numbers do look like. But just based on my knowledge about what those plants are, where they operate, I would say what you said is true. But as far as information that would be reported to or reported out of NASS, I don't know how that they would do that. I don't know if they can do that for confidentiality reasons.

Q. Okay. If there is a Federal Order in California, and the Federally regulated price for milk used to produce butter and nonfat dry milk is greater than the amount that CDI can recover from the market in California, have you given consideration to contingencies on how that loss will be distributed among your membership or other producers?

A. Well, I'm hopeful there aren't any losses. We do other things besides produce butter and powder, and it may be that our product plants suffer somewhat on profitability under a
Federal Order in California, but the challenge is still to make -- are two-fold. To provide a service to our members and to try to achieve profits. We have kind of a two-prong approach here.

We don't do only butter or powder, we do other products as well. We do cream and condensed, and we provide milk to other entities, and the combination of that would be, we would be -- we would going toward our profitability. So although we may be challenged on one aspect of the business, it will just be a contingent upon, or it will be a challenge for us to try, to the staff of CDI to continue profits at a reasonable level, even if they are a slightly reduced level.

Q. Does -- well, I don't mean to be flip in this question, but when I asked about contingency plans, you said were you hopeful. And if you have any, apart from wishful thinking, could you indicate whether you do, the next question might be a little more nosey. But, do you?

A. I think you can appreciate, Mr. Vetne, that kind of depends on what the decision is that comes out of this entire process. But CDI, in general, is looking to move away from bulk commodity-type products, like a bulk butter or a nonfat dry milk, into more specialty products. And that will be a transition over a period of years. But that is our focus right now, is to move into other products besides a bulk commodity-type products upon which the prices are usually
Q. Is it your opinion that a Federal Marketing Order, if adopted, will provide you opportunities that do not now exist under the State Order to transition to other kinds of products like you described?

A. I don't think so. These plans have been in place for a couple years now, and they will continue to follow them, no matter what the regulatory environment is, whether it is the State Order or a Federal Order, we'll continue on this path.

Q. Okay. Is it your belief that operating losses for butter powder plants will stimulate that search for alternative uses in a way that breaking even has not stimulated up until now?

A. Again, I don't think so. Like I said, the plans have been in place for sometime, and I don't think we're going to wait around to see what the result is. We have got the strategy set and we're going to try to move forward as best we can under whatever the regulatory environment is.

Q. Okay. Thank you. Your Honor, I'd ask that Exhibit 52 be received. No more questions on it?

JUDGE CLIFTON: Does anyone have any questions for Dr. Erba to determine whether you object to Exhibit 52 being admitted? No one does. Is there any objection to the admission into evidence of Exhibit 52? There is none. Exhibit 52 is admitted into evidence.
Thereafter, Exhibit Number 52 was received into evidence.)

MR. VETNE: Your Honor, I have one more document and then I'll sit down. It's an excerpt from transcript of testimony of Dr. Erba at a hearing before CDFA on Monday, May 20, 2013. The entire, his entire testimony is excerpted, but not the entire transcript. I'll show it to the witness and provide the charge with a copy.

JUDGE CLIFTON: Ms. Frisius, will this be Exhibit 53?

MS. FRISIUS: It will be.

JUDGE CLIFTON: Thank you. This will be Exhibit 53.

(Thereafter, Exhibit Number 53 was marked for identification.)

JUDGE CLIFTON: All right, thank you.

BY MR. VETNE:

Q. Everybody has one. Thank you.

        Dr. Erba, do you recall appearing at a CDFA hearing on May 22, 2013, to discuss class price formulas and, in particular, but not exclusively, 4b whey formula?

A. Yes.

Q. There was one of the hearings on Mr. Vandenheuvel's list, on page 2 of Mr. Vandenheuvel's testimony.

        And we see your testimony beginning on page 49 and 50 of the transcript of that proceeding.

A. Yes.
Q. Okay. Do you recall being there?
A. Yes.

Q. Okay. You were there in particular to advocate for improving the way whey is accounted for in the California Class 4b milk price formula, correct?
A. Yes, we had a series of hearings on that same issue.

Q. Now, if you look at page 51 of the transcript, second full paragraph, it is only two sentences, the second sentence reads:

Our proposal will bring equity to the price of milk used in cheese processing and will also provide California Dairy producers the relief they need.

I want to direct your attention to the word equity. And tell me in which way the 4b price was, at the time, inequitable and in what way your proposal would make it equitable or more equitable?

A. As I said, we have a series of hearings over the same issue, and our intent was to bring that California price, 4b price, in better alignment with the Federal Order price, the Class, Federal Class III price.

Q. "By in line with," do you mean a price that would move up and down in concert, or close to concert with the Federal Class III price?
A. I think that's an accurate description.
Q. At the bottom of page 52, the last full sentence, you state:

Instead, we are proposing what we believe represents a solution to the milk pricing inequity that can be justified based on milk prices in surrounding states and market conditions facing the dairy industry.

In that part of your testimony, were you referring in part, to the statutory directive governing CDF activities that Mr. Vandenheuvel talked about, statutory directive that the CDFA consider milk prices in other states?

A. No. I think throughout, at least -- probably gonna misstate this -- but we have tried not to go back to the California Food and Agriculture Code and underscore repeatedly the Code Sections are there, the guidance that they provide. Our appeal was that we felt the prices were not aligned correctly, and we appealed two things other than the Food and Ag Code to get them back into alignment. That's why when you look, I think, at that testimony, although I'm not totally certain, we don't do an extensive job from citing Food and Ag Code Sections.

Q. Okay. Continuing through page 54, the paragraph that begins in full there, you say:

Second to when making class by class comparisons of California milk prices with those in other Milk

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Marketing Orders, only one class of milk stands out in the comparison as not being at all close to its federal counterpart, and that's Class 4b -- that's State of California 4b -- while California prices do not have to match milk prices found in other marketing orders, the prices ought to be reasonably close.

Do you see that?

A. I actually believe if you gave me a line number that would be.

Q. Line 6 through 13.

A. That's better.

Q. If that helps. Page 54, line 6 through 13.

A. I'm on the wrong page, that would help.

Q. 54, yes okay.

A. I'm sorry, did you ask me a question and I'm not answering it?

Q. And I read that paragraph, line 6 through 12, and then you proceed to compare butter, milk, fluid, Class 2 and Class 3 in the testimony that follows.

Do you see that?

A. Yes.

Q. Good. And then on the top of page 55, after going through that exercise, your testimony was:

I suggest that for those price comparison and
acceptable level of price difference between California prices and Federal Order prices is demonstrated.

Do you see that?

A. Yes.

Q. And for each of those products other than 4b there was a somewhat lower price in California, correct?

A. I believe so, yes. It looks like it, yes.

Q. Yes. But there are prices that, using the word I used before, moved, more or less in concert with the Federal Order price, even though they were not at the same level as Federal Order prices, correct?

A. Yes, they tended to move reasonably well together.

Q. Okay. And that's what you refer to in your testimony there in 2013 as an acceptable level of price differences between California and Federal Order markets?

A. Let me -- let me explain this a little bit. We said it was an acceptable level, didn't say we agreed with it.

Q. Your testimony now is that by acceptable level, it is something you could live with, but you didn't mean to imply that you wouldn't like more?

A. Well, it's again, this is a series of hearings that we went through with CDFA, and it was fairly apparent that CDFA was not going to get to the point of giving California exactly the Federal Order prices for every class. And, again, back to
the comment of acceptable levels. We just resided on the fact we were never going to get to the prices that would put us in concert with the Federal levels, so there is going to be a difference, and we accepted that on all but one of the classes.

Q. Okay. And that class was 4b?
A. The Class 4b, California Class 4b, Federal Class III.

Q. Right.

A. Difference.

Q. Which you address in the following paragraph which I will read. That is page 55 of this transcript, starting with line 15:

I will make one final point in support of California’s dairy proposal. Recently, the California Dairies receive the results of a study that reviewed the potential impacts of a Federal Milk Marketing Order in California. We, along with Dairy Farmers of America and Land O'Lakes, co-funded a study from Doctors Mark Stephenson and Chuck Nicholson. The study identified a large Class 4b, Class III spread as being problematic and suggested that a manufacturing deferential in the Class III price could resolve the problem of higher milk prices, while simultaneously encouraging pool participation by cheese plants. A level of the differential is about 70 cents.
In other words, the study suggested that California price for milk used for cheese ought to be 70 cents less than the Federal prices. That 70 cent differential is approximately the same as what is represented in AB 31, and is about the same as the $1.20 increase in the Class 4b price we are proposing today.

That quote ends on the excerpt of the transcript, page 56, line 7.

At the time you gave this testimony, you were conveying to CDFA at least, that a differential between the California price of milk used to produce cheese, and the Federal price of milk used to produce cheese of 70 cents, would be an acceptable and appropriate level. Correct?

A. Yes. We had several proposals. That would have been about the level, again, recognizing that we were not going to get the CDFA Secretary of Agriculture to concede to exactly a Federal Class III price in California, so we were trying to offer something that was a reasonable compromise. An increase from where it was, but not as high as the Federal level Class III price.

Q. All right. You continue on to discuss Class 4a. And there had been an increase in the 4a price, as I understand it, of about 25 cents per hundredweight equivalent prior to that?

A. It says 30 here.
Q. By the same 30 cents, okay.

Starting on line 17, page 56 of the transcript, I'll read:

Because nearly all butter and powder processing facility is owned by producers and not by proprietary companies, increasing the Class 4a price only functions to redistribute money from producers who have made investments in butter and milk powder processing facilities to those producers who have not. This is entirely counter to the concept of increasing milk prices to provide equitable milk price assistance to all producers. The higher the increase in Class 4a milk price, the less equitable the milk pricing system becomes. From the perspective of a CDI member, this caution appeared to be largely ignored when the Department issued its decision. Basically, CDI members will net only 7 cents more in their milk prices as a result of the December 12 milk price hearing.

JUDGE CLIFTON: I'm sorry, I really think you ought to read that whole phrase, 7 cents per --

MR. VETNE:

7 cents per hundredweight more in the milk price as a result of the December 2012 milk price
hearing. The reason is, that CDI members will have to give back about 18 cents per hundredweight of the 25 cents per hundredweight in the form of higher prices paid by their Cooperative for milk processed into butter and milk powders. In contrast, a producer who does not belong to a processing Cooperative and has no investment in the processing capacity will receive the full 25 cents price increase.

JUDGE CLIFTON: 25 cent --

MR. VETNE: Per hundredweight price increase.

BY MR. VETNE:

Q. Let me see if I can translate this, if my understanding is correct.

If the Class, California Class 4a price is set at a level you can't recover at a level in the marketplace, you have to account to, CDI has to account to the pool for the whole price increase, correct?

A. Yes.

Q. But if you, thereafter, are able to sell your butter and nonfat dry milk only at a loss, your producer, your member producers, exclusively share that loss while everybody shares in the higher resulting price, correct?

A. I think that's generally correct, yes.

Q. Okay. Now, on page 56, lines 17, and 18, 19, you
distinguish between processing facilities owned by producers rather than proprietary companies.

Is it your opinion that a price setting milk rate, price setting agency, can charge a price more readily that creates a loss for proprietary-owned company than a Cooperative-owned company?

A. What that refers to is the -- it's not in here, but the history of CDFA and its decisions when they make these pricing adjustments, particularly temporary ones. And that was, they very rarely charge Class 4a and 4b at the same rate, recognizing that 4a was largely held by producers, butter powder operations largely held by producers. And they recognize that if you charge the, if you increase the 4a and 4b price by the same, you are differentially hurting the producers who own butter powder facilities. And this was just a sort of reminders I guess, to CDFA that they were changing what they had been doing for years, if not decades.

Q. Okay. Can you come up with an economist's rationale, if there is one, for covering the margin required by butter powder plants to operate, but not covering the margin required by cheese plants to operate based on the type of ownership?

A. I could only do so in the sense of a regulator if the attempt is to increase prices to producers. And in that vain, then, yes, I could differentially charge, or increase the price for 4b differently than 4a, if my outcome goal was to increase
prices to producers.

Q. Would you agree that if that is your goal, it would indeed be a short-term goal because the capacity would eventually evaporate?

A. I think almost in every instance that I could think of, it was always a short-term goal.

Q. Okay. Is the outcome you want from this proceeding by USDA a long-term rather than short-term solution for California?

A. It is a long-term solution and to require that my company makes some changes along the way as we get there.

Q. Thank you.

I would like Exhibit 53 be received.

JUDGE CLIFTON: Does anyone want to question Dr. Erba on Exhibit 53 before determining whether you have any objection? No one. Is there any objection to the admission into evidence of Exhibit 53? There is none. Exhibit 53 is admitted into evidence.

(Thereafter, Exhibit Number 53 was received into evidence.)

MR. VETNE: Thank you, your Honor, I'm through.

JUDGE CLIFTON: It's 4:44. I have two questions. The first is if, Dr. Erba, will you be here tomorrow?

DR. ERBA: It seems like I will have to be.

JUDGE CLIFTON: That's what I wanted to hear.
Now I would like a show of hands of those of you who have additional questions for Dr. Erba? Lots of us, including I do, Dr. Erba. So we can do a little more tonight, but the rest we'll have to save for tomorrow. So is there someone that would like to make use of about the maximum would be ten minutes now?

MR. MILTNER: Your Honor, with some careful planning, I think I can conclude in less than ten minutes.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Ryan Miltner on behalf of the Select Milk Producers. Dr. Erba, way back on Friday, do you recall generally the questions that Mr. English had asked you?

A. I tried to forget them, but, yes.

Q. I understand.

A. Yes.

Q. Do you recall his colloquy with you about the treatment of a handler purchasing, a handler located in California, purchasing milk from a farm located out-of-state?

A. Yes.

Q. Okay. I would like to examine that a little further, I would like to look at the farm side of that transaction. So in the current, under a current California Order and I guess I'm looking for you to acknowledge whether I'm correct on this, the out-of-state farm selling to a California handler can be paid
whatever price the plant chooses to pay; is that correct?

A. I believe that's correct.

Q. And so that farm, in a rational economic market, the plant is going to want to pay less than it would pay to a farm in-state, correct?

A. If everything is equal economically, then, yes.

Q. Okay. And the farm is going to want to receive more than what whatever it will receive in its, we’ll call its homer market or local market, correct?

A. Whatever its next best option would be.

Q. Okay. Now, if a California Federal Order is implemented, now that plant must pay the minimum regulated price to that producer, correct?

A. Correct.

Q. And under the Proposal Number 1, that would apply equally to a Class 1 plant or a plant of any other use, correct?

A. Right. So they would be following the prices that have been announced depending on what products they actually produce.

Q. And so what we have is with the implementation of a California Order, are we not actually achieving handler equity so that all handlers supplying California are going to be paying the same price for their milk, correct?

A. All handler supplying California?
Q. I'm sorry. All handlers -- all handlers purchasing milk that are pooled in California?

A. I think so. I think if we are on the same page, yes.

Q. Okay. So that by implementing the California Federal Order, we achieve one of the goals of regulation, which is to have handler equity, correct?

A. That is the attempt, yes.

Q. Okay. Now, on the producer side of that transaction, and I want to focus specifically on what happens under Proposal 1. The out-of-state producer shipping to that plant, the California plant, is that farm able to own California quota?

A. Not if that farm is located outside of California.

Q. And so under Proposal 1, what would that producer receive?

A. That producer would receive I think what we have called the uniform nonquota price.

Q. And can you expand on what the uniform nonquota price is?

A. So on, I know it is in the proposal somewhere as far as the language goes, we quote the actual Code Section which does this. I believe it's 1051.62, 61 and 62, which discuss the pricing so the, after the pool, the revenue pool from milk sales is collected, formed, and the prices are now, before prices are announced, the Market Administrator would take from
that the quota premium, the information from which would come from CDFA, and then after that is done and that is removed, to announce the, or to calculate the uniform price, the nonquota uniform price. I probably didn't explain that too well.

Q. Well, I think you did. Let me see if I understood it correctly. That once all the revenue is paid into the pool, quota is paid out, correct?

A. It's not paid out, it's taken out. So it's -- yes, taken out is probably a better term.

Q. What difference do you see between taken out and paid out, I'm just curious?

A. Well, because it's not paid yet. It is just, at this point, it is just calculations.

Q. Okay. So once you take the pooling of funds, you take out the quota, the quota value.

A. Quota premium.

Q. Quota premium?

A. Yes.

Q. Okay. And the remainder is what is the --

A. The remainder is what becomes the nonquota uniform price.

Q. Nonquota uniform price. Thank you. In that situation, is there not an economic disincentive to producers outside of California to supply milk to the California market?

A. I guess it depends on what that next best option
discussed a few minutes ago might be. There may not be any
other options, there may be several other options, I do not
know.

Q. Nevertheless, that farm is never in a position to
receive a full uniform price since they are not eligible to own
quota, correct?

A. That's correct.

Q. So while you have handler equity, you don't have
producers supplying the same area, being paid the same, and to
take it a step further, you, whereas a producer in California
can make the election to purchase quota, the out-of-state
producer is permanently left in that position, correct?

A. Correct. I would just point out that the nonquota
holder in California and the nonquota holder outside of
California, would be eligible for the same price.

Q. They'd both be eligible for the?

A. Nonquota uniform.

Q. Nonquota uniform price. I realize we just talked over
each other, I know, I apologize. But the producer, only the
producer in California is eligible to purchase quota?

A. Only -- it is dependent on the location of the dairy
farm, the person.

Q. Correct.

A. Correct.

Q. And that's a matter of California law, it's not a
matter of regulation, correct?

A. That's correct. It is in a California statute.

Q. Is there anything -- maybe rephrase that a touch. Was there consideration given to dividing the producer settlement fund pro rata into an in-state and out-of-state producer pool?

A. I don't think we ever talked about that. Although we did discuss the possibility of changing California statute to allow quota to be available to producers outside the state. It was part of the discussion and we ultimately decided changing California law for this purpose was probably not an avenue we wanted to go down.

Q. Would -- and I know there's going to be no answer to that, at least I don't think there will be. Would the Cooperatives entertain a modification to their proposal to account for out-of-state milk and to create a separate out-of-state Producer Settlement Fund?

MR. VLAHOS: Objection, your Honor. John Vlahos, your Honor.

I don't think it is fair for this witness to be asked on the stand to take a position on behalf of the three cooperatives who are the proponents of Proposal Number 1.

MR. MILTNER: Your Honor, if I may, with all due respect to Mr. Vlahos, that's why I prefaced the question with "you may not be able to answer this right now," but I certainly wanted to suggest it. And I don't know that it's an objection to be
ruled upon. If he wants to instruct his witness not to answer, that's fine.

MR. ENGLISH: Chip English. I would note that at the beginning of the cross-examination of Dr. Erba by the attorney, well, by Ms. Hancock, there was sort of a similar line of questions with respect to a different issue, and the witness there was no objection raised, and the witness answered those questions. I think these are appropriate questions.

MR. MILTNER: Thanks, Mr. English, for reminding me of that.

JUDGE CLIFTON: And I think Dr. Erba should think about it overnight. It's now, 4:56. See you in the morning. Thank you. Oh wait, we have one more thing.

MR. HILL: Brian Hill. I hate to do this, but I am of the belief that Mr. Doornenbal was not sworn in, so I don't know if this is something to be addressed now, because he's coming back.

JUDGE CLIFTON: It is because he is still here. Would you come forward to the podium? I so appreciate when people let me know these things, because --

MR. HILL: I forgot, too.

JUDGE CLIFTON: They are easily remedied. So would you state your full name and spell it again for us, Mr. Doornenbal?

JUDGE CLIFTON: Thank you. I would like to swear you in now, just in case I forgot to before you testified.

Would you raise your right hand, please? Do you solemnly swear or affirm under penalty of perjury, that the evidence you will present will be the truth?

MR. DOORNENBAL: I do.

JUDGE CLIFTON: And as to the evidence you already presented, because testimony is evidence, was it true?

MR. DOORNENBAL: It was.

JUDGE CLIFTON: Thank you. You may step down. Thank you very much Mr. Hill. Ms. Frisius?

MS. FRISIUS: I believe that --

JUDGE CLIFTON: Would you come to a microphone?

MS. FRISIUS: I believe Exhibit 50 and 53 have not been accepted into evidence today.

JUDGE CLIFTON: I did admit 53, didn't I? 53, now 50, that was Vandenhuevel's testimony, I'm pretty sure I admitted it, but I can admit it twice just in case. Is there any objection to the admission into evidence of the testimony of Rob Vandenhuevel, which is Exhibit 50? There is none. Exhibit 50 is admitted into evidence. Thank you, Ms. Frisius. All right.

You are welcome tomorrow to come as early as 8:00 tomorrow morning, we will not go on record until 9:00. We go off record at 4:59.

(Whereupon, the evening recess was taken.)
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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 20, 2015

[Signature]

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IN RE: MILK IN CALIFORNIA

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