UNIVERSITY OF CALIFORNIA

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XXV

TRANSCRIPT OF PROCEEDINGS

October 28, 2015
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

Wednesday, October 28, 2015

9:00 a.m.

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

TRANSCRIPT OF PROCEEDINGS

VOLUME 25

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WEDNESDAY, OCTOBER 28, 2015 – MORNING SESSION

JUDGE CLIFTON: We're back on record on October 28, 2015, and it is 9:00 in the morning. This is Day 25 of the milk hearing. My name is Jill Clifton. I'm the United States Administrative Law Judge who is taking in the evidence at this milk hearing. I am a USDA employee. I would like now to take the appearances of others participating, beginning with other USDA employees.

MR. FRANCIS: Good morning, William Francis, F-R-A-N-C-I-S, Dairy Marketing Specialist USDA AMS Dairy Programs.

MS. MAY: Good morning, Laurel May, USDA AMS Dairy Program.

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

MS. ELLIOTT: Hello, I am Pamela Elliott, E-L-L-I-O-T-T, I am a Marketing Specialist with the USDA AMS Dairy Program.


MR. HILL: Good morning, I'm Brian Hill, B-R-I-A-N,
H-I-L-L, and I'm also an Attorney with the Office of the
General Counsel Marketing Regulatory and Food Safety Programs
Division.

MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N,
B-E-S-H-O-R-E, Attorney for the Cooperative, three Cooperative
Proponents of Proposal Number 1, California Dairies,
Dairy Farmers of America, and Land O'Lakes.

MR. VLAHOS: Good morning, Vlahos, J-O-H-N, V-L-A-H-O-S,
law firm of Hanson Bridgett, H-A-N-S-O-N, B-R-I-D-G-E-T-T,
co-Counsel for the co-op Proponents of Proposal Number 1.

MR. HOLLON: Elvin Hollon, E-L-V-I-N, H-O-L-L-O-N,
Dairy Farmers of America, Proposal Number 1.

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

MR. ENGLISH: Good morning, my name is Chip English,
C-H-I-P, E-N-G-L-I-S-H, I'm an Attorney with the law firm of
Davis, Wright, Tremaine, with my principle office in
Washington, DC, and I'm here on behalf of Proponents of
Proposal Number 1 the Dairy Institute -- I'm sorry- whoa --
someone did not get enough sleep last night.

I'm here to undermine Proposal Number 1, and I'm here
as Counsel for the Dairy Institute of California, which is the
Proponent of Proposal Number 2.

Ashley Vulin, V-U-L-I-N, is assisting with production
materials for witnesses today and she will be here later today.
She's also with the law firm of Davis, Wright, Tremaine, on behalf of Proponents of Proposal 2.

DR. SCHIEK: Good morning, William Schiek, that's S-C-H-I-E-K, with the Dairy Institute of California. I'm the Economist for the Institute, and I'm here in support of Proposal Number 2.

MS. KALDOR: Rachel Kaldor, R-A-C-H-E-L, K-A-L-D-O-R, Executive Director of Dairy Institute -- that's what happens when your counsel wakes up at 1:30 and starts working, that's all I have to say.

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


MR. VETNE: John Vetne, also a representative for Hilmar Cheese Company.


MR. VU: Good morning, Bao Vu, B -- as in Boy -- A-O, last is Vu, V -- as in Victor -- U, of the law firm Stoel Rives, and
I also represent the California Producer Handlers Association and Ponderosa Dairy. Thanks.


JUDGE CLIFTON: Is there anyone else who has not yet come to the podium who would like to testify today? If you would come forward, sir. Go to the podium and tell us who you are.


JUDGE CLIFTON: All right. And when would you prefer to testify today?

MR. GIACOMAZZI: As soon as possible.

JUDGE CLIFTON: As soon as possible? All right. When -- what I'll ask you to do right now is take your seat where you were. We'll go through our preliminary announcements and matters, and then I will determine if we can call you first. Thank you.

Is there anyone else who has not yet come to the podium who would like to testify today? All right. I see no one yet. Let us now then go onto announcements and preliminary matters, beginning with those from the USDA.

MS. MAY: Good morning, Laurel May with USDA. Welcome to
today's session of the hearing. We're happy to see all of you here and grateful for those of you who are speaking to us and helping us understand better what the needs of the California dairy industry are.

Anybody that would like to, is welcome to testify in this hearing and anybody who would like to question any of the witnesses may do so. The session is being recorded, or, sorry, not recorded, it is being transmitted via live audio feed, and the link for that is a You Tube link, and you can get to that www.ams.usda.gov/live.

The court reporter taking official transcripts of this hearing and those are available approximately two weeks after the end of each hearing week. You can access those at the AMS dairy website.

Copies of some of the exhibits that have already been presented are available in the back of the room on that table. And there are refreshments that you are welcome to enjoy in the back of the room, also.

Yesterday, at the end of the day, Mr. Blaufuss had begun reading his testimony into the record, and I believe today we were going to have him return, although, Mr. Giacomazzi indicated to me that he would like to go early if he can.

JUDGE CLIFTON: Thank you, Ms. May. Mr. English?

MR. ENGLISH: Good morning again, your Honor. My name is
Chip English. And let me start by saying that absolutely we will move with our schedule after Mr. Giacomazzi, so we're happy to do that. And so that will be first, unless someone else has a different view, but that is certainly our view.

When he is complete, and I guess depending a little bit how long that goes, Mr. Blaufuss will return to the stand. We still have sort of our own hanging chad, Mr. Ahlem, who was available earlier in the week and was unable to get on because he graciously allowed us to complete some witnesses. My understanding is that he had to re-report for the potential jury duty this morning, and I have not gotten not an update, so I don't know whether or if we'll see him. But if we do, I think it would be late morning. And subject to other dairy farmers, he would be then, next on our list to get him on the stand, especially since he's been delayed.

After that, last night, due to a miscommunication for which I take responsibility, I indicated that we would have a policy history witness. And after the hearing concluded, I was able to confirm that, yes, that is going to happen. That is going to be Mr. John Vetne. And I communicated that to Mr. Beshore at 6:45 last night, and also managed, on a procedural basis only, to communicate that to USDA at 7:30 last night. So I apologize that I was not able to do that on the record last night and I take responsibility.

Assuming that we get past those witnesses, the next
witness would be Dr. Schiek returning to the stand, Part 2, on pooling.

And if that gets done and we're ready for another witness, Mr. Zolin would return for his Part 3, which would be on plant definitions. So I think it's fair to say that once we get done with Mr. Vetne, Mr. Ahlem, and Mr. Blaufuss, that we're moving out of opening statements and we're moving down into Topic 2. And I realize we have obviously had some bleeding over from some witnesses who were testifying only once and coming in, but we're trying to follow the topic schedule. And so we're trying to get through Topic 2 next. And so, for instance, Ms. Taylor, who I now expect to testify tomorrow, would be covering that, and there may be some coverage of opening statement, but basically that would be her testimony on Topic 2.

Later this week, Mr. Blaufuss will testify a second time, and that will be on Topic 2. At that point, I believe we will have completed, or we intend to complete, Topics 1 and 2. Mr. Zolin will go later on 9(d). That's correct. So Mr. Zolin advises me that Mr. Ahlem has been excused from jury duty so he'll be here in about an hour or so. So we're updating this on the fly as we go.

Anyway, what I was trying to get at here is that we expect, and intend, this week, to complete Topic 2. Then we have had our one witness on Topic 3 and 4. Topic 5 we had
Mr. Zolin on uniform provisions, and of course we had the
witnesses last week on ESL, which covers Topic 5.

It is our anticipation and expectation that we would
start on Topic 6, which is class prices, next Monday.

And so that's my preview. And I think that's about as
complete a preview as I can give for the rest of this -- yes,
Mr. Beshore?

MR. BESHORE: Marvin Beshore. The 9(d) proprietary bulk
tank handler would look to come in 2, I assume. I wasn't sure
when that was lined up.

MR. ENGLISH: Thank you, Mr. Beshore. I think, we're not
going to start talking about quota issues really until next
week after pricing. And 9(d) really is linked to quota issues.
I know it is sort of a plant issue, but it is more of a quota
issue. We wouldn't have it but for the quota. So I think and
intend that -- we may change our mind -- but I think and intend
that we would be bringing it when we talk about quota.

So that's -- and then I think it's fair to say that
once we get into pricing, we expect that to take at least three
days next week. So that's my preview that gets us, I think,
through the next eight days.

JUDGE CLIFTON: Are there any other preliminary matters? I
see none. The docket number as known in the Hearing Clerk's
office in the United States Department of Agriculture is, in
brackets, [AO] docket number 15-0071.
I would like now to call Mr. Giacomazzi to the witness stand. I'm delighted that this worked out. Thank you for yielding to him so that he can spend a minimum of time here for maximum effect.

Now, when I swear you in, Mr. Giacomazzi, it will be in a seated position. And after you are sworn in, you can test a little bit how close you need to be to the mic. You will be able to hear whether your voice is being projected. Do you have any writing that you want to have marked as an exhibit and made part of a written record?

MR. GIACOMAZZI: I do not.

JUDGE CLIFTON: All right. I'll swear you in now. Would you 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. GIACOMAZZI: I do.

JUDGE CLIFTON: Please state and spell your name.


JUDGE CLIFTON: And if you don't mind my asking, what heritage does that name come from?

MR. GIACOMAZZI: Swiss-Italian.

JUDGE CLIFTON: Okay. And say -- pronounce it for me one more time.

MR. GIACOMAZZI: Giacomazzi.
JUDGE CLIFTON: Giacomazzi. Thank you. All right.

Now, what we would normally like is to know about you and your connection with the dairy industry, and you may proceed in any manner you wish.

MR. GIACOMAZZI: Okay. That's what I hope to do.

JUDGE CLIFTON: Good.

MR. GIACOMAZZI: All right. So since I have been sworn in and I'm required to tell the truth, I will start by informing you that I do not have an e-mail server in my basement, I use G-Mail. So -- so as I said, I'm Dino Giacomazzi. I'm a fourth generation dairy farmer in Kings County in the town of Hanford. My family has been farming and milking cows in the same location, everyday continuously, since 1893. We're going to celebrate our 123rd anniversary in the dairy business in California this coming January. Incidentally, the barn that we milk cows in today is an old flat barn, and it was built in 1937, which is the same year my father was born. And also historically interesting, the same year that the Golden Gate bridge opened, so we have been -- a lot of history in California, a lot of history in Kings County.

I apologize if my phone vibrates. I'm trying to keep track of where I'm at on my phone here while talking to you. So my family's heritage and history in California is very long. I do have fifth generation dairy farmers in the works. They are two boys, eight years old and three years old.
And so my reason for coming before you today and providing some information about my relationship with the dairy industry is to ensure that those two little boys have the opportunity to participate as dairy farmers, the same as I did, as my father did, his father did, and his father before him did at this property in Hanford.

So I want to also let you know that I have a grandmother who turned 102 years old on July 23rd of this year, and -- feel free to applaud -- and I kind of also want to dedicate my travel here to her. It is very important to me that my grandmother is able to continue out her life living on the dairy farm. Since my grandmother was born on a dairy farm 102 years ago in Tulare County just down the road to another Italian family called the Curdy family, and her father was involved originally in the -- in the development of Dairyman's Cooperative Creamery, which is now has joined with Land O'Lakes Creamery, and so we are Land O'Lakes shippers.

My cousins in the Tulare area have been with Dairyman's and Land O'Lakes since the beginning. And I would -- I would suggest that part of the reason that I'm here is to ensure that my mother, my wife, and my grandmother can continue living their lives on the dairy farm in a time when dairy farming has become increasingly more challenging due to many factors, primarily due to economics.

And so I would like to then tell you a little bit about
myself and my journey from being a dairy farmer's kid to not
being on the farm for 13 years, and then returning to the farm
under circumstances that are, you know, certainly not ideal,
but ultimately turned out for the best.

So I was raised on the farm, grew up working there,
went to school. Did FFA, 4H, you know, the whole bit. Went
off to Ag College at COS and then Cal Poly Dairy Science
Degree. Came back to the farm after Cal Poly to an environment
where my grandfather and my father were both in charge and
weren't, let's just say they weren't the best of friends, and
didn't quite see eye to eye on almost everything. And I became
mixed up in their, you know, lifelong battles with each other,
and decided that's not how I wanted to live my life, fighting
with my father and my grandfather, so I left the dairy.

I moved back to San Luis Obispo, where I became
involved in the music business because I had a dairy science
degree which didn't really provide me any skills for survival
in the real world. So over a 13-year period I became fairly
successful in the music industry as a concert producer and a
manager of tours for rock bands. And at the ripe old age of
30, I decided I was too old for that industry and I moved to
San Francisco and started a software company.

And I did software in San Francisco during the dot.com
boom and bust from 1998 to 2002, during sort of the first
Internet bubble. It was a very exciting time. But something I
learned through my experience of building software and being involved in the music business, two industries that are very trend-oriented, you know. Music tastes change on a weekly, monthly basis. And in the beginning stages of the Internet, there were never really any standards established. There was all this competing technology and there were constant battles for supremacy for which, you know, technology is going to be adopted to build web applications and to build web sites. And so we would find ourselves in these situations where my partners and I, who had this web development company, we would be halfway through a project, working on using, utilizing a certain technology that would become obsolete in the middle of the development cycle. So we had to learn very quickly that in order for us to survive in this industry, we had to be looking way out into the future, months into the future in terms of, you know, technology. Things were changing so fast. Really, we were trying to project and predict what people were going to be using a year from now before we started a project so we didn't waste our time being obsolete.

And so this sort of requirement for survival in software in San Francisco in the early 2000's sort of informed my habits of how I thought about business and how I thought about doing things. And in the middle of this, you know, endeavor, my father came down with lymphoma and was going through treatments of chemo and needed some surgeries. And my
family asked if I would come back to the farm and watch over things while my father was going through treatments. And I agreed to do that. I figured since I was doing software and everything was Internet-based, it didn't really matter where I was.

So I came home for awhile and I got stuck there. So almost 15 years later, 14 some years later, I'm still there. Happily there. Fortunately, met my wife, had my children there. Unfortunately, buried my father there in 2011. So when I came back to the farm very shortly after 2011, September of 2011, I actually came to the farm in October of 2011 to start in 2011, 2001. So 9-11, 2001 happened, September 11th, in the middle of October that year, I came home to the farm and started my dairy experience at the beginning of what I called the beginning of the big change. Everything started changing from that point forward for agriculture, and for dairy in particular.

Prior to that time, markets were, you know, reasonably stable. They weren't great, you know, agriculture had a pretty tough time in the '80's. But for the most part, people were supportive of agriculture and had an attitude about farmers that farmers were like them. Most people had a connection to a farmer, even back then. And this sort of 9-11 event to me, sort of symbolizes the beginning of the change in attitudes of American consumers and world consumers about agriculture and
how their food is made, which has led us to have to deal with a
lot challenges. And when I came back from the -- from -- when
I came back to the farm from doing software, I had this
mentality that I had to be looking into the future to see what
changes were going to be occurring and try to meet them before
we get there.

And so I saw all these consumer trends, these consumer
changes happening in trends. Consumers were interested in
environmental issues, and in California we started undergoing
some pretty serious regulations regarding groundwater
management. And so we immediately, you know, before the
regulations came to us, started updating our facilities and
started changing the way we operate in order to be compliant
and make sure that we were farming in the most environmentally
beneficial manner.

Later on, there were environmental air regulations that
were coming down the road regarding dust and particulate
matter. And so my family and I, we sort of pioneered a
technology for farming that allowed us to put our crops in
using different technology and different ideas that reduced our
passes in the field by 85 percent, reducing our dust emissions,
our diesel emissions, our uses of diesel by 85 percent to get
the same or better yield in our crops. Which I'm proud to say
that this technology had led us, had allowed us opportunity to
receive some pretty interesting awards for this work that we
did, including Sustainable Agriculture Champion in 2010 by the US EPA. And in 2012, we received the Leopold Conservation Award, which is sort of like the, I don't know, the Noble Prize for farmers in a way. Not that, it's hard to describe this thing without sounding like a prick, but it's just -- it's -- sorry. It's -- anyway. It is pretty important. I'm very proud that we got it. And this came out of this mindset of looking for change versus, you know, resisting change.

And most, a lot of farmers tend to resist change. Most people tend to resist change. So I took it a change-oriented approach towards farming and agriculture. And I promise I will get to some point at some point here. But what -- so one of the other things I did when I got back was to get involved in as many organizations as I could to better understand the trends in the industry, to know what's coming down the road, so I wouldn't get caught behind the curve on any particular, you know, outside element that would impact the way we do business. I wanted to make sure if animal welfare issues were coming down the road, that we were going to be ahead of it.

And very early when I got back on the farm, I made sure we were animal welfare compliant. We were one of the first certified dairies in California for Farmers Assuring Responsible Management, the FARM Program. And so as I continued these trends and changes in environmental and animal welfare and human resources areas, all along we started
encountering deeper and deeper struggles from an economic perspective.

I will tell you that in the 120 some odd years of my family's participation in the dairy industry and agriculture, the first year we ever had a relationship with a bank, other than depositing checks and writing checks, was in 2008. And we established this relationship with the bank because I had anticipated the market change in 2009, and figured that we weren't going to be able to cash flow our way through that deep of a loss situation, and we became, you know, acquainted with Farm Credit West, which we are now deeply acquainted with. Not only in dairy, but also in the almond business, which I will talk about a little while later.

So since 2008 we have -- prior to 2008, we had never had a single dollar of debt, with the exception of several small land purchases that had some short-term mortgages on it. But from operating perspective, we had never incurred operating debt until 2008 -- until 2009, I would say. We established the relationship in '08, and in '09 started borrowing money. And we, since then we have continued to borrow and pay back, and borrow and pay back, and borrow and pay back. But it is becoming, in each cycle it it seems that we go through with the pricing, with the milk market going up and down in this state and in this country, we seem to borrow more, pay back less over time. So we are digging ourselves into somewhat of a hole, and

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which has caused me to spend some -- I would say a significant
amount of time thinking about milk pricing in California.

Going back to the McKinsey Report and looking at those
hearings, and looking at what CMAB had done to help come up
with some new ways of pricing milk in California, which we
didn't really execute, to recently, a few years ago I was, I
don't know if I would say fortunate, but I was asked to be on
the Dairy Futures Task Force by Secretary Ross. And what I
suppose I learned with my experience in, on that task force
with many other people, including many people in this room
today, was that milk pricing in California has become a
political quagmire, I guess I would describe it as. And we
seem to be at a bit of a stalemate from a political
perspective, to make any change in milk pricing in California.
And since I am a change-oriented person, I like progress and I
like things to move forward for the better, originally I will
tell you all that I was very opposed to the idea of California
going to a Federal Order, and and I still think it's not a
great idea.

What -- what -- as a Libertarian-oriented, you know,
independent businessman, you know, when has there ever been a
lot of good that's come from giving up local control to the
federal government, right? This is true in almost all cases,
except for one, when you live in California.

When you live in a place that's crazier than the
federal government from nearly every perspective, whether it be
milk pricing or the California EPA versus the Federal EPA, and
in most cases we would be better off under Federal regulation,
not under California regulation.

Now, Federal Labor Laws, we would be better off under
Federal Labor Laws then we would be under California Labor
Laws. So if I lived in Texas, I would probably have a
different attitude about local versus federal regulations, but
I live in California, you know, the most over-regulated,
ridiculously politically charged, unbalanced, you know, state
in the union. And you guys can fact-check me if you want, I'm
sure you can figure out that that is likely true, with the
exception maybe of some Northeast states. But we have got it
pretty tough here.

So I was very much a proponent of fixing the California
system when I was on the Dairy Futures Task Force. I really,
really wanted there to be a local fix. And I learned in that
process that that's not going to happen. I think it will never
happen. And that our best opportunity is to move away from a
politically charged, politically motivated, very difficult
situation where, you know, political appointees have to make
economic decisions between people to something that is more, I
don't know how to describe it, more judicial I guess. I kind
of view the Federal system as a more, you know, fair system,
where it's based on facts and you can hear everyone's opinion,
and you can uncover the details and really dig into what the
benefits or the, you know, the negative alternatives of a
proposal may be, and really look at it, the truth in the matter
and not, you know, based on who is going to get elected or
which organization is given more money to which side of the
Governor's office. And so I feel like our best opportunity
going forward is with the Federal Order.

And so I will tell you some of the struggles that we
have had regarding being in a California Order, besides, you
know, the obvious situation that we get paid less than most
other regions of the country. We have much greater challenges
than a lot of areas of the country, in addition to the fact
that we get paid less with, you know, labor and regulations,
and, you know, global greenhouse gas stuff.

And I don't know if you guys know this or have any
relationship with the environmental stuff that's going on, but
it is very likely that dairy cows in California are going to
get regulated under Greenhouse Gas Bills for farting methane
and causing global warming. So, you know, just an additional
challenge that we're going to face. And we're going to
continue facing these types of challenges, including high land
prices, and, you know, shortage of labor, and all kinds of
things. So one of the primary difficulties that we've faced in
terms of managing the risk of being a dairy farmer in
California is sort of our disconnection from the Chicago Board
of Trade and our ability to effectively manage our risk through hedging.

And when I first came back to the farm, I went to a class that was offered by a trading organization that, you know, every quarter for two years I would go to these four, five-hour long meetings where they would teach me how to hedge and I would learn, you know, all of the complexities of the market. You know, the puts and the calls, and you know, the trends and all this kind of stuff. And so after a couple years of this I became confident enough to try to do something. And I had noticed that in the dairy industry we seem to be on a three-year cycle of boom and bust. You could almost set your watch to the cycle, you know, the 2006, 2009, 2012, these are years that generally ended up being a little bit on the down side for dairy.

So in December of 2011, it looked to me like there was a good opportunity to hedge for 2012. And so I had done a bunch of analysis of the market and looked at what my mailbox price was over the past ten years compared to Class III milk in Chicago to see, you know, what I could expect in terms of a return or what my ultimate floor would be in terms of hedging my milk income by buying puts on Class III milk in Chicago. So it looked at that time like it was about 85 cents, which was pretty close to the, I would say ten-year average, and so I thought, hey, this is great, I will buy these $15 puts for 20
some odd cents per hundredweight, and if Class III in Chicago was to drop below $15, minus my 20 something cents, I would have, like I said $14.70 floor for milk, you know, for this coming year. And I, and my break even at the time was just around $15. And so I thought, you know, I could at least minimize my losses throughout this period by investing some $50,000 in the Chicago Board of Trade.

So that was December of 2011, when the difference between my mailbox price and, which is very close to, you know, generally, overbase price in California, after you add in my quota, and you take out all the stuff that Land O'Lakes robs us for, and everybody else. But, so we were pretty close, you know, in this differential we were pretty much right on the average money in December of 2011 when I executed these hedge strategies.

By February 1st of 2012, the difference between Chicago Class 4b, Chicago Class III and California Class 4b, was $2.50 below, so I should also mention my prices are, were 85 cents below Class III, and went from 85 cents to $2.50 below within a period of a month. So my price in California was in the $13 range, and my puts in Chicago were at the $15 range, but the Chicago Board of Trade never dropped below $15 at the time, so we never received any benefit from executing those puts on Class III.

So the next time around I thought I would learn my
lesson, and -- and so from that point forward I started hedging a combination of Class III and Class IV, kind of in a proportion to what the California pool contributions are. So 40 some odd percent Class, well -- 60 some percent Class III and 40 some percent Class IV, sort of based on what the California pool, you know, how a California pool -- how the California pool contributes to my paycheck from the formulas perspective. And over the next couple of years, and the next couple of downturns in the market, we have never received any payments back from Class III. We have received some benefit from Class IV. Our Class IV price here seems to track more closely to our 4a, and Class IV in Chicago tend to track more closely to one another. Unfortunately, that's a very thinly traded market and it is often times very difficult to find an opportunity to buy a put or to do any sort of hedging inside of Class IV. So I have felt that, you know, one of the biggest problem with the State of California, one of the problems is that we can live with volatility, we can live with risk. I think volatility is actually a good thing for business, I mean, volatility creates opportunity. And but if you can't manage your risk in the volatility, then you become a victim, rather than some, a manager. And I feel in California, we are basically victims. Whereas in the rest of the country, people have opportunities to be managers.

And I'm not an Economist and I'm just talking to you
about these numbers and experience from my recollection, so if
you want to challenge me on the numbers, that's fine, we can do
that, but I won't have a good answer for you. So this is just
my experience with doing hedging, something that I have found
little value in and made things much more difficult.

So what I have done instead, rather than investing my
money in the Chicago Board of Trade these days, I'm investing
my money in myself and I'm planting almond trees as a hedge
against milk prices in California, and the dairy industry in
general. So I'm diversifying myself into, I call myself an
indiscriminate milk producer. I will be producing cow milk and
probably almond milk at some point. Which, by the way, tastes
terrible and I don't recommend it. But definitely eat almonds
in any other way you can, particularly on ice cream, it's a
good way to get it.

So am I being too much of a promoter here? So anyway,
instead of, instead of hedging in Chicago, we are trying to
diversify our business. Because for the 123 years that we have
been in the dairy business, 100 percent of our income has come
from cow milk. And the almond milk thing is something that's
you know, hopefully not almond milk, but almonds in general
seem to be something of value on the land that we live on.

So we are intentionally becoming more dependent as a
dairy farm on imported feed as a result, where before we were,
we were growing most of our feed ourselves. Now we are having
to import feed from other sources. So we're putting the dairy
farm a little bit at risk, but it's completely necessary
because we have determined through, over the last 15 years,
that dairy income alone is completely unsustainable for us in
the State of California. So we have moved towards
diversification.

So I have two other things on my list. One is
questions and one is heavy drinking, so I don't know if I
should just sum it up and say thank you for allowing me to come
here today to talk to you. I do support Proposal 1, the
proposal by the co-ops. That is, in my opinion, the best
opportunity for dairy producers in California.

After all, without the dairy producers in California,
we do not have a dairy industry in California. And if we want
to continue having a thriving and vibrant and, you know,
economically beneficial industry in California, I think it's
important to keep the producers healthy. And at this point, we
are not very healthy. And I would suggest that this is fairly
well demonstrated, if you look at the cooperatives in Tulare
County, where I come from, and what their processing capacity
is versus what their current through-put is. We have -- we
have seen milk supplies to our co-ops drop between 7 and 10
percent year over year, and quite a bit down from what their
capacities are. So, you know, coming out of a year like 2014
which was the, in our experience, the most profitable year that
we had ever had, it was -- it barely got us back to even. Right? And it didn't provide much opportunity for us to invest in growing the herd, or, I mean, or improving the facility for the animals. We were mostly paying back debt and investing in diversification. So I don't know that, you know, and I see it everyday. I mean, you all, many people from the countryside, I mean, I'm living out on the farm. We have seen small dairies, you know, 100 cow dairies, 500 cow dairies go out of business and get leveled and plant trees or some other crop on it over the years. But now we're seeing 5,000, 10,000, cow dairies getting leveled, you know, when the best opportunity you have for a 20 or 30 million dollar facility is to grind up the concrete into road base and recycle the metal, and plant trees on it, when that's the best opportunity that you have for an investment like that, that really causes me to question, you know, the system that we're operating under. And I think it is certainly time for, I think we are beyond the trend in terms of change being necessary for this industry in California to survive.

And with that, I just want to give a shout-out to my friends online who are listening to me. And thank you to you for giving me the opportunity to talk to you today. And I'm open for any questions you might have.

JUDGE CLIFTON: Mr. Giacomazzi, your testimony is spellbinding. Very different from what we have had, and very
helpful in that respect. I would hate to follow you, the rest
of you who are speaking today.

I would like to now invite questions. Mr. Beshore?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Thanks for coming down from Hanford today,
Mr. Giacomazzi. Just a couple of quick questions. You
mentioned when you were talking about your education, you
mentioned going to COS, or I think if I heard that right.

A. Yes.

Q. Can you just tell us what that --

A. Oh, yeah. COS is the College of Sequoias, it's a
Junior College in Visalia.

Q. Very good.

A. And Cal Poly San Luis Obispo, by the way, I don't think
I said that. Important distinction. San Luis Obispo.

Q. Which is where you graduated subsequently?

A. That's where I finished school.

Q. Finished school.

A. After five years. Yes.

Q. Okay. I may have missed this, but can you just tell us
a little bit about your, you know, your family, your dairy
operation today in terms of size, the number of cows?

A. Yeah, I did not mention that. I apologize. So today
we milk around 950 cows, and we farm right at 1,000 acres, 400
of which now is planted to almond trees that we have planted in
the last two years. So we have put 40 percent of our property
into almonds.

Q. And the rest of the acreage is used for?
A. Corn, wheat, alfalfa, feed for the cows.

Q. Okay. And then just one final question. You mentioned
the Leopold Award that you received.
A. Yes, sir.

Q. And you know, your conservation practices are really
impressive. Can you just, you said it's the Noble Prize or
whatever, but just for -- for the record and for everyone, just
talk, explain what the Leopold Award is a little bit, and so we
know what that is.
A. All right. So the Leopold Conservation Award is an
award that is given annually by the Sand County Foundation,
which is a non-profit organization in Madison, Wisconsin, that
was established to protect a property that was owned by Aldo
Leopold, who was a conservationist in kind of a university
conservationist who taught farmers that it's possible to
co-exist, agriculture and wild life can co-exist. And taught
people how to farm and to generate habitat for wildlife. And
they give this award away annually, I think nine states. And
they try to honor people who are doing things that are
environmentally beneficial, ecologically beneficial. They get
many, many applicants every year, particularly from California, because there's a lot of people in California doing some pretty amazing things in terms of conservation. And they have these committees that choose the recipients. And I was the recipient for 2012.

Q. So Leopold is one the great names in conservation?
A. Yes.
Q. And probably not everybody has heard of that, so I appreciate your --
A. Exactly.
Q. -- providing that.
A. You got to be a little bit of a hippie to know Aldo Leopold. I'm not a hippie.
Q. Thank you very much.
A. Conservation is profitable, so this is why we do it. It is -- when you are looking at environmental solutions, like any solution, if you want people to adopt them, those solutions have to be the most profitable option. And it turned out in the way we farm now, the most profitable way to farm is also the most environmentally beneficial, so we look to, you know, marry profitability and other external benefits at the same time. We have been able to do that in almost every way, except for in our milk price situation.
Q. Great. Thank you.

JUDGE CLIFTON: Now, did you call the foundation Sand

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

MR. GIACOMAZZI: Oh, come on. All right.

JUDGE CLIFTON: Dr. Schiek?

CROSS-EXAMINATION

BY DR. SCHIEK:

Q. William Schiek.

Mr. Giacomazzi, I want to just thank you for coming here today, and commend you on all the things you do to keep your operation on the forefront. I think you are a very forward-looking dairyman, and that's something to be commended. So --

A. Thank you.

Q. I just had one question. We have, you know, we have had a lot of news stories and things about the drought here in California. I wonder if you might be able to talk a little bit about how the drought has impacted your operation. Has it made it more difficult to get water, increased your cost, those kinds of things?

A. Yes, definitely. The drought in California, both the man-made drought and the God-made drought, are having pretty significant impacts on us. Obviously, from a -- I live in a region where we historically have had very available groundwater. And our groundwater being depleted at fairly
rapid rates because we are dependent on groundwater recharge from surface conveyance systems. The Kings River, the St. John's River both feed into the area where I live, and over the last four years we haven't had much water. We haven't had much rain and there's been, I would say, an increase in demand for water to some degree.

Right now we have, over the last four years we have had to replace four wells, each one at the cost of nearly $400,000 after drilling and putting in a new pump and new pipelines and things to connect to that water source. So we're drilling deeper and going bigger. And we are getting less water to recharge. And if we don't do something about this fairly soon, we will probably all be out of water. It probably won't be in my lifetime, but certainly my concern isn't for me anymore, it is for my children.

There has been a law passed in California called the Sustainable Groundwater Management Act which aims to establish groundwater sustainability agencies who will be charged with developing plans to assure groundwater sustainability. And I was, up until two weeks ago I was the President of my County Farm Bureau, so I'm fairly involved in that process now. And I can tell you it is going to take a long time for us to get there, but, yes, it has made things certainly more expensive. Growing feed with, growing corn and alfalfa with water that you have just spend $400,000 to get to, is a difficult thing to do
in a time when it's uncertain whether you are going to have a year of profitability.

Q. Okay. Thank you.

JUDGE CLIFTON: You mentioned the McKinsey Report. Would you describe it for me?

MR. GIACOMAZZI: The McKinsey Report was a study, I don't know if it was a study, it was a document that was commissioned by the California Milk Advisory Board, I think around 2003, 2004 -- anybody correct me, I don't remember. It was awhile ago. It was released probably in '06 or '07. And it was a study of the California milk industry. And then it suggested some opportunities that the California industry might implement in order to establish a more, I don't know, a more appropriate model for milk pricing, you know, it was kind of looking at the class pricing, class based pricing system versus some other system such as a Dutch auction, which I'm not sure if I'm actually correct in this, but I think the world, the Pontera's Global Dairy Trade Program is based a little bit on information that was suggested in the McKinsey Report. It was, yeah -- it was just something that everyone talked about really ferociously during a time of low milk prices, and then once milk prices came back up, everybody went home and got fat and happy again. And then milk prices went down and everyone came back crying again. And then went back up, and they went back home. And this trend has been going on now for the entirety of
my career in dairy, and it's, the trend has stopped.

We are now, from my observations, we are not going to quit moving towards change. And I would say that 2014 is the evidence of that. You know, in 2013 we started looking at changes in the pricing system in California. 2014 we had the most profitable year that we had seen in my career, but we kept talking about change, because we knew that that was temporary and that this industry still remains economically unsustainable for most producers.

JUDGE CLIFTON: Do you have any recommendations regarding milk pricing from your point of view that would benefit your operation and deal with this volatility?

MR. GIACOMAZZI: Well, my point of view is that, you know, dairymen should have an opportunity to be profitable. But like I said before, I don't, I'm not afraid of volatility and I don't mind volatility in the market, as long as there's an opportunity to manage it. And we currently have no opportunity to manage it. So to me, if we could get all of our pricing, if I could get my price for milk closer to the reality of what is offered in Chicago, or some other device for hedging that gives me an actual benefit because -- I will tell you another thing that this MPP program, this Margin Protection Program offered by your agency, I believe, is not of much benefit to California, either.

We have an extreme disconnect between the numbers used
in the MPP and the actual numbers in California from our milk income side and from our cost side. I mean, we don't pay the same for corn as they do in the Midwest. We don't pay the same for soy bean meal as they do in Southern Illinois. Our alfalfa costs are different than they are most other places, so it doesn't really track for us, much as the Chicago Board of Trade does not track for us in the Class III area. So I would think that if I had an opportunity to say I'm going to invest X-amount of dollars in hedging Class III in the future, and my, but I would hope to have an expected differential between my price and Chicago. If some way there was some, if there were some way to hedge the basis, you know, to lock in the basis and say, California's Class 3, Class 4b price will never drop below more than, you know, 25 cents of Class III, then that would probably be great.

But I actually think at some point we're going to have prices here above Class III, because once the dairies disappear, there's going to be a lot of demand for milk. And I think that dairies are disappearing. And at some point, to keep processing facilities open in this state, they are going to have to pay to get it here. I would hope that it doesn't come to that.

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

MR. FRANCIS: Will Francis from USDA. Mr. Giacomazzi, just wanted to thank you very much for taking the time out of your
busy schedule to come and give us your thoughts on this issue.

So, thank you very much.

MR. GIACOMAZZI: Thank you.

JUDGE CLIFTON: Last chance. Any more questions for Mr. Giacomazzi? I thank you very much. It is a pleasure to meet you. And if you have more than one business card, if you could give one to Laurel May, who is right here in the front row.

Come back to the stand, if you would, Mr. Giacomazzi. Would you just read into the record your business contact information?


Want my phone number and e-mail, too?

JUDGE CLIFTON: Yes, please, if they are business.

MR. GIACOMAZZI: Yes. (559) 381-8125. And Dino@Giacomazzi.US is my e-mail.

JUDGE CLIFTON: Thank you very much.

I think our next witness will be Mr. Blaufuss. Do you want a five-minute break?

MR. ENGLISH: We're ready to go.

JUDGE CLIFTON: Okay. Very good.

MR. ENGLISH: Chip English. No, your Honor, I think we're ready to go, and we're going to take a break when Mr. Ahlem
get here, so we're prepared to get started.

JUDGE CLIFTON: We're getting out our Exhibits 109 and 110.

MR. ENGLISH: That will be correct, your Honor.

JUDGE CLIFTON: Mr. Blaufuss, you remain sworn. Please again state and spell your name.

MR. BLAUFUSS: Rob Blaufuss, B-L-A-U-F-U-S-S.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Before you resume your statement on Exhibit 109, Page 6. At the end of the day I interrupted you a little bit to talk about Exhibit 110, regardless. And Mr. Vlahos has helpfully pointed out that the figures might need a little more explanation. So why don't we do that now. So what Mr. Vlahos pointed out, if you look at Figure 1 you have identified, it's called the Alta Dena map, and you say Alta Dena Data, and you have a P for plant, but it's not Mr. Vlahos' eyesight, there does not appear to be a P for plant; is that correct?

A. Yes, that's correct.

Q. Okay.

A. These were, Figures 1 and 2 were pulled at a different timeframe than Figure 3.

Q. So if you go to Figure 3, maybe that will help us a little bit. Figure 3 is Heartland Map, and you have actually got sort of the, you have got orange for producer and blue for the plant, correct?
A. Correct.

Q. And even though there is not a P, there is a blue dot if you look Southeast of Los Angeles, correct?

A. Correct.

Q. Is that City of Industry?

A. It is.

Q. And your Honor, just to be very clear, because I'm not sure the record was clear yesterday, the name is City of Industry, it is not City of Industry, sort of like industry city, it is City of Industry is the name of the location. So that's -- that's the blue dot that is Southeast of Los Angeles, and that's the Heartland map, correct?

A. Correct.

Q. Now, will that also help us locate Alta Dena?

A. That is correct. Alta Dena is also located in the City of Industry. And actually, our internal nomenclature is COI North and COI South. So if you want to figure out where Alta Dena is, just draw a dot a little bit north of where that Heartland Farms dot is.

Q. Okay. And now Figure 2 is, of course, of the Bay Area, so that's not, is not going to link up to Figure 3. Where is the plant on Figure 2?

A. I'll admit my California geography isn't great. The plant itself is located in Hayward.

MR. VLAHOS: Mr. English? Can I help out just for one
1 second?
2
3 MR. ENGLISH: Since I'm from one of those Northeastern states mentioned by the witness, yes.
4
5 MR. VLAHOS: To help out, the city of Hayward is just a little bit south of the city of Berkeley and south of the city of Oakland, so it is in the Bay Area, but south of Oakland and Berkeley.
6
7 MR. ENGLISH: Thank you, Mr. Vlahos.
8
9 BY MR. ENGLISH:
10
11 Q. So with those clarifications, and again, I thank you, Mr. Vlahos, for pointing that out. Would you then, return to Exhibit 109 and complete your statement, starting on the middle of page 6?
12
13 A. For the month of September 2014, a Class II facility located in Nashville, Tennessee, would have remained in the pool in order to draw from the pool a location adjusted value of 85 cents per hundredweight. The monthly pool or depool decisions for plants in this hypothetical example for January 2014 through September 2015, can be found in Table 1.
14
15 Dean purchases a significant amount of bulk condensed skim milk, which is ultimately used in our facilities around the country. While at one time we were sourcing a portion of our condensed skim from California sources, we have increasingly moved away from it, as transportation costs escalated. It is our experience that bulk spot loads of
condensed skim moving from California into the Federal Orders has not disrupted markets to any noticeable degree in recent years as a result of a price gap between CA and FO regulated minimum prices. If the co-ops truly felt that there was disorderly marketing occurring in the state and inefficient movements of Class 2 and 3 milk were happening as a result of the state's pricing architecture, why, in recent years, have they only petitioned for hearings on adjusting the Class 4b price? There has been absolutely no attempt to address the issues ostensibly causing disorderly marketing for Class 1, 2, 3, and 4a milk for reference by the proponents of Proposal 1 in their case-in-chief. While differences in pricing systems have the potential to lead to disorderly marketing, it is not itself indicative of disorderly marketing.

Over the past decade, there have been instances where unregulated milk, be it raw or packaged products moving into California from neighboring states has caused disruptions in the California Class 1 market. Interstate commerce laws do not allow for California to regulate the milk being moved into the state from neighboring states. Speaking specifically from a Class 1 standpoint, such movements of milk is able to occur when the out-of-state price of milk (typically the local statistical uniform price) is cheaper than the Class 1 price in California. Competitive pressures from both out-of-state bulk milk and packaged fluid milk were significantly reduced by
Federal statute, CDFA, and Federal Order regulation changes which occurred in the mid to late 2000's.

In two separate hearings in the mid-2000's, CDFA dealt with a disparity between California Class 1 price and uniform prices being paid in neighboring states. At the time, the wide disparity in prices had led to a loss in Class 1 sales for processors that produced, processed, and sold California milk. These hearings resulted in a reduction to California Class 1 prices which reduced the economic benefit to import milk into California. Other significant regulatory changes occurred in 2006 when the USDA, and then the U.S. Congress, set limits for entities seeking producer-handler status, and in 2009, when USDA began fully regulating producer-handlers whose Class 1 route dispositions were in excess of 3 million pounds a month, including sales into California. These Federal Order regulation changes impacted a competitor in Arizona who was increasing his California Class 1 sales. In the years following the Federal Order 124/131, decision and adoption of the Milk Regulatory Equity Act, fluid milk sales moving into California from Arizona declined compared to levels experienced in the early 2000's. Dean has not seen a noticeable change in milk import levels in the California market over the past year. While competition for fluid milk sales in the state remains highly competitive, our market intelligence on the California market does not point to any major changes in out-of-state
competition, which would indicate disorderly marketing. The main source of increased competition for fluid milk sales over the past year has not come from out-of-state plants, but rather, in-state producer-handlers.

While the proponents of Proposal 1 may try to bury the lead, make no mistake about it, this hearing is occurring because of a dissatisfaction over the disparity between the California Class 4b price and the Federal Order Class III price. Producers are focused on increased revenue and in this case, revenue derived from cheese and whey. The Class III price and its relationship to the California Class 4b price, however, is not in and of itself indicative of disorderly marketing.

The California State Order has served both producers and processors well throughout the years. Dean is not of the belief that the State Order is so beyond repair as to require the forming of a new Federal Order in California. CDFA has typically been responsive in addressing issues that have arisen which impact the orderly and efficient marketing of milk in the state. When disorderly marketing conditions have occurred, CDFA made appropriate adjustments to regulatory language to address it.

Speaking as a Class 1 processor, Proposal 1, as it is written, makes me exceedingly uneasy about having access to an adequate milk supply long-term. As outlined by the evidence I
have presented here, I do not share Mr. Hollon's view that,
"The FMMO proposed by the Cooperatives would not only promote
and enhance orderly marketing conditions, but would also
address long-standing conditions of disorderly marketing."
There are several key requirements that are uniformly found in
all other Federal Orders which seek to ensure orderly marketing
conditions. By simply repackaging California regulatory
language into a Federal Order, the co-ops have failed to
account for those FMMO provisions. In order to provide for the
orderly marketing of milk in a Federal Order construct,
provisions such as shipping percentages and repooling
restrictions were put in place to ensure that supply plants
meet basic performance standards in order to have access to the
additional value generated by the market-wide pool, and
especially the Class I proceeds. A market-wide pool -- a
market-wide Federal Order pool sans performance requirements
like the one proponents of Proposal 1 have proposed, could lead
to disorderly marketing in California.

Q. Chip English.

If you would look back at page 8, in the first full
paragraph, the second paragraph, if you include the carry over,
in the last sentence you substituted, I believe, the word
"indicative" for "definitive" and I actually think indicative
may be more correct. It is the last sentence that reads, "The
Class III price and its relationship to the California 4b
price, however, is not in and of itself," and I think you said indicative. Page 8. Would you like the record copy to be corrected to read as you read it, "indicative?"

A. Yes.

JUDGE CLIFTON: All right. Ms. Elliott? She's already got a thumb's up, she's right with it. That's on page 8, roughly in the middle of the page, fifth line down of the first full paragraph, we're striking "definitive" and inserting "indicative".

And I have got two other little --

MR. ENGLISH: Then why don't you go ahead, your Honor.

JUDGE CLIFTON: Well, if you are going to do them, I like that better.

MR. ENGLISH: Well, I would if I knew what they were.

JUDGE CLIFTON: Last line on page 8, which to words do you want us to strike?

MR. BLAUFUSS: In that sentence, two words would be "rely on".

JUDGE CLIFTON: All right. Do you see that, Ms. Elliott?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: So we're striking two words in the last line, "rely on". And the only other little change I think you probably want to make, Mr. Blaufuss, is on page 7, five lines up from the bottom, you read that "Whose Class 1 route dispositions were in excess of 3 million pounds a month." So I
assume you would like us to insert the word "of"?

MR. BLAUFUSS: Yes.

JUDGE CLIFTON: So that is just before 3 million pounds.

All right. Thank you, Ms. Elliott. Were there any others, Mr. Blaufuss? That's all I saw.

MR. BLAUFUSS: I think you hit on the ones that I knew of it.

JUDGE CLIFTON: All right. Great. Mr. English?

MR. ENGLISH: Thank you, your Honor.

So as we have with past witnesses, we have end notes for references rather than footnotes, and we're not asking the court reporter to put those in the transcript, they are in the exhibit. But I thought that I would point out that Exhibit 109 on page 9 has four such end notes.

BY MR. BLAUFUSS:

Q. So let's look first at Exhibit 110, Mr. Blaufuss. And even though I have gone through a little bit of Figures 1 through 3, why don't you describe what they show and what the difference size circles mean, and just walk us through what is shown on Figure 1.

A. Okay. So Figure 1, if we're looking at the Alta Dena map, what this will show is where our milk supplies are located for this individual facility. And then the size of the circles as you can see from the, we'll call it the table, or the key on the top corner shows the amount of pounds that we generally
receive in that given month from those areas. So the larger
the circle, the more volume.

Q. And so you have provided the plant zip code, which
would give somebody a more precise way of locating the plant if
they wanted to, and then you have categorized this as a supply
that's within 100 miles. 54 percent of the Alta Dena milk
comes from within a 100 miles, correct?

A. Correct.

Q. And then the remaining supply, the total supply
certainly comes within 250 miles, correct?

A. Correct.

Q. Okay. And if you look to the next two figures, that
would provide the same information, correct?

A. That is correct.

Q. And I note for the Bay Area, 99 percent of your milk
comes within 100; is that correct?

A. Yes.

Q. And finally, if we look to Figure 3, we would have sort
of the same information for Alta Dena, a small portion comes
under 100 miles, and ultimately everything is within 250 miles,
correct?

A. That's correct. And I will add, I stated this I think
in my testimony, or at least in questioning, these maps are
reflective of June 2015. I still believe in talking to our
milk supply personnel who handle this, this is still
reflective. It is not to say things can't change and
circumstances arise, so there can be some loads that perhaps
aren't perfectly shown on the map, but typically this is our
milk supply base that we rely on these facilities.

Q. Now, in your testimony I think you said that you don't
regularly receive milk from out-of-state, bulk milk from
out-of-state, correct?
A. Correct.

Q. Would it be more accurate to say that it would be very
unusual for you to receive milk from out-of-state?
A. That's correct. Our preference in our California
facilities, we have invested a lot of capital in the State of
California, and our preference is to source local, produce
local, and sell local.

Q. And turning back to your testimony, and byway of
example, on page 5, in the bottom long paragraph, you say,
"what the proponents of Proposal 1 fail to mention is the
current Federal Order language allows all Class 2, 3, and 4
plants to depool from the respective Orders when there are
economic incentives to do so." Would it be fair to say, for
purposes of this, that handlers elect not to pool milk?
A. Yes, I believe that would be the nomenclature that
would be preferred.

Q. By USDA?
A. By USDA.
Q. Okay. And so to the extent I have used the phrase depool, I'm part of that problem. So the phrase that you think USDA would prefer to use is elect not to pool?

A. Depool just kind of flows off the tongue a lot better.

Q. Okay. So that takes us then, to Table 1 of Exhibit 110. And I know you have mentioned in your testimony, but let's look at it in greater detail. So what have you done here, and what's -- what are the columns? Just walk us through for the record.

A. Certainly. So Column A is just the month. So I look to the last, from January 2014 through September 2015. So, in looking at, you know, these individual months what these decisions would have been had there been a Class II stand-alone plant in these locations, so, you know, in the proponents initial, I believe it was their initial write-up, they specifically called out these three cities and how they can source California condensed skim into those cities and still pay freight, and still be at or below cost in those areas. But it just ignored the fact that there's plants in Federal Order structure II, III, and IV, like you said, Mr. English, those plants can elect not to pool.

Q. And are you aware of stand-alone Class II operations in those areas?

A. I don't believe -- I don't know if they are in individual cities, and that would be reflective of the exact
location differentials. I believe there's a Class II facility
north of Denver perhaps, and there may be ones in Nebraska,
which would still be Federal Order 32, though I don't know that
for sure.

Q. Okay. So it might affect the numbers modestly because
the blend would have been adjusted for the location?

A. Correct.

Q. But ultimately when you look at the numbers you are
looking at for September 2014, you are looking at a number that
is significant enough that you believe that milk could have,
and likely was, depooled in those months, in that month for
those two Orders?

A. At least a portion of it that could get out of the pool
would have elected to do so.

Q. And that's because if you look at Column D, for
instance, for plants in or around Denver --

A. Column D, it doesn't matter where the plant's located.

Q. Okay. I'm sorry.

A. You are going to have a 70 cent differential in the
same base price for Class II.

Q. Okay. And so what you would look at is the Class II
price relative to the blend, correct?

A. Correct. So the plant decision is going to be to look
at it, what am I going to have to pay in, what's my minimum
price for each of the class that I'm producing? And compare
that to what they would receive out of the pool, which would be
the blend price at location. And so they are going to look at
it and say, if my Class II, in this case, price is higher than
what the blend would be, I'm going to elect to not pool that
plant.

Q.  Okay. And so what's true in September 2014 for Denver
is also true in September 2014 in and around Kansas City,
correct?

A. Correct.

Q. Now, Nashville is different, so you did include
Nashville. And what's the conclusion as to Nashville?

A. Yeah, I didn't want to not include Nashville, and then
I would suspect Mr. Beshore would ask the question why I
cherry-picked the data, trying to read ahead on the tea leaves
on that one, so I was sure to include it for full disclosure.
But since they are such a high Class I utilization in the
Southeast, you would have to have a pretty dramatic movement in
milk price between Class II and Class I in a given month to
ever elect not to pool that milk.

Q. And of course also, the California condensed would have
to move a greater distance to get to Nashville, correct?

A. Correct.

Q. On page 4 of your testimony, in the carry over
paragraph on page 3, you discuss the idea that, "it would be
critical that Federal Order language provide a Market
Administrator the discretion to make changes to shipping percentages without requiring the administrative process of a Federal Order hearing." In order to be able to make changes, you would have to have shipping percentages in the first place, correct?

A. That's correct, which is why I include the line, you know, we want to have the Market Administrator have the discretion to change it without having to go through a Federal Order. Because absent that in the State of California, the only thing you are relying on is a call provision. And I think in our point of view, we would rather let the market sort it out, which is what we have done in taking our commercial options. But if they don't have that option, I can tell you, we are in the situation, and let's just say for the record, for hypothetical, California is in Federal Order, I can tell you we would be submitting paperwork to the MA to adjust the shipping percentages for the next month.

Q. But to the extent that California does have call provisions that haven't been used recently, those are also not part of any proposed Federal Order in Proposal 1, correct?

There's no call provisions built into Proposal 1 that you know of?

A. I believe that could be correct.

Q. Okay. And just for clarity, this is, your testimony Exhibit 109 says Part 1. And you have been here for most of
the hearing, I think you might have not been here for the short
week after Columbus Day.

    A. Yeah, I took that short week off to make sure my son
recognized my face.

    Q. But, for instance, when I discussed earlier today
testimony with respect to Topic 2, and, for instance 7(a) and
requirements for 7(c) and Section 13, you will be appearing
likely later this week on Part 2, correct?

    A. I believe that's the plan.

    Q. And somebody from Dean Foods will be here later to
discuss in greater detail the issue of producer-handlers,
correct?

    A. Yes, I think we'll actually both be discussing that
issue in greater detail.

    Q. Okay. And there's probably some other issues like
transportation and fortification that will be another part,
correct?

    A. Correct.

    Q. Your Honor, at this time, I would move admission of
Exhibit 109 and 110. And following that, I would sit down and
the witness would be available for cross-examination unless
we're ready for a break for the court reporter?

JUDGE CLIFTON: Yes, we are ready for a break, but I don't
want anybody to move. The first part of our break will be
remaining seated. Is there anyone who would like to question
Mr. Blaufuss with regard to Exhibit 109 before determining whether you have any objection? There is no one. Is there any objection to the admission into evidence of Exhibit 109? There is none. Exhibit 109 is admitted into evidence.

(Thereafter, Exhibit Number 109 was received into evidence.)

JUDGE CLIFTON: Is there anyone who would like to question Mr. Blaufuss regarding Exhibit 110? None. Are there any objections to the admission into evidence of Exhibit 110? There are none. Exhibit 110 is admitted into evidence.

(Thereafter, Exhibit Number 110, was received into evidence.)

MR. ENGLISH: Am I instructed to sit down?

JUDGE CLIFTON: You are. We go off record at 10:36.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 10:52.

Mr. English, how would you like to proceed?

MR. ENGLISH: Thank you, your Honor. Chip English.

Your Honor, conveniently, as the break was about to start, Mr. Ahlem arrived. And, therefore, it seems to me it's a perfect time for Mr. Blaufuss to accede the witness chair and me to accede the lectern to Mr. Ahlem and Mr. Vetne. So Mr. Blaufuss will be back later.

JUDGE CLIFTON: Thank you.

MR. VETNE: John Vetne representing Hilmar Cheese.
JUDGE CLIFTON: Is there any written statement that will accompany Mr. Ahlem's testimony?

MR. VETNE: There is nothing for distribution. He has notes for himself.

JUDGE CLIFTON: All right. Very fine. Mr. Ahlem, is this the first time you have testified in this proceeding?

MR. AHLEM: Yes.

JUDGE CLIFTON: I'll swear you are in. If would 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. AHLEM: Yes.

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


JUDGE CLIFTON: Thank you. I think everyone can hear you loud and clear; is that correct? Good. All right. Thank you. Mr. Vetne, you may proceed.

MR. VETNE: Yes, thank you.

DIRECT EXAMINATION

BY MR. VETNE:

Q. Mr. Ahlem, you're appearing here in somewhat unique capacity. You are a dairy farmer; is that correct?

A. Yes.

Q. Okay. And you also have a role with Hilmar Cheese
Company; is that correct?

A. Yes.

Q. You have an ownership interest in the company?

A. Yes, I do.

Q. And you serve on the Board of Directors?

A. Yes.

Q. And you are Chairman of the Board of Directors?

A. Yes, currently I'm Chairman.

Q. And you have made some notes for yourself to read which describes some of your personal history and the history of Hilmar cheese; is that correct?

A. Yes.

Q. Proceed, please.

A. Thank you. Like I said, my name is Jim Ahlem, and along with my wife Carol, we operate James Ahlem Dairy and Jade Jerseys, milking a total of about 2,600 Jerseys in Hilmar, California. We also are in a partnership with my two sons in Foothill Farms, milking 2,400 Jerseys in Denair, California. I'm a founding owner of Hilmar Cheese Company and currently serve as Chairman of the Board. I also serve as Treasurer on the California Milk Advisory Board. Over the years, I have had the opportunity to serve on many other boards, including National Dairy Board for six years, the last two as Vice-Chair of DMI; National All-Jersey for 15 years, five as President; and many other local state organizations.
JUDGE CLIFTON: Slow down please. Thank you.

MR. AHLEM: Okay. I will.

Community-wise, I was a Hilmar volunteer firefighter for 27 years, a 4H leader, involved in church leadership, and many other activities that most parents do as their kids grow up.

I was born and raised in Hilmar with two brothers and two sisters, and all but one sister are still in the dairy business. I live on the home farm that was settled by my grandparents in 1902. I attended Hilmar schools, Oregon State University, Modesto Junior College, and graduated from CSU Fresno with a BS degree in Animal Science.

Carol and I were married in 1974, and we're still having a blast. After school, we came home to Hilmar and I farmed for my brothers for about three years. I started my own dairy in November, in 1978 on a facility rented from my uncle that was across the street from the home farm. I started with 125 cows and one employee who did the milking, and I did the feeding, the farming, and everything else. Milk prices at that time were not great and interest rates were as high as 18 percent, so with those conditions, we decided to start a family. Two boys in 15 months were a good start, and a beautiful daughter a couple of years later. We stayed on the rental dairy for about six years and moved back to the home farm when the dairy herd had grown to about 500 cows.
About two years before that is when the dream of Hilmar Cheese began. I would like to step back a little bit and share some things about my father. He started his dairy in the early 1930's and built one of the first Grade A milk barns in the area, about 1935. As a side light, I still use that barn today, that's where I milk my hospital cows. Dad was a thinker and a risk taker and innovator. So in the late 1950's, his brother and a couple of neighbors set up a bottling plant in Hayward, California, and began selling fluid milk through a cash-and-carry store at that plant. They expanded with a second plant in nearby San Leandro. That was not an easy business, but away to get a little more money for their quality product marketed under the All-Jersey milk label. And in late 1960's, when pooling was created, it basically put them out of business in just a couple years. Regulatory environment was not good for us then.

Back to Hilmar Cheese. In the early '80's, Dr. Tony Ernstrom did research on cheese yield from high protein milk from Jersey cows, and discovered that milk from Jerseys and other high-component breeds, had significantly higher yields. Out of 100 pounds of Jersey milk, you would get 12 to 13 pounds of cheese, compared to 9 to 10 pounds from conventional milk. With this information and much work and support from National All-Jersey, we were able to go to our co-ops that we knew were making cheese with our milk and
request a premium for our high-yielding milk. This was something new to them and they agreed to a small amount, which was a start. But when we continued to ask for closer to full value, we were told if we wanted more money for our milk, to build our own plant.

We are thankful for that advice everyday. A group of about six or seven of us began to do some legwork to see if we could make this happen. It was at that time we hired John Jeter to consult and run some numbers on building a plant. At that time, about 45 percent of cheese consumed in California came from out-of-state and we had a customer that agreed to take all our production and pay us in 15 days -- and this was all done on a handshake.

We put some good numbers together and invited producers with high-component milk in the area to join us, and we formed a group of 13 to begin financing efforts. We talked to many banks, and the only way to make it work was to sign continuing guarantees. We put everything we owned on the line for this endeavor.

For my wife and I, who are really still just getting started at 32 years of age, with two children of four and five years old, and my wife pregnant with our third, it was an unbelievable risk, even though for us it was an easy decision. We were surrounded by people who were successful, but like-minded, and who we had immense trust. We set the company
up as a private corporation because it was important that it
remain in the hands of the owners with high-component milk
because of the way we were going to pay for milk. We paid off
a cheese yield formula that basically pays you for how much
cheese your milk makes subject to a regulated minimum prices,
which gave high-component milk good premiums. We started
production in 1984 and exceeded our five-year projections in
about 18 months due to a large processor that failed and left
many dairy producers without a home for their milk. We were
able to help as many as we could, which put us way ahead of
schedule.

We continued to look for ways to get more value out of
our milk supply, and started investing in research. We had a
whey stream that was, at that time, a disposal problem and
needed to be dealt with because of all the environmental
regulations for disposal. The solution was a start investing
to process whey and extract protein and lactose. We built a
protein plant in about 1991. Since that time, we have invested
hundreds of millions of dollars refining those processes, and
millions more in research and development to find new ways to
use the high value products that we are producing. We take
tremendous pride in our R and D efforts and feel we are one of
the leaders in the industry in this area.

Over the years we have had tremendous growth of about
20 percent per year. We also spend a tremendous amount of

5000
effort planning and implementing our vision, and developing a
culture that benefits our employees, our owners, and our
producers.

Our board meets twice monthly, and the second and third
generation owners are invited to attend both meetings. We feel
very strongly that they need to be able to see how we govern
and be able to learn our culture and participate in our ongoing
discussions. We have several G-2's -- by G-2's I mean second
generation owners, I'm sorry -- several G-2's that are on the
board, as some of the founding owners have passed away. There
is an interview process that the G-2's interested in serving on
the board go through before being appointed. We work extremely
hard on succession planning throughout the business, including
ownership.

We are continuing to grow with our powder facility, due
to begin production in December. This is a new area for us and
this investment is an area that will help us to be able to
diversify and give us flexibility to take advantage of changing
markets.

I would like to comment about our producers, as we both
need each other. I'm very protective of our shippers, in part,
because I am one of them. I do generate a lot of my income
from my dairy. Owners get paid the exact same way that all
producers are paid. They work extremely hard to produce the
kind and quality of milk that enables us to get the best value
and the highest return for that milk. We have a unique payment
system called a Market Basket Price that takes into account
different markets and products and prices they generate, to
give the best returns. We strive to educate our producers to
what kind of milk generates those best returns. Many of them
understand these signals and reap benefits from these premiums.
Hilmar has paid some of the highest premiums in the state,
year-after-year.

In closing, I have tremendous concern with Proposal 1.
I fully understand the negative impact on our company. It
could possibly have a negative affect on our producers who
lower premium. Many of them have made huge investments to
produce milk that generates premiums that pay them fairly for
their milk. As an owner of Hilmar Cheese, we took unbelievable
risks in very difficult times to start this company and have
been very successful. I feel we have, over the years,
benefitted all dairy farmers in the state, by not only driving
higher premiums, but the investment we have made to drive
innovation. I sometimes wonder if other processors or co-ops
had made the same type of investment in technology and research
and development that we have, where would our industry be
today? We built this company to generate a profit and returns
that allow to us reinvest in value-added ideas and equipment
that have potential returns to the entire industry.

If this proposal is adopted, we will still grow, and we
will invest, but it will make it extremely difficult to do so in California.

Q. Thank you, Mr. Ahlem. In your last sentence you are referring to Proposal Number 1?

A. Yes.

JUDGE CLIFTON: I do need some spellings.

MR. VETNE: Okay. Pay attention, Mr. Ahlem, because I'm not sure I can help her.

JUDGE CLIFTON: When you first started, Mr. Ahlem, and you were talking about your background, you talked about the companies that you were associated with, you and your family. I would like you to go over those entities again, please. I think there were three different companies that you have.

MR. AHLEM: There's some different boards that I served on.

JUDGE CLIFTON: Well, okay, let's start with J Jerseys.

MR. AHLEM: Oh, Jade, J-A-D-E.


MR. AHLEM: That is a second dairy we have.

JUDGE CLIFTON: It is a what?

MR. AHLEM: That's a second small dairy we have on a lease facility, that my wife and I own.

MR. VETNE: Second small dairy farm.

JUDGE CLIFTON: All right. What's the name of the first one?

MR. AHLEM: James Ahlem Dairy.
JUDGE CLIFTON: Your name, James Ahlem Dairy, and then Jade Jerseys. And talk to me about Foothill Farms.

MR. AHLEM: Foothill Farms is a partnership with my two sons, we're minority. We only own about ten percent of that operation.

JUDGE CLIFTON: And the place in California where it's located.

MR. AHLEM: D-E-N-A-I-R.

JUDGE CLIFTON: All right. I have to say, I absolutely love the sentence that "we were married in 1974 and are still having a blast."

MR. AHLEM: 41 years.

JUDGE CLIFTON: Then, another spelling, John Jeter.

MR. AHLEM: Yes. J-E-T-E-R.

JUDGE CLIFTON: Okay.

MR. VETNE: What, Mr. Ahlem, what role did Mr. Jeter play in Hilmar Cheese?

MR. AHLEM: Eventually, John was our first employee, was our CEO, until September of this year.

MR. VETNE: Thank you.

JUDGE CLIFTON: Tony Ernstrom?

MR. AHLEM: Yes.

JUDGE CLIFTON: Do you know how he spells his name?

MR. AHLEM: I spell it E-R-N-S-T-R-O-M. There may be someone else here that knows if that is the correct spelling.
JUDGE CLIFTON: And then there's a kind of cow, and I don't know this cow, I wrote down "Hosta"?

MR. VETNE: I think he said hospital cow.

MR. AHLEM: Oh, hospital cows. My sick cows. I currently still milk them in the original, my father's original milk barn.

JUDGE CLIFTON: Oh, okay. So that's the farm that, the barn that was built in 1935?

MR. AHEM: Yes.

JUDGE CLIFTON: All right. Okay. Then, thank you.

Thank you, Mr. Vetne.

BY MR. VETNE:

Q. Okay. I was going to ask you about hospital cows. Those are -- those are cows that you have taken out of commercial production and isolated separate from the herd, and treat them until they return to health or you decide what to do with the problem; is that correct?

A. Yes, we keep those cows separate and any antibiotics we have given them is until the withdrawal period is complete before we reintroduce them into the herd.

Q. Okay. And I wanted to ask you about your Market Basket payment system to which you referred. Is it correct that Hilmar essentially looks at the finished products it makes, combination, cheese, whey products, other things, and measures the return that the plant gets for the sale of those products,
and takes that revenue and moves it into the producer milk
check in relation to that return that you find in the
marketplace?

A. Yes. And that's also in relationship to the components
of the milk that was used to make that product from the
individual producers.

Q. Okay. And would it be correct to say that that Market
Basket of products can vary from time to time? Cheese, whey,
the various products that you make?

A. Yes.

Q. Okay. And in turn, producer revenue would vary along
with that, correct?

A. Yes or premiums.

Q. Okay. And if -- if a regulated system imputes to
Hilmar Cheese a product in a regulated Market Basket, that is
not in your commercial Market Basket, how does that affect your
ability to translate your Market Basket revenues to your
producers?

A. What do you mean by the regulatory imputes?

Q. If the regulatory system, for example, imputes to you
certain revenue from sale of dry whey, which that's not in your
basket of products, correct?

A. Uh-huh.

Q. But if the system imputes to you that revenue and
requires that it be transferred to producers in some form, will
that adversely affect your ability to take the products that you make and translate to the producers?

A. Yes. Yes. If we don't make a product, we're not generating any revenue off of it to put into our formula to reward our producers for that type of product.

Q. Okay. You refer to --

JUDGE CLIFTON: Mr. English?

MR. ENGLISH: Well, I think Mr. Vetne asked a predicate question about whether or not they manufacture dry whey, and I heard, uh-huh. And so I think maybe it would help if the record was clear as to what the "uh-huh" meant. So I don't know if you want to fix that or not.

MR. VETNE: I do. Sometimes -- sometimes I get distracted, and I'm not good at multi-tasking, so I didn't hear the "uh-huh".

BY MR. VETNE:

Q. So you do not make dry whey; is that correct?

A. No, we don't.

Q. Okay. And you don't have any current plans to make dry whey; is that correct?

A. No.

Q. Okay. Have you ever made dry whey?

A. No.

Q. Okay.

JUDGE CLIFTON: Well, when you extract from the whey stream
what you extract, those were two things, right, protein and lactose?

MR. AHLEM: Yes.

JUDGE CLIFTON: So in what form is the protein when you extract it? What do you do with it, I guess?

MR. AHLEM: It is liquid and we dry it to different concentrations. We have a process over the years, we add further value to those proteins.

BY MR. VETNE:

Q. Let me ask some questions and maybe we'll clarify that. You do not take the whey stream that comes out of cheese production and simply dehydrate it until it turns into a powder, dry whey?

A. No.

Q. Okay. You take the whey and -- and separate the proteins from the lactose, and you make a protein-concentrated product and a lactose?

A. Yes.

Q. Thank you. You mentioned a large processor that failed in 1984. What kind of processor was that? A fluid manufacturing?

A. Yeah, I think they were fluid. That's way back when. I don't remember the name, but someone here may.

Q. Okay. So let me see if I got, just understand the context. There was a plant buyer of milk that had a producer
milk supply, and that buyer failed, and there was milk available to Hilmar to process into cheese?

A. Yes. That was a real critical point, because when that company did fail, they were calling up their shippers and saying, "We're not picking your milk up tomorrow." So it was really a dire thing that needed to be addressed in the whole industry, not just us stepped up.

Q. Okay. You talked a little bit about your Board, you Board activities. The high bar that you, the company, creates for membership on the Board. Were you on the Board when the decision was made by Hilmar to invest in a cheese plant in Dalhart, Texas?

A. Yes.

Q. Okay. Can you describe a little bit about the process and considerations that went into that decision to invest in capacity in Texas rather than someplace else?

A. Yes. We had been looking to grow. Like I said, we were on, we have always been on a pretty steep growth mode, and we -- we were looking all the time. And we looked in California, we looked in Utah, Idaho, and then this group from Texas came to us and wanted us to build a plant. They had some farmers out there that thought the dairy industry would be good for them. They recruited us, they had dairy, a lot of open space for dairies. And working through with them we decided that it would put us closer to our markets at that time, and
still does, but this was probably the most logical place to go. And we did look at California, but with unstable regulatory environment that, it was nice to go someplace where we were wanted, is what that boiled down to.

Texas worked well with us for economic development, some funds came in from there, and then we decided to build a plant out there. There was, we kind of felt it was a last frontier for dairy start ups. A lot of ground, fairly good water, and just, there was a lot of opportunity there, so we decided to make our investment in Dalhart, Texas.

Q. Okay. And were you similarly involved in corporate decision making as a member of the Board of Directors in the investment of a powder facility in California a few miles down the road from your Hilmar plant?

A. Yes.

Q. You were involved in that? You've described that plant as a powder facility. Find a little bit more. It is not, it is not whey powder, right?

A. No, no.

Q. And it's not nonfat dry milk, NFDM, that is produced in substantial quantities in the U.S., is it?

A. No.

Q. It is -- it is designed and was planned to produce something called skim milk powder, correct?

A. Originally it was for whole milk powders.
Q. Whole milk powder.

A. Yes. And then we made a little more investment so we could do either with it.

Q. You can go either way?

A. Yes.

Q. Okay. And the market for that is, is where?

A. It's international. A lot of it is exported.

Q. Okay. This is forward looking in your part. It hasn't started operations yet?

A. No, it is due to start up in December of this year.

Q. Okay. And you hope to be able to produce product there that you can market profitability to international buyers, correct?

A. Yes.

Q. Okay. And at least in part, the success, failure, or something in between of that facility, would be heavily influenced by regulated prices for milk, whether they are set by the State of California or USDA; is that correct?

A. Yes, that could be.

Q. Okay. Is there anything else you want to add before I sit down and --

A. No, just maybe a little more about the powder plant. As I said, it was originally designed as a whole milk powder plant, because when we first started looking at it, the whole milk powder market was very good. And then, even through the
planning process, that changed and skim milk, and it is --
neither one of them are very good of them right now, but we
don't have a short vision, we have a long vision, so that it
also gives us just the flexibility to process milk close to our
plant in Hilmar. And three years ago if you told me we were
going to invest and build a plant in Hilmar, I would have told
you you were crazy but --

Q. Thank you very much. Okay. Are you willing to receive
some questions by people other than me?

A. Sure.

JUDGE CLIFTON: Mr. Ahlem, thank you so much for coming
back. I know we wanted to get to you Monday, I believe it was,
and failed to. We very much appreciate your being here.
Is there anything you want to add to your testimony
before I invite questions from others?

MR. AHLEM: No.

JUDGE CLIFTON: All right. Who will begin the questioning
of Mr. Ahlem? Mr. Beshore?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Good morning, Mr. Ahlem. I represent the Cooperatives
that have brought Proposal 1 to the hearing, LOL, and CDI, and
DFA. Just a couple of questions. What -- what -- of the milk
that you purchase and process at Hilmar, what portion of it is
Jersey milk today?
A. Oh, it's probably around -- around 15, 20 percent.

That's all the milk, Jersey milk there is in our area. We pretty much have it all. There just isn't that many Jerseys.

Q. You started out, it was basically, were all the founders Jersey --

A. All the founders, yes. To be an owner at Hilmar Cheese, you have to have Jersey cows.

Q. Okay. So all the current shareholders are Jersey dairymen?

A. Yeah.

Q. Okay. Are you still affiliated with National All-Jersey? If I heard you right, you were on the board, or had been on the board for 15 years or so?

A. Yeah, I went off about five years ago. I retired from that board.

Q. Okay. Were there other Hilmar producers or involved with National All-Jersey?

A. There's a Hilmar producer there is, yes. Mike Wickstrom is on the National All-Jersey board.

Q. Okay. You are aware that Mr. Metzger testified earlier in the hearing?

A. Yes.

Q. Okay. And the National All-Jersey supports a Federal Order of some terms in California?

A. That's what I understand.
Q. Okay. Since Jersey milk and Hilmar has got that commitment to the relationship with Jersey milk and Jersey producers, the California system has never been particularly designed to favor protein pricing, as Mr. Metzger testified; isn't that correct?

A. Yes, that's correct.

Q. So in that respect, a Federal system that did provide pricing incentives for protein milk would be a positive for Jersey producers, wouldn't it? Would it not?

A. Yes.

Q. Can you tell me what products are in the Market Basket price?

A. No, I can't tell you. Most everything we do make, I would not be able to list them. I don't get into that part of the business.

Q. Okay. So when a producer, when a Hilmar producer gets the Market Basket price, does it list out, like, you know, two, or three, or four, or five, or six different components or different categories of prices?

A. It is listed as a Market Basket premium. The calculations are proprietary.

Q. Okay. So it is a blended premium?

A. Yes.

Q. Of the elements that are in the Market Basket?

A. Uh-huh.
Q. That's a yes?

A. Yes, sorry.

Q. Thank you. I'm sorry. Okay. And so in the California system, Hilmar producers get, setting aside quota, get an overbase price.

A. Correct.

Q. Correct? Which is, itself, a blended price of all the uses in the market?

A. To my understanding, yes.

Q. And that includes Class 1, which Hilmar doesn't itself process, but that's part of the overbase price, the Class 1 values, correct?

A. Yes.

Q. And the Class 2 values, and Class 3 values, and the Class 4, all values in the California system, correct?

A. That's my understanding.

Q. Okay. When did you, maybe you testified about this to Mr. Vetne and I apologize if I missed it, but when was the Dalhart move made? When was it?

A. It was probably about six years ago, six, seven years. I can't keep track of time anymore, it goes too fast.

Q. And one of the motivating elements there was the unstable regulatory environment in California?

A. Yes.

Q. Okay. Thank you. I don't have any other questions.
JUDGE CLIFTON: Who next has questions for Mr. Ahlem?

Mr. Vlahos?

CROSS-EXAMINATION

BY MR. VLAHOS:

Q. John Vlahos.

Good morning. This is just to complete the record.
You mentioned the processor who went out of business and you
couldn't recall the name?

A. No.

Q. Would this refresh your -- does it sound like it was Knudsen?

A. I'm guessing it could have been. That rings a bell.

Q. Okay.

A. It is been about 1994, probably.

Q. Yeah. Okay. It might be interesting for you to note in the record, that when pooling went into effect in July 1969, there was a suit to prevent its going into effect that was sponsored by a Knudsen. It's an odd coincidence.

JUDGE CLIFTON: Mr. Vlahos, would you spell Knudsen?

MR. VLAHOS: K-N-U-D-S-E-N.

JUDGE CLIFTON: Thank you. Who else has questions for Mr. Ahlem? Mr. DeJong.

MR. DEJONG: James DeJong, Hilmar Cheese.

CROSS-EXAMINATION

BY MR. DEJONG:
Q. Just a quick follow up question on something Mr. Beshore asked you. In regards to the decision to make the Dalhart plant, you mentioned that an unstable regulatory environment was part of that decision?

A. Yes.

Q. Was a primary factor in that unstable regulatory environment, in fact, the Class 4b price at the time that had a much higher whey factor and it was making returns very problematic?

A. Yes.

Q. I have no further questions.

JUDGE CLIFTON: Does anyone else have questions for Mr. Ahlem? I see none. Mr. Ahlem, is there anything else you would like to add?

MR. AHLEM: No, I appreciate I would be able to be here.

JUDGE CLIFTON: Me, too. I appreciate you being here. I appreciate so much your enterprise, your energy. Congratulations on all you have accomplished and I wish you well.

MR. AHLEM: Thank you very much.

JUDGE CLIFTON: Mr. Francis?

MR. FRANCIS: Sorry. Will Francis, USDA. Sorry, I was late getting back here.

First, I just wanted to thank you very much for appearing here today. Thank you for doing your civic duty.
trying to serve on the jury duty, and also, your civic duty for appearing as a dairy farmer and representative of Hilmar in our hearing here.

I just wanted to explore, and I'm not sure you are the right person to ask some of the questions to. You have got experience working in the California system, but also with your Dalhart, Texas plant, have some experience interacting with the Federal Order in the Central Order. So can you give us any comments relative to your interactions in the Federal Order system?

MR. AHLEM: I'm probably not the one to ask that. I don't, we kind of take a higher level look at the business. I don't get involved in the pricing issues or the orders or the Federal Orders, either.

MR. FRANCIS: Okay. That's fine. Thank you very much.

JUDGE CLIFTON: Do you know who does, Mr. Ahlem?

MR. AHLEM: In our company?

JUDGE CLIFTON: Yes.

MR. AHLEM: We have multiple people that work on that for us. We have our milk procurement, Al Zolin is one of them, he does a pretty good job for us.

JUDGE CLIFTON: Good. He'll be coming back, so that's good to know.

MR. AHLEM: Good. Good.

JUDGE CLIFTON: Thank you so much.
MR. ENGLISH: Chip English. Recall Mr. Blaufuss. And I was complete with direct, so he's available for, I think now called questions by others, also known as cross-examination.

JUDGE CLIFTON: Mr. Blaufuss, you remain sworn. Would you again state and spell your name?

MR. BLAUFUSS: Rob Blaufuss, B-L-A-U-F-U-S-S.

JUDGE CLIFTON: Thank you. Who will ask the first cross-examination questions of Mr. Blaufuss? Ms. Hancock.

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. I just want to shake things up a little bit and change the order. Nicole Hancock. Good morning.

A. Good morning.

Q. Prepared statement Exhibit 109. Is it -- was it fair to say that collectively you have taken the position that in California, under the California State Order system, that there is no disorderly market conditions?

A. Based on what we feel is disorder, I would definitely say that we view the producer-handler issue that currently is allowed to operate in the state as creating issues, and I believe, I think we would consider it to be disorderly to a certain level, but we don't view the system as a whole as being in this extreme state of disorder.

Q. And I think -- I think what you described in your testimony, you actually called it a competitive issue, right?

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So I'm looking at page 8 of your testimony, and at the top of the page, which is a carry over from the paragraph on page 7, the last sentence says, "the main source of increased competition for fluid milk sales over the past year has not come from," oh wait, I'm not even in the right section. Hang on one second. I'm just reading the wrong sentence. "While competition for fluid milk sales," hold on -- yeah.

It is the last sentence, I'm sorry. "The main source of the increased competition for fluid milk sales over the last, over the past year, has not come from out-of-state plants, but rather in-state producer-handlers." Is that what you are referring to?

A. Yes.

Q. Okay. So are you saying that that is disorderly market conditions in California?

A. I think there are, regardless if you are in a California State Order or if you are in a Federal Order, there is always going to be issues in the system. And I think it doesn't matter if you are talking to processors, and I would tend to think there's things in the Federal Order structure that the co-ops would like to see changed. Now, I don't know that, but I just believe that to be the case.

I think talking about the producer-handlers, and the through agreements throughout the state, throughout the years, they have been allowed to have a regulate price advantage in
the marketplace, and we feel that that does create some
disorder in the Class 1 space.

Q. And are you referring to the exempt quota that they
hold?

A. Correct, the exempt quota.

Q. And do you know how much exempt quota there is as
compared to the pool?

A. I anticipated some questions on this. I believe as of
September, this is August 2015, there was roughly 20 million
pounds of exempt quota, 21 million pounds in Class 1.

Q. Do you know what percentage of the pool that
represents?

A. I don't have that number in front of me, I don't
believe. Just total pounds.

Q. But a small percentage, right? Less than one percent?

A. If you are looking at it on a basis of total pounds in
the pool, it is a small percentage. But if you also look at
the exact same exhibit you will see that the total
producer-handler volume in Class 1 is, call it a hundred
million pounds. Of that, roughly 21 percent is exempt. You
compare the actual volume on a percentage basis of how much
milk producer-handlers account for for the California Class 1
space, and I believe the data here for this single month will
show it is north of 20 percent of the Class 1 market. So for
you to compare on the total pounds in the pool, in my opinion,
that's a red herring. That's not a comparison that really
matters. Because in our space, producer-handlers are
predominantly Class 1, and that's who we're competing against
in the Class 1 space. So the fact that there may be one
percent, I think is the number I remember hearing or a very
small number in the total pool, to us it doesn't matter. It is
apt to look at how much percent are they of the Class 1 space.

Q. And -- and are you saying that the producer-handlers
are 21 percent of the Class 1 or that the exempt quota that
they hold is 21 percent of the Class 1?

A. The total pool pounds of the Class 1 product was 452
million pounds in Class 1. The total, I believe I'm reading
this correctly, total producer-handler Class 1 pool utilization
was 100 million pounds. Of that, they enjoyed 20 percent, I
think if you rough math, 21 million pounds of 100 million pound
total is going to equal 21 percent, roughly.

Q. Okay. So help me understand what about their -- their
-- is it the exempt quota that you are saying gives them the
price advantage that creates disorderly market conditions in
California?

MR. ENGLISH: I object to the characterization. I think he
specifically avoided using the term disorderly marketing
conditions.

JUDGE CLIFTON: Yeah, when Mr. Blaufuss began to speak
about this he was very precise, and he mentioned the word
disorderly, but not as an overall disorderly marketing condition in California.

When Ms. Hancock asked him on cross-examination about whether the exempt producer-handlers created disorderly conditions, he responded in such way as to use the word disorderly, but not the specific phrase disorderly marketing conditions in California. So we're walking a tightrope here. I note your objection, Mr. English, but I'm going to allow Ms. Hancock to ask the questions the way she wants, and Mr. Blaufuss to respond accordingly. So would you ask that last question again, Ms. Hancock?

MS. HANCOCK: Well, I want to make sure that the record's clear on this, because, and actually, I just want to understand what your position is as well. So let's back up again, and maybe there is -- do you distinguish between saying that there is disorder and saying that there is disorderly market conditions?

MR. BLAUFUSS: I'm not sure I'm understanding that question.

BY MS. HANCOCK:

Q. Well, I mean, I guess, my original question was do you think that there are disorderly market conditions? And I understood your answer to say, yes, the producer-handler situation does create disorder. And so I guess I tied the two together. Am I incorrect in tying those two together?
A. I'll answer the question, and I'm not sure that I'm answering the question you are asking, but it is how I'm interpreting it. I believe we would view the producer-handlers to be, from time to time, and I think increasingly in the last year, to be disruptive in the Class 1 space.

Q. Do you equate disruptive with disorderly market conditions?

A. Well, if you want to get back to the definition of what we feel is disorderly marketing conditions. In my purview, that definition is to one, and foremost 1) being the Class 1 fluid plants are being adequately served; and 2) is there inefficient movements of milk going on in the marketplace?

And so by that definition, no, I don't feel that they are disorderly. Producer-distributors are not impacting our ability to get milk and they are not, I guess in my purview, they are not necessarily causing milk to move outside the state in and of itself.

Q. Okay. So I appreciate that. And even in the objection because I think we clarified it on the record for what your position is.

So when you say that the producer-handlers create disruption, do you mean competitive disruption, that they have displaced sales for your company, Dean Foods?

A. Yes. I believe that's a fair representation.

Q. Okay. So sales that you would otherwise have if they
weren't there?

A. I can't say absolutely that we would have had them. I mean, I, we are definitely of the belief that the regulatory price advantage that they enjoy helps them to gain additional sales, compared to fully regulated, similarly situated handlers.

Q. And can you give me any examples of when that has occurred?

A. I think we'll be discussing this in greater detail when we actually have our full producer-handler discussion.

Q. Okay. But you have said in this testimony here, in Exhibit 109, that there are disruptions that are caused, so that's what I'm trying to ask about now, is what you are talking about when you reference the disruption by the producer-handlers.

A. What part of the testimony are we looking at, just so I can parse out what I'm trying to say in context.

Q. Well, the 1) you talked about earlier on in Exhibit 109, when you say that there was not disorderly market conditions; and then 2) when you couple that with what you have said on page 8 about the main source of increased competition for fluid milk sales over the past year has not come from out-of-state plants, but rather in-state producer-handlers.

So what I'm trying to figure out is what examples do you have where the producer-handlers have displaced your sales
in a way that is disruptive or that your describing in this

A. Well, like I just stated, once we have the full
discussion on producer-handler, which I believe will happen
next week, we will have specific examples that we will provide
at that time. And I think just, it is probably worth saving
that discussion for when that happens, because I think it will
be much more clearer in the record, than me just -- having
someone who is local and is dealing with the competitive
structure on a day-to-day basis is much better than me trying
to give you a synopsis of it.

Q. Okay. So as you sit here today, you don't have
examples to give me?

A. I don't have the examples sitting in front of me, but
we will definitely have the discussion when it comes up next
week or whenever it does come up.

Q. Thank you.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Good morning, Mr. Blaufuss.

A. Good morning, Mr. Beshore.

Q. First, I want to ask, I want to understand, see if I
can understand your duties and responsibilities with Dean so I
know where to go or where not to go in some of these areas. So
are you involved in milk purchasing decisions, and Dean's plants?

A. I am not the person physically pulling the trigger on the transaction, but I'm involved in, I would say more on the dairy commodity side, but to a certain degree also on the milk supply side.

Q. Okay. So would that involve any decisions regarding, well, how about in terms of pooling plants and reporting plants in the Federal Order system?

A. I'm generally aware.

Q. Okay. Are you involved --

A. It's not my decision to make, but really, you know, in talking pooling or not pooling in our own individual plants and we're predominantly Class 1, so that's not really a space that we deal with.

Q. Okay. Do you have any non-Class 1 plants, like Class 2 plants, where that is a decision-making process?

A. Yes.

Q. Okay. Do you -- how many and where are they?

A. I believe just one in the Upper Midwest.

Q. Okay. Now, with respect to your -- your testimony here on California, I want to talk about first the, you know, the current or recent issues with Class 1 supply, which you have, which you have mentioned. Am I correct that the problem arose because of mudslides which kept milk from getting out of the
Valley down to the -- which blocked one of the roads, as I understand it, I guess, from Northern locations, between Northern milk supply locations as shown on some of your figures here, to your LA plants? City of Industry plants?

A. Yeah, I wouldn't agree with that characterization. I mean, I think supplies definitely played a role, but this week in particular we had to spike in demand as well, so it was a little bit of a supply issue, but also largely this week was a demand issue.

Q. Okay. But when initially it was a logistical supply problem, correct?

A. Yeah, and I would say, you know, the week prior it was a problem, but it wasn't a severe issue. This week, with the demand spike, it became, you know, the issue that was raised in my testimony.

Q. Okay. Would you agree that the decline in milk production in California which has been reported and testified to as recently as this morning by the dairy farmer, that that's a factor in the supply situation in California now?

A. I'm sure it's part of the issue, part of the component there. But I also say, I mean, milk supply has been falling or declining year over year throughout 2015. And up until, call it September, we had absolutely no issue in getting an adequate supply of milk to our fluid plants.

Q. Now, Dean Foods, besides purchasing from cooperatives,
has some of its own milk, farms in California, correct?

   A. Yeah, as I stated in my testimony, we are both direct
   ship and cooperative supply in the State of California.

   Q. Okay. And one or more of your, of your farms in
   California that the supply Dean, supplies Dean's plant over in
   Las Vegas, Nevada, correct?

   A. That's confidential. I'm not going to answer
   specifically about individual producers and where they ship to,
   other than to say we have direct shipment.

   Q. I'm not trying to -- trying to get into any individual
   producer identity. But isn't it correct that Dean has farms,
   has independent dairy farms in California, the milk from which
   it ships to its Las Vegas, Nevada plant?

   A. There is not a lot of cows in Southern Nevada, so I
   would suspect that predominantly that's going to be California
   milk. Whether or not that's direct ship, I'm not positive.

   Q. Okay. But, so the Dean plant in Nevada, Dean does have
   a plant in Las Vegas, right? A fluid milk plant?

   A. Correct. We have a plant in Las Vegas, and the often
   mentioned plant in Reno as well.

   Q. Right. Okay. So just talking about Las Vegas, I think
   just under, if I understand you correctly, that's predominantly
   supplied from California sources?

   A. I'm not positive, but I believe that, I don't know that
   we're -- we have Nevada milk in that plant. I don't know that
to be true, but I know there's not a lot of cows in that area
of, that area of the state.

Q. Okay. Do you think the shipment from California over
to Nevada has anything to do with the tightness in your milk
supply for your California plants?

A. I don't think those relationships have changed. I
can't speak to the individual sourcing strategies in volumes
because I'm not, that's not my direct role, so I don't that I
could answer that question.

Q. Okay. So you are not aware then over the last couple
of weeks when there's been some, you know, supply challenges
here in California, whether you were able to divert some of
your California milk to your California plants and have it
replaced in Nevada with some cooperative milk over there?

A. I believe we have had to move around milk supplies,
basically because of all the weather that impacted the state.
So there were changes in our sourcing strategies in the last,
if I recall, two weeks.

Q. Okay. Are you satisfied that under the current CDFA
system, which you find to be orderly, that the ability to call
if you need to for milk for Class 1 would do the job?

A. We, as I put in my testimony, we prefer to let the
market take care of it. So if we need milk, you know, that's
an agreement between buyer and seller, we'll do what we have to
to get milk into our facilities. I think we would do the call
provision, which I don't think has ever been enacted in the
state. I could very well be wrong, but I don't believe it has.
I think our company view is, if we are relying on a call
provision to get milk into our plants, we're already too late
in solving the problem.

Q. Okay. So what you -- so the current -- just so I
understand, the current California situation has no shipping
requirements under it, correct?

A. That's correct.

Q. None to speak of?

A. That's correct. But I would say there's been a
historical understanding going back TO the Milk Pooling days,
and I believe Dr. Schiek testified to this, there's an
understanding of that the milk plants will remain supplied. So
there might not be a shipping percentage in the state
regulation, but there's an implied understanding that they will
be supplied.

Q. Okay. And you prefer to have it, I think, have them
supplied on a marketplace basis. You would prefer to have the
market work that out, I think you have just said, right?

A. Yes.

Q. Which would involve, of course, over order charges from
time to time if they are necessary?

A. Yes.

Q. Okay. Let's talk a little bit about the exhibit, the
Class 2 issue, which in your exhibit, it was 110, the last page. So this is in response to Mr. Hollon's testimony. And I appreciate the Nashville column. I'm sure I would have asked you about it. So let me see if I, see if I understand what this shows.

Mr. Hollon pointed out that from time to time, because of the differences in Class 2 price formulas in California and the Class 2 price in the Federal Order system, from time to time those differences were such that it made it economical for milk to move out of California as far as the destinations you have depicted here in Table 1 of Exhibit 110. Is that how you heard his testimony?

A. I believe that's what he testified to.

Q. Okay. So you are not saying that those price, in your testimony here, you are not saying that those price differences aren't correct, I mean, he tracked all the correct prices on this exhibit, right?

A. In doing the regulated minimum class prices on a like for like basis, correct.

Q. Right.

A. But -- if I could add a but to that.

Q. Yes?

A. In the Federal Order structure, like I state in my testimony, Class 2, 3, and 4 stand-alone plants can elect to not pool, to elect to not be in the pool.
Q. I am going to get to that. I just want to walk there a step at a time.

A. Okay.

Q. Okay. So he had the right prices, minimum regulated prices, California versus Federal, and in some months, the difference in those prices, minimum regulated prices, was such that there would be an economic incentive, well, that you could take milk from California, move it to points in the Midwest, I'll just be general, to points in the Midwest, including Denver or Kansas City or even Nashville, and lend it at less than the applicable Federal Order price, correct?

A. I believe that was his assertion, yes.

Q. Right. And it's true, isn't it?

A. What I would say to his comparison of that price -- I mean, the first thing I want to say is, you know, California co-ops, I think the numbers they have used 75, 80 percent of the milk supply is who they receive milk from, in total California.

Q. Okay. Can you answer my question and then explain what you want?

A. Yes. Please ask the question again.

Q. The question was, isn't it true that in certain, in months from time to time, as Mr. Hollon showed, the price difference between the California price and the minimum Federal Order price is such that you could take milk for Class 2
purposes, condensed skim for instance is what was discussed, and move it from California to points in the middle of the county in the Federal Order system and land it at a cost, at a value that was less than the price applicable under the Federal Order system in that area at that time?

A. If the price gap is wide enough, that can happen.

Q. Okay. And --

MR. ENGLISH: Now, he gets to explain. You promised him an opportunity to explain.

MR. BESHORE: I thought he stopped.

MR. ENGLISH: Well, no.

MR. BESHORE: He's welcome to please explain. If the price difference is great, nothing can happen.

JUDGE CLIFTON: But you used two words in your question, you used both value and cost.

MR. BESHORE: I meant them to be synonymous.

JUDGE CLIFTON: Okay. So you weren't just using price. What was included in cost, transportation? You know, I got confused.

MR. BESHORE: Okay. Minimum regulated value in California, plus cost to transport to the destination in Denver or Kansas city or Nashville. Is that how you understood my question?

MR. BLAUFUSS: Yes.

MR. BESHORE: Good. Now, yes, under certain circumstances
that can occur?

MR. BLAUFUSS: Yes.

BY MR. BESHORE:

Q. And, please?

A. And now I can say my piece?

Q. Yes, you can.

A. The first part, and this will be a, I'll give you a little head's up, two part, but I'll try to be succinct with my point. When we talk about this, when Mr. Hollon talked in his testimony, it was basically, at least in my impression, implied that all condensed skim sales are happening on a spot basis. Which, from our own personal Dean internal view, is not the case. So any given year, a large buyer is going to contract a significant portion, in our case, well over half on a yearly basis the amount of condensed skim that we buy. So on those instances happen, let's say that's September where it was typically $2.14, yes, that can occur, there can be spot loads that go, but that's not to say that all this California condensed skim is flooding the market. Because my contractual buy with, either I'm buying from California or I'm buying from Federal Orders, is going to lock me in and I'm going to be taking that product. So you do typically internally will have a little bit of wiggle room to allow ourselves be to buying some spot, but predominantly we're not huge in buying in the spot market.
And I guess the second point I'll say with respect to condensed skim, and this is getting to my point with the co-ops controlling 75 to 80 percent of the milk supply in California, I would have loved to see that data. You know, we talk price points, but we don't talk milk movements. And I understand the confidential nature of their data, but I would have liked to see the correlation between the milk condensed skim leaving the State of California matched up to price levels. I understand the confidentiality, but if I look at the transportation analysis that was done, they were able to go through a third party and put that together. But instead, all that I heard in the testimony was a one or two month discussion Mr. Hollon had with his plant in Southern Minnesota, and Mr. Erba speaking about how they do have contract sales, but I don't believe he mentioned spot sales. I could be wrong, but I didn't hear it. And I don't believe -- and granted, I was feeding a one year-old at the time -- Mr. Schad's testimony, I don't believe he spoke to Land O'Lakes movements of condensed skim milk out of the State of California, or at least he wasn't aware of how they moved it.

Q. So you're suggesting that the movements could be on a spot basis but not regular. And if they are not regular, you don't consider it a significant issue. Is that what I --

A. I don't know. I mean, I don't have the data in front of me. I know from our, I can only speak to the Dean internal
view as we haven't seen in our marketplaces that we're buying, and we're buying in a lot of areas in the country, California condensed skim flooding these markets and making a real noticeable difference in what's going on in those markets, east of California.

Q. All right. Okay. You have seen some, but not enough to bother you.

A. I don't know that I'd characterize it that way. In talking with our procurement folks who have been in the business a long time and been at Dean for five, ten years, and have a long-term understanding of both internal and what's going on in the marketplace, when we discussed it, that was their view, is this, the price difference itself in the last few years hasn't created this significant disorder, as I think you, I think proponents of Proposal 1 have indicated.

Q. Okay. So just to understand then, the depooling point you are making on Table 1 of Exhibit 110. What you are depicting here, first of all, other than the plant in Wisconsin, do you know of any, which is the Dean plant, do you know of any plants operated by any entity in Order 32 that are pool plants, Class 2 pool plants, that would have the option for depooling?

A. Well, first, I'd probably make the correction that stand-alone Class 2 plants not in Wisconsin, first and foremost.
Q. I'm sorry.
A. But I just want to make sure the record's clear on that, that it is in Illinois.
Q. Okay. I think you said -- I guess you said Order 30?
A. I said Midwest, and that's, I realize a very general term, but sometimes includes Ohio and sometimes doesn't.
Q. Okay. But it's in Illinois the plant were you talking about?
A. That's correct.
Q. But in the Upper Midwest Order area?
A. Federal Order 30, yes.
Q. Okay. Sorry about that. My misunderstanding of that.
So go on, do you know of any in Order 32?
A. To answer the question, I don't have the sheet in front of me. I know there's a yogurt plant and I believe it is north of Denver, I don't know if it is a pool plant, I just know it is there. I believe there's still a Class 2 facility in Nebraska, though I could be wrong on that, but I believe there still is one.
Q. Okay. So if there was, if there are any, they're pool plants and they are confronted with, and pool plants are subject to minimum prices for pool milk, correct?
A. Well, if they are in the pool, yes, they have to pay the regulated minimum price.
Q. Right. And your suggestion is that if there's, that
the remedy for them, if there is lower price competition from California, is to depool and therefore, buy at a lower price?

A. No, I wouldn't agree with that, I think you are tying it, you are trying to tie it together and I don't see it that way.

Q. Well, isn't that what Table 1 shows?

A. No, Table 2, or Table 1, sorry, just shows, if I'm a Class 2 facility, that stand-alone and can opt out of the pool should the opportunity arise, you know, a plant's going to look at it and say, look, here's my class price that I'm obligated to pay if I stay in the pool, and here's what the blend price we estimate will be. Typically, if they have the ability to not pool, they are going to opt out of the pool to avoid making that payment, should their regulated minimum class place be above the blend price, location adjusted, of course.

Q. But are you saying that the decisions you are showing here on Table 1 had nothing to do with the circumstance of lower priced Class 2 solids being available from California?

A. My point in this example was to look at, okay, if I'm a Class 2 plant and let's say I'm making condensed skim in these areas, first and foremost, what's my plant decision? Do I stay in the pool or do I opt out? Well, if I'm going to pay in, I'm going to opt out. The second question is, what are you paying for the milk? And that's an agreement between buyer and seller. I could be paying the Class 2 price, I don't know
that. It is just not regulated by the Federal Order. I could also be paying class minus. It is an agreement between buyer and seller at that point, and whatever your contractual arrangement is with your supplier, be it direct ship or cooperative.

Q. By the way, your contract set that for condensed skim that you reference for your plants are generally at Federal Order class prices, are they not?

A. I'm not going to speak to exact price points, it is confidential.

Q. If plants depool, plants in any Federal Order, depool in order to meet the competition from lower priced sources from California or elsewhere that represents a loss of revenue to that Federal Order pool, does it not?

A. I'm sorry, could you ask that again?

Q. If plants depool, and I'm, as depicted on Table 1 of Exhibit 110, that represents a loss of revenue to that Federal Order pool, does it not?

A. In its very nature, by opting out of the pool, yes, that would take, reduce the amount of payment that that plant would make to the Order. It would'n reduce necessarily the cost of the milk to get -- the cost or the price to get milk into the plant.

Q. Okay. The plant may end up paying the same price to get milk there, but it is not going to pay into the pool.
A. Correct.

Q. Okay.

A. Who is ever supplying that plant.

Q. It is a loss of revenue to the pool.

A. Yes.

Q. Okay. Let's talk about movements, interstate transactions in California, and your thoughts about them. You have indicated in your testimony, 109, that some years ago there were, Dean, as a Class 1 handler in California, was concerned with the volume of Class 1, or the volume of milk coming from out-of-state into California, volumes of Class 1 milk, correct?

A. Correct. And if you looked at past CDFA hearings in the mid-2000's you will find us testifying to that.

Q. Okay. And the remedy was to have multiple CDFA hearings that reduce the Class 1 price in California sufficiently to deter the volume or to reduce the volume of those shipments, correct?

A. No, I mean, I don't think it was just the CDFA hearings themselves. I think a major role in reducing the amount of milk that's coming into the state had a lot to do with the MREA and how that treated the producer-handler out of Arizona. And I think CDFA data, and I don't have it in front of me, but CDFA data on the milk that was coming into the state California, from outside, you will see there's a pretty rapid drop off from
the amount of milk coming in that was unregulated at the time.

Q. Well, that's the Arizona plant. But in, on page 7 of your testimony, the second full paragraph, you talk about "in two separate hearings in the mid-2000's, CDFA dealt with the disparity between the California Class 1 price and uniform prices being paid the neighbor states. At the time, the wide disparity in prices had led to a loss in Class 1 sales for processors that produced, processed, and sold California milk. These hearings resulted in a reduction to California Class 1 prices which reduced the economic benefit import milk into California."

Do you see that? Did I read your testimony correctly?

A. I believe you did. I didn't follow you line for line, but it sounded pretty close.

Q. And that all had nothing to do with MREA, isn't that true?

A. There were separate hearings, yes. I will say, if you look back, and I believe there was a hearing in 2005, a hearing in 2006, and I believe in 2008. In 2005 hearing there were no changes made; 2006 there was different tweaks made, and I believe they added the, I think it was the whey adjustment factor I believe is what the term would be, and actually, if I remember reading correctly, as that impact statement was put forward, I believe at the time they said the price of Class 1
would actually go up. And how they did that, I need to check that, but I believe that's what the results were. The 2008 hearing, though, yes, they did change the structure that we did see a decline. I don't know what the number was, but they did reduce the Class 1 price.

Q. So those changes in the California Order reduced the price disparities so that not as much milk is coming into California from outside the state?

A. A lot of the, we'll call it games, or lack of better term, that were going on in the mid-2000's with the California and areas outside, that did reduce the incentive to bring in bulk import milk into the state.

Q. Okay. So from a Class 1 handler's point of view, the problem was solved or brought into a tolerable circumstance?

A. I don't know that I would say that it was solved or tolerable, I would say when you look at the amount of milk coming into the state today, I'm not going to call it a steady state, but we have seen a pretty significant drop off in the amount of import milk into the state. And I think we -- compared to what we were, say five, ten years ago, it is a noticeable change.

Q. And that's a positive one from your perspective.

A. It's a positive one for the California pool. From a Dean Foods perspective, we're buying California milk, producing California milk, and selling California milk. So, I mean, I
Q. Okay. You understand that from the producers perspective, that milk is still not, the milk that's coming in is still not pooled in California?

A. The milk that's not -- that is currently coming in from outside the state, yes, the state cannot regulate that.

Q. Okay. And the milk that's coming into California that the MREA addressed, is not pooled in California, either, correct?

A. Yes. So that milk would be pooled fully regulated handler under the Arizona order.

Q. Right. In other words, what the MREA did for California was that it priced the milk from Arizona that's coming into California so that on the handler side, the competition was ameliorated, correct?

A. The MREA, sorry, I can't say that, basically stated that if a plant's located in a Federal Order and selling into a State Order with market-wide pooling, then it is going to be fully regulated under that Order in which it resides.

Q. The Federal Order?

A. Correct.

Q. Okay. So the MREA made sure that that plant, which had not been fully regulated under any Order, correct?

A. Correct.
Q. Was now fully regulated under a Federal Order, correct?
   A. Correct.
   Q. And it was the Arizona, in this case, it was the
      Arizona Federal Order and not the, it's the Arizona Federal
      Order, correct?
      A. Correct.
      Q. So that the Arizona producers received the benefit of
         the Class 1 sales into California of that plant located in
         Arizona presently, correct?
         A. That milk is pooled in the Arizona Orders, yes.
         Q. Right. And it's -- would it be your understanding that
            under Proposal 1, or 2 for that matter, that plant would be
            pooled in California, in the California Federal Order?
            A. That's correct. I believe at the current time, both
               Proposal 1 and 2 handled producer-handlers and milk sales and
               milk flows in that respect the same.
               Q. Okay. I have no further questions at this time,
               Mr. Blaufuss, thanks a lot.
               A. Thank you.
               JUDGE CLIFTON: Who next has questions? Good, Mr. Miltner.
               CROSS-EXAMINATION
               BY MR. MILTNER:
               Q. Ryan Miltner, M-I-L-T-N-E-R, Counsel for Select Milk
                  Producers.
                  Mr. Blaufuss, are you familiar with the United States
Census Bureau and their data sets at all?
   A. In the general sense, yes.
   Q. Okay. Are you aware that they define the Midwest and
   they include Ohio in the Midwest?
   A. I believe they do. From our own, the way we handle
   things, we consider it to be the Mideast, so that's true, you
   can parse that up however you want.
   Q. I understand that Ms. Uther would agree with you, on
   that point I would agree with her. But actually, I am not
   going to take too long.

   I wanted to pitch a concept to you following up on
   Mr. Beshore's questions. Disorderly marketing, you would agree
   it is a nebulous concept and we have talked about it ad nauseam
   at this hearing, yes?
   A. It's been discussed a time or two.
   Q. As I hear your testimony and I look at your statement,
   it occurs to me that perhaps market disorder is not an
   all-or-nothing proposition. Would you agree with that?
   A. I think it depends on what your definition of
   disorderly is, and which I stated first and foremost, ensuring
   an adequate supply of fluid milk to fluid plants and to
   inefficient movements of milk.
   Q. And if either of those occurs, you would say that's
   disorderly?
   A. I believe those would be the two criteria in my
definition, yes.

Q. And I wrote this down as you said it, and I think I got it right. You described a situation as, "disorderly to a certain level."

Do you remember saying that?

A. What was I referencing?

Q. I believe you were discussing the producer-handler activity in California.

A. I would consider the producer-handler, as I walked through with Ms. Hancock, to be disruptive. I don't believe it checks the box on my disorderly marketing conditions. The producer-handlers are not causing us not to receive milk into our plant, and I don't know that a mass inefficient movement of milk is occurring.

Q. Okay. Is it, would you -- would you agree, I don't want to say that because I don't know if I necessarily agree with it, but would you -- would you accept the premise that you could have something that's not particularly orderly but it doesn't rise to the level of disorderly marketing?

A. I think no matter if you are talking a State regulatory structure, or a Federal structure, there is always issues that can arise. I think the perfect example is simply looking at my testimony, the issues we have had in the last couple of weeks. It is not orderly, but that doesn't speak that there's a long-term disorder in the marketplace.
Q. It is almost as if, and maybe, I think I used this description yesterday with one of the witnesses, that it's almost like there's a continuum where on one end you have disorderly marketing and on the other end there is perfect order, and there are a number of states in between. Would you agree with that?

A. I would agree that life is seldom black and white.

Q. I think that's good. I appreciate your exploring that with me. Thank you.

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

CROSS-EXAMINATION

BY MR. VLAHOS:

Q. John Vlahos.

Just one little area that I would like to explore with you a bit. It deals with the testimony you provided in answer to Ms. Hancock's questions and to Mr. Miltner about the difference between disruptive and disorderly marketing conditions. And if I recall your testimony correctly in response to Ms. Hancock's questions, you thought that the existence of the exempt quota of producer-handlers in California was disruptive in the Class 1 space, but did not constitute disorderly marketing conditions under your definition of the disorderly marking conditions.

Have I got that correctly?

A. I believe so. I think it was viewed as represented, I
believe I did state we view them as disruptive, but per my two,
how I view the conditions as disorderly, it did not check the
disorderly.
Q. Okay. And in order to, under your definition to check
the box for disorderly marketing conditions, it would have to
have negatively impacted the supply of milk, fluid milk for
Class 1 usage, or cause inefficient movement of milk, or both?
A. Yes, I would say those are my two definitions of
disorderly marketing.
Q. Okay. Where did you get those definitions of
disorderly marketing?
A. Well, if I'll put out ferret your own witness from an
earlier time, my first check box, your, your witness,
Lon Hatamiya, while he was still with AMS Dairy Programs, I
believe he was the Administrator at that time, testified before
Congress around the time of the 1996 Farm Bill, and I don't
know if -- I'll just read the direct quote.
Q. Sure. Go ahead.
A. I'll read the paragraph before just so we get the
context.
"Today, I would like to focus my remarks on the purpose
of the Federal Order system and how this system relates to the
economics of milk marketing. I will also provide a general
perspective on some of the alternatives for change that have
been raised."
Overview of the Federal Milk Marketing Order System

Federal Milk Marketing Orders are intended to ensure that an adequate supply of milk is available for consumption as a fluid product. Milk Orders are guided by the location of bottling plants, and in turn, by location of consuming population centers."

Q. And in that testimony did you -- did you get the inference that that's the only condition that would justify either an amendment to or the promulgation of a Federal Milk Marketing Order? He stated what a purpose was, but is that the only purpose for which you could either amend a Federal Milk Marketing Order or promulgate one?

A. I think you can always propose promulgating an order. I don't think it has to be directly tied to one or the other. In my purview, if I'm looking at amending or having an order, those are going to be the first two criteria. Is there an adequate supply of fluid milk? And two, is there inefficient movements of milk occurring?

Q. Okay. That's your view. Do you know of anything other than what you just read that supports the proposition in that sentence, the only way, the only criteria for which you can promulgate an order or amend an order?

A. I have no document or defined terms from, you know, to say that that's the only way that you can do it.

Q. Okay. Thank you.
JUDGE CLIFTON: Are there other questions for Mr. Blaufuss? Mr. Vetne?

CROSS-EXAMINATION

BY MR. VETNE:

Q. Mr. Blaufuss, we have had various cheese marketers come and explain to us what it cost to move a pound of cheese from California to elsewhere in the country. I don't think we have had a distributor tell us anything about the cost of moving packaged milk.

Do you have per gallon, per pound, per hundredweight, per 40,000 pound truck load, just a ballpark of what that cost?

A. I don't. The only thing I can say generally is it's typically more expensive to move a package fluid milk product than it is a bulk product. At least that's how I understand it.

Q. Okay. There has, however, been some discussion, inference, or assertion that at California bottlers have some kind of advantage because they can buy milk at fairly low state Class I price and move it to the East in competition with federally regulated handlers. Now let's, if it goes into a Federal market, I understand that USDA has a partially regulated up-charge based on the federal price at the location of your plant, you still have to move it to those markets. And then you also meet competition, for example, in Nevada, where there is no federal market to create an up-charge if it comes
from California. Do you know if, if the cost of transporting
packaged fluid milk delivered to those locations, even with
some up-charge to the Federal system or without, is
sufficiently remunerative so that you have an advantage of you
arriving in those marketplaces?

A. Are you specifically speaking of a California facility
going to a Federal Order or going --

Q. My question, dysfunctionally, contained both. So let's
start with a Federal Order. You do have a bit of an up-charge,
but it's still, it is still lower?

A. Speaking generally of how the provision would work, the
Federal Orders, if we're taking -- which I'll say we are not
doing, we're not taking packaged milk in California and selling
it very far east outside the state -- the Federal Order that we
go into, they are going to look at where our plant's located,
and essentially, from a price structure, and this is how I
understand it, treat it as though it is a fully regulated
plant, in the fact that you are going to have the Class 1
differential attached with the State price. And they are going
to look at that price versus what the Federal Order price is
that month, and then you will have to pay in a compensatory
payment, as it is called.

Q. Okay. There are a lot of markets, however, east of
California, a lot of geography that isn't regulated at all. Do
you have any comment on your ability to transport and undercut
the local price from California points of origin?

A. If we talk Northern Nevada, our price is tied directly to the California, Northern California, Class 1 price. So it is not like we take milk from, say, I think part of Mr. Hollon's testimony is, you can take packaged milk from Sacramento and sell it, or take Reno milk and sell it into Sacramento at a lower cost. And that's, I mean, that's the same price structure today on a Class 1 basis, Northern California and Northern Nevada.

Q. It's -- so Nevada has a state regulated Class 1 price structure that corresponds with California's Class 1 price structure around Sacramento?

A. The Northern, the Northern California, Northern Nevada are tied together.

Q. Thank you.

A. And that assumes, of course, that you are buying 100 percent Nevada milk.

Q. Good, thank you.

JUDGE CLIFTON: Who else has questions for Mr. Blaufuss?

Mr. Francis, if you have some, would you rather go before or after redirect by Mr. English?

MR. FRANCIS: No preference.

JUDGE CLIFTON: All right. Then Mr. English, why don't you do redirect and then we'll see if Mr. Francis has anything further.
REDIRECT EXAMINATION

BY MR. ENGLISH:

Q. Thank you, your Honor, I have no preference, either. So just a couple questions. Just for clarity, you referenced the sworn testimony before Congress of Mr. Hatamiya. Was that on May 25th, 1995?

A. That's correct.

Q. You were asked a number of questions by Mr. Beshore with respect to some of the issues involving your current situation down in Southern California and how it relates to your preference. And you referred to sort of an informal understanding, as I understand it, that when pooling came in, that somehow Class 1 processors would get their obligations fulfilled. Remember that?

A. Yes.

Q. Okay. If we go to a Federal Order, do you understand first, that the Class 1 price surface is going to change and go up effectively?

A. Yes.

Q. Okay. And whether it's been effective in a formal sense or not, the existence of the call provisions could, of course, help move milk in the sense that people don't want them to be implemented, and therefore, people might move milk in order to avoid the call, correct? That's, theoretically that's why, that's one reason calls work when they have been used, or
at least existed, that they can at least theoretically cause
milk to move even if they have never been used?

A. That's correct. Basically forces, talking specifically
on the California side, they put out both Northern and Southern
California a list of, here are the call handlers, if you need
milk and you want to call, they give you the phone number to
the plant. You submit that to the plant, while also telling
the State that it is occurring, and they have within 48 hours
to respond. And if they don't supply the milk needed, they are
penalized.

Q. So if you end up in a Federal Order, what is your view
about the reliance on some kind of informal arrangement in
California dating back to 1967?

A. I think if we go into a structure where we are no
longer in a California State Order, and instead, are in a
Federal Order, I think from a company perspective, we would
view that as a complete and disruption of the status quo. And
the fact that, I would say that long-term agreement that's not
written in stone will change.

But I think if we're talking a Federal Order structure,
you have to have proper provisions to ensure that you are
supplying the Class 1 facilities, which is what, you know, I
reference in my testimony gives me extreme anxiety. I don't
know what term I use, but basically anxious about having a
long-term supply, when there's absolutely no reason or, there's
not, shouldn't need a reason, there's no regulation that forces milk to move to a Class 1 facility.

Q. Like there is in every existing Federal Order, correct?
   A. Correct.

Q. And that's especially so if your price is going to go up? If your Class 1 differential is going to go up, that's even more of a reason why you need to have those performance standards?
   A. Correct.

Q. I mean, you need them anyway, but you need it regardless, correct?
   A. I mean, every Federal Order you have a basic level of performance, and that's going to differ depending on the Order you are talking about. If you are talking Upper Midwest, you are going to have a lower performance standard. If you are talking about Florida where you predominantly call it an 80 to 90 percent maybe Class 1, you are going to have a higher performance standard in the marketplace.

   And the California structure as written in Proposal 1, there's absolutely no performance by the plants. So if I am a manufacturing facility located in somewhere in the countryside, at the end of the month I'm still going to get the blend price that's using the Class 1 dollars generated, but they don't necessarily have to deliver any milk to a fluid plant to get those benefits in the market-wide pool.
Q. That's all I have. Thank you.

JUDGE CLIFTON: Mr. Vetne?

RECROSS-EXAMINATION

BY MR. VETNE:

Q. Mr. Blaufuss, you referred to performance requirements applicable to plants in the Federal Order system. Does not the Federal Order system in all markets have performance requirements applicable to cooperative suppliers also in the form of diversion limits, which is related to Class 1 or pool plant supply?

A. Yes, that's also a provision that's uniform to all orders.

Q. Yes. So the Federal Order system not only gives you opportunity to, by regulatory encouragement, to attract milk from manufacturing plants or supply plants that might be pooled, but also gives you opportunity by regulatory encouragement to obtain milk from cooperative associations through the limits on diversions.

A. Not sure I'm understanding the question, sorry.

Q. You were, I'm just trying to take this, you talked about plants and the encouragement for plants. Okay?

Diversion limits applicable to any handler, including your own, is the amount of milk that you can market to nonpool plants, the converse of which is the amount of milk you must market to pool plants, correct?
A. Correct.

Q. Okay. So the lower the diversion limit, the more restrictive, the more milk must be marketed to pool plants, correct?

A. Correct.

Q. Okay. And you operate pool plants?

A. We do.

Q. Okay. And diversion limits are frequently among those which the Market Administrator can adjust from time to time without going to hearing, correct?

A. I believe that's at their discretion.

Q. All right. A request can be made of the Market Administrator to adjust various performance requirements, if the market is in need of a supply for Class 1 use?

A. That's correct. And then that's one of the tools we talked about. It is one of the tools that allows them discretion to be able to change without having to go to a Federal Order hearing, which tends to take a little time.

Q. Okay. Thank you.

JUDGE CLIFTON: Mr. Francis?

RECROSS-EXAMINATION

BY MR. FRANCIS:

Q. Will Francis, USDA.

Just wanted to explore a little bit some of your statements in your prepared testimony, Exhibit 109.
On the bottom of page 6, where it starts "while" and then it continues on page 7, so it reads, "while differences in pricing systems have the potential to lead to disorderly marketing, it is not itself indicative of disorderly marketing." Can you elaborate on what other factors or items would be indicative of disorderly marketing?

A. If I'm speaking directly to this quote or what I have in my testimony, my point in this is talking, you know, we focus a lot on just the regulated price differences, and saying that I think proponents of Proposal 1 are of the mindset that prices alone is a disorder. And I think in my view, I talk about my two definitions for disorderly marketing, my point is, if there's, prices can be different, but that's not indicative. Unless there is actual movements or inefficient of milk behind them, I don't view that as disorder.

So my point is, if there is, if there is milk moving around the countryside because of this regulated price difference, be it whatever class of milk we're talking about, I don't view that as disorder, unless you have inefficient movements of milk behind it.

Q. Okay. Thank you. And then the other question is, on page 8, sort of in the middle section where that paragraph reads, "The California State Order has served both producers and processors well throughout the years." And then it continues on, and you talk about "CDFA has typically been
responsive" and then later on you talk about "CDFA has made appropriate adjustments to regulatory language." Can you be a little more specific in the types of adjustments and responses that CDFA has made?

A. I think I reference there was three separate hearings on Class 1. Typically, there's a lot of information put in the record, CDFA came out with a decision in fairly short order, compared to what happens, say, in the Federal Order structure. So when I say responsive, that's kind of what I'm talking about. You know, decisions be it of the processor, producer, we might not always agree on whether or not it is, agree on the results. But typically when there's issues arising, and I think as evidenced by the amount of hearings that CDFA has held in the last, call it three years, I think they have been willing to listen to what -- they are willing to listen and they are going to look at the record to see what data gets entered to ultimately make that decision.

Q. Okay. And they made adjustments to remedy disorderly marketing conditions. I'm interested in a little more specifics on what the disorderly marketing conditions were, and some specifics on the responses.

A. From a Class 1 side, I'll say if you look at the data going back to milk moving into the state, that increased significantly in the mid-2000's of some activities from areas outside I think. If you look at, by my definition of
inefficient movements of the milk, I think that was inefficient movement of milk. So in my purview, that would be a, you know, a lock down -- a lock down, which I think you are looking for with your question.

Q. Okay. Thank you.

JUDGE CLIFTON: Mr. English, do you have anything else for Mr. Blaufuss on this subject? No? All right. Mr. Blaufuss, I think this concludes your testimony on this particular subject. Mr. English, how would you like to proceed?

MR. ENGLISH: My next witness is not in the room at the moment, and the court reporter -- I mean, it's been, I think we have been going a little over an hour and a half, so I would like to at least pass out the testimony and get started with Mr. Vetne, but I think we would do ourselves a favor if we had a 10 or 15-minute break, especially for the court reporter.

JUDGE CLIFTON: Great. So let's take our 15 minutes, and we won't necessarily go a long time with Mr. Vetne, but if everyone will have the testimony in hand before we break for lunch, I think that's great. So let us take 15 minutes now. Please be back and ready to go at 12:50.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record. I'm a bit early, it is 12:49, but everyone seems ready to go. Mr. English, I'm looking at the documents. I'll need your help here.

MR. ENGLISH: I may need the help of Mr. Vetne. I know
that there is -- this is Chip English. I know that there is a
statement that Mr. Vetne has passed. Mr. Vetne has passed out,
and I believe everybody has, but we'll confirm, a 7-page
statement, which I would, would ask to be marked as the next
exhibit.

JUDGE CLIFTON: Is that 111?

MS. ELLIOTT: That's correct.

JUDGE CLIFTON: Thank you, Ms. Elliott. We'll mark that
statement as 111.

(Thereafter, Exhibit Number 111, was
marked for identification.)

MR. ENGLISH: And then he has an Exhibit for John Vetne
Statement with a big A in the right hand, and I think we have
that marked as Exhibit 112, that's a multi-page document. Is
that correct, Mr. Vetne?

MR. VETNE: Yes, that is correct. And that is all I
believe needs to be marked.

(Thereafter, Exhibit Number 112, was
marked for identification.)

MR. ENGLISH: You did pass out a one-page document called
milk cows inventory, that's color.

MR. VETNE: Yes.

MR. ENGLISH: Is that duplicated in black and white in your
Exhibit A which is now Exhibit 112?

MR. VETNE: Actually, it is duplicated in the package, and
the package includes A, B, C, and D. So about six pages back from the end of the package is Exhibit big C, and there is a black and white version, which is the way it was produced when it was mass printed. The original three copies, which I provided for the record, do have the blue version, so I wanted people who are interested, to see the blue version, which hopefully will appear on this document when it is scanned and posted on the website.

MR. ENGLISH: So what you are saying is that in Exhibit 112, since it is a multi-document, most of us received a black and white version, but the record received a color version of this particular page?

MR. VETNE: That is correct. And so I passed out a color version so everybody could see that also, but it does not need to be separately marked, because the ones that I provided for the official record are color.

JUDGE CLIFTON: Excellent and I thank you, Mr. Vetne. The ones that have the blue coloring certainly are more visible to prove the point, so thank you.

MR. ENGLISH: So I'm not sure we have identified and sworn in the witness.

MR. VETNE: No, we haven't.

MR. ENGLISH: That was addressed to Judge Clifton, Mr. Vetne.

JUDGE CLIFTON: Mr. Vetne, I'll swear you in in a seated
position. Would you raise your right hand, please?

MR. VETNE: I will.

JUDGE CLIFTON: Do you solemnly swear or affirm under penalty of perjury that the evidence you will present will be the truth?

MR. VETNE: I do.

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

MR. VETNE: John Vetne. V-E-T-N-E.

JUDGE CLIFTON: Thank you. Mr. English, you may proceed.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Mr. Vetne, would you read that portion of Exhibit 111 down through the first full paragraph that ends in "including regulatory decisions" and then stop, please?

A. Yes, I will.

Q. Okay.

A. The statement has a couple of headings, the main heading is: Proposals to Promulgate a Federal Milk Marketing Order for California Hearing in Clovis, California, October 2015.

The statement title is: Statement of John H. Vetne on FMMO policy evolution: Orderly marketing in Section 8c(18) Supply and Demand pricing.

And the text begins as follows:
JUDGE CLIFTON: Please read more slowly from now on.

MR. VETNE: You think I would have like, caught on by now.

This hearing has presented a good opportunity for the industry and agency participants to learn, or to understand better, how government regulation of milk pricing came to be, and how government milk pricing policies have evolved in response to evolution of milk production, milk processing, milk manufacturing, and milk product distribution practices.

Dr. Bill Schiek has taken us through a history of the California program. Paul Christ and Dennis Schad have outlined the evolution of the parts of the FMMO program. I hope to contribute some additional perspective to the FMMO program from my experience of over 40 years and USDA literature, including regulatory decisions.

BY MR. ENGLISH:

Q. So please do stop there. I mean, the record now needs to know something more about Mr. Vetne. You were born in Oslo, Norway?

A. Yeah.

Q. And you, your undergraduate degree was from, it's a Bachelor of Arts from Andrews University?

A. In Southwestern Michigan, yes.

Q. And what was your undergraduate degree in, if you can --

A. I started out doing science courses because my dad's a
doctor, and then I found I could do really well without much study in sociology, history. So I'm a history major, education minor. My plan was to go into teaching elementary or high school level. I did practice teaching and I taught for one year before I decided to go to law school.

Q. May I say there's a number of us over the years, including myself, who have learned a lot from you. Where did you go to law school?

A. At Wayne State University in Detroit, Michigan, which also happened to be the university my father received his advanced medical training after emigrating from Norway as a practicing physician in Norway.

Q. And because you might be a little too shy, your JD was cum laude?

A. Yes.

Q. And then, where did you, after you got your law degree, go to work?

A. It was 1973. So I told my friends I was infiltrating the establishment, but I went to work for the government. I got a job at USDA with their Office of the General Counsel, and I was assigned to what was then called simply the Marketing Division. And I was, my primary responsibilities were Federal Milk Marketing Orders for dairy, fruits, vegetables, and some additional work in the Perishable Agricultural Commodities Act Programs.
Q. And for how long were you in the Office of the General Counsel?

A. That would have been from July of 1973 to December 31, of 1979.

Q. And by the time you left, were you a Senior Attorney in Litigation Specialist?

A. That was my title, yes.

Q. So in January of 1980, did you start at a law firm known as Wilner and Scheiner?

A. Not immediately. Actually, shortly thereafter. But while I was still working at USDA, a lawyer in Tennessee who had been representing seal tests owned by Kraft was retiring, and Kraft was looking for another lawyer, and they invited me to consider leaving public practice and entering private practice. So for a short period of time, I simply did the work I was assigned to do, and then looked around for a place to park. And Wilner and Scheiner in the Thurman Arnold Building in Washington, had an Administrative law practice, specializing particularly in communications law, so I was there for a period of time.

Q. Communications and agriculture, sort of like branching out into entertainment?

A. Definitely entertainment.

JUDGE CLIFTON: Would you spell the name of the firm, please?

BY MR. ENGLISH:

Q. And did you continue to work for Kraft at that point?
A. Kraft was a client of mine and became a client of the firm, yes.

Q. And for how long did you work at Wilner and Scheiner?
A. Until early 1984, so it would have been about four years.

Q. And then you did what?

Q. And since leaving USDA, is it safe to say you have been involved, as you said, over 40 years of experience in significant number of Federal Milk Marketing Order proceedings?
A. That is true. Fair to say. I would say 80 percent of my practice time over the years has been in Federal Milk Marketing Orders. A portion of that also involved in-state milk price regulation, including the State of Maine, the State of California, the State of New York, and a short experiment in the State of Vermont.

Q. You got ahead of me, that's fine. Your work in
California dates back to --

A. It dates back to approximately 1996. I received a call from the Manager of Security Milk Producers, a Southern California Cooperative, that I understand later merged with CDI. Karen Brookes called me and said, we got some issues coming up here, are you willing? So I said I was willing but I don't know that much, so let's find out a little bit about it. So there was a Dairy Institute course in Milk Marketing in California coming up, so I signed up for the course. It was a, it was a full-week crash course and I learned a lot. And learn a lot more as I go along, and I have learned a lot here at this hearing.

Q. You are also the author of a chapter in a book entitled Agricultural Law, correct?

A. That's right. About the time I left USDA, a law book publisher called Shepards, McGraw-Hill had commissioned John Davidson, South Dakota Law, Law School, to assemble a treatise on agricultural law, and they wanted one of the chapters to be in Marketing Order programs, so I received a call from John Davidson, and -- and I agreed to author the chapter and it was published, I think, '82'ish.

Q. And then there was a supplement that you provided in the late '80's?

A. Later in the '80's, I provided a supplement, they kept asking me to keep supplementing, but is hard to be a book
JUDGE CLIFTON: It is hard to what?

MR. VETNE: To be a book author. So I did, I supplemented it once.

BY MR. ENGLISH:

Q. Are you aware of any other such published material in a law book on Federal Marketing Order programs?

A. Not as, not including both fruit and vegetables, I believe not including fruit, vegetable Marketing Orders as well as milk. But I know that Marvin Beshore contributed to a volume published by Matthew Bender, I think it was, so, and we were, and we came out, we're in and out of USDA about the same time, and we were given a similar charge by competing publishing companies.

JUDGE CLIFTON: Would you spell Davidson?

MR. VETNE: D-A-V-I-D-S-O-N.

MR. ENGLISH: Your Honor, I would move Mr. Vetne to be recognized as an expert in Milk Marketing Regulation and Policy.

JUDGE CLIFTON: Does anyone wish to ask Mr. Vetne questions before determining whether you object to his being accepted as an expert in Milk Marketing Regulation and Policy? No one. Is there any objection to Mr. Vetne being recognized as an expert in Milk Marketing Regulation and Policy? No one.

Mr. Vetne, I do accept you as an expert witness
regarding Milk Marketing Regulation and Policy.

BY MR. ENGLISH:

Q. So to break up the statement a little bit, why don't we maybe go through about ten minutes, Mr. Vetne and your Honor, to get us to 1:15, AND then we can come back at 2:30. SO why don't you continue with your statement that's marked as Exhibit 111, Mr. Vetne?

A. Okay. I have to re-read the last sentence of the first full paragraph to put context to the second sentence, or to the second paragraph.

Q. My fault.

A. I hope to contribute some additional perspective to the FAMO program from my experience of over 40 years, and and USDA literature, including regulatory decisions.

This is important, I believe, so that party presentations and agency deliberations can be measured against expressed policies and why such policies came to be. And if a departure from policy is desirable, to recognize the departure and explain why a departure is necessary.

Dairy economics literature is also important as a reference and a guide to decision making reasonableness. The U.S. Secretary of Agriculture, speaking through his judicial officer, has explained that Milk Order promulgation and amendment decisions are properly measured against "the view of leading experts in the field of dairy marketing...It is in the
light of these views by the leading dairy experts that the Secretary's final decision should be evaluated."

And then there's a footnote reference at that point.

Q. I'm sorry, your footnotes are more than just references. Would you prefer they just be reproduced as part of the transcript or you want to read them in? I'm indifferent, so whatever you want to do?

A. Mr. English, I wrote the text so that it would flow a certain way. My preference is, when I'm all done, if you want me to go back to the footnotes to provide some additional context or elaboration I will do that; is that all right?

Q. That is okay. We'll figure it out. Go ahead.

A. Heading, Orderly and Disorderly Marketing of Milk

The AMAAA statement of Congressional policy, in 7 USC Section 602(3), allows the Secretary "to establish and maintain such orderly marketing conditions for [milk and other farm products]...as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market..."

The terms "orderly" or "disorderly" are not defined, but are explained by historical context and agency decisions for 80 years.

Historical context, and U.S. illustration of conditions that may demonstrate disorder --

JUDGE CLIFTON: Start that sentence again, please,
Mr. Vetne.

MR. VETNE: Historical context, and USDA illustrations of conditions that may demonstrate disorder sufficient to warrant federal intervention, are summarized in the most recent AMS program brochure entitled "The Federal Milk Marketing Order Program" (Marketing Bulletin No. 27, updated January 1989) -- I'll refer to that as FMMO Bulletin 27. This publication has not been updated in the past 25 years and is not available on USDA web sites. I insert parenthetically (it will now be). So it is reproduced in Part A of my exhibits. Disorderly milk market early history is summarized in pages 7 - 10, and illustrations of more recent disorderly behavior in unregulated markets that may merit regulatory intervention or "conditions indicating need for an order" is described in pages 11 - 12 of FMMO Bulletin 27.

The application and evolution of USDA policy in identifying and quantifying milk market disorder is shown in its decisions. In my view and experience, USDA has generally applied its policies consistent with the Erba-Novakovic definition of "disorderliness" as "lack of a predictable, sustainable, and efficient flow of a product to a specific market," and lack of "orderly relationship between different markets in terms of price and supply..." that is, an assertion of disorderly or undesirable conditions is demonstrated, if at all, by observable and quantifiable market behavior.
The two most recent Milk Marketing Order promulgation decisions demonstrate this principle. In 1981 -- that's a correction.

JUDGE CLIFTON: All right. Let us get that. Ms. Elliott, you are right there?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: Thank you. Begin the sentence again.

MR. VETNE: Thank you.

In 1981, a Marketing Order for Southern Idaho and Eastern Oregon was created. Proponent cooperatives, given a second chance to prove their case, presented substantial evidence of market behavior that was deemed disorderly. In 1990, a Marketing Order was promulgated for the Carolinas. This promulgation was also supported by evidence of observed and quantified market behavior deemed to be disorderly, and I will depart from my prepared text. I represented clients and participated in both of those proceedings.

Back to the text. Milk Orders have been regularly amended to promote marketing efficiency, equity among handlers, equity among producers, adequate supplies for fluid use when needed, and efficient disposition of milk in excess of fluid needs to manufacturing plants. Amendments have been frequently needed because the Orders themselves created disorderly marketing. For example, during the 1980's and the 1990's, Grade A milk production was expanding rapidly in markets with
pooling standards designed to accommodate smaller pools of milk. To promote for surplus milk marketing efficiency and equitable access to market pools by producers ready, willing, and able to supply milk for Class 1 use, diversion limits and other pool performance standards were often suspended after opportunity to comment, but without hearing. Amendments, after formal hearing, followed after repeated suspensions. Gradually the orders adjusted to the market reality of larger pools of Grade A milk and occasional imbalance of supply with demand by giving authority to Market Administrators to adjust pooling standards.

Supply plant rules similarly evolved to promote efficiency. Historically, a supply plant was a place where small quantities of milk from many producers was assembled and transshipped to distributing plants. As farms produced more and more milk and transportation technology improved, supply plants were allowed to direct ship milk from producer patron farms to distributing plant customers, thereby enhancing marketing efficiency objectives. A vestige of the historical role of supply plants as a transshipment point is illustrated by the Upper Midwest's requirement, as explained by Henry Schaefer earlier in this hearing, that supply plant operators are still required to "wet the tank" once per month.

The point of this is that USDA has consistently and reasonably relied upon a proponent of a Milk Order or order
amendment, to meet its burden of proof with evidence of market practices that constitute disorder before creating a regulatory remedy. In cases where proponents appear to rely more on regulatory philosophy than on hard facts, USDA has rejected the proposed rule or order. This is illustrated by the 1979 recommended decision in the first Idaho promulgation hearing, and in the 1989 Texas-Southwest Plains decision denying proposals to regulate large producer-handlers. In the Texas decision, the Secretary agreed that the lack of regulated pricing for producer-handlers "raises the potential for competitive inequities among handlers," and that in fact, "there is not an equal sharing among all dairy farmers in the market of the returns from the sale of milk in all uses."

JUDGE CLIFTON: So since that's a quote, I would like to you do it again.

MR. VETNE: Okay.

In the Texas decision, the Secretary agreed that lack of regulated pricing for producer-handlers "raises the potential for competitive inequities among handlers," and that in fact, "there is not an equal sharing among all dairy farmers in the market of the returns from the sale of all milk in all uses. The existence of large producer-handler operation merely implies that conditions for disruptive and disorderly marketing conditions may exist." Concluding his discussion of the proponents' failure to met their evidentiary burden, the
Secretary explained:

"The justified concern of proponents over the potential for unfair and disorderly marketing conditions has not manifested itself with any demonstrable evidence of disorder in the Texas market. **** Consequently, in view of insufficient evidence of marketing disorder attributable to producer-handler operations, there is no basis for adopting the proposal to regulate relatively large producer-handlers."

Notably, both in the Idaho market and in markets with large producer-handlers, proponents offered substantial evidence in subsequent proceedings that met their burden of proof, and the Secretary then granted a Milk Order remedy.

Q. Your Honor, I propose to stop there, it's 1:16. But I do want to note while we're here, in the quote that you just read, Mr. Vetne, after the ellipses, if you said, "consequently in view of insufficient evidence of marketing disorder," did you mean to read "market disorder"?

A. I meant to quote the decision precisely, and right now I do not know if the Secretary used the word market or marketing, so I invite anybody to look at that Federal Register and use the exact words, but I -- if you tell me to change it, I will, but --

Q. Well, I'm just saying, you read marketing.
A. I meant, I wrote market because that's the way I read it in the text, so yes. You are right. The way I spoke it is not the way I wrote it, and the way I wrote it is the way I saw it in the Federal Register.

Q. Fine. So that would --

A. No correction required, your Honor.

Q. Well, you have to -- to the extent you are not going to correct the exhibit, but to the extent you said marketing disorder and the actual quote is market disorder, that's what you meant to say?

A. That is what I meant to say. Yes.

Q. So it's now 1:17, your Honor.

A. Are we on the same page? It would be page 4.

Q. We are all on the same page, but we are going to take a break for lunch.

A. I would welcome that.

Q. Well, yes, with the Judge's indulgence.

JUDGE CLIFTON: Please be back and ready to go at 2:35.

MR. ENGLISH: Thank you, your Honor.

(Whereupon, the lunch recess was taken.)

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WEDNESDAY, OCTOBER 28, 2015 — AFTERNOON SESSION

JUDGE CLIFTON: We're back on record at 2:46. Mr. English?

MR. ENGLISH: Chip English.

BY MR. ENGLISH:

Q. Mr. Vetne, we were on page 4, at the heading, Remedies Available.

A. Okay. Continuing on page 4, the Exhibit 111.

Remedies Available and Considerations Required for Milk Order Rules.

This part of the text simply outlines the deliberative process built into the statute and the options available, and some things relevant to what the statute requires the Secretary to look at.

If a producer or --

JUDGE CLIFTON: Mr. Zolin is having trouble hearing. I'm having trouble hearing, but I know the speakers are in a different location, I'm not concerned about that. I want to make sure everybody in the back is can hear.

MR. VETNE: Is this okay? Starting again.

If a producer or cooperative or handler petitions the USDA for a hearing to promulgate a Milk Order or amendment to cure apparent marketing disorder, what can the Department do and what must it do, if proponents have met their burden of proof as to disorderly conditions?

Section 8c(5) of the AMAA governs marketing orders for
milk. The introductory clause says:

"In the case of milk and its products, orders
issues pursuant to this section shall contain one
or more of the following terms and conditions, and
(except as provided in subsection (7)) no others."

There follows a list of authorized types of milk order
rules, including the core principles of uniform classified
pricing to handlers based on use, and uniform blend prices to
producers regardless of handler use, each subject to certain
limited adjustments in subsections (A) and (B).

In subsection (G) there is an express limitation on
some types of trade barriers, which reads as follows:

No marketing agreement or order applicable to milk
and its products in any marketing area shall
prohibit or in any manner limit, in the case of
products of milk, the marketing in that area of
any milk or product thereof produced to any
production area in the United States.

There is also an express standard for consideration of
any Milk Order provision designed to fix or modify minimum
prices to be paid producers. The Secretary must consider a
variety of "economic conditions which affect market supply and
demand for milk and its products in the marketing area to which
the contemplated agreement, order, or amendment relates...."

JUDGE CLIFTON: Because of the commas, I would like you to
read it -- normally I'm not having you read punctuation, but
the way this is written I think you should read it so that the
meaning comes across. So would you read again just what's in
quotes?

MR. VETNE: Okay. I'll start the three words before that.

Consider a variety of "economic conditions which affect
market supply and demand for milk and its products in the
marketing area to which the contemplated agreement, order, or
amendment relates..." and then "fix such prices as he finds
will reflect such factors, ensure a sufficient quantity of pure
and wholesome milk, and be in the public interest." That's
7 U.S.C. 608c(18), and I have emphasis "supplied" because I
wanted to refer back there to, in this case, in the marketing
area to which the contemplated order relates. So that would
fit here where we have a contemplated order or a proposed
order.

Continuing with the text. The Secretary has expressed
his interpretation of this section many times in decisions and
in correspondence. In 2008, the Secretary terminated a
proceeding to consider higher Class I and II prices requested
by NMPF, that's National Producers Federation, to provide
economic relief to dairy farmers, and on several occasions he
denied requests for price relief due to conditions of drought
and other milk production challenges because the markets had
adequate supplies of milk for fluid beverage use, and the AMMA
is not intended to be a price support program. Part B of my exhibits, in chronological order, contain some of these letter determinations by the Secretary. Letters of September 17th, 2012, by Secretary Vilsack and AMS Deputy Administrator for Dairy Programs, Dana Coale, contain a concise and thorough explanation of USDA's interpretation of the limits of its milk pricing authority under the AMAA. The Deputy Administrator explained:

First, the Federal Milk Marketing Order (FMMO) program is not designed to be a price or income support program --

JUDGE CLIFTON: Mr. Vetne, would you read it again? I think you said FMOO.

MR. VETNE: I did not intend to. I will read it again, the quote:

First, the Federal Milk Marketing Order (FMMO) program is not designed to be a price or income support program, since it is not authorized to establish minimum prices above the relative market value of the products of milk. ****

And then further in that letter the Deputy Administrator continues:

Section 608c(18) of the Agricultural Marketing Agreement Act of 1937, as amended, outlines the criteria and procedure by which the Secretary
establishes and adjusts minimum prices in the FMMO program.

So if you will turn with me to Exhibit 112, I'll go off text here for a minute. The last six pages or so constitute, well, 10 pages or so, or 12, 14 -- a little more than two-thirds of the way through the packet, after the publication of AMS, which is double-sided, everything else here is single-sided, is Exhibit B. And that, in chronological order, contains a collection of responses, in some cases the letters to USDA, and responses by USDA in all cases, on requests for increased minimum prices, revenue enhancement for one reason or another because of drought, because of tough times, because of margin, cost of production.

The first letter, for example, is a reply to Congressman Roy Blunt from Secretary Ann Veneman to a request for a drought adjustment surcharge on Class I and II prices. And the second paragraph at the end, the last sentence says, "the FMMO program is a marketing tool, not a price support program." And then the letter goes on to describe other things that USDA was working to do to help address the situation.

The second letter, a couple of pages on, is a letter to Congressman Don Sherwood, basically along the same line, responding to an incoming letter from Congressman Sherwood asking USDA to call a hearing for increased prices as requested by DFA, and basically the same responses given. The objectives
are to assure an adequate supply of milk for the fluid market
and create an orderly structure under which farmers can market
milk year-round. Again, the letter says the FMMO program is a
marketing tool, not a price support program.

The third letter is a letter, May 20, 2003, from
Congressman Phil English to Ann Veneman, asking for price
relief, price enhancement after USDA turned down the request by
DFA. So it's a renewed request, apparently spurred by high
feed costs, transportation costs, stress in the dairy producer
community, producers going out of business. That's a one-page
letter, and following that there's a response of June 16, 2003.
The second paragraph of which, as the prior ones, say "the FMMO
program is a marketing program with the objective of assuring
that fluid drinking," the word drinking has been put in, "milk
markets are adequately supplied and it is not intended to be a
price support program."

And lastly, it is an incoming letter from Dori Klein,
you don't know where Dori Klein lives or what her address is
because it is properly deleted, asking for a hearing to
increase Federal Order prices. And follows a response by
Secretary Vilsack on September 17, 2012. And Secretary Vilsack
in turn, refers Dori Klein to a letter of the same date, from
Deputy Administrator Dana Coale. And in Dana Coale's response
to Ms. Klein, there is the discussion on marketing tool and the
limits of Section 8c(18) authority provided in the AMAA to the
to the Secretary, which I quoted in my prepared statement.

Okay. Going back to the prepared statement.

Examination of local and regional supply and demand conditions in some marketing areas, have nevertheless, led to increased minimum prices since FMMO Reform. USDA has twice --

JUDGE CLIFTON: And you missed a word so please just re-read that sentence.

MR. VETNE: Examination of local and regional supply and demand conditions in some marketing areas, has nevertheless led to increased minimum milk prices since FMMO Reform. USDA has twice increased Class I prices and the Southeast markets -- to address hurricane-created fluid milk supply difficulties in 2004, and to address declining milk supplies available to a growing population in 2008.

There's one other provision of the AMAA that requires examination of conditions unique to regional marketing and production areas for milk and other commodities.

Section 608c(11)(C) states:

All orders issued under this section which are applicable to the same commodity, or product thereof, shall, so far as practicable, prescribe such different terms applicable to different production areas and marketing areas as the Secretary finds necessary to give due recognition to the differences in production and marketing of
such commodity or product in such areas.

End of quoted statutory text, back to my text.

But the Secretary's tasks are not completed even if the record evidence is good, proposed rules conform to the limits of Section 8c(5), proposed prices are fixed after thoughtful consideration of Section 8c(18) pricing factors and unique regional factors are considered. If handlers do not agree to be bound to the terms of a marketing agreement, and for Milk Orders they never do, the Secretary must determine, "that the issuance of such order is the only practical means of advancing the interests of producers of such commodity [i.e. milk, in this case] pursuant to the declared policy..." and is approved by producers. And that's a directive in 7 U.S.C. Section 608c(9)(B). Although the "only practical means" test is expressed at the end of the process, it is something the agency should -- let me insert parenthetically (I believe does) -- bear in mind from the time a petition for hearing is received through the conclusion of decision making. Application of this standard is reflected in USDA's decisions that modify Milk Order terms requested by proponents, and in decisions where USDA, on its own initiative, creates a regulatory remedy that no proponent has asked for.

Several of these provisions, that is the provisions of the statute, present some unique challenges for USDA in addressing the Cooperatives' proposal for a California Milk
Marketing Order, and in reconciling the proposed regulatory
remedies with express statutory limitations and instructions.
The proposals largely disregard Section 608c(18) milk pricing
standards, particularly for Class III and IV uses of milk, and
they appear to create several barriers to the marketing of milk
and dairy products intention with the limits of Section
608c(5)(G). The proposal to incorporate California milk quota
system -- start that again. The proposal to incorporate the
California milk quota system as part of a Federal Milk
Marketing Order plan for distribution of classified milk price
revenue to producers, unnecessarily creates tension with
"uniform" producer price requirements of Section 608c(5)(B).

And then a subheading: A Few "Big Picture"
Observations About Supply and Demand for Milk and its Products
in California - The Marketing Area to Which the Contemplated
Order Relates - And in Other U.S. Milk and Milk Product
Production Areas

Much data is already in the record concerning the
growth of milk production and of milk products production in
California. Useful visual tools to illustrate dairy growth in
California and the dairy endeavors in the rest of the U.S.
include U.S Census of Agriculture Maps from 1997, 2002, 2007,
and 2012 Census, showing the population of milk cows by
location. The 2012 map is reproduced in Part C of the
exhibits.
So now again, towards the end, about five pages in from
the end of the package of exhibits, and this would be
Exhibit C on most of the copies you are looking at, shows a map
of United States with black dots, and the hopefully the
original exhibit will have blue dots, as it was prepared by
NASS, showing the population density of milk cows, one dot
equals 2,000 cows, in the country. This is the milk cow
inventory in 2012.

You can go back to the Agriculture Census on the NASS
website and find similar maps showing milk cow inventory for
each of the preceding 5 years, 10 years, 15 years. The Census
is taken every five years, and the results are published about
two years after the Census, so this is the most recent
Agriculture Census, and a visual illustration of the milk cow
population.

To me, rather than looking at numbers, I like to look
at maps. And I look at the dots on the map and see there's
fairly substantial concentration of milk cows in the Central
Valley of California, close to that to the Northeast is a
concentration in Idaho. You move down the map towards the
New Mexico-Texas border there's somewhat smaller concentration,
but still a concentration. And then you move up to, to
Wisconsin, and Southeastern Minnesota, there's another
concentration. And there's another concentration a bit more
scattered in New York and Southeast Pennsylvania.
I find that useful to visualize where milk is, and therefore, where product is produced, and where it needs to flow from. And the absence of maps would be, absence of dots on the map would suggest that's a place milk and products need to flow to.

Returning to the bottom of page 6. Another useful visual tool to examine supply and demand for products of milk produced in California and in the rest of the U.S., and how supply and demand for these products have changed rather dramatically from 1993 to May 2006, is the product flow to population demand maps generated by the U.S. Dairy Sector Simulator Model, that's the US DSS, to which frequent reference is made in the -- in the 1999 Final Decision of USDA on Federal Order Reform, and the 1998 Recommended Decision of USDA on Federal Order Reform.

So if you will, and that venture by Cornell in preparing this, the simulated and map contours in 1998 and 1999, was based on milk production in 1993. And it was updated to a couple months for fluid milk, let's see, '93. I think they incorporated 1996 in the final version. I don't think the manufacturing sector was updated. So if you will turn to the last exhibit in my package, that would be Exhibit D, which would be the last four pages. D is the cover page for that.

The first is simply the cover page of the 1996 staff report, staff paper, by Cornell. It is a rather long document.
I didn't reproduce it. What I simply was focusing on here was the flow of product to market, which was illustrated by the output of the computer model used by Cornell in their Dairy Sector Simulator. And what the Dairy Sector Simulator did, was to take the existing milk production during the period of time, mostly 1993 for that purpose, and force the model to move the milk and products produced of milk, in the most efficient way possible. In other words, to remove human equation from it, there's no competition, just take all this milk and move it as efficiently as you possibly can.

So, for example, for state like California, which even back then produced more cheese in the aggregate than its population consumed, the model being efficiency driven, would require all the citizens of California to consume only California cheese, there would still be some left over that had to be exported. And as you can see in the map prepared in the 1996 simulator, which is assembly, processing, and distribution cheese plants, there is, in fact, some product that is assembled and distributed in California that moves out.

I did the math for 1993, and based on the population of California at the time, the average per capita consumption of cheese in the nation attributed to California population, and the cheese production as reported by NASS for that year, California would have had to export, in 1993, about 44 million pounds of cheese. So there was some export.
So fast-forward to 2006. The Dairy Sector Simulator was used again in the presentation of Chuck Nicholson at the 2011 Dairy Economists Conference. And the update at that time was, at least as to location of producer milk, where's the milk supply, was funded, at least in part by AMS. And while they were at it, they produced a revised "How Would Cheese Flow in 2006?" Based on existing milk supply and population. Again, as most, as efficiently as possible. A picture says a thousand words.

You look at the cheese flow in 1993 compared to cheese flow, and this was just for one month in May, not the whole year like 1993 data was, and there was a lot of cheese flowing. And again, so I did the math again for 2014, the most recent year for which all of the data is available. We know the population of California in 2014, around 38 million people. We know how much cheese was produced in California, that's in the NASS data, and we know the per capita consumption, which had increased somewhat per capita from '93 to 2014. And for 2014, instead of 44 million pounds that would have to be exported, minimum, from California, making the most efficient use of cheese, about 1.3 billion pounds would have to be exported from California. So that -- that change in supply relationship of California to the rest of the country, not just California, look at Idaho, and look at the absence in 2006 of cheese flowing from the Southeast cheese plants that were in the
Southeast in 1993 just haven't survived, and cheese manufacturing has moved elsewhere.

Okay. Enough of my comments on that. I will go back to my text, which is the top of page 7 and coming to a conclusion.

The simulated Class III price surface for milk delivered to cheese plants in the 1996 US DSSS report, based on 1993 data is contained on page A10 of the report (.pdf page 52), I did not produce that, but you can access it with the website access material I provide in the footnote.

With the nation's lowest pricing points in the 1993 Class III or cheese price surface, in Central California, Southern Idaho, and Minnesota, and slightly higher prices in Wisconsin, I think the difference was 20 cents.

California's supply of milk and cheese have clearly changed since 1993, and since even 2006, the most recent year, with some published cheese marketing results using the US DSS model. Cooperative proponents for a California Federal fluid Milk Marketing Order, a Federal Milk Marketing Order, urge USDA to look no further than 1990's data on supply and demand for milk and milk products, along with 1999 agency evaluation of that data, to reach a decision on the appropriate minimum Class III and IV prices for California in 2015-16. It is difficult to imagine how proponents' myopic approach can satisfy Section 8c(18) of the AMAA.
Let me go off text here just for a moment. I'm not saying that proponents and everybody else haven't referred to the most recent data available, everybody has. Everybody has. But what's been termed the Federal Pricing Grid was created in the 1998, '99 Federal Order Reform process, the 1999 decision, and the pricing surfaces were produced in the US DSS model for fluid milk and for cheese, and the template, let me call it a template rather than grid, that resulted was a pricing surface for fluid milk based on supply and demand in 1993 to '96 in a '99 decision. And the template for Class III and IV, or manufactured products, was based on data pre-existing the 1999 decision. And actually, the pricing surface produced by the US DSS model at that time, showed that the three lowest pricing points were pretty close to each other. Wisconsin being a little bit higher than the Central Valley, as I look at that map, but not a lot. But then there wasn't that much cheese flowing out of California, much production in California.

And in this hearing where it has to, we're asked to take that 25 year-old data, essentially, that produced the 1999 decision and superimpose it onto California, well, the template that existed post-Federal Order Reform, included market supplied demand and production of products and milk prices in California that weren't Federally regulated. The template carried forward a pre-existing milk pricing aspect, which was California.
When, Federal Order Reform was the product of informal rule making, and USDA described its decision making process quite transparently, too. USDA assigned its staff to various committees, and there were some on uniform provisions, some were in classified pricing, and all of this is discussed in a decision, as well as, actually in some greater detail, in the regulatory impact analysis that accompanied that decision. The committees were composed of Market Administrator staff, and I think what the description of what happened in those decisions, for Class I pricing, for example, is pretty informative here.

The Department described its process of coming to conclusions, deriving in part from the US DSS model. In part, from the pre-existing price surface, and in part from the input of staff that were familiar with the markets they administered. So the end result, there was sometimes a little, sometimes a lot of adjustment in individual markets based on the input from those that were responsible for administering those markets who knew the market conditions. There was no staff person in any of those deliberations representing market, supply, demand, and pricing for milk in California. There was not one.

But in 2015, there were, the Department will still have to deal with Section 608c(18), and that is the supply and demand for milk and the products of milk in California. That is a 2015 perspective, not a 1993 or 1999 perspective.

Okay. So the last sentence says, detailed discussion
of reasonable levels for Class III and IV pricing in California in the event an FMMO is adopted for the state, will come in later testimony. That's all I have prepared, thank you.

BY MR. ENGLISH:

Q. Chip English. Looking, just referring first to the foot notes. Are there any particular foot notes that you think, rather than just being in your exhibit, that you need to discuss in any detail or can they just be part of your exhibit?

A. Well, you know, in the footnote 1 on the first page, for example I quote the Secretary speaking through the judicial officer, and that refers to the case called In re Borden, Inc., which was published in Agriculture Decisions, Volume 46, starting at page 1315. And the reference in that document is page 1420. So you know the decision's already 105 pages. Let me tell you, page 1420 is only the beginning of that decision. It is a long decision. And it has to do with the location value of milk, but the Judicial Officer went out of his way to say, "We measure the reasonableness of what the Secretary did, in part, by the study of milk, Milk Marketing by the experts."

And he gave particular attention to two studies, reports, originating within the Department of Agriculture, to the Department of Agriculture. The Nourse report was such a report. And then a decade after the Nourse Report came what I call the Knutson Reports. The Knutson Reports were two, one in '72 and one in 1973. And in '72 Knutson described how we got
here, and what's the problem, and what are we going to do when all that Grade B milk disappears?

So part one created the framework for the problem that that committee was trying to address. Part 2 was examination of different ways to address it. And part 2 contains detailed discussion on various ways to price milk when Grade B milk disappears, and came to the conclusion that a product price formula using surveyed product prices, or determined product prices, however you arrive at market value of product prices, and a make allowance, would produce a minimum regulated price pretty close to what the competitive milk price under the Minnesota-Wisconsin price series did. And for those who might be listening that aren't familiar with that, there was a time when there was a large volume of Grade B milk in Minnesota and Wisconsin, totally unregulated price-wise, and USDA surveyed prices actually paid for that milk, Grade B supply, and used that as a basis for fixing the Federal Class III price. During most of that time there was only one manufacturing class price and that was Class III, cheese, butter and powder.

It wasn't until the '90's that that subcategory was further subdivided to Class III and III(a), III(a) being essentially what is now Class IV, because those two commodity prices produced, well, the class -- butter, powder makers were struggling mightily, and mostly-producer organizations were struggling to account at the Class III price when they made a
product that would not return to them a Class III value. So cooperatives in particular, who use that product for balancing, had to account to the pool, bore the losses between the regulated price and what they could get for the market, they suffered the cost but had to share the benefit of the regulated price, which they didn't receive in the first place, it was all the producers who got a higher blend price as a result. So the Secretary said, probably be a good idea to have a separate class for butter and powder. And that's where we have been since. So those are the two reports, the Nourse Report and the Knutson reports, that's page 1.

JUDGE CLIFTON: So the court reporter will have footnote 1 to look at for spellings, but just for now would you spell Borden, Nourse, and Knutson?


MR. ENGLISH: It's spelled differently than Knudsen the company.

MR. VETNE: Spelled differently than the failed dairy company in California. Actually, Ron Knudsen may have changed his name after that, I don't know.

BY MR. ENGLISH:

Q. Let me just turn quickly to footnotes 12 and 13. Footnote 12 is basically the source for the data that is the
next to the last, and the second to the last page of your exhibit, the first two pages of D, correct? Of Exhibit 112?

A. That's true. There was a cheese flow, national cheese flow map produced by the U.S. Dairy Sector Simulator model, you know, both in 1996, and published in a 1996 report, and published in a 2011 report, both of course, relied on milk supplies for prior years, you can't simultaneously observe and report, so that's the source of both maps. I'm aware that during the period between 1996 and 2011, the model has been improved. Everybody that tinkers with computer models makes improvement as they go along.

Q. But the underlying assumptions --

A. They show the same thing. The same thing being the most efficient movement of product from where it's being produced to where it would be purchased.

Q. Going to the bottom of page 4, the top of page 5, when you discuss 608c(5)(G) and I think what's euphemistically called the "trade barrier" discussion. And I may have given your experience a little short shrift, and I apologize.

When you referenced California, one thing you got involved in was representing Southern Nevada entities in the case that ultimately, two cases went up to the Supreme Court, U.S. Supreme Court, and I think maybe you think that you got the name Hillside accidentally and it should have been Ponderosa.
A. All the lower court decisions were called Ponderosa V whoever, and then you got there first, Chip, and the Supreme Court took Hillside as the name of the case.

Q. But do you recall whether the, in addressing the case in the District Court, whether the Trade Barrier argument of (G) was, an Lehigh Valley case, ended up being analyzed as sort of the mirror image for what states could or couldn't do interstate commerce?

A. Absolutely. I know I, and I think others that do what I used to do, you know, look at this as being a Federal version of the Commerce Clause. I think -- I think it might have -- okay. I was sworn to tell the truth, and maybe go off script a little bit.

I think it might have a little less teeth when it comes to milk because it says, "orders can't prohibit the marketing of milk from elsewhere." The Lehigh case said, you know, if it, for all practical purposes prohibits, you know, you look at the practical effect, not for the word "prohibit" to have that effect, but, or in any manner limit in the case of products of milk. That's a really tight restriction. I think that, that's as close to the Commerce Clause examination as you can get. And, you know, there's products of milk, there is fluid milk, there's cheese. So that's why I refer to that.

Mr. Vlahos?

MR. VLAHOS: On the grounds that the witness is now
interpreting a case, I'm going to object to it and ask that it be stricken, and it's a legal conclusion, and the case speaks for itself.

JUDGE CLIFTON: Your objection is noted, the witness's testimony stands. I will not strike it.

BY MR. ENGLISH:

Q. And finally, Mr. Vetne, before I move admission of the exhibits and allow others to question you. As I read your testimony, I sort of thought the heart of it, and if I were to summarize it for my part, was looking at the bottom of page 3 and the page 4, top of page 4, the concept that a proponent had a burden of proof of the evidence of market practices, rather than market theory.

A. That's really the heart of step one, yes. And that's what, that is the focus. And then, the second focus was if USDA gets that, what do they do with it? And the most important part about what they do with it is, the HTST pricing.

So those are the three highlights.

Q. And so over on page 4, what the Secretary himself said at the time you referenced what you call the 1989 Texas-Southwest Plains decision, having been there myself, and on the losing side I might add, you know, I call that sort of the pure milk Gore, Inc., Gore Brothers Pure Milk Case. Hat, the Secretary acknowledged that the mere, that, yes, because an entity was a producer-handler, there was unpriced milk. And
because there was unpriced milk, there was the potential for unfair disorderly marketing conditions, correct?

A. Yes.

Q. But the problem was, as the Secretary says in that statement on the top of page 4, that there was a lack of demonstrable evidence of actual disorder.

A. That's --

Q. And I did, I inserted the word "actual".

A. That's exactly right. And I -- I have been to many dozen Milk Order hearings over the years, and I have frequently disagreed with conclusions of the Secretary as to what constitutes disorder, what needs to be remedied, or what remedy to provide in the circumstances, but I have never, I do not remember any case, and I think I remember all of them, in which there were not observed practices, marketing practices, transactional practices, that were the subject of the inquiry, and what to do with them when proven was really the debate, you know --

JUDGE CLIFTON: Did you just say you do not remember any where there was not an examination of practices?

MR. VETNE: Exactly right. There was always an examination of something that was observed. Something that was observed. And frequently, we say, "I observed that, I think it's a good thing." Somebody else will say, "I observed that, you better do something about it." But there was always an observation of
something.

And I also noted that, you know, frequently it is the Marketing Orders themselves that create it. Thank you for giving me the soapbox, but we had ten years of hearings on performance standards that could have been avoided if only USDA had zoned out producer milk from the market in which it was pooled. That's what brought California milk into Ohio, it brought Idaho milk into the Upper Midwest. The value of that milk in relation to the market, as it had been prior to Federal Order Reform, would have been so low there would have been no regulatory incentive to make inefficient movements of milk simply to pool. That's one example.

There are other opportunistic things, like Superior Dairy in Ohio. Superior Dairy saw the chance to be a partially regulated plant. Took advantage of existing provisions, created a partially regulated plant, and realized a financial benefit over a period of time. It took a year to address it.

And actually in the final conclusion -- I wish we would do this more often -- you know, there was, there wasn't formally negotiated rule making, but there was a negotiated resolution that was proposed to the Secretary by opposing sides. I wish that could happen more often.

JUDGE CLIFTON: In this hearing, for example, I'm just saying.

MR. VETNE: Who was it that said, let's get Scott,
everybody in the same room, bang their heads together and come up with some solution. That could work. There is room in the system for negotiated rule making, thought ought to be given to it.

    JUDGE CLIFTON: Well, it can be addressed in your briefs, and the work that you do leading to your briefs. Mr. Vetne, what did you mean by zoned out?

    MR. VETNE: Zoned out is a way that that producer milk, that is, the revenue from the pool that goes to producers, used to be priced from a market center. So, for example, if the center of the market is Chicago, a producer delivering to a plant in Wisconsin would get a lower price because the value of milk at that location is less than the value of milk delivered to a plant in Chicago. And if it went even further away to a plant in Minnesota or South Dakota, it would be even lower there. You take that and extend it further out, once you get to Idaho, there would be, like a buck left. There was something way below any blend price that anybody would want to try to associate Idaho milk in the Upper Midwest.

    The final Federal Order Reform Decision didn't use that practice on a market-by-market basis, but had this contour prices, the price grid for Class I, and continued to adjust producer prices exactly the same as handler prices, so even if you are a thousand miles from the market where relative to that market the milk ought to be worth not very much at all because
it is so far away, if there were higher class price or a good
class price, that producer's blend price would not be reduced a
thousand miles away from the market. So that is a, was a
major, major difference pre-Reform and post-Reform, and I don't
think it was a good Reform.

JUDGE CLIFTON: Mr. English, when you referred, I believe
you were referring at the bottom of page 3 to the
Texas-Southwest Plains decision, and you said, "I call that
the -- "

MR. ENGLISH: Pure milk, P-U-R-E, M-I-L-K.

MR. VETNE: That was his clients.

MR. ENGLISH: No, that wasn't my client, that was
Mr. Yale's, we have referred to Ben Yale that passed.

MR. VETNE: Pure Milk was the, what was the company that --

MR. ENGLISH: Was the producer-handler.

MR. VETNE: The producer-handler that stimulated the
request for remedy.

MR. ENGLISH: And just because, you know, I just want to be
clear, that was not my client, that was Mr. Yale's client, and
he was successful.

At this time, your Honor, I have completed direct
examination and I would move admission of the Exhibit 111 and
112.

JUDGE CLIFTON: Let's start with Exhibit 111. Is there
anyone that would like to question the witness regarding
Exhibit 111 before you determine whether you have objections to it being admitted? There is no one. Is there any objection to the admission into evidence of Exhibit 111? There is none. Exhibit 111 is admitted into evidence.

(Thereafter, Exhibit Number 111, was received into evidence.)

JUDGE CLIFTON: Regarding Exhibit 112, is there anyone that would like to question Mr. Vetne regarding Exhibit 112 before determining whether you have any objection? There is no one. Is there any objection to the admission into evidence of Exhibit 112? There are none. Exhibit 112 is admitted into evidence.

(Thereafter, Exhibit Number 112, was received into evidence.)

MR. ENGLISH: I'm done.

JUDGE CLIFTON: Very good. Thank you. Who will be the next to question Mr. Vetne? Mr. Miltner.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Ryan Miltner, Counsel for Select Milk.

Hi, John.

A. Hi, Ryan. Yeah, you don't have to call me Mr. Vetne.

Q. I won't start now.

So as I was reading over this and trying to figure out what I wanted to ask, I was thinking of my Administrative Law
class many moons ago, and how I probably shouldn't have skipped it to go to Indians games when we talked about formal rule making. But I have picked up on a few things since then.

A. Yes, you have. I agree. Very well, too.

Q. Thank you.

I guess, let's start with your statement. The first thing I think is easy, your footnote number 1, what you call the Knutson Reports, is that the Milk Pricing Policy, Part 1 and Part 2?

A. Exactly right.

Q. Okay.

A. Dr. Knutson, who was then a Chief Economist, I think Chief Economist, in AMS Dairy Programs chaired the committee. So like the Nourse Report, Ed Nourse was the Chair, I called it the Knutson Reports because he was the Chair. But it is the Milk Pricing Policy and Procedures.

Q. Okay, great. So let's talk about Section 6023.

A. 6023?

Q. Yes.

A. Where are we?

Q. This is the last paragraph on page 1.

A. Oh, okay.

Q. And you quote the section which begins, your quote begins, "to establish and maintain such orderly marketing conditions for milk and other farm products." I want to focus
on "such orderly marketing conditions."

A. Yes.

Q. In your experience, is that the clause that leads us all to this dance around what is disorderly versus orderly?

A. No and yes.

Q. I'm glad you have clarified it.

A. Orderly is used twice in that section. "Establish orderly" and then "orderly flow of the supply thereof to market". If one reads Nourse, if one reads the first few pages of the Federal Milk Marketing Order program, which is my Exhibit A, Part A of Exhibit 112, orderly has context. And this was written in the early '30's when there was chaos, not just in milk, but in agriculture in general. Came off the Stock Market plunge in 1929 and the whole country went into a depression. And leading up to that time, in a period of irrational exuberance, everybody was producing more than they probably should have. There was, in fact, for milk and other products, too much of a supply. What happens when there's too much of a supply? Price goes down.

And for milk, there were have and have not's. Some producers had a, like we heard earlier in this hearing, before the Gonsalves Milk Pooling Act that happened in the '30's. Some had a Class I market, some did not. Prices between the producers varied differently and there was a struggle between producers to get a share of that Class I market, and they would
economically, if not physically, cut each other's throats to
secure a share of that market. That is, there's, if there is a
question of where the line for market disorder exists, that is
way above the line.

There was a -- there was an Appellate Court Judge in, I
think the Fourth Circuit, named Judge Frank, very
well-respected, who wrote a decision called Queensboro Farm
Products. And he sort of describes his emotions after hearing
about -- about the dairy economy leading up to that case. And
I think I got most of that, part of the decision by memory.
And here it goes:

"The city dweller or poet who views the cow as a symbol
of bucolic serenity is naive indeed, for from the udders of
that placid animal flows a bland liquid indispensable to human
health which has produced more human strife than alcoholic
beverage."

And that's really, that human strife is what led up to
the enactment here. So the context for orderly, getting back
to your question, is what happened there. And bringing
production back into line with supply, and then doing whatever
you can to make market channels work efficiently, and to avoid
the farmer-to-farmer strife that was observed by Congress
leading up to this Act. Okay.

So does that answer your question?

Q. Sort of.
A. More than you wanted or less than you wanted?

Q. No, it's, that's helpful. It's the Second Circuit.

A. Second Circuit.

Q. Yep.

A. Thank you. You Googled it while I was --

Q. No, no, no. I knew it. I'm trying to find the quote I
in there that I like better than yours, which is something
along the lines of: "To completely understand the complexity
of the milk problem would require almost a universal knowledge
of chemistry, biology..." and several other disciplines. I
like that one.

A. Okay. Well, I like the one that isn't in a court case
that somebody said, "there are more people that understand
Quantum Physics than understand how milk is priced." So that's
why we're here. Thank you.

JUDGE CLIFTON: How is Queensboro spelled?

MR. MILTNER: Q-U-E-E-N-S-B-O-R-O.

JUDGE CLIFTON: Thank you.

MR. VETNE: I know you and I are having fun, but let's try
to contribute to this record.

BY MR. MILTNER:

Q. Okay. So let's, I want to ask another follow up on
that particular phrase, "such orderly marketing conditions."
And obviously there are a litany of marketing conditions, but
my question is, does the AMAA describe a situation or describe

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a, what I will call a set of one -- in other words, the Secretary has a singular goal, which is to protect orderly marketing conditions, and is that, is that a Holy Grail or is that a continuum of acceptable outcomes?

A. Hopefully what happens after the Secretary intervenes is more orderly, more efficient, more predictable, more transparent, than before. Producers couldn't trust their butterfat tests, we're getting paid for all the butterfat, and after involvement they can. That kind of thing.

However, rather than, I want to refer you, the Borden decision that is cited in Footnote 1, the lengthy decision, has a heading, that's chapter and headings throughout, and has a heading that essentially says, here's how, here's how USDA has, and how we judge disorderly marketing conditions. And then the Judicial Officer goes through the economic and regulatory history, the writings about it, and in that case, the decision that was under review.

So it, as I say in the next page, it has context. It has historical context and it has context as applied, and that's what I mean. It is -- is it a fixed? I think you used the term fixed.

Q. Close enough.

A. It is -- it is fluid.

Q. No pun intend?

A. No pun intended. It is fluid. What is unfair and
disruptive today may not have been thought about 20 years ago, so, or what was deemed to be Holy Grail 20 years ago may not exist today, and yet we still continue to operate the same way as though it still existed. I think that's just as pertinent.

Q. The section of the Borden decision you cite or you have referred me to, would you characterize that, that section as a statement of policy or a statement of law?

A. It is a review by the Judicial Officer of policy as applied by the USDA.

Q. Okay. That decision is now 28-years old I think, if my math is right. No, that would make me older than I am. The Borden decision is '87, right? So that's 28 years?

A. Yes.

Q. Okay. So because what may be the Holy Grail at one point and no longer be the Holy Grail, have you read the decision? I assume you have read it recently, do you believe that the articulation of policy there is still an accurate state of what the policy is or should be today?

A. I think it is a good articulation of the process. The decision may not, you know, the decision involved a pricing result that doesn't exist today, so the circumstances on the ground are different, but the process of getting there I think is the same, except that we have more information, such as the Dairy Sector Simulator. We have more sophisticated, both marketing and policy analysis tools today than we had in 1987.
I think the process is the same. We have better tools to apply
to that process.

Q. In the particular section that you have pointed to
which talks specifically about what disorderly marketing is,
you believe that section, I guess, looking at that section in
isolation regardless of the actual decision there, you believe
that is still relevant for our consideration and the
Department's consideration today?

A. I think that still illustrates it, yes.

Q. Okay. I want you to look at page 5 of your testimony,
if you could.

A. Oh, good you skipped through all the way over to 5.

Q. There's no promise I won't go back. The section you
quote in the middle of the page, and you're quoting from a
letter -- is this the letter from Dana Coale that you are
quoting there, I think?

A. That's true. Dana Coale's letter of September 17,
2012.

Q. Okay.

A. End-to-end. And I quoted that as an expression of
fact, that is, the fact of that policy in 2012; the fact of
that policy in years prior to 2012; the fact of that decision
expressed, that policy expressed in decisions since I have
looked in vain for a departure from that policy since 2012, so
I have to believe it continues to exist.
Q. The clause that you quote prior to the ellipsis there.
A. Yes.

Q. Talking about the, and I'll read the section I'm looking at: "Since it is not authorized to establish minimum prices above the relative market value of the products of milk, with respect to manufactured products." Would you agree with me that the Secretary, the Department, has adopted a national market as the relevant market for those products?
A. I would agree that product prices that are surveyed by USDA are the result of surveying transactions throughout the United States, resulting in a calculation that produces an average price for all products in the United States.

Q. And so for purposes of establishing minimum prices under the Federal Orders, that average price you refer to is a single national price, correct?
A. That is what is produced in the Federal Order system that resulted from Federal Order Reform in 1999, that resulted in a template that did not include California.

Q. So is that yes?
A. It's yes, but.

Q. Okay.
A. Your question, the answer to your question would produce a misleading inference if I didn't do the but, so yes.

Q. Maybe incomplete, but not misleading. To the extent that any proponent here seeks a different federal price for
manufacturing classes than what exists in the current Federal Orders, would that be a deviation or a change in policy for the Department?

A. It would be a different price. I do not believe it would be a deviation from, or a change in policy. I think the Secretary, what resulted from Federal Order Reform, was, at the time, the reasonableness and functionality of the Class III price was measured against how closely does it match what we used to use as the basic formula or M-W price? Okay? One of the factors by which it was measured was, is it pretty close?

One of the factors that was measured beyond that was rational economics, maybe the something that wasn't exact term, but rational economics. What was produced at the time was a price that was pretty close to what had previously been announced as the M-W price, which was the price of milk used to produce cheese in the most efficient, lowest price production area of the country, Minnesota and Wisconsin. And as I recall looking at the Class III price surface, that was true at the time. Supply and demand for milk and products of milk are different now.

So somebody asked an earlier witness, I can't say who, so, you know, the Secretary could have different manufacturing prices with different locations to reflect local supply and demand. So -- or, and the answer was yes, and I can't member who said that. Or the Secretary can establish a manufacturing
price by formula at a level which is lowest in the country, and
individual markets then, can adjust by premiums or other
factors unhampered by minimum prices. So if it is at the
lowest price, you don't need multiple, multiple pricing points.
If it's at a higher price someplace, then you might need to
consider having a lower pricing point in a market where supply
and demand for their product produces a value for that product
in that local market.

Q. This might be a difficult question because I -- because
I can't, we don't have a true comparison, but I'll try it
anyway. Are you arguing that the formulas for manufacturing
milk in particular, that we currently have, are no longer an
appropriate, or no longer a close approximation of what the
MWNFPP were?

A. I'm not making that argument, but I think that it's
moved farther away from what the MWNFPP were. It's been 20
years data time since that time, and I'm not saying it is
higher than M- or BFP would have been, but less a reflection of
what it is then. I -- as I was preparing for this hearing, I
took a look at the NASS data on cheese production. And NASS
used to report cheese production by, I think five regions. It
was the Western Region, there was the South Central Region, the
Northwest Central Region, the Northeast Central Region, and
then the Eastern Seaboard. Maybe the Eastern Seaboard was
subdivided, and so maybe there were six, so you had a pretty
good idea.

And when you take cheese or cheddar cheese, you try to plot out where the dividing line is, where is the midpoint at which half the production is to the east and half the production is to the west. And you assume that when prices are surveyed, they are more or less followed to be weighted that way, or half the production is to the north and half to the south. There would be a geographical line just simply, or a pinpoint if you could do it, as to where is the center of cheese production. And back then, as now, that line falls somewhere in the Central Region. Probably not as close to, as close to Chicago as it used to be, it's probably moved quite a bit west, but it is still in the Central Region.

The West Production Region doesn't produce half, so you have to move into the Central Region before you get to half the cheese production. So the cheese is basically a Central United States price if the surveys are somewhat proportioned either in cheddar or all cheeses to production regions, but if you take that same approach to nonfat dry milk, for example, and you try to pinpoint the center of production so that as much powder is produced to the west of the line as to the east of the line, you get a line that's not, it is not, you know, near Wisconsin and Minnesota, the line is at the Nevada-California border.

So whatever survey price is produced now for butter and powder, is heavily weighted towards what I believe to be a
lower value of that product in California, but it's not much lower for in terms of transportation to get into Nevada a little bit. But for California, product still has to equalize, would still have to move into the Central part to get an equalized value. So California and the evidence is the value is lower here.

There is no option other than finding a value for that product in California. And if that requires two price surfaces, two Class III prices, or a new lowest price being the California price, I don't know. But that should be the outcome of this hearing, if there is an outcome, to make that determination.

Q. That kind of leads me to my next question then. So how do you put a number on or quantify a formula or a price that approximates what the M and W and the BFP represented 20 years ago? Not that you are going to replicate those formulas, but that you achieve what I think you perceive to be as an accurate determinative price?

A. You don't need to. You don't need to replicate the M and W, 20 years ago. You know, you had a product price formula that represented the milk value in cheese at the lowest, at the lowest priced area within the Federal Order system. California was not part of the Federal Order system. Didn't need a lower price in California than the Federal Order system, it already had a State Order with a lower price.
Now, if you bring into California, the process is the same. You have to determine a market value for the products of milk in the marketing area to which the contemplated Order applies, that's the directive of Section 608c(18). So you determine a California value for cheese.

If you go back to the second Knutson Report that the one in which a recommendation was made for product price formulas, you got to do two things, you got to determine a value for the product, and you got to determine a reasonable make allowance so that in the end, the manufacturers receive enough margin they are willing to take milk and continue to be in business to dispose of milk that's not used in Class I and II. That's the end result. And you can have a make allowance, you know, that's twice the average cost. If you have a product price that is a dollar above that, it doesn't matter if you have got a good make allowance, both have to be in harmony in the market that you are looking at.

Q. And even though California is not in the Federal Order, we nevertheless, the prices for cheese manufactured in California are already incorporated into the formula, are they not?

A. They are incorporated into a California price, if that's what you mean.

Q. No, I don't mean a California price. They are incorporated into the prices surveyed which set the price.
A. Oh, absolutely. They are part of the survey that sets the price, sets a national price for cheese. It doesn't tell you what the value of cheese is in California, all it tells you is what the average value of cheese is on a given day where all cheese clears the market.

Q. Well, it actually sets a weighted average price on that, doesn't it? So it reflects both the price and the volumes produced in California and other locations, correct?

A. Yes, yes. That line -- that line, since 1999, has been edging closer to California. California and Wisconsin have both produced more cheese. Wisconsin started to come back from the edge, and is finally climbing back up in the direction that California was for 20 years, maybe not as fast or as large. So the midpoint line is, wherever that line is, everybody to the east of that line, value flows from west to east. Everybody to the east of that line will have no problem in a minimum price set at the center. Everybody to the west of that line, if they are subject to a minimum price set in the center of the line, will have their product priced more than they can recover in the marketplace.

And now we have this unregulated area in Idaho. A lot of product. You can look at the '06 product flow map, lot of product is now coming from Idaho, unregulated. No minimum price applies.

Q. And yet but still those cheese produced in Idaho, if it
meets the specifications, are incorporated in the survey nonetheless, correct?

A. Cheese, yes. They are incorporated in the survey. But the measure here is not the value of cheese on average, it is the value of cheese in California. And more importantly, it's the value of milk going into the cheese in California.

Q. This colloquy we're having about whether it's the average or whether it's California, isn't that a policy consideration?

A. No, it's an economic consideration. The policy's already established. The policy is from the final Federal Order Reform Decision, and is guided by, I believe, the Knutson report, too. You find a commodity price, you apply a reasonable manufacturing allowance to produce a result that will allow manufacturers to purchase milk and make a reasonable profit. It is the essence of reg. making. It's a new concept in Milk Orders to consider it reg. making, but that's what reg. making does, it sets cost, regulates prices, and allows a reasonable return on investment. That's where we are in the Class III and IV formula.

You take something, any component of that, and pretend that there's revenue where there isn't, you have produced chaos. Illegal chaos and economic chaos.

Q. The decision by the Secretary to utilize the average price in setting the formulas, though, that is a policy
consideration, would you agree?

A. That was a policy -- that was the result of policy, it wasn't, that wasn't the policy.

Q. Well --

A. That was the result of policy. And if you read the decision, the policy was, we will find a price that allows manufacturers to pay for milk and recover a reasonable return on their investment. The most emphatic clause I think in the Federal Order Reform Decision, says "the importance of establishing a price for manufactured use is low enough to clear the market cannot be understated. The importance of market clearing cannot be understated." But I'm not concerned about clearing the market in New York or in Ohio, here. What is the price that will clear the market in California?

Now, it may be demonstrated in California that the average price for cheese, whatever it is, Western Missouri, Eastern Missouri, Iowa, Wisconsin, that manufacturers here can take that price as the commodity price, subtract the make allowance and pay producers and stay in business, that would follow policy. That would follow that policy. What resulted from the Federal Order Reform Decision was the result of policy, and it was, it was the result of policy that did not require USDA, as I have said, to consider whether that's applicable to supply and demand for products of milk and milk itself in California. It wasn't part of the template, although
it is part of the process upon which prices are surveyed. It is not part of the pricing template at the time.

Q. The line you have described as far as setting the, excuse me, the center of cheese manufacturing is, as California's cheese manufacturing is increased, you note that line moves west.

A. It does, it has to.

Q. As it moves west, doesn't the impact of that cheese production, including the costs of California manufacturers, get pulled into the formula to a greater extent?

You are shaking your head no.

A. No, I'm not shaking my head no meaning --

JUDGE CLIFTON: He's thinking.

MR. MILTNER: Okay.

JUDGE CLIFTON: I think we need a break. Remember exactly where you are, "to the extent that line gets pulled west -- "

MR. MILTNER: I have a note here, your Honor.

JUDGE CLIFTON: Okay, good. I'm going to ask you to ask it again when we come back. It is 4:13. Let's just take 10 minutes roughly. Please be back and ready to go at 4:25.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 4:26.

Mr. Miltner, you may proceed.

BY MR. MILTNER:

Q. Thank you, your Honor. I believe my last question
before we went to break dealt with the line Mr. Vetne had
referred to, reflecting the center of cheese production in the
U.S., and he had testified that that line over the years has
moved westward. And my question was, as that line moves
westward, does it not incorporate California cheese sales
prices in the national price survey to a greater extent?
A. And the answer is yes, but let me add. The line -- the
line doesn't just move westward. The line that I have in mind
moves westward because a proportionately greater volume of the
national cheese supply is in western states compared to eastern
states as time goes on. So that would be California, Idaho,
New Mexico. So at this point, you know, in our discussion, we
don't know whether that makes a difference in arriving at an
average price, because it could be that all other prices
surveyed are the same price, so it doesn't matter where
geographically it is, but it does matter if on one side of the
line, survey prices tend to be higher, on another side lower.
So as, if, indeed, as I think the facts prove, surveyed prices
reported are lower in the western states, whether it's
California or anyplace else, that line will move towards those
states. And a regulated price produced at that line would not
create any challenges for any plants located to the east of the
line because the line is at an average price lower than survey
results to east. It would create a challenge the further west
you get from the line, if indeed prices are lower to the west,
because it would impute a value that doesn't exist to the west of the line.

When the Federal Order Reform Decision came, if you look at the price surface map, it didn't make much difference in the Federal Order system to have one price that was essentially the Upper Midwest price, and the DSS model, I think, served to reassure USDA that if we do it this way, it is something everybody can live with, you know, because that model produced a price that was lowest in the Upper Midwest. Well, almost lowest, lowest in Minnesota, Central California, and Idaho.

And, in fact, if you look at, if you look at the flow of product on the next to the last page of Exhibit 112, even then there wasn't a lot of product that needed to flow to the east from California or the Pacific Northwest at that time. So it was a combination of policy articulation and application of policy which produced a result that didn't look to, if I were looking at it as Administrator Analyst, it didn't look like it produced too many problems for those plants within the Federal Milk Marketing Order system. So I think it was a rational result at the time.

If you look at the next page, the last page again, the Pacific Northwest doesn't have to go very far under ideal efficiency conditions to dispose of its production of cheese in excess of per capita consumption, but California now does, and
Idaho now does, and it all flows east. And where a market is flowing from where produced to where consumed, it tells you, any economic analysis tells you that if its lowest value where produced and highest value where consumed, oranges flow to New England from Florida, cheese flows from California to Atlanta. It is worth more in Atlanta than it is in Tulare. So you have a problem to the west of that line.

So what kind of a rational system, then, would create a problem for half the market or a quarter of the market, and basically allowing no challenge to some of the players, and significant challenge to a good portion of the players. That's -- that's a new conundrum that needs to be raised for the first time in this hearing, because it is for the first time that USDA has been presented with an economic challenge to its application of policy in the Reform Decision. That ends my answer.

Q. Thank you. You stated in your answer, and I think you stated it once before the break, no cheese manufacturer east of the line would have a problem with the price set based on the line in the middle of the country, more or less. Did I say that -- is that right?

A. I did, because, yes, I am assuming that the prices, that the values are higher to the east because that's the way the product moves.

Q. Now, we have been in hearings, you and I, representing
different clients on manufacturing prices, but as you recall
there were cheese manufacturers from the Northeast complaining
about the prices from the formulas being too high, that they
needed to be adjusted lower. Remember that?
   A. That was in the make allowance. Absolutely. Yes. The
resulting price was more than they could recover in the
marketplace because the make allowances were set too low.
There are two places in application of the policy where there's
a danger of making a mistake, and one is in determining what
the value of the product is, where the price is to be applied,
and determining the cost, reasonable make allowance for the
product so that there can be return on investment.
   Q. And you remember in the same hearing, there were
producers who owned interests in cheese plants west of the line
saying everything is fine, you don't need to change the make
allowance for us, right?
   A. Well, the make allowance wasn't changed for producers,
it was changed for manufacturers, so I don't think that's
right. You will have to ask your question with more precision.
   Q. You remember that there were producers who owned
interests in cheese plants. Therefore, they had a processor's
interest as well as a producer's interest, and they testified
their cheese operations were doing just fine under the current
make allowances. You remember that?
   A. I remember that there were producer groups and I
remember that there was a cheese plant in New Mexico that is owned by producers, and I remember that producers didn't want to increase the make allowance. That's as far as my memory goes. I don't remember that the producers, although they had an ownership interest, were speaking for the managers of that plant or the butter directors of that plant. To me, it makes no difference if they say, "I own stock in this company, therefore, regulate or don't regulate." That's not really the point.

Q. Your answer also prompted another question, your previous, previous answer. The page in your Exhibit 112, I believe, the one that has the May 2006 map with cheese flows?

A. Yeah, the last page.

Q. Yeah. How is the length of the line originating from each triangle determined?

A. If you go back, if you go back to the text on the last page which tells you where to find the 1996 us US DSS spatially disaggregated model, it has many pages of the narrative description how the model works and what the lines mean. There is some of that in the Chuck Nicholson presentation, but go back to the model because it takes product from where produced through distribution, to points of consumption as far as it needs to go, till all the product's gone. So some of the lines aren't very far because the product, the aggregate of products produced a certain location don't need to go very far until
they are all disappeared and all the demand is satisfied. And this model, not, this map, again, most efficient possible distribution of all the cheese, wherever produced, to all consuming points, wherever they are, has product flowing from Central California to populations in the Southeast, Georgia, Florida. We know California product ends up in Chicago, Kansas City.

The model doesn't allow it to do that because the model doesn't incorporate human distortions to maximum efficiency. So this is -- this gives you a picture that illustrates direction. As soon as you bring, you know, a pound of cheese into California, which the model doesn't do, from Idaho, that's a pound of cheese that can't be consumed in California, it has to flow out of California. So this is an understatement, I think, of the flow of product, but it gives you an indication of what would have to be done at maximum efficiency. So the end of the line is, all the product is consumed. That was your original question.

Q. So it is assuming that the cheese only travels as far as it needs to find a consumer; is that right?

A. All of the cheese travels as far as it needs to go to find, to find consumers. It takes all the consumption points, all the production points, and puts them together as efficiently as possible.

Q. And the triangles that represent cheese manufacturing,
are those only plants that manufacture a commodity cheddar?

A. No. No.

Q. No.

A. Not in this model. This is -- this is all cheese.

Q. So what, it represents all cheese?

A. All cheese.

Q. So is each triangle a cheese plant or are they just kind of --

A. Yes, aggregated.

Q. They are aggregated?

A. Yes. That's my read. Again, go to the 1996 study, it will describe, because they have triangles and things there, too.

Q. Yeah, but I haven't had a chance to do it yet, so since you have put it in here, I'm trying to get your interpretation of it.

A. You did it before, right? You did it in 1999? Looked at the model?

Q. In the model? I have looked at them, yeah.

A. Okay. So points of production are the triangles. The lines are where it goes most efficiently to where the population is.

Q. Most efficiently. But again, they are not representative of where the cheese actually goes?

A. Absolutely not. We know that's not the case.
Q. Right.
A. We don't operate this efficiently.
Q. And for instance, it doesn't -- if you looked at that map, and we know Cabot Cheese is distributed nationwide, and everything up there would have, indicates that there are at least enough consumers in New England that it wouldn't need to leave New England, but it's got a nationwide demand for that product.
A. Probably not. I don't think you could actually map the actual distribution of cheese. You would have -- you wouldn't be able to see the states underneath all the lines.
A. Yes, sir.
Q. First full paragraph, you have underlined it, only practical means, do you see that section there?
A. Yes.
Q. And actually, as you wrote this, you state, "the Secretary must determine that the issuance of such order is the only practical means of advancing the interest of the producers of such commodity."
A. Yes. And as approved by producers.
Q. And as approved by producers.
A. The Act is intentionally producer-oriented.
Q. Right. I guess I want to try to see if I can pick your
brain as to the contours of what only practical means encompasses. Is that purely a discretionary finding of the Secretary?

A. It is clearly a discretionary finding. I assume, I assume that public servants, such as the Secretary who was appointed, makes a diligent and good faith effort to apply directives such as this as best they can. It's a requirement that the Secretary determined, it is the only practical means. So the Secretary actually says those words every time a decision is made.

I worry that the importance of those words somehow gets lost in the process or is lost to those that participate. I think, I think the Secretary has the right, if not the obligation, to ask proponents of rule changes, you know, is there any other practical means of achieving a result here that cures the problem? And I think certainly that those will come before the Department ought to have that in mind.

Q. Let me offer a hypothetical for you to think about, and hopefully talk about.

Let's assume that there's a milk problem, that the Secretary convenes a hearing, that there are multiple proposals, more than one of which would provide a means of advancing the interest of producers in such commodity, but for instance, two solutions would advance those interests. How do we determine which one is the only practical means, or if there
are two, is it the Secretary's discretion to choose between them?

A. The Secretary must always make a choice, and the Secretary, as a prudent public servant, I think, should, and will, walk away with confidence that the chosen one was the only practical means. Your question doesn't necessarily suggest competing solutions, just different solutions. Frequently there are different solutions that aren't that far apart.

Q. Is it that it perhaps in practice, the section you quote there might be better written, not that we can write it, it is Congressional language, but it might be, it might be better interpreted as that the issuance of an order is the only practical means of advancing the interests, etcetera?

A. That's not what it says and I don't think that's what it means. It's not an order, the order presented. Or -- or that, not just the order presented, the order the Secretary comes up with in a final decision. Because we talked about, you know, the Upper Midwest when it was merged, having reserve supply plant which nobody thought of and was created by the Secretary. That was one of the instances I had in mind. The only practical means. Okay. "I got something better than you or you or you have proposed here, I think it is the best option for this market, so here we go."

Q. Okay. Let's talk for a few -- well, your, Honor, what
time do you want to go off record today?

JUDGE CLIFTON: I think I can -- I think I can give you
four more minutes and then I would like you to interrupt your
cross and resume it tomorrow.

MR. MILTNER: Okay.

MR. VETNE: Is this still cross?

BY MR. MILTNER:

Q. Let's look at Section 18, 8c(18).

A. I got it. Okay. I got the whole thing right here.

Q. Great. Let me get mine so we can talk somewhat
intelligently. In the penultimate paragraph of your testimony,
you have stated, "it is difficult to imagine how proponents
myopic approach can satisfy Section 8c(18) of the AMAA." And
as you expounded upon that, I interpreted your testimony to
mean that that is related principally to the fact that the data
upon which the price surface is set, is outdated. Is that
accurate at least in part or in whole?

A. That is accurate in part and almost the whole. It, the
request hearing Proposal 1 is, let's take the prices and the
surface created in 1999, based on '96 and '93 data, and apply
it. And, you know, in Section 8c(18) which I have here, and
which I quoted, quoted in part, "market supply and demand for
milk and its products in the marketing area to which the
contemplated order, proposed order, relates, and fix such
prices as you find will reflect those factors and ensure
sufficient quantity of pure and wholesome milk and be in the public interest." Supply and demand for milk and its products in California is the primary, the primary directive -- to borrow a phrase from Star Trek -- the prime directive.

Q. Let me take your argument and extend it a bit.
A. It's not my argument, I'm quoting the statute.
Q. Okay. Forget the statute, let's talk about specifically your articulation of the myopic approach.
A. Myopic, I struggled hard --
Q. I know.
A. -- because that, that was the only semi-disparaging word I think I used in my entire statement, and I ended up using it because it was a softer word than I otherwise had in mind.
Q. You could also say that it wasn't necessarily disparaging, just value-laden.
A. Okay. Thank you.
Q. We're supposed to use value-laden words. I was taught that when I took legal writing.
A. Okay.
Q. Let me extend that, though. If that's true, and we hypothetically had to reauthorize all the other Federal Orders using current regulations, would those orders be illegitimate?
A. No. What do you mean reauthorize?
Q. I want to say hypothetically we didn't have a Mideast
Order, and the hearing was about, let's take what we have in the Upper Midwest and use that price surface and use those universal regulations and create an Order for the Mideast.

A. Yes.

Q. Would that be illegitimate?

A. Would that be illegitimate? No. You create an Order for the Mideast, and look at supply and demand and prices in the Mideast when you create the Order. Now, it's one thing — it's one thing to judge a regulation by the things that you do and look at when it is created. It's a more difficult task as time goes by, to judge the point at which a regulation becomes unsustainable because things have changed since it was first created, and that happens, too. Doesn't change what you have to do at the inception. We're now at the inception.

Q. Okay. I think that takes up our four minutes, your Honor.

JUDGE CLIFTON: Yes, I think that's a good stopping point. Thank you so much. I would just comment that the last part of the examination of Mr. Vetne related to page 7 of Exhibit 111. All right. Thank you, Mr. Miltner. And we'll allow you to resume, hopefully tomorrow.

Let's see what Mr. English has in mind for tomorrow, given the fact that we only got halfway through his people.

MR. ENGLISH: Thank you, your Honor, Chip English.

Well, to my knowledge, and of course dairy farmers can
show up anytime. To my knowledge, I don't have anybody coming
tomorrow who has to go tomorrow. Now, the schedule is a very
fluid thing, but at the moment, my anticipation is that we will
pick up tomorrow with Mr. Vetne on the stand. And from there,
we would move forward to Dr. Schiek, Part 2, which is pooling;
Al Zolin, Part 3, which is pooling; and Sue Taylor, her Part 1,
which I think is primarily pooling. And I am fairly confident
that that would consume the day.

JUDGE CLIFTON: All right. And you're flexible if we have
other people who would like to be heard tomorrow?

MR. ENGLISH: I'm flexible. All of those people, as you
may have noticed, have been here virtually full-time for this
proceeding, and all of them will be here Friday and Monday and
whatever. So the answer to that question, your Honor, is yes.

JUDGE CLIFTON: Excellent, thank you. Ms. May, do we, are
we allowed to leave everything right where it is over night?
Yes is the answer. Would you like to speak?

MS. MAY: Yes.

JUDGE CLIFTON: Good.

MS. MAY: Laurel May. Just as a preview, next week we will
be in this room Tuesday through Friday, but Monday we're going
to be in the auditorium of this building, which is, presents a
few challenges, all of which can be overcome. But I thought
maybe if you wanted to, we could go over to that room
afterward, if anybody is interested in looking at it. What it
has is a stage and a theater-type classroom environment, so
very nice chairs, think about that -- and the peasants
rejoiced -- and with the little flip-down gismo that goes in
front of you, just like back in college. So not a whole lot of
space to spread out all your junk. Very few plugs. So it is
kind of like going on a little nature field trip for the day.
So you pack light, just one day, just Monday over there.
Tuesday through Thursday back in here.

So if you are interested in seeing what that looks like
so you can kind of anticipate what you are going to do, join me
for a field trip right afterwards, and hopefully that room is
still unlocked.

JUDGE CLIFTON: Mr. Vlahos?
MR. VLAHOS: That's next week you are talking about, not
tomorrow?
MS. MAY: I'm talking about Monday. Tomorrow and Friday
here, but we just thought maybe you'd want to plan ahead.
JUDGE CLIFTON: Mr. English?
MR. ENGLISH: I'm sorry, next Tuesday through Thursday back
here or Tuesday through Friday back here?
MS. MAY: Tuesday through Friday, sorry, I might have said
the wrong thing.
JUDGE CLIFTON: All right. Now, to get to the auditorium
from here, it is as if you are going out the entrance and it's
on your right.
MS. MAY: Yes. I'll meet you over there right after we stop.

JUDGE CLIFTON: All right. Excellent. Anything else? I have asked Mr. Van Nortwick to testify at his convenience either tomorrow or the next day, so when he arrives, I would like to put him on the stand when he's ready to testify.

Mr. Vlahos, if you would come to a microphone I could --

MR. VLAHOS: We're on the record, I'm sorry. John Vlahos. Your Honor, we didn't catch the name.

JUDGE CLIFTON: His name is Van Nortwick, V-A-N, N-O-R-T-W-I-C-K, he's the gentleman behind you, Mr. Vlahos. He's the publisher of "Agribusiness Publications" and he's the gentleman who has created the ability for us to listen to the recorded audio feed on the website. All right.

Other preliminary issues, announcements? I see none. Then we'll go off record. What time is it? We go off record at 4:57. And Ms. May is leading the way to the auditorium.

(Whereupon, the evening recess was taken.)

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**TRANSCRIPT OF PROCEEDINGS - VOLUME XXV**

October 28, 2015

**IN RE:** MILK IN CALIFORNIA

**Min-U-Script® Barkley Court Reporters**

(39) year-after-year - 1999