UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XXXI

TRANSCRIPT OF PROCEEDINGS

November 5, 2015

Myra A. Pish, CSR No. 11613
397094
UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

_______

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

_______

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

Thursday, November 5, 2015

9:00 a.m.

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

TRANSCRIPT OF PROCEEDINGS

VOLUME XXXI

Reported by:

Myra A. Pish CSR
Certificate No. 11613

6136
APPEARANCES:

U.S. DEPARTMENT OF AGRICULTURE: Office of the General Counsel
BY: BRIAN HILL, ESQ.
LAUREN BECKER, ESQ.

U.S. DEPARTMENT OF AGRICULTURE: ERIN TAYLOR, Dairy
Product Marketing Specialist
LAUREL MAY, Marketing Specialist
MEREDITH FRISIUS, Marketing Specialist

CALIFORNIA DAIRIES, INC., DAIRY FARMERS OF AMERICA, INC., LAND O'LAKES, INC.: Law Offices of Marvin Beshore
BY: MARVIN BESHORE, ESQ.
Hanson Bridgett, San Francisco
BY: JOHN VLAHOS, ESQ.

DAIRY INSTITUTE OF CALIFORNIA: Davis Wright Tremaine
BY: CHIP ENGLISH, ESQ.
ASHLEY VULIN, ESQ.

LEPRINO FOODS: SUE TAYLOR, Vice-President
Dairy Economics and Policy

DEAN FOODS COMPANY: ROB BLAUFUSS

HILMAR CHEESE COMPANY: JOHN VETNE
JAMES DeJONG

CALIFORNIA PRODUCER HANDLERS ASSOCIATION: Stoel Rives
BY: NICOLE HANCOCK, ESQ
BAO Vu, ESQ.

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

---00---

6137
INDEX - VOLUME 31

WITNESSES IN CHRONOLOGICAL ORDER

SUE TAYLOR:

DIRECT EXAMINATION BY MS. VULIN 6148
CROSS-EXAMINATION BY MR. BESHER 6188

JACOB VERBURG:

STATEMENT GIVEN 6209
CROSS-EXAMINATION BY MR. BESHER 6213
CROSS-EXAMINATION BY MS. TAYLOR 6214

SUE TAYLOR:

CONTINUED CROSS-EXAMINATION BY MR. BESHER 6218
CROSS-EXAMINATION BY MR. VETNE 6230
CROSS-EXAMINATION BY MS. TAYLOR 6251
CROSS-EXAMINATION BY MS. MAY 6267
CROSS-EXAMINATION BY MR. BESHER 6273
CROSS-EXAMINATION BY MR. VETNE 6280
REDIRECT EXAMINATION BY MS. VULIN 6281

STEVEN P. KLUESNER:

DIRECT EXAMINATION BY MR. ENGLISH 6289
CROSS-EXAMINATION BY MR. BESHER 6296
CROSS-EXAMINATION BY MS. TAYLOR 6313
CROSS-EXAMINATION BY MS. MAY 6316
CROSS-EXAMINATION BY MS. REED 6317
REDIRECT EXAMINATION BY MR. ENGLISH 6319

ALAN ZOLIN:

DIRECT EXAMINATION BY MR. ENGLISH 6322
CROSS-EXAMINATION BY MR. BESHER 6338

---o0o---
# INDEX - VOLUME 31

## INDEX OF EXHIBITS

<table>
<thead>
<tr>
<th>NO.</th>
<th>DESCRIPTION</th>
<th>I.D.</th>
<th>EVD.</th>
</tr>
</thead>
<tbody>
<tr>
<td>135</td>
<td>TESTIMONY OF SUE TAYLOR</td>
<td>6147</td>
<td>6187</td>
</tr>
<tr>
<td>136</td>
<td>STATEMENT OF STEVEN P. KLUESNER</td>
<td>6288</td>
<td>6296</td>
</tr>
<tr>
<td>137</td>
<td>TESTIMONY OF ALAN ZOLIN PART 6</td>
<td>6322</td>
<td>6338</td>
</tr>
<tr>
<td>138</td>
<td>DAIRY INSTITUTE OF CALIFORNIA MODIFICATIONS TO PROPOSED SECTION 1051.9(d)</td>
<td>6322</td>
<td>6338</td>
</tr>
</tbody>
</table>

---o0o---
THURSDAY, NOVEMBER 5, 2015 — MORNING SESSION

JUDGE CLIFTON: We are back on record on November 5, 2015. It's a Thursday. It's approximately 9:00 in the morning. This is Day 31 of the milk hearing. We are in Clovis, California.

My name is Jill Clifton. I'm the Administrative Law Judge who has been assigned to take in the evidence of this hearing. I would like now to take the appearances of my fellow USDA employees, and then following them, the appearances of the other participants, including first, teams for proponents and opponents.

MS. MAY: Good morning. I am Laurel May with USDA AMS Dairy Program, Marketing Specialist in the Rule Writing division.

MS. TAYLOR: Good morning, Erin Taylor, Marketing Specialist with AMS Dairy Program.


MS. FRISIUS: Good morning, Happy Thursday. This is Meredith Frisius, F-R-I-S-I-U-S, I'm with USDA AMS Dairy Programs as a Dairy Marketing Specialist.

MS. BECKER: Good morning, Lauren Becker, B-E-C-K-E-R, I'm an Attorney in the Office of the General Counsel for USDA.

MR. SWENSON: Good morning, Virgil Swenson, V-I-R-G-I-L,
S-W-E-N-S-O-N, Assistant Market Administrator with the Central
Federal Order in Kansas City, and on detail with AMS Dairy
Program.

Agricultural Economist for the Upper Midwest Milk Marketing
Order Federal Order 30, on detail to USDA Dairy Programs.

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

MR. VLACHOS: Good morning, John Vlahos, J-O-H-N,
B-R-I-D-G-E-T-T, San Francisco, co-counsel for the Cooperative
Proponents of Proposal 1.

DR. ERBA: Good morning, Eric Erba, California Dairies,
E-R-B-A.

MR. WEGNER: Good morning, Thomas Wegner with Land O'Lakes,

Consultant with the Proponents of Proposal 1.

MR. ENGLISH: Good morning, your Honor, 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 a law firm office in
Washington DC. I'm here on behalf of Proponents of Proposal

6141
Number 2, the Dairy Institute of California.

MS. VULIN: Ashley Vulin, A-S-H-L-E-Y, V -- as in Victor -- U-L-I-N, also an attorney with Davis, Wright, Tremaine with my principle office in Portland, Oregon -- I don't think I have shared that yet. Also at attorney representing the Dairy Institute of California.

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


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

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


MS. HANCOCK: Nicole Hancock with Stoel Rives, representing the California Producer Handlers Association and Ponderosa Dairy.

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


MS. REED: Good morning, Kristine Reed, K-R-I-S-T-N-E, R-E-E-D, co-counsel for Select.

JUDGE CLIFTON: Is there anyone else who has not yet come to the podium who would like to be identified? Not yet. I would like now to go on to announcements and preliminary matters.

MS. MAY: Good morning. Laurel May with USDA. My colleagues and I welcome you to this session of our hearing to consider a Federal Milk Marketing Order for California, and welcome you to participate by witnessing or by asking questions of any witness that you would like to do so.

We are broadcasting, as you know, via live audio feed, which is accessible at www.ams.usda.gov/live, and the court reporter continues to take official transcripts of this hearing which will be available approximately two weeks at the end, after the end of each hearing week on the AMS dairy website.

We do have copies of some of the our exhibits in the back of the room in those file boxes, and they are filed by
number, so if you would like to look at some of those, you are welcome to.

Just to remind you of what our plans are, after tomorrow we will move this hearing to the Piccadilly Inn at the Airport, and that is located at the Northwest corner of Peach and McKinley Avenues, it's kind of behind the Shell station and there's a bunch of pine trees out there so you can't exactly see the hotel right from the corner, but if you drive either direction on one of those roads, you will see it.

And then Judge Clifton asked me to remind you that the following week, if the hearing is still in session, we will be moving to the Falls Event Center, which is at 4105 West Figarden. And the way you get to that is by going straight west on Bullard Avenue, and after you cross Marks, this is, you know, like ten miles down there, you cross Marks and the Bullard will begin to kind of loop to your left, kind of to the south, and that becomes Figarden, we call it the Fig Garden Loop, I think it is Figarden Drive is the actual name of it. And just after Brawley, the Event Center is on your left and there's plenty of parking behind the Event Center. But we will continue to meet at 9:00 in the morning at both locations.

Yesterday when we ended we had Mr. Paris from Joseph Gallo on the stand. I believe we were done with his cross-examination. This morning I understand that Ms. Sue Taylor from Leprino will be taking the stand, and then
depending on how things go, Mr. Kluesner from Nestle, and then it will be up to -- we'll see what happens after that, that's where I'll leave that.

JUDGE CLIFTON: Thank you so much. Mr. English?

MR. ENGLISH: Good morning, again, your Honor.

Chip English. So where we're going today, and this is a little bit of a modification from yesterday and having talked to people, apparently I was overly optimistic anyway, according to the people. So we are going to start, as predicated or predicted yesterday with Sue Taylor, what I have been calling Part 2. And to make that clear, this is going to be pricing and impacts on Leprino, and the pricing impacts on the pool will be separate, and that's what I call Part 3.

As I said yesterday, Nestle, Steve Kluesner, will come next, and that order was what I predicted yesterday. And then I said after that it's a little bit up for grabs and it has changed. So after Nestle and Steve Kluesner, and recognizing I believe that there may be a dairy farmer at some point today, we would turn to one of two things next, and the order depends on production issues for one, and post-production issues for another. And that is Zolin, Part 6, on Section 9(d), the proprietary bulk tank handler provision; and Rob Blaufuss, Part 4, on fortification. And that really is all we're going to have ready today, and I have already informed all the participants of that. That is to say that Sue Taylor, Part 3,
the pricing impacts on the pool, will go tomorrow, and
Dr. Schiek on quota will go tomorrow. I guess I should say
that depending on the drafting of regulatory language, which
appears to fall to one person, it could be that Mr. Zolin gets
on today with Part 7, the modifications to Section 7(c), but
that just, the language isn't drafted yet, and that person's a
little busy.

Thanks, Mr. Hollon. Oh, by the way, you didn't enter
your appearance yet.

JUDGE CLIFTON: I don't know whether he comes in just two
minutes late on purpose to avoid the parade, I'm not sure. He
does it consistently.

MR. ENGLISH: I might have been thinking something along
those lines, your Honor.

MR. BESHORE: He has a day job.

MR. ENGLISH: So do we all. Anyway, my view of this is
that if we had a shorter day tomorrow, you know, it's going to
wash out. And while we prefer to have a shorter day on a
Friday, I think that the reality is the quota and the
Sue Taylor, Part 3, are going to go tomorrow and I appreciate
everybody's indulgence. And we really are working very hard to
get all this done.

JUDGE CLIFTON: Those who are here know how hard it is to
be ready for each days' hearing. And you may think that we are
doddlings along, going 9:00 to 5:00, and taking lunch, and
breaks, but it is amazing how much work has gotten done. And
of course, it has to get done outside the 9:00 to 5:00 hours.
I really appreciate very much how hard all of you are working.

MR. ENGLISH: Thank you, your Honor. And that's absolutely
ture. Thank you.

JUDGE CLIFTON: My addition to the announcements is that
tomorrow is casual Friday. Please make sure you wear very
comfortable clothes, whatever you would like. I emphasize
shoes, make sure you wear your favorite footwear. All right.

And the docket number by which the Hearing Clerk in the
United States Department of Agriculture knows this case is in
brackets [AO] docket number 15-0071.

All right. Any other preliminary matters or
announcements? There is a little noise because they are
cooking right behind us, and I hope you all had breakfast.
Smells really good.

All right. I see nothing further, so we'll call the
first witness. Ms. Taylor, you may come to the stand.
Ms. Frisius, will this exhibit be Exhibit 135?

MS. FRISIUS: It will be.

JUDGE CLIFTON: I am marking my copy as Exhibit 135. 135.
(Thereafter, Exhibit Number 135, was
marked for identification.)

JUDGE CLIFTON: And Ms. Taylor, I'll swear you in in a
seated position -- well, you remain sworn. Would you again

6147
state and spell your name.


JUDGE CLIFTON: Thank you. Ms. Vulin, if you will identify
yourself and then you may proceed.

MS. VULIN: Ashley Vulin for the Dairy Institute of
California.

DIRECT EXAMINATION

BY MS. VULIN:

Q. Thank you, Ms. Taylor, for joining us again. I would
ask that you begin reading your written statement into the
record.

A. Thank you.

I'm Sue Taylor, Vice President of Dairy Economics and
Policy for Leprino Foods Company ("Leprino"), headquartered in
Denver, Colorado. I previously testified at this hearing so
will forego the company and personal background.

Position

Leprino supports the adoption of Proposal Number 2,
developed by Dairy Institute of California, if USDA
("Department") promulgates a Federal Milk Marketing Order that
includes California. I previously testified in support of
Dairy Institute's proposal regarding pool plant definitions and
in opposition to the pool plant definition found in
Section 10 -- gosh -- it should be 51 rather than 50, carried
that one over from the original co-op petition .7.
JUDGE CLIFTON: Now, let me stop you. Do you have it, Ms. Frisius? All right. And now read the section number again in its entirety, please, Ms. Taylor.

MS. TAYLOR: It would be Section 1051.7(c) of the Cooperatives' proposal, Proposal 1.

My testimony today will focus more broadly on regulated milk price policy and specifically in support of Dairy Institute's Class III price proposal (Proposal 2) and in opposition to the Class III price proposal found in Proposal 1.

JUDGE CLIFTON: Now, I want to ask if the volume is loud enough in the back. It's good. Excellent. Thank you. You may continue.

MS. TAYLOR: Thank you.

Today's Dairy Industry Context

In today's domestic and international environments, it is more critical than ever that the minimum regulated milk pricing system influence be minimized. Competition across the entire food complex for "share of stomach" is very high. Whether innovating a new dairy product or seeking dairy space as an ingredient in the development of a new innovative food, it is important that dairy demand not be constrained by overly burdensome price regulations.

The USDA dairy industry is increasingly integrated with global dairy markets. U.S. exports were minimal in the mid-90's before the Uruguay round of the WTO introduced
disciplines that led to growth and developing economies and rising global prices for dairy. Over 15 percent of US dairy milk solids are now exported in the form of various dairy products. Leprino and many other manufacturers, along with producers through their check-off dollars, have made significant investments in developing exports that will drive up demand for US dairy products, and along with it, the demand and price for raw milk to dairy farmers. These are the opportunities that will raise all ships for the industry. As the Department considers its decision from this hearing, it is important to ensure that the California Federal Milk Marketing Order facilitates, rather than inhibits, the collective industry's ability to leverage this opportunity.

Importance of Market Clearing Prices

Regulated milk price policy must be set at levels that contribute to orderly marketing of milk. This necessitates that the regulated minimum milk prices for the manufacture of hard manufactured products be set at levels that clear milk in the market in an orderly fashion. To do so, the minimum regulated price of milk in California must be set at a level that does not exceed values after allowing for reasonable returns that are achievable under good management practices by the California manufacturers.

Milk used for manufacturing, whether for cheeses or for butter and dry milks, is the primary method for California
dairy farmers to market the volume of milk that is produced beyond the milk required for the higher priced and more perishable Class I and II products. The utilization of nearly 80 percent of California's milk production in classes III and IV highlights the importance of these manufacturing outlets in marketing California's milk production. Because of the critical role that Class III and IV products play in marketing producer milk components beyond the borders of California, it is crucial that the price formulas be market oriented, reflecting the values of California-manufactured products, FOB manufacturing plant.

The importance of setting the regulated price at a level that is not intrusive on the market is increased when the regulated price is based on an end product price formula. End product price formulas contrast with survey-based milk prices like the old M-W and BFP price series previously used in FMMO's in their rigidity. The previous surveyed milk price would flex with market conditions and had the flexibility to reflect changes in manufacturing costs on a real time basis. In contrast, manufacturing cost allowances in the end product price formulas are only changed through rule making processes. The cumbersome process for adjusting these allowances necessitates that regulated price formulas be set at a level that allows other market forces to work and adjustments to occur outside of the regulated system.
There is substantial risk in setting and regulating prices too high. Overregulating prices results in disorderly marketing by encouraging additional milk production that the market does not have already outlet for, while decreasing demand at the processor level. Additionally, the setting of regulated prices at too high of a level discourages investment in innovative technology the industry requires to develop commercially viable new products. However, there is little risk in setting the regulated price to low, since the market compensates through the development of premiums.

The University BFP Committee commissioned to advise USDA during the FMMO Reform process echoed the need to view regulated pricing as market clearing minimums in stating that:

Minimum pricing reduces the need for the Secretary to fine tune the price of milk to reflect local or regional uniquenesses in a market setting that is nation in scope. Regional price differentials for manufactured products which may vary seasonally and over time, can be set by market forces where over order premiums are warranted.

Additionally, the FMMO Reform Final Decision on BFP replacement and make allowances, reveals that the policy decision is premised upon the ability of milk to escape the application of minimum regulated milk prices. It states that:

Manufacturing plant operators who find the level
of make allowances inadequate compared to their actual costs, also have the alternative to not participate in a Federal Order marketable pool. This ability for a manufacturing plant operator to step outside of the Federal Order marketable pool that was anticipated by the Department in the Reform Final Rule is not provided under Proposal 1. The importance of setting the regulated price at a market clearing level is even more critical given that suggested change in policy.

BY MS. VULIN:

Q. And both of those quotations had foot notes with citation to the source of the quote. We would ask the court reporter to please incorporate those as if they were read into the record, with your Honor's permission.

JUDGE CLIFTON: Yeah, we have a little problem with the formatting the way the transcript goes in putting in. We can easily have the court reporter type, for example, a website, but when you get into formatting like either end notes or foot notes, it is almost as difficult as charts, because it is like 25 lines to a page and so forth. What we could do instead, is now have Ms. Taylor read those foot notes, if you would like.

MS. VULIN: Sure. And Ms. Taylor, could you please identify which quotation the footnote is related to?

MS. TAYLOR: Certainly. The first quotation came from the BFP University Study Committee Report entitled, "An Economic
Evaluation of Basic Formula Price (BFP) Alternatives. And that was published in June of 1997, commonly referred to as the BFP Report, and that quote specifically was found on page 147.

And the second quote can be found in, gosh, now I'm going to have -- I might need some help with this, 64 Fed. Reg, I believe that would be pages 16025 and 16097, okay. Now, I'm a little bit confused here on the citation.

JUDGE CLIFTON: You are doing fine. The first page number that you read was the beginning of that particular portion of the Federal Register, and the second page number you read is where that quote is found. So you did it just right.

MS. TAYLOR: Well, thank you. And that's in column 2, and that publication date was April 2nd of 1999.

BY MS. VULIN:

Q. Thank you, Ms. Taylor. I'll have you continue.

A. Dairy Institute (Proposal 2) Class III Formula.

The Class prices that apply to milk for hard product manufacturing (Classes III and IV) should be set no higher than the levels that are reflective of the value that can be returned through good management practices in the lowest value order to which the regulations apply. The promulgation of an Order for California necessitates that the Class III formula be revisited in the California context. My preference is that USDA suspend this hearing or defer the outcome's implementation until a national hearing can be held to review and revise the
existing Class III formula in light of today's costs and other market factors, along with the potential inclusion of California in the FMMO system. In the absence of a suspension of this hearing until a national hearing can be held, it is very important that the Class III price formula that is adopted through the California promulgation proceeding be set in relationship to achievable returns in California using the most recent available data. It will be important to proceed to a Class III/IV national hearing on a timely basis after the California rule making, both because those formulas are based upon nearly ten year-old data and to consider the implications of the outcome of this proceeding on other parts of the country. Additionally, this hearing record has already revealed that the whey factor in the current Class III price formula over values whey relative to what can be achieved by small cheese makers. A national hearing should be held to correct the factor across the system.

The Class III price formula can be dissected by products and the price discovery reference, yields, and make allowances for each. The Class III formulas that currently exist in the FMMO system look to cheddar cheese, butter, and dry whey to establish the minimum regulated Class III price. The products represented in the formula should represent the most generic commodity value within the products subject to that class's price regulation. Those products must have
clearly identifiable specifications that can be associated with prices received in cost of manufacturing products of the same specifications. The product yields should represent the yields that are reasonably attained by the regulated entities, and the make allowances should reflect at least the cost of converting milk into those products with a return on investment and marketing allowance.

Q. Ms. Taylor, first you read that with "a" return on investment. Would you like us to strike the "N" in that word?

A. Sure.

JUDGE CLIFTON: Thank you, Ms. Frisius.

BY MS. VULIN:

Q. And this paragraph, essentially what you are saying is that the Class III formula needs to be set low enough so that the most generic version of these products can be economically feasible to produce.

A. Absolutely. And that is the, in my mind, a basic premise of the entire milk pricing system. It should be set up as a minimum regulated milk pricing system, it is not setting up maximum. And you need to accommodate the most generic forms that clear the market. And so that's a long-held frame of reference within the regulated system. And that's something that, whether it is proprietary processors or co-ops, I feel it is very important. What you find sometimes even amongst the co-ops is, if you get that regulated price set too high, those
who invest in infrastructure and assets to manufacture
products, those members pay the penalty, whereas those who
don't essentially get that higher regulated price. So that
basic premise is a benefit to clearing the market, regardless
of the ownership structure.

Price Discovery

Dairy Institute's primary proposal is to use a western
NDPSR price series for the price discovery mechanism for each
of the product prices. The proposal also contains default
equations to use as a surrogate if USDA determines that
confidentiality concerns limit the Department's ability to
release a western price series. Discussions with AMS staff
prior to the call of hearing revealed that there may be
confidentiality concerns. I recently learned that the
confidentiality restrictions may relate more to confidentiality
concerns in the area outside of the Dairy Institute proposed
geography for the western price series, than confidentiality
concerns regarding the release of the western area data. Dairy
Institute's intent, while selecting the states for inclusion in
the western NDPSR price series, was to start along the Pacific.
The inclusion of states beyond the Pacific was intended to
address the confidentiality concerns that USDA might have
regarding the release of the western price series. If the
inclusion of the additional states has inadvertently created a
confidentiality issue for the balance of the country, USDA
should consider defining an area that includes the Pacific states of California, Oregon, and Washington, and only add contiguous states, to the extent that the addition of the those states contributes to the ability to eliminate the confidentiality constraints. The Department should not add states beyond the geography defined in the Dairy Institute proposal.

JUDGE CLIFTON: May I interrupt? I would like for you to tell us what NDPSR stands for.

MS. TAYLOR: I still think of it as the old NASS survey, so you are going to challenge me. National Dairy Price --


MS. SUE TAYLOR: Thank you for phone in from a friend.

JUDGE CLIFTON: That's great. So National Dairy Product Sales Report. And tell me who publishes that?

MS. SUE TAYLOR: And that is published by AMS.

JUDGE CLIFTON: All right. And you said, I'm thinking of the old NASS report, tell us the history of why it is you are thinking of the old NASS report?

MS. TAYLOR: The price series that I'm referring to is, you know, generally, it can be described as the price series that is collected for the purposes of establishing the commodity prices that are used in the milk price formula. When USDA adopted end product pricing within the Federal Orders in January of 2000, they needed to have, actually, I don't recall,
I was going to say mandatory and auditable prices, I'm not sure that that existed on the very front end. But in any case, more specific price series to rely upon for that calculation.

National Agricultural Statistics Service, or NASS, was the agency that originally had the responsibility for collecting that data, summarizing it, and publishing it for AMS and industry use.

JUDGE CLIFTON: Thank you.

MS. TAYLOR: That was later transitioned to AMS.

JUDGE CLIFTON: Thank you very much. So we're back on Page 6.

BY MS. VULIN:

Q. Starting at "if the Department."

A. Thank you.

If the Department determines that adjusting the region defined for price discovery does not overcome the confidentiality concerns, the Department should adopt the surrogate formulas as defined in Dr. Schiek's testimony. These factors were generally derived by comparing the relevant NDPSR survey prices with CDFA audited reports of prices received for the commodities in California.

Proponents of Proposal 1 have questioned the existence of a spatial price pattern for dairy commodities that is essentially West Coast plus transportation costs to the markets in the East. This price surface is the market reflection of
the supply and demand balance where there are disproportionately high volumes of production of those products in the west, and the disproportionately high consumption of those products in the population centers of the East. The spatial relationship was reflected in the publication of regional prices in the NASS price survey when they published the regional data. It also is reflected in the comparison of the audited prices received data published by CDFA that was used by Dr. Schiek to calculate the price formula factors for the respective products. And it is reflected in the spatial equilibrium model results that were introduced into the hearing record by Dr. Stephenson of University of Wisconsin.

The concept of location value of a commodity is not unique to dairy commodities. It is commonly referred to as basis and can be described as the difference between the local market and a reference price. Basis is common in most commodity markets, and it is not a new term, and it is not a synonym -- not a cinnamon either -- but not a synonym for disorderly marketing conditions. Most farmers are familiar with the term basis, as it is common in the grain markets, such as the difference between Iowa/Illinois corn prices and New Orleans, etcetera, or Iowa/Illinois corn prices in California, as well as the energy markets, say, Texas oil vs. Brent oil. Because basis reflects local market conditions, it is directly influenced by several factors, including:
Local supply and demand conditions. Local supply and demand conditions impact basis. The prices in deficit areas generally reflect the price required to attract the product from the surplus supply region for the commodity.

USDA's Central Federal Milk Marketing -- I'll start that again. USDA's Central Federal Milk Market Administrator Staff publishes annually a map showing the milk production per capita by state. The map from the February 2015 Marketing Services Bulletin, Number 13, from the Central Milk Marketing Order is reproduced below as Figure 1. The US average per capita milk production shown in the map legend is 646 pounds. I calculated an estimated per capita milk need to serve the domestic market at 549 pounds, simply by taking the 646 pounds and reducing it by 15 percent exports. States that produce less than 600 pounds per capita are pictured on the Central Order map in light or medium gray and are considered "deficit" states. States that produce more than 600 pounds milk per capita are shaded in dark gray and are considered "surplus" states. It is easy to see that most of the deficit states are in the Eastern part of the country, which means the efficient and orderly movement of dairy products needs to take place to supply the needs of the population in those areas. Although specific products, particularly branded retail products, may be produced in a deficit area and be distributed nationally, the flow of dairy commodities is largely from the surplus area to

6161
the deficit area.

Q. So now we're looking at Figure 1, and you had stated that it would require 600 pounds per capita in order to serve the local market, and anything in excess of that would be surplus, correct?

A. Actually, the 600 pounds is the break point that the Central Order has used in categorizing the shading. For the domestic market, I estimated at 549 pounds, so we don't have a precise match up there, but in general you can consider, and they do show on the map this specific per capita milk production by state, so you can look and see where those break points. And generally, I think I might have seen one state that, if you moved it to the 549 number, might change shades, I believe Indiana.

Q. I see that.

A. Would be the one state that would flip. But otherwise, you can generally say light shading and medium shading in gray is deficit in terms of the production of milk to serve their own population on a presumption that their consumption is at national average on a per capita basis. This is a simplified way of looking at where the surpluses are and where the deficits are, because as I already said, product will move for branded reasons, for other reasons, into different areas. So for example, not all cheese consumed in California will have been produced in California. But nonetheless, it gives a good
overview of surplus and deficit areas.

Q. Looking at this map it looks like the entire West Coast is a surplus area.

A. Yeah, with the exception of Nevada. But given the vast volumes of milk produced in California, if you think about how it is actually Nevada can be served from the surrounding states that have that surplus production, that wouldn't be an area to be concerned about, nor would Montana or Wyoming.

Q. But also California and Washington, the Coastal states, are all at a surplus?

A. Yes.

Q. Then you have another cluster of states that are some incredibly high surplus including Idaho.

A. Yes. Okay.

Q. Thank you. You may continue.

A. Transportation Costs.

California is relatively isolated from the rest of the country being located on the Western edge of the mainland. A California manufacturing plant must compete for sales on a delivered price basis with manufacturers in other parts of the country. This may be manifested by the manufacturer arranging the transportation and pricing the product at the customer's location or selling FOB manufacturing plant at a discount related to transportation costs to what would otherwise be a delivered price. In either case, the all-in price of the
customer must be competitive with the supply alternatives and
the net price of the manufacturer is reflective of that
competition and the cost to transport the product to the
customer. Even many of the dairy products marketed at retail
within California are first delivered to converting facilities
to the East of California before being cut or shredded,
packaged and delivered to the retailer's distribution center
for further distribution back into California.

California values are lower than parts of the country
further east because more milk is produced in California than
is consumed in California, and surplus milk in the form of
manufactured products is cleared into the deficit areas of the
country.

Leprino's Distribution and Transportation Costs.

Leprino's California production is sold worldwide.
Over 13 percent of our California cheese production and nearly
90 percent of the our California whey products are exported.
Nearly half of our California cheese volume that is sold
domestically is shipped east of the Mississippi. Much of this
cheese is shipped into the milk and cheese deficit Southeast
market. The cost of trucking cheese from our California plants
to the Midwest, where many of our customers who produce frozen
foods or shred and package cheese for retail distribution
around the country are located, is in excess of ten cents per
pound, and the cost of trucking to the Northeast and Southeast
is roughly 15 cents per pound, plus or minus a penny, depending upon location. In order to compete for those customers, our pricing needs to be competitive with alternative supply sources in other parts of the country, most importantly, in the Midwest.

Q. So you said nearly half of your cheese volume is sold, that's sold domestically is shipped east of the Mississippi?

A. That's correct.

Q. And on those products if they go to the Midwest, they have at least a 10 cents per pound cost of trucking, and if they go all the way to the Southeast, they have up to 15 cents per pound.

A. Correct, 15. When I look at the data, most of the data points were between 14 and 16.

Q. So on a large portion, the majority of your milk you incur significant transportation costs, the majority of your milk products.

A. That's correct.

Q. Thank you.

A. Cheese Valuation.

Both the current Class III formula and Dairy Institute's proposal is based upon a cheddar cheese production model. Cheddar cheese has formed the basis of regulated cheese, milk, and end product price formula since California developed a separate Class 4b milk price formula in 1989, and
USDA replaced the old BFP with the end product price formula in 2000. Cheddar cheese was historically the most common cheese produced and was the market clearing product within the complex as reflected by its inclusion in the Dairy Price Support Program that was terminated in the 2014 Farm Bill. The specifications for cheddar cheese are clearly identified in FDA's standard of identity and large volumes of bulk cheddar cheese continue to be produced.

Given the increases in Mozzarella production for which the volume now exceeds cheddar production both in California and in the U.S., some have suggested that the Class III formula may be -- I'll start again with that phrase. Some have suggested that the Class III formula be based upon Mozzarella. In contrast with cheddar cheese, Mozzarella specifications vary significantly in order to optimize the performance within a customer's application. FDA's standard of identity breaks the Mozzarella category into eight products. Attachment A is a table that shows the name, moisture range, fat on a dry basis, commonly referred to as FDB, wet fat, and CFR reference for the various products.

Q. Can we turn to that Attachment A now?
A. Certainly.

Q. It's found on the second to the last page. So can you tell us the information that's included in this table?
A. This was a summary created by some of our folks in our
product development group that simply, well, it's an attempt to show, and this is used quite often to help walk customers through the range of Mozzarella products, to summarize the different kinds of Mozzarella cheeses that are described and defined by FDA standard of identity. In the left column we have the name that is used for that particular kind of Mozzarella. Then we have, in the second column from the left, the moisture content. And you will see in the top four products, nonfat Mozzarella cheese, lowfat Mozzarella cheese, light Mozzarella cheese, and reduced fat Mozzarella cheese, that, in fact, FDA is not defining explicitly in that standard of identity, the moisture content. Or the middle column, the FDB, the fat on a dry basis, are not defined specifically. And in those cases, they are defining a wet fat for the finished product. And then on the, in the right column is the CFR reference for that particular standard of identity. And in some cases, the person summarizing this has pulled relevant verbiage that better describes the defining aspects of that particular product.

As you get down below the top four products into low moisture part skim Mozzarella cheese, you will note that they are defining specific moistures, but with significant ranges. So, for example, low moisture part skim, the moisture can range from 45 percent to 52. They also are defining a specific fat on a dry basis. In this case, from 30 to 45 percent. But they
have no definition for wet fat that is explicit in the CFR.

Q. So between the top four Mozzarella products and the bottom four Mozzarella products, not only do they have different standards of identity, but they use different factors to even define those standards of identity?

A. That's correct.

Q. Okay. So I'll have you return to the testimony now, I believe we're on page 10, beginning with the complexity.

A. The complexity of using Mozzarella in the regulated pricing model should be clear on its face. To satisfy the need to have a clearly specified product in the Class III price formula, one product, such as low moisture part skim Mozzarella, would need to be selected from within the broader Mozzarella group.

The next filter that would need to be applied to the eligible product definitions is form. The product form is intended to be bulk and not differentiated with value added processes. This eliminates the inclusion of retail product and shredded product, as well as other value added processes. After narrowing the Mozzarella that would be eligible for reporting to low moisture part skim Mozzarella that is sold in unshredded form of bulk size, the eligible volume is much smaller than that represented in the bulk cheddar category. We reviewed our California production and identified the proportion that would be ineligible for reporting during our
fiscal year 2014 fiscal year. That volume represented in 
excess of 80 percent of our California Mozzarella production. 
I do not have visibility to our competitor's production 
profile, but expect that much of their Mozzarella is similarly 
sold in shredded form, given the nature of the Mozzarella 
market. If that is the case, the volume of Mozzarella that 
would be reportable is roughly 60 percent of the volume of 
cheddar cheese production in California within the same period. 
Cheddar remains the dominant form of uniform bulk cheese 
produced in California.

Q. So back in Attachment A we learned that if you are 
looking to use Mozzarella as the standard, you are going to 
have to narrow it to merely a representative class that is 
quite small really, and possibly not representative of the 
entire class of products.

A. That would be correct. It's important in these 
products, because of the differences in product specification 
have their on cost associated with them, and collecting the 
prices, the prices are differentiated by product. If you have 
a higher fat product, it's going to be a different price than 
if you have a skim product. And so it is very important to 
have very clearly defined specifications within a relatively 
narrow range in order to have a relevant price and 
manufacturing cost, and yield all matched together. And those 
Volumes would be, again, much smaller. You know, even my
analysis that I just laid out, probably is overly generous, because the range within low moisture part skim Mozzarella is large enough that you would probably even want to narrow it to a narrower range of FDB's and moisture within that product category, which if I had done that, would drop the numbers even more.

Q. So even after we narrow for the type of product, we have to narrow, if it was processed out of bulk block form, which narrows it even further, so then we have a very, a sliver of the product commodity space trying to be a barometer for an entire commodity that really has maybe not much to do with that, if we had to rely on Mozzarella.

A. That's correct.

Q. Okay. Thank you. Starting at bulk cheddar on the bottom of page 10.

A. Bulk cheddar remains the best product upon which to build the Class III price formula. The price for most commodity cheeses produced within the U.S. is referenced to the price of spot cheddar cheese traded with the Chicago Mercantile Exchange or CME. The form of bulk cheddar that should be used in the California FMMO Class III formula is 40 pound block cheddar. To my knowledge, all bulk cheddar production in California is produced in the block format. Additionally, most other commodity cheeses, including Mozzarella, reference to the block cheese, or the block price on the CME. Therefore, use of
the 40 pound block price is in the formula is consistent with California production and returns.

Cheddar Yields.

Dairy Institute's proposal incorporates the yield factor for cheddar cheese that is embedded in the FMMO Class III formula. Fat capture and yields range with vat configuration. The range of fat capture and yields to California can be expected to be similar to that reflected in the hearing records that establish the yield assumptions in the current Class III formulas.

Cheddar Make Allowance.

Dairy Institute's proposed cheddar make allowance should be amended from the 22.91 cents included in Dr. Schiek's testimony, to 23.06 cents per pound cheddar. The 23.06 cents make allowance is calculated by adding California's cost from the CDFA most recent audited cost studies of 22.91 cents per pound cheddar and an administrative additional marketing cost allowance of -- there's a demon there -- thought we got this out -- okay. I would like the record copy to delete the dollar sign before the 0.15, so it is 0.15 cents per pound on a dollar basis .0015.

Q. Less than a penny?
A. Less than a penny. Not even two-tenths of a cent.

Q. I think your overly hopeful attorneys might have intervened, so apologies.
JUDGE CLIFTON: And Ms. Frisius has signaled that she has stricken the dollar sign.

MS. TAYLOR: This proposed make allowance is both consistent with the principle that the make allowance should be reflective of the most current cost data available and is consistent with USDA's methodology from the 2008 Class III/IV Final Decision. Specifically, that decision adopted a cheddar make allowance based upon the CDFA weighted average cost from its audited cost study released September 2007m covering cheddar cheese plant costs for January through December 2006 of 19.88 cents, plus a sales in administrative cost allowance of .15 cents per pound. The sales and administrative costs is added because none is captured in the underlying CDFA cost study.

Whey Cream Valuation.

The Dairy Institute proposal contained in the Notice of Hearing does not address errors in the valuation of whey cream in the Class III price formula. The issue remains a problem but the economic impact of error varies around the country. This is an issue that should be addressed through a national Class III/IV hearing in the near future. The over valuation is rooted in both volume and value assumptions embedded in the current Class III formula.

The current formula assumes that all of the fat received at the plant that is not captured in cheddar cheese is
recovered and converted to Grade AA butter. This assumption is inconsistent with manufacturing realities, and it is inconsistent with the record from the 2006-2007, Class III/IV price formula hearing. The existing Class III price formula also assumes the whey cream is used to produce Grade AA butter, which is not permitted by USDA's own regulations.

Whey cream outlets are very limited in California. Our whey cream sales from our California locations are generally to one of three markets. One in California that seems to have very limited demand, and two in Wisconsin. Our prices net well below the CME's AA butter market, regardless -- let me re-start that sentence. Our prices net well below the CME AA market price regardless of outlet for our whey cream.

JUDGE CLIFTON: Do you want us to insert the word "butter" after the AA?

MS. TAYLOR: That would be fine.

JUDGE CLIFTON: All right. Thank you, Ms. Frisius.

MS. TAYLOR: Pricing in Wisconsin is at or below flat market, that's CME Grade AA butter -- depending upon the market conditions. The cost of transport on our whey cream delivered to Wisconsin exceeds 54 cents per pound fat. The number of buyers for whey cream nationally continues to shrink placing additional downward pressure on whey cream returns as sellers are forced to ship whey cream greater distances to find markets.
While we are waiting patiently for a national Class III/IV hearing to address this, the Department should be cognizant in this promulgation proceeding of the overvaluation as they consider factors adopted in the balance of the Class III formula.

Separate from the whey cream technical error is the need to amend the Dairy Institute butter make allowance to include the, again, delete the dollar sign -- to include the .15 cent administrative and marketing cost adjustment. The butter make allowance would be amended from 17.24 cents per pound butter to 17.39 cents per pound.

JUDGE CLIFTON: And let me coordinate with Ms. Frisius. Have you stricken the --

MS. FRISIUS: Yes.

JUDGE CLIFTON: Thank you, the dollar sign. Thank you.

MS. TAYLOR: Whey valuation.

The California cheese industry experience of 2007 is a case study in the setting of minimum regulated prices above market clearing levels. The cheese industry stress was manifested in California by consolidation, producer payment defaults, and reductions in plant throughput. Although often characterized as a "small cheese maker issue" it clearly was not. Several large cheese plants with whey processing capacity also experienced significant challenges. Land O'Lakes was very public about the financial difficulties at their CPI plant in
Tulare, and subsequently sold that plant. Dairy Farmers of America ("DFA") was similarly quite clear that their Corona plant had been a financial drain. Their August 8th, 2007, press release (Attachment B) announcing the reduction in throughput August 31st, 2007, and planned closure January 1st, 2008, indicated that, "Market conditions and operating results have hindered success at our Corona plant and in our American cheese division. We constantly look for ways to end losses and stimulate profitability."

BY MS. VULIN:

Q. And that press release is attached here on the last page, Attachment B?

A. That's correct.

Q. Thank you.

A. In a conversation that I had the prior day with a Senior Executive of DFA, I was told that the September 1 reduction was designed to reduce the plant throughput to a level at which the processing of their whey stream into any product other than dry whey could be eliminated, thereby eliminating the losses on the other more specialized whey products produced at the plant. Although I'm not privy to the magnitude of the losses on these other specialized whey products, one can assume that they had to be very significant to have justified the increased plant overhead cost per unit of production that is associated with the reduced throughput.
Additionally, several of the petitioners at the September 2007 CDFA hearing testified that they curtailed cheese production due to the poor whey economics. Three cheese plants struggled to fulfill producer payment obligations and were placed on the ineligible list for the CDFA Producer Security Trust Fund. All of these changes were reflective of the stress that had been created because the Class 4b price generated a milk price that exceeded the revenue stream of the finished products being produced by many of the state's cheese makers.

**Whey Factor**

The inclusion of an explicit whey factor in regulated pricing had its origin with the implementation of Federal Order Reform in January 2000. Similar to California, many cheese plants outside California did not, and do not, have whey processing capacity. However, the inclusion of the whey factor within the Federal Order system was expected to boost the Class III price by a modest enough amount that a small cheese maker that lacked sufficient scale to cost effectively process whey, was perceived to be able to cover the whey portion of milk price through premiums garnered on the specialty cheeses, if produced. In its first year of implementation, the whey factor contributed 29 cents per hundredweight to the Federal Order Class III formula.

The explicit inclusion of a whey factor became an
increasingly challenge for those without whey processing
capacity, as whey prices strengthened a few years later. With
whey driving up regulated minimums by over $3.00 per
hundredweight at times in 2007, plants without processing
capacity struggled and soon some were shuttered. In Federal
Order areas, some plants that are located in dense cheese
production regions were able to recoup some value by the sale
of whey to consolidators as prices increased. But, as
Wisconsin cheese makers Mr. Buholzer and Mr. Stettler testified
earlier in this hearing, the whey factor was even problematic
for those cheese makers selling to whey consolidators in
Wisconsin. The whey factor was also problematic for
manufacturers of whey proteins because dry whey values in the
milk price formulas outstripped returns for protein in lactose.
It was not uncommon in that timeframe for cheese makers unable
to recover the whey value assumed in the Class III milk price
formula to negotiate with their suppliers for relief from the
full Class III price.

The existence of an explicit whey factor has been
problematic for cheese makers without whey processing capacity
regardless of whether they are operating in the Federal Orders
or California.

Q. Ms. Taylor, I would ask that you just slow down just a
little bit. Thanks.

A. However, the binding nature of the current California
State Order and the Cooperatives' Proposal 1, under which minimum regulated prices are enforced on all Grade A milk manufactured in California, limits market based approaches to relief. This lack of a pressure relief valve severely limits the range of milk values that can be applied to whey without risking significant damage to plant capacity.

Much testimony has been incorporated into this hearing record regarding the inability to economically process whey in smaller cheese plants. Whey processing is highly capital intensive. The extraordinarily high capital costs create a barrier to entry for small cheese plants. In its raw form, dilute whey from a cheese vat has limited value in the marketplace. Skim whey, prior to condensing, is typically around 6 percent solids. At this low level of concentration, transportation costs quickly consume the historic market value above cost of processing. Some intermediate size plants can condense their whey for more economic transport for further processing at a large plant. However, the returns achieved for any intermediate products short of the finished whey that is used in the milk price formulas, fall short of finished product value.

The diversity of whey products also creates challenges relative to explicit inclusion of a whey factor in the regulated pricing system. Dry whey was historically viewed as the lowest common denominator amongst all whey products. This
was because it is the most generic whey product requiring the least advanced technology, and returns were generally lower than those for the more highly refined whey proteins. It was thought that so long as the milk price was based upon dry whey prices, the whey contribution to the milk price would not be overstated for those who process whey. This long-held assumption is challenged from time to time and was proven to be incorrect in 2007. As more processors invested in whey fractionation technology the increased production of whey protein concentrates depressed those prices.

Q. By way fractionation technology, do you mean further processing the whey down to a usable substance?

A. I'm referring to the splitting of the whey stream to isolate the protein from the carbohydrate, and the level of isolation varies by product, but it is typically done by ultra-filtration.

Q. Thank you.

A. Simultaneously, as older plants producing dry whey were mothballed, the supply and demand balance pushed dry whey prices up. Consequently, the portion of the milk price attributable to the dry whey value outstripped the returns from whey protein concentrate, particularly in operations that did not also produce lactose. It was one contributing factor to replacing the explicit whey factor within the California Federal, excuse me, the California Class 4b formula with a 25
cents fixed factor in 2007. Proposal 2 --

JUDGE CLIFTON: I'm going to stop you there. This is extremely valuable and very helpful, and I'm going to call a five-minute stretch break before you resume at the very bottom of page 15.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 10:15.

Ms. Vulin, would you help us find our place again?

BY MS. VULIN:

Q. Yes, we are on the bottom of page 15, starting at the heading, Proposal 2 Whey Valuation

A. Thank you.

Proposal 2 Whey Valuation

The Dairy Institute proposal appropriately caps the whey contribution in the Class III formula in recognition that 44 Class 4b plants do not even recover a liquid whey value and the viability of some of those plants will likely be threatened by the increased cost burden related to a product that they cannot, even under best management practices, extract a value from the whey stream. Many small cheese makers have testified at prior CDFA hearings that they cannot sustain their operations at an incremental milk cost of $1.50 per hundredweight of milk attributable to whey. They cannot achieve the plant efficiency assumed in the formula make allowance for cheese, so our outsider perspective of their...
potential margins based upon local specialty cheese sale prices at retail is likely unrealistic. I cannot speak to how many of these cheese makers are at risk of closing if the incremental milk cost generated by the whey factor in the formula is sustained at $1.50. But I will note that based upon prior testimony at CDFA hearings, even the $1.50 per hundredweight milk may challenge their viability.

Proposal 2 Alternative Whey Valuation

The Dairy Institute proposal to value the whey portion of the Class III milk formula relative to its concentrated liquid whey value is consistent with the philosophy that the Order will value the most generic product within a product group. The record clearly shows that there are scale barriers to recovering full finished product value from the whey market. Some plants without sufficient scale to process their own whey dispose of the whey into their waste treatment solutions, others sell concentrated whey either before or after ultra-filtration to other cheese plants or whey consolidators.

The WPC 34 price index is the most common reference used for the sale of liquid concentrated whey by cheese plants selling concentrated whey within California. As many witnesses have testified at this hearing, the prices received for that liquid whey are discounted to reflect that the liquid concentrated whey requires additional processing with highly specialized and capital intensive equipment in order to produce
a full value product. If sold FOB seller plant, the price is
discounted by the buyer for the cost of transport. If sold on
a delivered basis, the net return to the selling plant would be
the invoiced price, less the cost of transport. The Class III
formula should reflect the returns achievable at the
concentrated whey seller's plant.

The Dairy Institute proposal reflects a survey of
cheese plants and was corroborated by Mr. Barry Murphy, a
consultant working with many of the cheese makers with
insufficient capacity to have economically viable whey
processing operations producing dry products at this hearing.

Whey Make Allowance.

To remedy the omission of the .15 cents per pound
administrative and marketing allowance in the Dairy Institute
proposal, the whey make allowance outlined in Dr. Schiek's
testimony should be increased by that amount. And I will note
that I added "in" and would like that added in the record copy
prior to Dr.

JUDGE CLIFTON: Prior to what?

MS. TAYLOR: Dr. Outlined "in" Dr. Schiek's.

JUDGE CLIFTON: Oh, Ms. Frisius, do you see? You're
inserting "IN", thank you.

MS. TAYLOR: The revised proposed make -- the revised
proposed whey make allowance is 23.10 cents before including
transportation and cooling costs in the formula.
BY MS. VULIN:

Q. And just to be clear, since we had a little mix up on this earlier, the .15 cents per pound is less than a penny, in fact .15 cents?

A. Right. It is midway between a tenth and two-tenths of a cent.

Q. Thank you.

JUDGE CLIFTON: Would you just read that last sentence one more time?

MS. TAYLOR: The revised proposed whey make allowance is 23.10 cents before including transportation and cooling costs in the formula.

USDA should not adopt the Cooperative Class III formula.

The Department should not adopt the Cooperative's proposal for Class III and IV pricing. In essence, the Cooperatives are asking for price equality with other FMMO's without allowing for equality in the way the price applies. The proposal sets the Class III and IV prices in California equal to what was set in the balance of the FMMO's based upon a hearing in 2006/2007. This proposal was supported simply by the rationale that prices should not be different. They have not entered evidence specific to the relevance of the formula factors to California.

The price levels generated by the cooperatives' proposal, Proposal 1, have already proven untenable in a less
onerous version. The price levels exceed those that were
generated by the Class 4b formula, strike did, before
December 2007, when overvaluation led to the financial
difficulties in closure of cheese plants, three cheese plants
being placed on the ineligible list for the Producer Security
Trust Fund for failure to pay timely, and the sale of a
proprietary cheese company referenced earlier in my testimony.

It is not difficult to anticipate the damage that would
be done if Proposal 1 is adopted. The proposal, once again,
sets up the scenario of signals to producers to increase milk
production while signalling to cheese makers to reduce
manufacturing capacity. Based upon history, that signal will
be once again manifested in increased cheese plant
bankruptcies, plant closures, and a shift in manufacturing
volumes from California to other states by multi-state
operators. The proposal would set up a scenario in which even
those of us with a scale and capability to economically process
whey would be better off shifting production. In addition to
our cheese making assets, we have invested hundreds of millions
of dollars in capital to produce specialized whey products in
our California plants and continue to need to reinvest in order
to maintain markets in a highly dynamic marketplace. Adoption
of the proposal would, over the long-term, result in a loss of
reinvestment in California facilities and their eventual
obsolescence and closure.
Class IV Formulas

Leprino encourages USDA to apply the same principles to Class IV price formula as are advocated for Class III. Regulated prices must not provide artificial financial incentives between the manufacture of Class III and IV products. The very intent and nature of pooling is to mute the competition for market outlets from various uses of milk. However, a pricing and pooling system that completely eliminates the incentive to place milk in its highest and best use, or which provides an incentive to manufacture milk into lowered valued uses, does not serve dairy producers, manufacturers, or consumers well. To accomplish neutrality, the pricing formula must be established by consistently applying the same principles to both manufacturing complexes. The Dairy Institute proposal takes an even-handed approach to the two manufacturing classes, utilizing western-based prices and California-based make allowances. Consistent with that, the nonfat dry milk and butter make allowances should be increased from those contained in Dr. Schiek's testimony by an administrative and marketing allowance of .15 cents, resulting in revised proposed make allowances of 17.39 cents for butter, and of 20.12 cents for nonfat dry milk.

Conclusion

If the Department promulgates an Order that is adopted through a producer referendum, the outcome of this hearing will
have significant impacts throughout both the U.S. and global dairy industries. The production within California of 20 percent of the U.S. milk supply and significant volumes of dairy commodities that also serve the global market makes it a significant force across broad geography.

If the Department promulgates an Order from this proceeding, it should adopt the Dairy Institute proposal, Proposal 2. This proposal will allow milk for manufacturing to move more freely to its higher and better use. That, in turn, will lead to reduced price volatility and provide a more stable plant forum with which the industry can grow demand. It also sets prices at market-clearing levels that allow for orderly marketing. These are critical elements that will contribute to the broader industry's ability to drive demand to the benefit of producers, processors, and consumers.

BY MS. VULIN:

Q. Thank you, Ms. Taylor. And is there anything else that you would like to add in addition to to your written testimony?

A. Not at this point.

Q. Thank you.

JUDGE CLIFTON: I have a couple of coordinating points with Ms. Frisius. On page 18, in the paragraph that is entitled Class 4 formulas, as you read the statement, Ms. Taylor, you made a couple of words plural, and I propose that we add the "S" to each of those words now, but I need for you to confirm

6186
that's what we should do. So four lines up from the bottom of
that paragraph, the line begins, "western based price" and you
read "western based prices". Shall we insert an S?

MS. TAYLOR: Yes.

JUDGE CLIFTON: All right. And again, the last line of
that paragraph begins with the word "allowance" and you read
"allowances". Shall we add an S to that word?

MS. TAYLOR: Yes.

JUDGE CLIFTON: All right. And then Ms. Frisius also
signaled to me in page 17, in the next to the last paragraph,
actually, the last full paragraph, we struck the word "did"
and she signaled to me that that has been done in the record.

MS. TAYLOR: Yes.

JUDGE CLIFTON: All right. Then, Ms. Vulin, shall we deal
with the exhibit?

MS. VULIN: Yes, we would move at this time to admit
Exhibit 135.

JUDGE CLIFTON: Is there anyone who would like to question
Ms. Taylor before determining whether you have any objection?
Are there any objections to the admission into evidence of
Exhibit 135? There are none. Exhibit 135 is admitted into
evidence.

(Thereafter, Exhibit Number 135, was
received into evidence.)

MS. VULIN: Thank you, Ms. Taylor, no further questions.
JUDGE CLIFTON: Who will begin cross-examination of Ms. Taylor. Mr. Beshore.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Thank you, your Honor. Good morning, Ms. Taylor.

A. Good morning, Mr. Beshore.

Q. Let me, I want to start with just a few questions about Leprino's operations and sales, and what's been referenced in your testimony today. First of all, not to repeat but just to set the background, Leprino has six plants in the United States outside of California, at which six manufacture, cheese manufacturing plants as you testified the other day?

A. That's correct.

Q. Okay. And they are all in the Federal Order system, buy milk that's pooled in the Federal Order system.

A. We buy milk, the areas where the plants are located, some of them that, from an -- well, first of all, they are all nonpool plants.

Q. Right.

A. And from an economic incentive perspective, there's some areas where I would expect that all that milk is pooled, but that decision has been made by the cooperative that supplies us. There are some that are located in areas where I suspect that that may not be pooled full time.
Q. Okay. In any event, as you testified the other day, the price of milk at those plants averages to be at least the minimum Federal Order Class III price.

A. That's correct.

Q. Okay. What portion, if you look at Leprino as a national production system and company, six plants outside of California, three plants in California, what portion of production of cheese is in California versus the rest of the country?

A. There are going to be certain things that I'll be a little bit more vague on because of privately-held company and competitive issues. I will tell you it is significant, you know, in terms of the California footprint, very significant, but I will not give you a precise percentage.

Q. Can you give me any more than significant? Less than 50 percent in California of national total production?

A. Yes.

Q. Okay. Is it roughly proportional on a total plant system basis?

A. No. Our California plants are larger on average than our plants outside of California.

Q. Okay. That gives us something to work with there. Now, Leprino's product mix in its plants, is it, do you produce all of the -- by the way, this information about standards of identity for Mozzarella on Attachment A of Exhibit 134 is
extremely useful and interesting.

JUDGE CLIFTON: 135.

MR. BESHORE: 135, I'm sorry, Exhibit 135.

BY MR. BESHORE:

Q. Does Leprino produce all those products listed on Attachment A?

A. We do not.

Q. Do you produce products that are not listed on Exhibit A, Attachment A to 135?

A. Yes.

Q. Okay.

A. We produce many of the ones that are on A.

Q. Okay.

A. But we do not produce nonfat Mozzarella cheese.

Q. The first one listed?

A. Right.

Q. Okay. What else?

A. I don't believe that we produce the bottom one, the Mozzarella cheese that's defined as 52 to 60 on moisture and greater than 45 on FDB. I'm not certain of that, but that's my sense.

Q. Okay. And your sense is that you think you do produce the other six?

A. Yes.

Q. Okay. Is there -- is there specialization within the
Leprino system in terms of production of these products, that is, does one of the plants produce all the, you know, low moisture part skim Mozzarella for your system, or is there specialization within products at your plants?

A. There's some specialization where some plants are dedicated to products where we can do full-day runs of a single product, and there are certain designated plants where we will do smaller runs for a specialized product.

Q. Okay. Is there, are there any products that are run at only one plant for full national distribution?

A. I believe we do have, I have not kept up on all of our flexibility across plants, but I can tell you in the past that, for example, the higher level of fat reduction that was required for some of those cheeses restricted those products to plants that had greater separation capacity on the front end, because we don't want to slow down the production process by the additional separation required and so we don't have that level of separation in every plant.

Q. Okay. Level of fat skim separation?

A. Right. Right. We also have some plants that are fully dedicated to shredding and freezing the product, selling it in that form. What we call our quality lock cheese, where we are using individual quick-freezing technology to essentially lock in the performance parameters of that cheese at the time it's made. There are some other plants that will produce a bulk
product that is shredded by our customer.

Q. Okay. So the plants that are dedicated to shredding and distribution of only that product are located?

A. Tracy would be one of them; Lemoore East would be one of them, and we have, just to clarify for the record, there is no Zip code called Lemoore East. We have two manufacturing facilities in Lemoore, California, and for internal identification, we refer to one as west and one as east. So our original Lemoore plant that we acquired in 1986, I believe, is strictly the IQF production of cheese.

JUDGE CLIFTON: It is what?

MS. TAYLOR: IQF is the term that I used. And that's represents Individual Quick Freezing. And it's a technology that Leprino adopted from the frozen vegetable folks back in the 1980's. And my understanding is that Jim Leprino figured out that if the vegetable guys could freeze peas and keep each as a unique pea, that, you know, at that point, if people froze shredded cheese, it would come out as a big block of ice when done. And so he figured that we should be able to do enough research and development to figure out how to adopt that same technology to cheese in a way that enhances the functionality of that cheese.

BY MR. BESORE:

Q. Okay. And if I understood your testimony, I don't want
to get it wrong, the Tracy and Lemoore East plants are
completely dedicated TO producing product with that technology?

A. That's correct. Lemoore West has that capability. It
also has capability of producing a block Mozzarella, and it
also has capability to produce a form that we refer to as
ribbon. And ribbon is a proprietary form that only we produce,
where we, rather than forming the Mozzarella into, say, 6 pound
blocks or 20 pound blocks for bulk, we extrude the Mozzarella
coming off the vat, but there's a mixing kneading process in
between. We extrude it into 1 to 2-inch thick ribbons that the
techn services folks would be terrified to have me try to
describe this, just on an eyeball basis two feet wide in some
cases, it varies by plant. But in any case, a long ribbon of
cheese that then gets cut up into sizes that we can either put
into thousand pound totes or into smaller packages that then
could be used through distribution to small independent
pizzerias.

Q. Okay. So the shredded products that are produced at
Tracy and Lemoore East?

A. Yes.

Q. East? Are they packaged right at the plant and then
sold FOB the plant?

A. They are packaged at the plant and the sales approach
will vary by customer. We have some customers who pick up at
the plant, and in that case it would be FOB pricing. But the
vast majority of our customers are priced at their location, and we have a system where we don't want our customers to try to dictate where their cheese is produced within the system, it is important for us to retain that flexibility across those nine plants. And so we will price them based on the delivered price that we need to be competitive. And then, essentially, we end up eating some of that transportation cost, if we are delivering it from an uneconomic source.

Q. Okay. That's -- you -- that's a pricing -- that's a product sales policy that Leprino has for its purposes, that you price, that you deliver it to your customer without their, without them dictating the source?

A. Yes.

Q. Okay. Okay.

A. Now, I should clarify that, of course, we work with our customers and many customers require plant approvals and all those other quality parameters and work hard to make sure that they are very comfortable and we try to maintain the highest standards on quality regardless of where we are producing it. But the customers do have some collaboration. They generally will qualify a set of plants.

Q. Okay. So are the plants in California, Tracy and Lemoore East, are they the only two plants in the system that are dedicated to just one finished product?

A. We have been changing so much of our plant
configuration, so let me think. They would not be. We converted our Waverly plant to a fresh ribbon plant within the last couple of years, so they don't have the capacity to flex.

Q. So they are producing solely the fresh ribbon that Waverly, then?

A. Correct.

Q. Is that the ribbon that you described earlier?

A. Yes, yes.

Q. Okay. Is that the only other plant that's specialized to one product only?

A. Our Greeley facility, the newest in our system, also is a fresh ribbon plant, does not have the capability to flex into the individually quick frozen product.

Q. So the fresh ribbon, let's say from Waverly, where would it be distributed?

A. That would primarily be distributed into the Northeast market. Much of it would go into that New York, New Jersey independent pizzeria market. Some may go outside of that further down the Seaboard.

Q. And the plants in Michigan, what products are, the two plants there, what products or group of products are produced there?

A. Remus is a string cheese plant.

Q. Strictly string?

A. Strictly string cheese. Allendale is primarily a fresh
ribbon product, but also has the capability to produce the IQF product.

Q. Okay. So is there any other plant besides Remus that's a string plant?

A. We also produce string cheese in Ft. Morgan, Colorado.

Q. Okay. Let's say you have string cheese customers in Texas, where would they be supplied from?

A. I do not see the specific information. I would assume that they would likely be supplied from Ft. Morgan.

Q. And if you had string cheese customers on the West Coast here in California and other points, I assume they would be, where would they be supplied from?

A. I presume also from Ft. Morgan. Now, there are -- there are some constraints relative to what products can be made in each of those plants, though, as well. So you may have national distribution from each plant, it's not strictly a distance calculation.

Q. Okay. Right. So based on the total product mix and what plant you can most efficiently and economically make those products at, is it fair to just generalize and say Leprino's got a national, it's got a national production system, a national customer base, products that are distributed nationally, and it is coordinated in the best possible fashion?

A. That's what we attempt to do. And of course, with the addendum that it is an international customer base at this
point. We are focused on the national at the moment, I presume.

Q. Right. I was, but thank you for mentioning that. Now, you indicated, I think, what, ten percent of roughly of California production is exported, if I remember?

A. I believe that it was higher than that.

Q. Okay.

A. I believe it was -- let me look.

Q. And I was drawing from memory, which is probably faulty. Page 9, 13 percent, second full paragraph?

A. Yep, that makes sense. 13 percent on the cheese production and close to 90 percent on the whey products, which would be the combination of the whey proteins and lactose.

Q. Okay. Do you export cheese or whey from any of your other facilities outside of California facilities?

A. Yes.

Q. What percentage, if you know, from the Federal Order system of plants, if I can call them that, system of plants outside of California?

A. I can tell you that all of the string cheese that we export would come out of plants that make get Federal Order milk, because that's the only, those are the only plants that, in which we produce the string cheese.

Q. Okay.

A. The string cheese exported is largely used in stuffed
crust pizza, which we have had that benefit of having invented a technology that allows the cheese to melt but not disappear from inside the crust, and none of our competitors have done that, and so we have been in that market since probably the late '90's. And as we talk, I'm looking for my cheat sheets. Could you ask your question again?

Q. Well, the question was what percentage of production outside of California is export, cheese and/or whey?

A. Why don't I just give you the total company --

Q. Sure.

A. -- percentages. We're, close to 10 percent of our cheese is exported, and just over 60 percent of our whey in various forms is exported. As I look at the data, obviously California makes up a big portion of that.

Q. Okay. Very good. Thank you.

JUDGE CLIFTON: May I interrupt just a minute, Mr. Beshore? The Tracy plant, is that in California?

MS. TAYLOR: Yes.

JUDGE CLIFTON: And how is Tracy spelled?

MS. TAYLOR: T-R-A-C-Y.

JUDGE CLIFTON: And the Lemoore plants, they are both in California?

MS. TAYLOR: Yes.

JUDGE CLIFTON: And how is Lemoore spelled?

MS. TAYLOR: L-E-M-O-O-R-E.
JUDGE CLIFTON: And I know you've covered some of this in your prior testimony, but I would like to get it here. In what state is the Waverly plant located?

MS. TAYLOR: Let's just call it New York, it straddles the New York-Pennsylvania border.

MR. BESHORE: It seems to show up on Pennsylvania statistics sometimes for some reason.

MS. TAYLOR: That's a good point. My understanding is that we have had that plant since 1978. I'm not sure who, but it was somebody prior to Leprino who decided it was a good idea to build a plant that straddled two states. And apparently, when we first started operating that plant, both states wanted to apply all their inspections, etcetera. And eventually New York deferred to Pennsylvania in matters of plant inspection, as well as, as I understand it, reporting on the statistics.

MR. BESHORE: Somebody said the intake was on one side, probably on the Pennsylvania side.

MS. TAYLOR: That's correct, the milk intake is on the Pennsylvania side.

JUDGE CLIFTON: And how is Waverly spelled?

MS. TAYLOR: W-A-V-E-R-L-Y.

JUDGE CLIFTON: All right. And Greeley and Ft. Morgan are both in Colorado.

JUDGE CLIFTON: Yes, with the Morgan being capital M and a separate word.

MS. TAYLOR: Correct.

JUDGE CLIFTON: And then in Michigan, I know it's been spelled in the record before, but I don't remember, how is Remus spelled?

MS. TAYLOR: Remus is R-E-M-U-S.

JUDGE CLIFTON: Allendale?


JUDGE CLIFTON: Thank you. I know you have done, someone has done that before for me, but I thank you. Mr. Beshore.

MR. BESHORE: Okay.

BY MR. BESHORE:

Q. Do you know what proportion of your product, and I'll just talk national, not export, is sold FOB the plant versus delivered to customer's locations?

A. I do not.

Q. Would it be more than half, less than half? Which is the greater?

A. I think that more than half is on a delivered basis.

The net effect on the economic side is pretty comparable.

Q. Okay. You have talked about distribution from California east of the Mississippi and into the Southeast. Is that, is that true? Do you distribute from California plants East of the Mississippi and into the Southeastern United
States?

A. Yes, a great deal of our product flows into the Southeast.

Q. From the California plants?

A. From the California plants.

Q. Okay. So to deliver from California to the Southeast, you have a plant in New Mexico, correct?

A. Correct.

Q. And you have two plants in Colorado?

A. Correct.

Q. And you go past those plants, I mean not literally past the plants, but you take product that's produced West of them and deliver it to points hundreds of miles, hundreds of miles east of those locations, correct?

A. Yes, and that's reflective of the vast consumption in the Eastern Seaboard versus the vast production that we have in our western network.

Q. Or is it based on the products that Leprino, where it manufacturers its products as well?

A. There is an impact by product, but regardless, and we have, over time, adjusted which products we're producing in which plants. And even when, much of the product that's going into the Southeast is in the IQF, the quality locked cheese form. Even when Roswell was producing that same product forum on a full-time basis, product from California was transported
into the Southeast.

Q. But less than it is now because Roswell is not producing it, and therefore, you have to transport more from California, correct?

A. I'm not sure that it's less. I have not seen that data. There's a lot of California, because of the fresh product that we're producing in Lemoore West, a lot of that product is going up to the Upper Midwest, and so that is displacing some of the QLC that we have produced otherwise here, so I don't have the data to determine that. But the movements are not irrational. They are -- they are, it's because of the demand in the Southeast. There's a tremendous amount of demand and we serve a lot of the large pizza chains, and ship into their distribution centers in the Southeast.

Q. But it is a product of where you produce it and where your customers demand it, it's a combination?

A. It's a combination. Yeah, we will optimize the system.

Q. The, what is the fresh product that you reference that's produced in Lemoore West that's shipped into the Midwest, Upper Midwest?

A. That's the ribbon product that I referred to quite often, shipped into the Upper Midwest in the thousand pound totes. As much as we would like to think that all customers would want to have the quality locked cheese that we produce, the IQF cheese, there are many customers who are food
manufacturers, whether they are making frozen pizza, or
entrees, or something else of that sort, who have shredding
operations within their production line. So if you can picture
a pizza production line, the cheese application is a very small
part of that. They already have the equipment that will shred
and dose it, so they are looking for bulk cheese rather than
pre-shredded cheese.

Q. Does anybody produce that product in the Upper Midwest,
any of your competitors?

A. Yes. A lot of those customers are buying from many,
many, different sources, and they will be using Mozzarella that
might be in block form, not ribbon, so the equipment is set up
so it is not constrained to only use the ribbon form.

Q. So is that an example of a situation where you say,
product is manufactured in California, shipped to converter
locations or processor locations outside of California, and
then shipped back into California for consumption?

A. Yes, that would be one of those cases, and it would be
shipped back into California. It could be shipped back in as
retail shredded cheese that's been packaged by those customers,
or it could be shipped back in in the form of a frozen pizza or
any number of other food items.

Q. Okay. Now, you have not offered any cost of
production. I mean, any manufacturing cost information from
Leprino for this hearing record. Do you intend to?
A. No. I know I could pull some data relative to comparisons, say, of electricity or any number of other things that are inputs. I can tell you that we, when I have looked at that in the past, and I have challenged our production accounting folks to dissect it in different ways. The challenge with doing it on a plant basis is we have such differences across the plants. But if you look at it relative to the rate per input, our costs in California are significantly higher than they are in outside of California.

Q. Well, the total production of cheese, these cheeses are all, you know, you are different products are all specialized and represent different costs among them, do they not?

A. For the individual cheese, absolutely.

Q. Okay.

A. And that's why you get driven toward looking at rates and not rolled up numbers.

Q. There's also not been any price information offered with respect to Mozzarella or any other Italian cheeses for purposes of milk price, minimum milk pricing. Do you intend to provide any for the record?

A. No, and quite honestly, the net returns for any typical Mozzarella manufacturer equilibrate over time with a net return for a cheddar maker, because there is sufficient flex capacity across the country by companies who can divert milk into the higher return use that will complicate the record by what is
the Mozzarella discount to the CME that offsets the higher
yield. And what's the manufacturing cost? The market forces,
the economics, and competition across cheese makers drives
those net returns to equilibrate over time, so it's not
necessary for the hearing record.

Q. So let me see if I understand this. First of all,
Mozzarella, or Italian, Mozzarella by itself there's more
Mozzarella production than there is cheddar production in the
United States today, correct?

A. As I said in my testimony, yes.

Q. And if you take all Italian types, there's roughly 50
percent more production total U.S. than cheddar production,
correct?

A. I haven't looked at all Italian.

Q. Okay. Well, the dairy product summary will be in and
shows that. And it's your position, and I take it that of the
Dairy Institute, that in order to have, that if you were to put
price and make cost information about the Italian types or
Mozzarella, it would just be too confusing for the Secretary to
figure out in coming up with minimum prices for producer milk,
correct?

A. It's my contention that it's irrelevant because it
doesn't represent a cheese that can be very specifically and
uniformly identified. If you do narrow it to that product that
could be narrowly identified, as I worked through in my
testimony, that's probably a low moisture part skim product, and by the time you look at that volume, it is much smaller than the cheddar production that's eligible to be reported. Therefore, it's not worth looking at. On top of that, it's also just inconsistent with the concept of going to the most generic product. It's also inconsistent with the concept of, again, the returns equilibrate.

Q. I understand that's your assertion, but there is absolutely no information in this record in terms of financial information, price, or cost information with respect to production and sales of Mozzarella or any other Italian types to evaluate that assertion; isn't that correct?

A. That's correct. But I have put into the record the fact that you have much lower volume that would be eligible. And, in fact, the co-op proposal does not use anything other than cheddar, and so it was not something that we would have even considered in the dialogue.

Q. But your economics, your testimony with respect to the results of a minimum price with respect to cheddar are based on what you assert would happen with respect to production of Italian cheeses for Leprino and everybody else who does Italian cheeses as well as cheddar manufacturers?

A. I'm not sure I understand what your question is.

Q. Okay. If we're pricing all cheese at one price, Class III at one minimum price, when you talk about economic
effects, you are not, you are talking about economic results for all cheese manufacturers, not just cheddar manufacturers. When you assert that there will be constraints in production, losses, etc., you are talking about everybody, not just cheddar manufacturers, correct?

A. All producers of what I would term commodity cheese.

Q. Okay. Only producers of commodity cheese?

A. There are going to be some differentiated products, whether it's on the cheese side or otherwise, that may have different effects.

Dairy Goddess is producing cheese. Bless her if she can get a much higher price at the local farm market, but in California where 40 billion pounds of milk is produced, the market must clear through commodity cheese.

Q. Okay. Your Honor, I would suggest this is a good time for the morning break, at least I would make that motion.

JUDGE CLIFTON: I agree. And I notice that we have got some new people that have arrived, and they may want to testify, and this will give people a chance to greet them.

Ms. Vulin, did you have any extra copies of Ms. Taylor's testimony? I know a couple of the gentlemen in the back would like that.

MS. VULIN: We have one but we can make more.

JUDGE CLIFTON: There's some on the back chair. Okay. Good. All right. Let us take a 15-minute break. Please be
back and ready to go at 11:17. 11:17.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We are back on record at 11:18.

Mr. Beshore?

MR. BESHORE: Your Honor, there is a dairy farmer here who has come to testify, and I'm certainly perfectly prepared to yield to him testifying at this time, and he's prepared to go forward now.

JUDGE CLIFTON: Wonderful. I invite you to come forward, sir. And I'm going to ask that you come up on the platform next to me. There are some steps at the opposite end of the platform. Welcome.

You may be seated. I'll swear you in in a seated position. What I'll do, I'll swear you in first, and then I'll ask you your name, and to spell it, and then we'll go from there.

MR. VERBURG: Okay.

JUDGE CLIFTON: Would you raise your right hand, please?

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

MR. VERBURG: Yes, ma'am.

JUDGE CLIFTON: Thank you. Please speak into the microphone rather than to me, because that way it will be captured better. And state and spell your name.

MR. VERBURG: Okay. My name is Jacob, J-A-C-O-B,
V-E-R-B-U-R-G. My address is 1142 --

JUDGE CLIFTON: Let me stop you. We'll take a business address if that's also where you operate your business.

MR. VERBURG: Yes, same.

JUDGE CLIFTON: Yes. All right. You may proceed.

MR. VERBURG: My address is 1142 North Hart Road, H-A-R-T, Modesto, California. 95358.

JUDGE CLIFTON: And Modesto is less than a hundred miles from here; is that correct?

MR. VERBURG: Yes, Stanislaus County.

JUDGE CLIFTON: Very good. Mr. Beshore?

DIRECT EXAMINATION

BY MR. BESHORE:

Q. I thank you very much for coming today, Mr. Verburg. And you have some comments you would like to make and please have at it.

A. Thank you. I have a written statement first and then after a written statement, I have some comments to make about our sick industry.

I, myself, and my son, we operate Verburg and Sons Dairy, and we are in support of the Federal Marketing Order proposal put forward by the Cooperatives, and that's Proposal Number 1.

My dairy operation, like I said, is in Modesto, California. We milk between 950 and 1,000 cows. I have been
in the dairy business on my own for 53 years. Before that, we were in the dairy business, of all places, in Torrance, California, which is where we had a Cash-and-Carry, at most. I don't know if everybody knows what a Cash-and-Carry operation is, but that's where you milk the cows, you process the milk, and you sold it through the front door. In those days, we're talking about the '50's now, in those days you could actually sell your milk for half a cent to two cents, depending on what the state said, less than what the local grocer could sell it for, because you were processing and selling on the premises. I don't think there's a Cash-and-Carry left today. We were the last dairy to leave Torrance because they passed an ordinance saying we don't want anymore cows in the city. So we were the last ones to leave Torrance.

As far as the rest of this, I'm just going to read it to you. Okay.

Time and time again, I and other dairy producers have called California Department of Food and Agriculture (CDFA) to fix our state pricing system, so that I and other dairy producers in our state are paid prices for our milk that are in line with the rest of the country. The failure of the CDFA to fix our state system has led me and other dairy producers across the far state, to support joining the Federal Marketing Order system.

I have been a dairy producer in California all my life.
Our state has some of the highest costs and of production in the country, due to high cost of land, dairy input, cost associated with environmental labor, which is really starting to hurt us, and all the other many regulations that dairy producers must adhere to in order to operate a dairy in the State of California. Adding the unprecedented challenges created by the ongoing historic drought, make the outlook for dairy producers here more uncertain.

I and other dairy producers simply cannot afford to be so significantly underpaid compared to dairy producers in the rest of the country. As to the cooperative proposal states, dairy producers in our state have been paid an average of $1.85 a hundredweight lower average from August 2012 to May 2015. If our prices are inline with producer prices in the Federal Order system, we would not have seen more than 300 dairies exit the last five years, and many more dairy producers questioning whether or not to continue -- and my son is one of them.

Not only are we paid significantly less than farmers in other states, we are also at a great disadvantage under the new Dairy Margin Protection Program. Because our prices in this state are so much lower, the Dairy Margin Protection Program is much less effective in California, given the fact that all milk price used for the MPPP approaching $2.00 higher than the price I and other dairy producers in our state receive. This program provides no real safety net when prices are out.
I support the Cooperatives' proposal because it will align our pricing with the Federal Order system, continue our state quota program that dairy farmers have invested in over many years, and bring the process of determining our prices inline with the rest of the Federal Order system.

That's the end of my prepared written statement. Now, I want to get personal.

I have one son that refused to milk cows. He said, "Dad," he says, "I'm going to grow almonds." He said, "It is a lot easier life and it pays better." I lost that son, but he still, the fact remains is, my grandson is now farming those almonds, and he's doing real well. Around my dairy, there is no more open land, except what I own. It's all trees. When I moved there in 1963, when I bought that ranch, there was 27 dairies on North Hart Road, which is two miles long. Today I am the only dairy on North Hart Road. There are no others.

I know we're producing more milk today than what we did in 1963, I understand that. But we have gotten more efficient. The system has made us more efficient.

My other son today, he is saying, "Dad, why are we doing this?" Because I love cows. But still, we can't continue the way we're going, it's not going to work. You are going to lose more and more of these producers. So I ask this hearing, please consider these proposals that are before you right now and today.
If you have any questions, please, I'll answer them to the best of my knowledge.

JUDGE CLIFTON: Mr. Beshore.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Thank you, Mr. Verburg. I had just one question. I don't think you covered this. Can you just tell us a little bit about how you market your milk, who you sell it to, and what your history's been that way. And also, I'll just throw out a second question, you can get into both of them. Do you have any quota and how do you look at that?

A. My dairy sells milk, for 40 years we sold to Berkeley Farms which were the Sabbati Brothers, they sold their operation to Dean Foods. When Dean Foods bought it, they decided that they were going to have all their milk come from DFA. I'm not a very co-op minded-type person. I'm too darn independent to be co-op minded. Even my walnuts don't go to a co-op, okay? And I do have walnuts.

So when Berkeley decided they had to have co-op milk, I quit Berkeley and I went to Foster Farms, which is now no longer Foster Farms, but they go under a different label today. But that's where my milk goes to today, is to Foster Farms. I have been with Foster Farms now for about six and a half, seven years.

As far as my quota, I'm one of the few people in the
state that is covered by over 80 percent of my production, which is covered by quota. If you look at the value of the quota today, the value of my quota is over $2 million, if I were to sell it tomorrow morning. So a lot, I hear a lot of arguments from fellow dairymen saying, "Oh, well, if I had your quota, I would never go for a Federal Order because you are going to lose your quota." Okay. I feel so strongly about this Federal Order that it's going to work and we're going to be able to keep our quota, that I am willing to sacrifice that $2 million. That answer your question?

Q. Yes, sir.

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

MR. VERBURG: You got a pretty quiet crowd here today.

JUDGE CLIFTON: Yeah, but they are thinking. You just—you just unloaded a lot, as you know. Ms. Taylor?

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning, Mr. Verburg.

A. Good morning.

Q. My name is Erin Taylor. I'm with the US Department of Agriculture, and I would like to first thank you on behalf of the Department for coming here today and taking time out of your schedule to come down here and give us your thoughts on this proceeding. It is very important the Department hears directly from producers, so we first want to thank you for
participating.

You said you milked about 950 to 1,000 cows. The Department, in making its findings, has to consider the impact on small businesses. And the way that's defined, we have come, and roughly about a production of 315,000 pounds of milk a month. Would you fit under that small business definition?

A. No, I'm over that.

Q. And you stated you have over 80 percent of your production covered by quota?

A. Yes, ma'am.

Q. Is it your opinion that that quota and that extra value you get from that is helping you keep business going when you feel that the prices aren't currently aligned? You are not getting an adequate price as compared to other producers in the rest of the country?

A. Correct.

Q. Okay.

A. That's correct. The quota right now, last time I checked, quota was bringing back a net return of about 16 percent. So nowhere else can you get an investment today in a bank and get 16 percent back on your investment. Okay? So quota has always been an excellent deal, and that's why I own as much quota as what I own.

Q. How long have you owned that quota? Have you been purchasing as you have been getting --
A. I have been purchasing over the last, almost when Gonsalves Pooling Act came in, which is what created the quota system, when Mr. Gonsalves created that in the legislature, that's what I received, I think, something like 120, 130 pounds of quota, because I was only milking at that time 72 cows. So over the years, I have always, when I increased my herd, I increased my quota, because it's always been a good deal. A lot of guys bought new pick ups and new cars for their mother, but not me. I bought quota.

Q. Thank you very much.

JUDGE CLIFTON: So, Mr. Verburg, you understand that if the USDA proposes that there be a Federal Milk Marketing Order for California, that the proposal would then be voted on by people such as yourself?

MR. VERBURG: Yes. Yes, I understand that. And believe it or not, I'm a citizen of this country now, so I can vote.

JUDGE CLIFTON: You say that as if it's not been always true.

MR. VERBURG: Well, it's been true for the last 25 years. But you got to remember, mom and dad showed up in this country at Ellis Island in 1952 with ten squalling brats. Okay? And I was one of the ten squalling brats.

JUDGE CLIFTON: You were a squalling brat in your younger years?

MR. VERBURG: Weren't we all? Just ask your mother.
JUDGE CLIFTON: From what country did your parents come?

MR. VERBURG: We are all emigrated from Holland.

JUDGE CLIFTON: Holland. And is Verburg a Dutch name?

MR. VERBURG: Oh, absolutely. Yes, it is.

JUDGE CLIFTON: It doesn't seem to have enough vowels to be Dutch.

MR. VERBURG: You are talking about someone that's from Friesland, not from Holland. Okay? If it's Fries, which the other half of the dairy population is Fries, okay? That's the province of Holland that's clear up against the German border, Okay? That's Fresland. Okay. In Holland we always called them a "Frases stive kopf, sic" which means a free stiff head. Because they were very stubborn individuals, not that Dutchman, because I think I just explained to the gentlemen back here a little while ago, I said, "You know, when it comes to Dutchmen, wooden head, wooden shoes, wouldn't listen."

JUDGE CLIFTON: Do you know how to spell Fresland?

MR. VERBURG: Yes.

JUDGE CLIFTON: How is it?


JUDGE CLIFTON: Thank you. Who else would like to question this producer?

MR. VERBURG: He's got a question, I just know it.

JUDGE CLIFTON: Are you talking about Mr. Hill right here?

MR. VERBURG: No, I don't know the gentleman's name, but I
can see it on his face.

JUDGE CLIFTON: Mr. Vetne, do you have any questions for Mr. Verburg?

MR. VETNE: No, but I'm going to walk up here anyway. I just wanted to bond with you a little bit. I was one of --

JUDGE CLIFTON: Identify yourself, please.

MR. VETNE: I'm John Vetne, I'm a representative for Hilmar Cheese, and I was one of three squalling brats that arrived in this country in 1952 from Norway, not too far away, ya?

MR. VERBURG: Yeah. But I didn't think that was your question.

JUDGE CLIFTON: Does anyone else have questions for Mr. Verburg? None. You do get off lightly, sir.

MR. VERBURG: I have been lucky all my life. The reason I have been lucky all my life is because this country let me in, and that's why I have been lucky. I'm proud to be an American citizen.

JUDGE CLIFTON: Ms. Taylor, I know you hate to follow that, but welcome back. And thank you both Ms. Taylor and Mr. Beshore, for yielding the floor. And Mr. Beshore, you may resume your examination of Ms. Taylor.

CONTINUED CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore. Thank you, your Honor.

Ms. Taylor, when we left off, if I remember, we were,
some of the discussion was with respect to the use of cheddar costs, the cheddar, cost of manufacturing cheddar as a proxy for cost of making all cheeses with one Class III price, and you indicated that you felt the costs of making Mozzarella or Italian cheeses and cheddar would equilibrate over time, that they would be close because -- is that a fair?

A. I think you misunderstood me.

Q. Okay.

A. It's the net returns that equilibrate over time. You have different yields, different costs, different prices received, but it is the margin that re-allocates milk to whatever the higher margin product is.

Q. Are you -- is there plant capacity that can switch from one to the other in terms of the higher return?

A. Yes. Divisco has flex capacity of significance. I believe that Foremost Farms still has capacity, I believe that Land O'Lakes still has capacity that can flex between cheddar and Mozzarella production. Additionally, over time you will see new plant investments that convert plants, if again, the margin on one cheese exceeds the sustained margin on another cheese.

Q. Okay. So as far as pricing of milk for cheese is concerned, while there are at anytime different returns perhaps from different products, over time you are satisfied with one minimum regulated price because over time the returns will
A. Yes, and specific to commodity cheeses.

Q. Is that what Leprino makes, commodity cheese?

A. Yes. I would say that the Mozzarella space, we have a fair amount of specialization within that space. But we're still disciplined in the marketplace relative to the alternatives, like any other commodity cheese.

Q. Okay. You have suggested in your testimony that if there is, that there's substantial risk in setting the regulated price too high, over regulating prices results in disorderly marketing, etc., I'm on page 3. Can you tell us, since the current prices were established in the Federal Order system in 2000 with Federal Order Reform, what disorderly marketing has been created by the Federal Order prices?

A. There -- in the area of discretionary application of that milk price due to nonpool plants in areas where the location value is lower, there has not been disorderly marketing for, because, for example, in the Pacific Northwest, all the primary cheese assets are owned by cooperatives and they have chosen not to be bound by the Class III formulas, as I understand it. They don't use the NDPSR in their formula at all because it overvalues the cheese price.

Similarly, in 2007, when the whey value exceeded what could be returned by cheese makers who didn't have that whey capacity, and in some cases cheese makers who had fractionation
capacity but the returns didn't meet the sweet whey assumption in the formula, because they were not bound by minimum regulated prices being nonpool plants, they negotiated safety valve releases, and so in those cases, had they been bound into the regulation, as Proposal 1 suggests, there would have been disorderly marketing.

Relative to cases where the Class III price applied and created disorderly marketing because those cheese plants were in areas where essentially you have to participate in the Order regulations in order to compete for milk, those areas I'm not sure I can come up with a specific disorderly marketing condition. Many of those also have higher value, milk higher value cheese returns because they are so close to the consumption areas.

Q. Okay. So you are saying the Pacific Northwest is an area, but let's set that aside for the moment. Can you tell me what other areas or plants or players you are talking about with respect to the 2007 situation in the Federal Order system?

A. Again, we may be defining things differently and precisely, because some of these are, you know, they are in areas that are regulated by Federal Orders, but the Federal Order price is such that either that or their ownership structure is such that they are not bound to that Class III price. I'm thinking of places like the Southwest, where I understand that the JV between Glanbia and the co-ops drive a
price on a product price formula that is separate from the
Class III formula. And so by its nature result in prices that
sometimes fall below Class III. I believe that the same would
be considered for the plant in Dalhart, Texas. I don't recall
the particular situation in 2007. I have also been told that
there were and Utah cheese plants that, again it is, right now
we don't have an Order that specifically --

Q. There was no Order there in 2007.

A. -- covers that geography, but ordinarily some of those
plants would have paid on Class III and negotiated with their
milk suppliers during that period to pay a lower price that was
more appropriate based on their returns. And so the lack of
disorderly marketing in that period west of the Mississippi,
was largely related to the lack of a binding price.

Q. Now, do you have personal knowledge of the terms of the
joint venture between, with respect to Glanbia and Southwest
Cheese?

A. I do not have knowledge of the specifics.

Q. Okay. So any testimony that you are giving with
respect to what prices may be payable by Southwest Cheese for
milk at that plant, are not based on your personal knowledge?

A. That's correct.

Q. And, of course, in terms of my question was in 2007,
now you talked about Utah, but there was no Federal Order there
in 2007. You understand that, correct?
A. That's correct.

Q. So then in terms of 2007 problems in the Federal Order system you are citing Southwest cheese for which you have no personal knowledge of the transactions, and the Dalhart plant, is that it? Are there any other, do you have any other examples of issues that you would cite?

A. There were, my understanding again, Pacific Northwest we have cheddar production made by cooperatives. And my understanding is that it is not isolated to 2007 in that case. But because the NDPSR price is a weighted average across the country, and that average represents some location value east of Washington State, that they do not pay a milk price that's based on the NDPSR survey. They have that discretion, both because, again, cheese in the Federal Order, typically cheese milk is not obligated to be part of the regulation, additionally, because they are cooperatively held.

Q. Okay. So because they are cooperative plants they don't count basically, is your view?

A. Oh, certainly they count, they are an important part of the market. But relative to disorderly marketing, because they are not obligated to pay the price that otherwise overvalues milk, it didn't create disorderly marketing.

Q. In terms of what was paid, what's been paid for milk in the Pacific Northwest, you would agree with me, would you not, that the mailbox price information that's regularly compiled by
the federal Market Administrator and published as part of this record would indicate what's being paid to producers?

A. What's being paid to producers, correct.

Q. Okay. And if that's being paid by producers by cooperatives, they are, they must be getting the money somewhere to pay it to producers, correct?

A. Yes. And the cooperative has a range of outlets, both from their own production which covers a market basket of goods that goes well beyond cheese, so it can be coming from that. It also could be coming from revenue on their bulk milk sales.

Q. Okay. So, let me ask this. Have you done any, as I understand it, your testimony and the Dairy Institute position with respect to pricing in the Federal Order system, is that the relief valve of depooling provides a significant revenue protection for purchasers of milk in Federal Order system that you don't see in Proposal 1 and is a major factor in opposition to Proposal 1; is that correct?

A. It's not revenue protection, we're talking about cost.

Q. Okay. Cost. That the cost that, that the depooling option, from your perspective, reflects a cost of milk that is, reflects a cost of milk factor that is important and not reflected in Proposal 1, correct?

A. I'll depart from depooling because I think depooling implies that the milk is normally pooled, and say that the optional pooling and participation provides a relief valve
against regulated prices that are above market clearing levels.

Q. Okay. And, therefore, if it applies, if it involves any relief at all, would have to mean that the buyers are paying less than the minimum regulated price, the nonpool buyers, correct?

A. Not necessarily.

Q. Well, if they are still paying the minimum class value, what's the relief?

A. There are decisions to be made relative to, let's say that you ordinarily pooled and you see an economic opportunity for a short time, it may be that the repooling provisions are such that that will impact, you know, your decision to be in or out in any given month.

Q. Have you done any studies for this record of the economics of pooling, electing not to pool, depooling, and actual prices paid for milk for the manufacture of cheese in any Federal Order markets?

A. No.

Q. Let me -- the map regarding production and consumption, shifting topics here. I just have a couple of more loose ends. On page 8 of Exhibit 135. That doesn't reflect any export consumption, correct?

A. Correct. And that's where the middle of the page 7 I noted that if you just do a kind of broad adjustment, the 646 pounds reduced by 15 percent exports, then the domestic
consumption would be implied to be 549.

Q. Okay. But the western states are majors, including not just California, but Idaho, Washington, Arizona are major exporters of manufactured dairy products, are they not?

A. Yes.

Q. With respect to the request to include a .15 cent add-on to make allowances, whey make allowance, or cheddar make allowance, or western-based prices, that .15 factor in the Federal Order formulas is based on data from what, the Reform process?

A. That's correct, so it's probably low.

Q. Okay. But it is good enough as long as we get it in there?

A. At the moment it is, until we have such time to have some broader study on the issue.

Q. Which might apply to prices as well, they are good enough now until we had a national hearing to potentially change them?

A. No, I wouldn't agree with that. I think that you significantly risk plant capacity in the application of your proposal. The magnitude of the overvaluation is much more significant. If we're off on this .15 by a factor of 2, if really it should be .3 at this point, just knowing our own cost, I would be confident to say that that factor should not be lower, if anything it's higher. We are off by less than
two-tenths of a cent per pound. We are not multiplying that by
10. Pretty minimal.

Q. Just so we understand, and there's no question here, it's fine
to be off low, but you don't want to have any possibility of
being the least bit high in prices, correct?

A. No, actually, if we're off on this, it would mean that we're
going to be overvaluing milk. But we're off by, we're overvaluing
it by a much smaller magnitude .15 to .3. Let's say that the
administrative and sales costs are double what we're estimating
here. That's a much lower magnitude of being off. You know, if we
corrected it, we would have a lower regulated price.

Q. Right.

A. But what you are talking about is potentially a regulated
price that's off by, you know, north of a dollar, not overestimated
by --

Q. Right. We're talking about the dollar plus that Mr. Verburg
just testified about, that is the difference between what he's
paid for milk and what producers in the rest of the country
are paid for milk for the same purposes, correct?

A. I missed his testimony.

Q. You did?

A. I did.

Q. That's a shame. Okay. On page 6. You have stated
that this is the second full paragraph, first sentence.

"Proponents of Proposal 1 have questioned the existence of a spatial price pattern for dairy commodities that is essentially West Coast plus transportation cost to markets in the East."

Now, are you talking about testimony there or are you just making a, you know, a rhetorical assertion?

A. As I listened to Mr. Hollon's testimony at this hearing, my recollection of his answers was that he did not acknowledge any kind of a spatial price relationship for commodities across the country.

Q. That's what you heard?

A. That's what I heard.

Q. Did you hear Mr. Schad's testimony?

A. I was gone from the hearing for a week, so I listened part of those days, but also had a different meeting for part of those days, so I'm not sure. I heard some, but not all, of his testimony.

Q. Okay. Is it possible that, or isn't it correct that, just as the USDA recognized that there are varying FOB prices for dairy commodities throughout the country, whether they be butter, powder, cheese, but there should be one price as a policy that Proposal 1 recognizes a fact of there being different FOB prices in some areas but advocates a price policy of one price. Isn't that the fair representation of Proposal 1?
A. I'm not fighting the idea of having one manufactured milk price. In fact, I'm an advocate, in that must be valued at the lowest value return market to which the regulations apply, otherwise you imperil plant capacity.

Q. Okay. So the lowest one price, no average pricing, the lowest narrow set of FOB prices that apply, that's your recommendation?

That's a cross-examination question, I can ask her if that's her recommendation?

JUDGE CLIFTON: I'll hear your objection, but I'm going to allow the witness to answer. She's doing perfectly fine on her own.

MR. ENGLISH: I think she is, but it may be perfectly fine except when you start characterizing what she said before. And I don't think she ever used the word narrow and I just have had this concern in the past that this would have been an attempt to re-characterize. And that's my objection.

JUDGE CLIFTON: Your objection is noted. Mr. Beshore, would you ask your question again?

MR. BESHORE: I think I would like it to be read back.

JUDGE CLIFTON: All right.

(Thereafter, the requested testimony was read by the court reporter.)

JUDGE CLIFTON: We're back on record. Ms. Taylor, you may respond.
MS. TAYLOR: When you look at the Dairy Institute proposal which advocates the use of commodity prices from, originally it was the full western area, but as I described in my testimony, the intent is, you start on the West Coast, Washington, Oregon, and California, and then extend east to the point where you essentially overcome some of the confidentiality issues on the, on any concerns from USDA's perspective. If, in fact, USDA were to find that Washington, Oregon, and California, were inappropriate grouping of states, it would be very difficult to argue that that's a narrow set given their total milk production and also commodity production that would be included in the survey.

MR. BESHORE: Okay. I have no other questions at this time, your Honor. Thank you, Ms. Taylor.

JUDGE CLIFTON: Mr. Vetne?

CROSS-EXAMINATION

BY MR. VETNE:

Q. John Vetne, representative for Hilmar Cheese.

Ms. Taylor, you were -- you were asked a question or two about milk going for manufactured use that is not pooled, there was some concern about the terminology depooled or not pooled, I'll use not pooled. And do you recall that, first of all, are we on the same page?

A. I think there were multiple questions so as you progress I should catch it.
Q. Okay. We're in the same neighborhood, let's see if we can get to the right house.

And as I recall, you questioned the extension of that to a conclusion that the buyers did not pay class price or an equivalent non-compulsory value for the milk.

Do you recall your answer there?

A. Is this in regards to the Pacific Northwest and other areas largely in the west?

Q. Or any market, yeah.

A. Yes.

Q. Well, any market in which milk was not pooled, and there was a question about whether class prices are being paid or not.

Do you recall that?

A. Yes.

Q. Okay. Would you agree with me that in markets to the west of the equilibrium line, let me put it that way, west of a point in geography where the average is reached, that from that point west, and further west you go, there would be a challenge to pay a regulated price because the price surface shows a lower value than the average price at those locations west of the midpoint?

A. Yes, that would be correct, particularly if it was a cheese plant that had same economics as are reflected in terms of yield and cost structure, as are reflected in the formulas,
the regulated formulas.

Q. So if such a plant's or such a milk supply, let's put it, not the plant, milk supply, whether it is the plant's producer patrons or cooperatives supplying the plant receive milk that was not pooled, that usually occurs on occasions where the classified price is higher than the blend price, correct?

A. If it's depooled, it would generally be because the classified price is above the plant price, there could be milk that's not pooled for many other reasons.

Q. Yes, okay. When there is that inversion in class price values versus pool price values, would you not expect that the difficulty of a cheese manufacturer or pool supplier to pay class prices would be even greater if during those months a contribution to the pool had to be made as opposed to other months in which there might be a draw?

A. When milk is depooled due to competitive reasons in some markets, the plant may still pay out that. If they don't have to pay that out for competitive reasons, then it does provide a cushion to some extent for those months in which they do participate and adhere to the class price.

Q. And there are some other regulatory factors which improve the plant operators or milk suppliers' ability to pay dairy farmers for milk that is not pooled, and one of those is, there's a savings, temporary or otherwise, of the
administrative assessment, correct?
A. Yes.

Q. Okay. Does Leprino make something that I buy in the store called fresh Mozzarella?
A. If you are referring to the Mozzarella balls in brine, we do not.

Q. Okay. Yes, that's what I'm referring to. Is that a whole milk Mozzarella? High fat?
A. I believe so, but I'm not specifically knowledgeable about it.

Q. Okay. Do you make something called stirred curd Mozzarella?
A. We do not. All of our product is pasta filata.

Q. Pasta filata? What's filata mean?
A. Taken together I can tell you that it refers to the stretching and kneading process within Mozzarella cheese making. I'm not sure which piece means which part.

Q. Okay. Your plant in, that straddles the Pennsylvania-New York line in Waverly, some state, city called Waverly in one of those states, does the nearby milk shed extend into a portion of Pennsylvania that is not regulated by a state pricing and pooling system?
A. We purchase all of our milk in that area from a cooperative so I don't have all of the details. My understanding is, in the Northeast, of course, we're nonpool
plant, so the co-ops decisions around whether to pool or not are made on an economic basis. But largely the milk that we're buying I would expect to be associated with the Northeast Federal Order, and my understanding is that the Pennsylvania Milk Marketing Board does not regulate Class III milk, so it's not -- the milk may be procured from an area that doesn't show up on the map as being part of the Federal Order but resides in Pennsylvania, but I'm not sure that the pricing gets impacted by the existence of the state pricing system.

Q. Are you aware there are some regulatory obstacles in the Northeast order to bringing milk into the pool and taking it off the pool on a monthly basis?

A. Yes.

Q. Okay. So you don't know whether the milk that you receive from the cooperative includes milk that the cooperative might elect to participate in unregulated transactions in Pennsylvania, simply surplus to that market, but not priced by the state authorities?

A. Correct, I would not know that.

Q. And it's also not too far from the Western New York State Order, which is a pricing and pooling location, state milk pricing and Milk Pooling location, correct?

A. Correct.

Q. And you don't know whether the milk that the cooperative delivers to you may be milk that is priced under
the state system?

A. That's correct.

Q. Okay. You indicated that your cheese is marketed to buyers under two major alternative pricing systems for your company. One is, you make an agreement and agree to ship finished cheese to location your buyer says to deliver it to and you price it at that location, you take care of transportation; is that correct?

A. Correct.

Q. That's one. And you also sell cheese FOB your plant. A buyer will purchase the cheese, take title at that point, and take care of transportation; is that the other one?

A. Correct.

Q. Okay. Would it be correct to say that the AMS NDPSR system does not allow for similar marketing options for cheese plants because milk is priced FOB the storage facility?

A. Okay. So you are bringing up an interesting nuance that I think is a problem within the data collection for NDPSR. My understanding is that the price to be reported if that plant is being sold directly from the plant is supposed to be reported FOB --

JUDGE CLIFTON: Start again. The price to be reported if and then start again.

MS. TAYLOR: If it is sold --

JUDGE CLIFTON: If what is sold?
MS. TAYLOR: The cheese or any other reportable product.
So it would apply to cheese, butter, nonfat dry milk, and whey.
That if it is sold from the manufacturing plant, that the, I
believe the price gets reported FOB manufacturing plant.
However, if the manufacturing plant moves that product to a
storage location prior to its further distribution and
delivery, the price is reported FOB storage location, which, if
that storage location is located close to the plant location,
probably doesn't significantly impact its location value.
However, one thing that we have encountered is, for example, we
do produce some nonfat dry milk in our Greeley plant.

BY MR. VETNE:

Q. Greeley?
A. Greeley, Colorado.

Q. Yes.
A. And I became aware that because we were moving that
product to Michigan for storage and absorbing that cost,
especially the NDPSR price that we were reporting incorporated
that gain in location value as we moved it East, it was
reported, essentially we ate the transportation to the extent
that that gets rolled into the survey price.

Q. Okay. So if you had storage of the -- to the extent
you have storage of that product in Colorado and you reported
FOB the Colorado location, you report a lower price because you
have not yet, the system has not yet attached a lower a
transportation cost to that movement.

A. Try to make sure I understand. The price reported in Colorado would be reflective of the location value of that product in Colorado. Once we move it to a location further east, if it goes into storage rather than going directly to a customer, the price gets grossed up effectively to the location value that exists in that area where we store it.

Q. Okay. So let me see how I -- so powder, for example, from Colorado, could be reported at two different prices; one, a price at the Colorado location, FOB the Colorado location, which would be a lower price than a price say in Michigan, correct?

A. Yes. But that option is not ours the way the NDPSR survey is written. Once we make that movement, we have no option relative to netting out the transportation costs that drove that higher value.

Q. So if you sold it, if you sell it FOB Colorado and your buyer moves it to Michigan, you report one price, which is lower than if you move it to a storage location in Michigan and then you report the higher price and that higher average gets incorporated into the NDPSR survey?

A. That's correct.

Q. Okay. And are you aware that USDA's questions and answers on that kind of transaction is that that kind of movement is or should be reflected in the make allowances part
of the marketing costs?

A. I have not had those direct conversations. I have heard that some others have gotten that response.

Q. Okay. You had a series of questions and answers, as I recall, you used the term flex movement of shifting of milk supplies between different products produced by the same company to cheddar or Mozzarella back and forth depending on which is the highest and best return to the company at the moment, correct?

A. Yes.

Q. Recall that? For a broader producer milk supply, not limiting it to a manufacturing plant operator that has both kinds of plants, would you not expect producers in the market to respond the same way by shifting their available milk supplies to the highest and best use within those two categories at any given time?

A. I think that those adjustments, if you are talking about incentives within the same product group, probably happen more gradually in that when a company decides to give up milk, they also have the penalty of unabsorbed overhead, and they also have the constraints relative to satisfying those particular customers, and so it's not something that's generally done for minor disparities in returns. And I would expect any disconnects on a short-term basis between, say, Mozzarella production, economics in cheddar to be very minimal.
by contrast with what I talked about the other day in Part 1 of
my testimony, where across product classes, the butter powder
complex versus the cheese complex, sometimes those disparities
are closer to the $2.00 range. And so I would expect the
reallocating to happen more readily with those kinds of
disparities than on a short-term basis between, say Mozzarella
and cheddar. It would have to be a longer-term disconnect
between Mozzarella and cheddar. And I just don’t see that
happening because of the number of companies that have the
internal flexibility to do that re-allocation. I don’t see
that level of disparity between the complexes.

Q. Based on your observations of the market for milk to
those two commodities, would you say that although there may be
slightly different incentives to produce one over the other,
that the disconnect is not as great as you might see between,
say Class IV kind of products and Class III kind of products?

A. Yes.

Q. Okay. Okay. Finally opening your statement. And I'm
on paragraph, page 2, about 6 lines up, well, five lines up.
The lines start with the word "values". That clause is a
"level that does not exceed values after allowing for" do you
see that line?

A. Yes, yes.

Q. Okay. I inferred when I read this, that you meant
product values, but I want to make sure that finished products,
dairy product values?

A. I wasn't thinking that narrowly. I was thinking more broadly. The, you know, the overall milk price that's the combination of prices received yields and cost of conversion.

Q. Prices received would be received for products?

A. Correct.

Q. Cost of conversion would be manufacturing allowance, correct?

A. Correct.

Q. And after that is done, you end up with the milk price, correct?

A. Extended by a yield, yes.

Q. Okay.

JUDGE CLIFTON: I'm sorry, what was your response?

MS. TAYLOR: Extended by a yield, yes.

JUDGE CLIFTON: By a yield.

MS. TAYLOR: By yield.

BY MR. VETNE:

Q. I'm still not understanding why I was wrong to read in the word product. The minimum regulated price of milk California must be set at a level that does not exceed values after allowing for reasonable returns.

A. My interpretation of your question was that you were narrowing it to the price of the product.

Q. Okay. Got it. Now I'm on page 5. The paragraph that
ends on top of page 5. You refer to the "hearing record
reveling that the whey factor in the current Class III price
formula overvalues the whey relative to what can be achieved by
small cheese makers."

I was left with the impossible impression that large
cheese makers have done just fine with the whey formula. Isn't
it true that there have been times when it is overvalued for
anybody that doesn't make dry sweet whey?

A. Yes, that has been the case. At times, when the
protein the more highly fractionated whey products sometimes
don't achieve the same value returns as the dry whey, and
probably rather than refer to, in this sentence, small cheese
makers, I more appropriately should have referenced cheese
makers with insufficient scale to economically process whey.
Because, in fact, I think Mr. Murphy's testimony and other
testimony that we have had, would indicate many people who have
plants that are up to, say 2 million pounds of milk. I think
Mr. Murphy was referring to volume of whey. I don't recall
that it was one and a half million, but in any case, they are
not insignificantly sized plants that still struggle to put in
the equipment and efficiently process the whey.

Q. All right. Your testimony, as I read it, pays
particular attention to the importance as well as the
difficulty of establishing economically sound Class III and IV
prices, correct?
A. Yes.

Q. Okay. Now, the system regulates Class I prices, the price for milk going into a package or a bottle, which is then sold, but for those products, the regulations do not fix the margin, correct?

A. That's correct.

Q. It doesn't come at you both from the top and the bottom, it's just the bottom, the price for milk.

A. That's correct.

Q. And that is also true for Class II products?

A. Correct.

Q. Class III and IV involve unique regulatory economic and policy factors, because it is based on the calculation that takes a product price and produces a milk price, and in that calculation, the manufacturer only has what's left in the middle.

A. That's correct.

Q. And if manufacturers of any of those products that from which the regulated prices are derived, first individually, if individual manufacturers sought to recover some of that inadequate margin or overvalued product price from buyers, they would face resistance in the commodity market competition, because other buyers would offer it lower. There is that problem when you are trying to pass on that cost, correct?

A. Yes, there are two problems with the construct. One
is, obviously competition from alternative supply sources always discipline what you can recover from the marketplace, regardless of what product that you produce. But additionally, it is the circularity that you point out. Where, if you do have the ability, and maybe the overall market has the ability to raise the prices, the rigidity of the end product price formulas means that that translates into a higher milk cost. It doesn't better your situation overall if the entire complex goes up. If you are a first adopter and are able to achieve that price, you may have a benefit for a period until the rest of the market --

Q. So I understand. If the manufacturer's collectively seek to recover their costs or inadequate margins from the market, if they collectively raise their prices, does no good whatsoever because the regulated price raises right along with the same boat?

A. Correct.

Q. And that is a constraint that does not affect Class II and Class I pricing?

A. That's correct. They still have the constraints from the marketplace and consumer demand issues, but their milk price is not tied to the finished product value.

Q. So if there is to be any return on investment for the Class III and IV products, it has to be built into how you measure the product value and the make allowance provided?
A. Yes. One other way to look at it is that's true within that cheddar complex, if you can differentiate and get a better price, a higher yield, a lower cost, any of those factors are helpful. But over time, even if you get that benefit because of the alternatives that manufacturers of cheese tend to have to go into different cheeses, the market will still discipline that margin back down to what a cheddar guy can get.

Q. Okay. Thank you. I move to page 12 of your testimony. The first sentence, first line under the heading whey valuation. Are we on the same page and the same line?

A. Yes.

Q. Okay. You refer to 2007 as "a case study in the setting of minimum regulated prices above market clearing levels." Lest anyone listening come to what I believe an erroneous conclusion that you're pointing a finger at the regulators for deliberately choosing a price that was above market clearing levels, what happened in 2007 is not because of the, it was the intention of the regulators to set a price, when that, whenever that formula was adopted above market clearing levels, correct?

A. Correct. They didn't understand fully the market.

Q. Well, maybe nobody did, but there were, the market for whey products moved in a way perhaps not anticipated at the time the formula was created.

A. I think that's necessary.
Q. So what we have is, in 2007, is an example of
unintended consequence, correct?
A. Correct.
Q. Okay. A consequence of perhaps providing a formula
that was too rigid in its construct by choosing one whey
product for which to value all uses of whey?
A. I would agree with that, but it goes beyond the
decision between dry sweet whey and fractionated products. It
was driven also by the fact that many cheese makers don't have
the capacity to efficiently process whey at all, some of the
testimony we have heard earlier.
Q. Okay. Would it be your recommendation to the
Department in deliberation on this hearing, to look carefully
for potential unintended consequences whenever the price
formula, however the price formula is set?
A. Yes.
Q. Thank you. And then, finally, let's see. Well, maybe
not finally. Page 15, two lines up from the bottom of the page
you refer to 44 Class 4b plants that do not even recover liquid
whey value. In context, this might be confusing just so we all
understand what you are referring to. When you say Class 4b in
this one place, you are referring to a California
classification of milk used to produce cheese.
A. I am. And I appreciate you focusing me in on that
number, because as I read it, I recognized that I did not
update that to the most recent data, and I believe the number should be 36, if I'm doing math from the stand properly.

Q. Okay. The 44 plants that you were referring to came off of a CDFA list of cheese plants that do not have a complimentary whey manufacturing operation.

A. That's correct.

Q. And your modified number of 36 comes from a more updated CDFA list of cheese plants; is that correct?

A. That's correct.

Q. Good. Thank you.

JUDGE CLIFTON: Ms. Taylor, shall we amend the record copies accordingly?

MS. TAYLOR: Yes, please.

JUDGE CLIFTON: All right. Ms. Frisius, page 15, second line up, we'll strike the number 44, and Ms. Taylor what number do we insert?

MS. TAYLOR: 36.

JUDGE CLIFTON: Thank you.

BY MR. VETNE:

Q. Okay. And then finally, I have been scratching my head for awhile because you and other witnesses have used, I'm looking at page 16, have used the term WPC 34, and sometimes that reference meant a finished dry whey product which, as I understand it, the dry whey product is 34 percent protein; is that correct? The finished dry whey product that is referred
to as WPC 34.

A. That is correct.

Q. Okay. And there's something else that is not a finished product which also gets the designation of WPC 34. What in the wet product does the 34 refer to?

A. It does become confusing because the wet product you could think of the concentration of solids overall in the wet volume, but, in fact, that's not what this refers to. When people talk about liquid WPC 34, they are talking about a whey product that where the whey stream has been pushed through ultra-filtration to concentrate up the protein from, sweet whey usually is about 12 percent protein, so they are splitting off enough the carbohydrate stream to get the protein as a percent of total solids in the solids component to 34 percent, but then the concentration in terms of how many solids there are for the, say a hundred pounds of wet whey, may vary from plant to plant and operation to operation. So the 34 refers strictly to the protein as a percent of total solid.

Q. Okay. Whether it is wet or dry?

A. Correct. Actually, there's a nuance I probably shouldn't even go into. You also hear people talk about WPC 35. My understanding is that 34 is actually the protein content of dry WPC 34, and it's -- the difference is that you have 3 and a half percent moisture in rough terms in dry whey.

Q. In the finished marketable product?
A. In the finished -- yeah, right.

Q. So if we're talking about wet WPC 34, we're talking about something that comes in liquid form, is delivered to a whey plant that converts liquid whey into some sort of finished product, and that the expected dry product from the wet product, is WPC 34?

A. That's correct.

Q. Because all that's required to be done is to remove water?

A. That's correct. And it might be that somebody uses a WPC 34 liquid whey stream to further fractionate into 80 or isolate, but my understanding is that even in those cases the pricing between buyer and seller tends to be based only the WPC 34 market.

Q. And the WPC 34 market to which you are referring in response just now is the dry WPC 34 market?

A. That's correct.

Q. Okay. And what you hope to happen as a result of this proceeding, and perhaps even in a broader basis, is to find a way to survey transaction prices that include wet WPC 34?

A. That would be the ideal.

Q. Okay. Thank you.

JUDGE CLIFTON: Ms. Taylor, I'm so glad Mr. Vetne asked about this. Is there, on the Chicago Mercantile Exchange, an item that relates to this?
MS. TAYLOR: There is not. But USDA AMS through their Dairy Market News reporting, collect prices and publish them every Friday in the Dairy Market News. I believe they are actually available online a little ahead of that, but they are contained in the weekly Dairy Market News.

JUDGE CLIFTON: And surely the industry has figured out a way to either call the liquid liquid or to call the powder powder so that when we see WPC 34 we know which is being discussed, but it is not typically done, is it?

MS. TAYLOR: When people are generally referring to WPC 34 without adding the qualifier liquid before or after, you can think about it as probably a dry product. If they are referring to a condensed or liquid product, I would expect them to use that as a modifier.

JUDGE CLIFTON: All right. So looking at your page 16, you are talking about using the powder index to value the liquid concentrate?

MS. TAYLOR: That's correct.

JUDGE CLIFTON: So I think you probably explained it perfectly in this paragraph, but could you tell me again, just what is it that you want to be used and how?

MS. TAYLOR: Okay. The ideal, going back to the basic construct of minimum milk price regulation, to value the most generic product form that is achievable under good management practices across the regulated entities, the ideal would be to
value condensed WPC 34. And, you know, as I would also say on
the milk side, but is no longer available because of
limitations in volume, the ideal would be to survey the price
transacted on loads of liquid WPC 34 and use that as a price
reference. Because the concentration in terms of the solids
within that liquid would vary, that would have to be put then
onto a solid equivalent basis.

If a survey cannot be done, then we go to the
methodology that was elaborated in greater detail by Dr. Schiek
in his testimony that uses the WPC 34 index and translates that
back into a liquid equivalent basis using the normal whey
makes, well, it converts first over to a dry whey equivalent on
protein. You apply the regular whey makes, but there is also
an adjustment in return based on transportation cooling costs
which are typically incurred to get that liquid WPC 34 between
the originating plant and the plant that's going to be
processing it into the final product.

JUDGE CLIFTON: So if one is referring to the concentrated
liquid WPC 34, is the lactose still in there?

MS. TAYLOR: There is still some lactose left in there, not
all of the residual 66 percent would be lactose, but much of it
would be. And the extent that you then further separate the
protein from the lactose, WPC 80, if we ignore the fact there's
a bit tiny moisture in the dry product, you can say probably
has almost 20 percent lactose.
JUDGE CLIFTON: Who next has questions for Ms. Taylor?

Ms. Taylor?

CROSS-EXAMINATION

BY MS. ERIN TAYLOR:

Q. Good afternoon, Ms. Taylor.

A. Good afternoon, Ms. Taylor.

Q. I cannot wait to see the transcript of Ms. Taylor and Ms. Taylor.

Could you -- can we first start off, you had some conversation with Mr. Beshore on Leprino's cheese operations mainly, but could you give us just a brief overview of Leprino's footprint in whey processing?

A. Sure. We produce sweet whey in two plants. One is Waverly, New York; one is Allendale, Michigan. Allendale's whey processing also includes the condensed whey that we condense in Remus and transport down to Allendale for further processing. The Remus plant is a little less than a million pounds of milk a day, so it falls within that plant size where you cannot economically process whey.

As we move west of the Mississippi, we have, in our newest plant, our Greeley, Colorado plant the capability to produce WPC 80 and WPI in lactose. I'm going to have to double check my cheat sheet. I'll move to California next as I look.

In California we produce WPC 80 in both Lemoore plants. In our Tracy plant, we concentrate and ship the retentate to
Lemoore West. We produce lactose in all three plants. And in a moment I will tell you what we produce in the other Colorado plants. Too many papers.

JUDGE CLIFTON: I applaud you in bringing them, because so many witnesses would just keep answering "I don't know," "I don't recall," "I don't have that here," and I thank you for bringing your materials.

MS. TAYLOR: Ft. Morgan is WPC 80 and lactose; Greeley, I believe I already covered, WPI, WPC 80, and lactose; Roswell is WPC 34 and lactose. I believe that covers all nine plants.

BY MS. ERIN TAYLOR:

Q. And do you solely process whey from Leprino's cheese operations or do you also buy additional whey for processing?

A. We solely use our own whey.

Q. Okay. On page 5 in the middle paragraph, talking about the Class III formula, you talked some about product yields and that product yields should represent the yields that are reasonably attained by regulated entities.

Is it your opinion that the yields currently in the Federal Order formulas are relatively reflective of the yields incurred by cheddar manufacturers in California?

A. Yes. As I noted in my testimony, there's a range of fat captures, and the fat captures will be what move that yield around primarily. There's a range that's achievable by vats, and so I suspect that there's a range of yields achievable
within plants in California, but I believe that 90 percent fat
capture assumption that is embedded in the yields in the
existing Federal Order formula, is still reflective of the
yields achievable by plants with older vats, and we still have
some plants with older vats in California.

Q. You have touched on this a few times, but just to be
clear. When it comes to price discovery, as the Dairy
Institute had proposed western survey of prices to use, and
there were some confidentiality issues raised by USDA. So it
is your position of Leprino and the Dairy Institute or just
Leprino's position that we could look at ways to find some
western price series that would avoid those confidentiality
issues?

A. I have not had final conversations with the folks at
Dairy Institute, although they reviewed my testimony and did
not raise any concerns on that methodology. And having been
part of that discussion, my expectation is that they would
concur, but I can't speak on their behalf at the moment.

Q. Okay.

JUDGE CLIFTON: Do you think you would be able to answer
that question while we're still at this hearing?

MS. TAYLOR: Yes.

JUDGE CLIFTON: Okay. Great.

MS. TAYLOR: I'm getting some nods yes.

BY MS. ERIN TAYLOR:
Q. I'm sure that will show up in brief, also. On page 10 in your discussion of cheese valuation, talking about filters on what products -- I think this is in regards to what products, how you would get down to some commodity products and what would or would not be included. In the middle paragraph you talk about eliminating retail product and shredded product. And this is a discussion, I think, on why Mozzarella would not be practical to be part of the formulas because you have such a small volume.

So when Leprino, do you sell your Mozzarella as bulk and which could be considered a commodity or do you sell it already with some value added to it or both?

A. Both. I would consider the shredding and individual quick freezing process to be value added. I would consider much of what we do in terms of improved functionality and customizing for specific applications to be value added. So we do have some that is, well, first of all, it all competes on a very commoditized basis nonetheless, you have some differentiation but not much, but in terms of the volume that is sold unshredded, I think I have in here that essentially when I narrowed down to just the low moisture part skim that is sold in bulk, and that includes block or ribbon, I have excluded more than 80 percent of our volume.

Q. Okay.

JUDGE CLIFTON: And what size is is the block?
MS. TAYLOR: Gosh, I know I should have asked that question back at the office. I think it is 6 and 20's, and so some people might even argue that the 6 pounders are too small to be considered bulk commodities, but I believe that we do 6 pounds and 20 pounds. I'm not absolutely sure.

BY MS. ERIN TAYLOR:

Q. On page 11 there is a discussion starting your discussion on the cheddar make allowances, and I take this as a, perhaps as in the same as before, Leprino's position that we should add an additional amount on for administrative marketing costs, and that might be a Dairy Institute position later, but right now you are speaking just for Leprino?

A. I believe that Bill Schiek pointed to this during the end of his testimony. I was writing mine and discovered the omission while he was on the stand, so he did not have a lot of time to digest it and so just signaled it in response to Chip.

Q. Okay. Currently, plants in California, if they don't have that, if they don't have that factor currently in that the make allowance as administered by CDFA, can you expand, have they just adjusted to that reality and are they eating that cost or have they somehow been able to account for that somewhere else in their total selling of that product.

A. One thing that's unique to California versus the Federal Order system, is California is using the CME rather than a survey price. The price assumption that gets buried in
the California 4b formula, gets adjusted from time to time by
hearing based on, the Department will issue an exhibit that
shows, I don't recall whether it is 24-months or more, I
believe it is a hearing exhibit here, of price history, through
which then you determine what the average price received in
California is relative to the CME. But the fact that you are
not in that loop with the survey, I believe provides a little
bit more flexibility.

Q. Okay. Often we hear that the Federal Order system it's
that circularity, and here you are saying that circularity
currently might not exist in California when it comes to that
factor?

A. Correct. It is not a direct circularity, a reel time
circularity.

Q. Okay. On page 11, discussing the current formula, the
first full paragraph, page 12, excuse me. The current formula
and this is Class III formula, assumes that all fat received at
the plant that is not captured in cheddar cheese is recovered
and converted to Grade AA butter, and the whey cream then is
also priced at the Grade AA, at the Class III butter price,
butterfat price. But is there not an adjustment in the formula
to account for the fact that not all the fat stays with the
cheese, and that's found in the protein portion of the
Class III price?

A. You want to get into a big ditch for --
Q. I don't want to get too far in that ditch.

A. Okay. So how it works is, you have, within the cheddar yield assumptions in the protein formula, an assumption that 90 percent of the fat is captured in the cheddar cheese. Actually, if I can come up with the formula sheet, I will be more specific as to which piece of the formula.

Okay. So the 1.383 factor in the protein formula is the pounds of cheddar cheese that are produced from a pound of protein. The balance of the formula is trying to make a correction for the fact that cheddar makers are using all of the fat for cheddar cheese but they are paying for the butterfat component at the butter value. And as you trace that balance through, the 1.572 is the yield of cheddar cheese from a pound of fat, and then it's reduced by the butterfat price times .9. That reduction means that you have ten percent of the fat that is still valued at the full AA butter price. So for one, you have an assumption there's no loss in the system, and as you go through cheddar manufacturing economics, you will find that probably you lose at least maybe instead of recovering ten percent of the fat that goes in the vat in the whey cream, you might recover seven or eight percent. And so that factor, that .9 probably needs to be .92 or .93. And then on top of it, it leaves the rest of the fat valued at the AA butter market, and the whey cream returns are much lower than the AA butter.
Q. The whey cream, I don't know if you were here yesterday, I think it was yesterday, someone talked about Pro Cream. Were you here for that conversation?

A. I recall hearing it.

Q. I was just wondering if that term, Pro Cream, is synonymous with your whey cream?

A. No, no. The whey cream is separated from the whey after it comes off of the vat and before it's made into either dry whey or WPC and/or WPI and lactose, or just as a permeate going out to animal feed.

The Pro Cream that was referred to yesterday is a high fat protein product that, as I understand it, is generated in the production of whey protein isolate. So that's confirmation that, in fact, you are not able to capture and all of the fat over into the whey cream side. Some of the fat resides back on the sweet whey side or whatever else you are doing with that whey stream.

Q. Okay. There was a lot of discussion with both Mr. Beshore and Mr. Vetne on 2007. And I think you have eluded to it, but just so there's clarity in the record, could you just explain for the record what occurred in 2007 and how you feel cheese manufacturers were, from I take from your testimony, harmed in that instance?

A. Certainly. The victim of my own preparation, I have price levels that I would like to refer to.
As I mentioned during my testimony, I think, well, actually, I'm going to backtrack a little bit to, I think that one of the proponents of Proposal 1 made a comment that whey valuation has been embedded in milk prices going back to the 1960's, and I would like to observe that to the extent that's true, it's because it was a cost and constrained the ability to pay. And there is lots of information out in the public sector, including a fair number of papers by Truman Graf, a professor at UW, or at Madison, I believe, that reflect the fact that whey processing was a lost proposition in that period.

When you get to Federal Order Reform, that was really the first time whey was captured in an explicit end product price formula, and it was done at Federal level. Although, I will tell you that I and Leprino at the time thought that that was a bad idea because there was no value for dilute whey traded in the market, there was a little bit of a, I guess a casual, but in truth we all fought it, an attitude that it was contributing very little to the milk price. And so yes, it was a bad idea. But would it cripple the industry? I'm not sure anybody expected it to cripple the industry. So when you look at the whey contribution to the regulated milk price, that first year it was less than 30 cents a hundredweight.

What happened in 2007 is, you ended up with a very high whey price, and part of that was related to worldwide protein
demand being very strong, and it got the milk price that was the portion attributable to whey up above $3.00 per hundredweight. And so folks who might have been able to absorb 20 cents a hundredweight, were then in a position where if they weren't recovering any of that whey value, they were under water by a very significant margin. And so we went from this no harm, no foul situation because whey prices historically had been so low that they really didn't generate that much impact on the milk price, to something that was crippling, and that's really what drove the 2007 situation.

At the same time as you ended up with those without processing capacity being crippled, you had a lot of folks who had innovated and invested in high level whey fractionation technology that were also under water because sweet whey prices exceeded the returns from even the protein concentrates for a period in there. Now, they were not under as much financial distress as the folks who had no whey processing capacity at all, and largely the folks who went bankrupt, or in California, FNA cheese which had cheese plants that weren't timely, I think they were up around 2 million pound a day plants, but they didn't have a full whey solution, they ended up with producer payment problems, and eventually were forced, under financial stress, to sell. Saputo acquired those plants.

Q. Okay. And I think, and later in your testimony you talk about how at that time, in your opinion, lots of people
started producing these different fractionated whey products, so prices for those products went down, where less people were producing dry whey so those prices went up, and that was the -- I'm trying to get, that's kind of a very simplistic view of the numbers that you just put out there.

A. Yes. We have had that general migration. It's been painful enough, I would say, even this year in certain products, higher level products. That I am picking up that there are some folks who are starting to add capacity on the sweet whey side, their dry whey side. I have to apologize, I always think of sweet whey, or of dry whey as sweet whey because it has so much lactose. I think there was an earlier witness who explained that sweet whey is produced not from an acid environment to coagulate the cheese. And so dry whey can be sweet or acid, so not to confuse the record. But in any case, there are times this year that the returns from the higher valued products have been unfavorable enough that my understanding is that there are folks who are starting to add capacity for dry whey just so that they can flip capacity. Until now, I would say most plants, because of the high expense, capital expense with whey processing, have not had the capacity to move between dry whey and fractionated wheys. Those with fractionation capability quite often will have capacity to move between levels of protein, but with dry whey versus fractionation, usually we haven't had flex capacity in
the industry.

Q. Okay. On page 14 at the bottom you have a sentence which says, "however, the binding nature of the current California State Order and the Cooperatives' Proposal 1 under which minimum regulated prices are enforced on all Grade A milk manufactured in California, limits market based approaches to relief."

As I understand the current regulations in California is that, even if a plant is isn't pooled, you still have to pay minimum classified prices --

A. That's correct.

Q. -- for that milk.

A. That's correct.

Q. And I want to better understand then, how, if the Cooperatives' proposal were all plants are pooled and you would have to pay those minimum prices for milk as you currently do under the system, how that's different than your current situation?

A. It's the price level.

Q. Okay.

A. And that goes back to, I think that there is risk in having mandatory pricing and pooling, regardless. And, in fact, am aware of some companies that chose not to build plants in California over the last few decades, precisely because the regulatory risk that's associated with not being able to get
outside of that system. But in any case, if the price is set
low enough, then you have the ability to adjust to the market.
But if it's set, as the co-op proposal is in my opinion, at a
level above what can be achieved, then it's an even bigger
problem.

Q. Okay. So the, kind of like the main underlying problem
is not necessarily the fact that everyone would have to be
pooled, it is that the price level of which you would be pooled
at would be a Federal Order national price and not the
California specific price.

A. We can live, as has been shown by our investment in
California over the last 30 years, we can live within a
mandatory pricing system, don't necessarily think that it is
the right policy solution, but we can live within it so long as
the prices are set low enough. I think that there are a lot of
other bad market consequences of that system, as I described
when I talked about mandatory pooling and pricing the other
day, in that it retards the movement of milk to the higher and
better use across manufacturing classes. So it's, from a
policy perspective, I think it has negative consequence for the
industry at large. But from an economic, day-to-day business
operation, so long as those prices are set low enough, we can
have an economically viable operation.

Q. Okay. On Proposal 2, the bottom of page 15, when you
talk about the Proposal 2 valuation, you said the Dairy
Institute proposal appropriately capsulates contribution. Can you expand on why you feel those, the floor and the cap is appropriate for California?

A. I tried to write this section in a way where I was clear that I'm not, I don't have the data to say, you know, is $1.50 as the top end, the right top end? Maybe $1.00 is, maybe $1.75 is. I don't have that data, but the concept of a cap, and a cap in a price level that we aren't jeopardizing the ability to manufacture viably for those entities that can't process whey I think is appropriate.

Q. Okay. And the number you amended to say 36 Class 4b plants, and you pulled that for some updated CDFA list. I just want the source of that number, what list or what year does that reflect?

A. I believe this has already been entered into the record and somebody might be able to help me with an exhibit number. 96?

Q. Thanks. One of my last questions. On page 18 you are talking about Class IV formulas. In the middle of that paragraph, the sentence beginning "however" reads, "however, a pricing and pooling system that completely eliminates the incentive to place milk in its highest and best use or which provides an incentive to manufacture milk into lower value uses does not serve dairy producers, manufacturers, consumers -- or consumers well." That's a statement that has been said here
and, you know, I have heard many times outside of any Federal
Order rule making, so I would ask that you expand on that
statement a little bit and how you feel that, I guess,
Proposal 1 would not allow milk to move to its highest and best
use.

A. That refers to what I elaborated on relative to
mandatory pooling. If you apply the Federal Order regulations
as they are applied everywhere in the system, where
manufacturers are not obligated to participate, I think that
you will have some manufacturers who opt to stay out of the
system, and there will be more competition because they will
have that revenue to bid away milk from a lower valued use. So
I think over time you end up with milk moving more easily and
reduced volatility because you will end up with those
adjustments in production as a result of that movement.

The reference to incentivizing manufactured milk into
lower valued uses is a reflection of my concern, both based on
history and based on some questions that were asked here about
the balancing class. That at times have been some inherent
biases to favor one class versus the other. And generally,
that's favoring the butter powder class over cheese. And in
the past there was a, there was a prior Director of the Dairy
Marketing Branch, I believe, in California, who, in private
conversations, maybe even in public conversations would say
that, "of course you buy, you give more margin to the butter
powder guys rather than the cheese guys." And it was premised, as I understand, a little bit on the fact that there was, butter powder was perceived to be a balancing class and probably less efficient plant utilization as a result.

I think in today's market where powders, in fact, are probably traded in much greater volumes in the world market, and have a tremendous amount of demand, and where manufacturers are building powder plants specifically to satisfy that demand, it's very difficult to justify trying to bias milk flow from a milk price policy perspective one direction or the other. And to the extent we do, I think we do it at our own peril and to damage the U.S. industry.

Q. Okay. And so in your final conclusion paragraph, you say, "this proposal will allow milk from manufacturing to move more freely to its highest and best use," and you are of that opinion because plants have the ability to not participate in the pool under the Dairy Institute proposal, where they don't have that ability under the Cooperatives' proposal.

A. That's correct.

Q. Okay. And just a couple clarifying questions on your Attachment A. Under, for example, low moisture part skim Mozzarella cheese, it gives the percentages, but there's a number 46 to 52 in the brackets. What is that, if you know?

A. You know, that's a very good question. It wasn't until I was looking at it while I was testifying that I noticed it,
and so I'm not sure what that's intended to be. I believe that the numbers above it are the numbers from the actual CFR, but I can clarify that and get back to you on that.

Q. And can you, just for the record, describe what the fat dry basis means and the wet, define what wet fat means?

A. Fat on a dry basis would be a calculation of the volume of fat in proportion to the volume of total solids in the cheese. The wet fat would be the volume of fat in relationship to the total volume of the cheese, including moisture.

Q. Okay. I think my colleague has a few questions for you.

CROSS-EXAMINATION

BY MS. MAY:

Q. This is Laurel May from USDA. I have a lot of questions and I think maybe it would be better for me to screen them with my colleague to make sure that they aren't completely dumb so that you don't all have to sit through that, and then we can come back.

JUDGE CLIFTON: Yes, let's find out, the gentleman from Nestle, let me know what your time constraints are today. You are here all day? Wonderful. Good. Are you content to let us complete Ms. Taylor's testimony before you testify?

MR. KLUESNER: Yes.

JUDGE CLIFTON: Good. Excellent. Thank you. The answer was yes. All right. Why don't we break for lunch and
Ms. Taylor, I'm sorry, I know you have another presentation to work on, and you probably hoped you would be able to begin, but that won't happen yet.

Let's see. It's already almost 1:20. So please be back and ready to go at 2:35. 2:35.

(Whereupon, the lunch recess was taken.)

---o0o---
THURSDAY, NOVEMBER 5, 2015 - - AFTERNOON SESSION

JUDGE CLIFTON: We're back on record at 2:36. Ms. May?

CROSS-EXAMINATION

BY MS. MAY:

Q. Thank you. This is Laurel May with USDA, and I, luckily for you, winnowed it down to two questions through lunch.

Okay. So my first question is on your discussion about the DPMRP prices for 40 pound blocks of cheddar cheese. And I was under the impression that we also collect information on 500 pound barrels of cheddar cheese and that those prices are considered into the average that we use for that cheddar cheese price. Are you suggesting that we don't use that?

A. It's a starting point. I assume that what you are referring to is the same thing as I referred to, the NDPSR?

Q. Sorry, yes.

A. And you are correct that we are proposing that the NDPSR cheese price that includes barrels not be used in the California Order. To my knowledge, there's no cheddar barrels produced in California, so it's not relevant in California.

Q. Okay. Good thing we asked.

A. There is some additional basis risk that comes with the NDPSR barrel inclusion and there's some technical errors in the existing formula that I can elaborate on, but it might be a ditch you aren't interested in inviting.
JUDGE CLIFTON: I would like to hear it. Yeah. If there is something, if there is a glitch that causes it not to work the way it is, even though that may relate to other orders, we would rather know sooner rather than later.

MS. TAYLOR: Thank you, Judge.

The calculation of the NDPSR cheese price under the current orders does a weighted average of the block price and the barrel price, plus 3 cents. The origin of the 3 cents, well, let me back up. The barrel price is adjusted from the 39 percent moisture price to a 38 percent moisture price, and barrel cheddar is typically used for processed cheese, and the buyers of barrel cheddar are interested in the solids, and so it is typically priced at not per total volume, but per pound solids, that's the practice in the industry. So the, as I understand it, most barrel is traded in a way where they may index the CME price, but the CME price is at 39 percent, so they will calculate a price per pound solid by taking that and dividing it by .61, the .61, 61 percent solids that would be in a 39 percent moisture price, and that determines a price per pound solid.

What USDA does in making that adjustment from 39 percent moisture barrel to 38 percent, is essentially they are grossing it up. You can take the 39 percent price and multiply it by .62 over .61, and so they are adding onto the 39 percent price, a value that moves with overall cheese prices. That
might be relevant, but the combination of that moisture adjustment to get to 38 percent, with a 3 cent add-on, is doubling up the adjustment. The 3 cents was derived back in the late '90's based on observations that the typical spread between blocks and barrels was 3 cents, but that was using a 39 percent moisture barrel price. If you were to do that same calculation based on 38 percent moisture barrels, you would find that there's very little difference. And so there's this doubling up within the current factor.

BY MS. MAY:

Q. So your use of the term "technical error" is referring to this doubling up --

A. Correct.


Judge Clifton, did that satisfy you?

JUDGE CLIFTON: Yes.

MS. MAY: Okay, good.

BY MS. MAY:

Q. So then my other question was a real simple one, I'm sure, for you. On page 17 of the very last line you say that, you know, the proposal would set up a scenario in which all these things make it so that it would be, you would be better off shifting production. What do you mean by shifting production?

A. I'm referring to companies with multi-state
manufacturing capacity. And so what I'm referring to is to the extent that capacity is available within our system, in our plants outside of California, and specifically plants further east, shift production out of the California plants over to plants in the east. And we have been building out additional capacity in Colorado. I already mentioned the Greeley facility.

The Greeley facility was planned in three phases. We have completed two phases and we are very close to pulling the trigger on the third phase. It will be relatively soon that we will move forward with the construction on the third phase. And so it would be redeploying some volumes of milk to other plants.

Q. Where it would be more favorable conditions for you to be priced and produce?

A. Correct.

Q. Okay.

A. If we end up paying a Federal Order price here that represents, again, a location value that's further east, then we would be incented to move, move that production over to the areas that are closer to what's assumed in the Federal Order price.

Q. Okay. Thank you. That's all I have.

JUDGE CLIFTON: Who next has questions for Ms. Taylor?

Mr. Beshore?
CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Just a couple of follow ups. On the block barrel issue, Sue, to be fair, that issue has been fully litigated in prior hearings and decided against the position you advocated, by the Secretary, correct?

A. The arguments have been made, I'm not sure whether litigated is the proper term.

Q. I will take that back. The arguments have been made, the same ones that you made today you have made in prior hearings, and the current formula has been the one determined to be appropriate by the Secretary.

A. That's correct. And I'm not convinced that those who made that decision understood the issue.

Q. Really?

A. And hopefully further elaboration in different terms is helpful.

Q. You really don't think the Department on those hearing records, which were very elaborate and argued and testified to on those issues, you don't think the Department understood what it was doing?

JUDGE CLIFTON: I think that's a little unfair. What Ms. Taylor said was that she did not think that the Department fully understood, and I think you just asked if the Department
didn't know what it was doing?

MR. BESHORE: Understand I think I said, what it was doing in making that decision.

JUDGE CLIFTON: Yeah. Well, you know, she has her opinion, you have yours, and anyone has the opportunity to read what the Secretary did or did not say about the issue, but I would like to you reword your question if you would like her answer on this.

BY MR. BESHORE:

Q. I'm not sure how I would reword it. I understood her, I understood her to say that the decision was made without the decision maker understanding the subject matter of the decision. Is that what you said, Ms. Taylor?

A. What I would say is that we have it in the hearing record in 2006, 2007 --

Q. 2000 also, I think.

A. I don't know whether that was the case or not. But in any case, like interpersonal communication between me and you, Marv, there can be some confusion along the way, and that doesn't necessarily change the facts or change -- there's no problem in going back and having another conversation about things that you don't think are factually correct.

Q. Okay. I just wanted to make sure this record was clear that that issue had been fully discussed in prior records.

A. It had been a topic within the hearing.
Q. Okay. Now, let me ask this. I would like to just run through Leprino's plants, and if you can, tell me when the last year of capacity expansion has occurred or multi-million dollar substantial capital investments made in the facilities. Is that -- do you understand what I'm asking there? Either, you know, capacity expansion or multi-million dollar investment in the facilities, and if you can't hit the year, as close as you can.

A. Marvin, I'm not sure that I can tell you off the top of my head precisely. I can tell you that we update all of our plants on an ongoing basis. And as I think across our plant system, I'm not sure that there's a single plant that wouldn't have had multi-million dollar investment within the last year.

Q. Okay. How about capacity expansion? You mentioned Greeley, of course, which is the newest plant in the system, right?

A. Yes.

Q. Okay. And that has been, that's projected for its second expansion after the initial construction, if I understood you correctly.

A. Correct.

Q. How about other capacity expansions, and I'm talking outside of California now, or start outside of California.

A. We, operationally, have made some adjustments that have impacted capacities in a range of plants. I can't off the top
of my head tell you precisely when each of those occurred.

Q. Okay. Has that, have those operational changes which involved, would involve capital investment I assume?

A. Yes.

Q. Would they have been made at all of the other five locations in the Federal Order system within, let's say, the last ten years?

A. No.

Q. Some further back than that?

A. There are some of those that have not been extended to all plants.

Q. Okay. What's the second newest plant, Leprino plant in the Federal system? Is it the second plant in Michigan?

A. No.

Q. Roswell?

A. How do you define new? We completely renovated a plant, had it fully shutdown, it's like new in many ways, we have owned it longer than Roswell.

Q. Which one is that?

A. Ft. Morgan.

Q. Okay. When did you add the second plant in Michigan?


Q. And when was the Roswell plant built?

A. I might have my dates wrong, so I believe that, I believe that we built Ft. Morgan originally in 1992, and
acquired Roswell, I believe, in 1994, and it was a cheddar plant, a cheddar barrel plant I believe when we acquired it from AMPI.

Q. Okay. Great. Thank you. To your knowledge, were there any bankruptcies of cheese manufacturers in the Federal Order footprint area, whether they were pool plants per se, in the 2007 -- 2006, 2007, whey price run-up period?

A. I have a recollection of somebody telling me that there were, but I don't know precisely. And I also want to circle back to your last question, which was that the most recent plant that was built before Greeley?

Q. Yes.

A. That would be Lemoore West.

Q. Okay. I was -- I was limiting my question to the Federal, to the non-California system. So Ft. Morgan would be correct in that -- in the -- in the outside of California?

A. I believe it would be Roswell if you go to actual ownership, and then Ft. Morgan before it, but Ft. Morgan had a substantial renovation more recently than we acquired Roswell.

Q. Very good. Thank you. Now, I guess I just have one final question. Isn't there, in terms of price regulation policy, isn't there a risk of setting regulated minimum prices too low, as well as the risk you have testified to of setting them too high?

A. I don't believe so.
Q. Really? No risk?

A. I, you know, there are a lot of areas of the country and a lot of areas where the world exists in quite good harmony relative to the trading of milk on a day-to-day basis, and so premiums develop and they exist. There's nothing that incent a processor to gut their milk supply. We ship out probably 20 percent of the volume that we bring in, so we have to make sure that our milk supply remains healthy, and I think that that keeps the system honest.

Q. I think you answered a different question than I asked, and that, the question you answered was, I think, is it necessary to have a minimum regulated price at all? And I think you said, in your opinion it's not. Am I correct?

A. Yes.

Q. Okay. Now, my question was, when you do have minimum regulated prices, when you set them on the low end, isn't it possible to create the situation where the purchasers of milk are not incentivized to be efficient?

A. No. If the regulated price is set too low, then competition will keep the drive for efficiency.

Q. In other words, in your view, if it is set too low, it won't be effective in the marketplace?

A. If it's set below market clearing levels, it won't dictate the total price. What's required to bring forth a milk supply dictates the total price.
Q. But isn't it the case that if a minimum, if purchasers of milk can buy it at values that are what I would consider too low, they are not, they don't have any incentive to be efficient, sufficiently efficient to, as efficient as if it were higher, put it that way.

A. Well, first of all, low and high don't have as much to do with the plant decisions as what the margin is, what the relative relationship is to the value they are receiving. So you can have a low price that gives you a big margin or a high price that gives you very little margin.

Q. Well, let's make them relative to the margin, low relative to the margin versus high -- that is, low providing a, you know, a nominally, or a, you know, a high margin, and high providing a nominally low margin.

A. Okay. And you are asking about the scenario where it would be a high margin.

Q. Yes, that's right. Is there not an incentive in that situation, is there not built into that situation the possible, a lack of incentive for efficiency on the buyers?

A. I don't think so. You would be a profit maximizer, and so even in that scenario you would try to be as efficient as you can. Additionally, if the margins are sufficient and attractive, you will invite additional investment in the industry as well as innovation.

Q. Thank you.
JUDGE CLIFTON: Ms. Taylor, what were you explaining when you said something about 20 percent of the volume we bring in? There's no incentive to gut your supply of milk.

MS. TAYLOR: Oh. As a cheese maker, it is important to be close to your milk supply because the cost of transport of your inputs far exceeds the cost of transport of your outputs. And so in rough terms, the volume of our finished products is equivalent to about 20 percent by the time you add up the cheese, the cream, and the powders, 20 percent of the volume of the milk that comes into the plant. We, our objective is to be able to procure milk within a 50-mile radius of our plants.

JUDGE CLIFTON: Who next has questions for Ms. Taylor?

Mr. Vetne?

CROSS-EXAMINATION

BY MR. VETNE:

Q. John Vetne representative for Hilmar.

The history of dairy in America, as I recall, is that when the AMAA was created, milk markets were very local, and product markets were similarly fairly local. Do you recall reading that and hearing that talking about it?

A. Yes.

Q. Okay. Today's market, product markets, are national and international, correct?

A. Correct.

Q. In order to compete in national and international
markets, you can't be lax about efficiency. You have to try to beat the efficiency of your competitor everyday, correct?

A. Correct.

Q. In fact, there is an international player in dairy at New Zealand where there is no regulated price and they, in fact, have produced some of the most efficient production of dry milk products in the world, and market those dry milk products because of their efficiency, correct?

A. That's correct.

Q. Okay. Thank you.

A. And they have just doubled their Mozzarella capacity.

JUDGE CLIFTON: Are there any other questions for Ms. Taylor? Is there any redirect?

REDIRECT EXAMINATION

BY MS. VULIN:

Q. Ashley Vulin, Dairy Institute of California.

First, just a minor point. Wondering if we can look at the first page and make an edit to the date. We had optimistically put November 4th in case Ms. Taylor made it on the stand then, but today is the 5th. So for accuracy, I would ask that the Court strike the 4 and turn it into a 5.

JUDGE CLIFTON: All right. And, Ms. Frisius, top page of Exhibit 135. Thank you.

BY MS. VULIN:

Q. Thank you, your Honor.
So I'm going to bounce around a little bit. First, during his first cross-examination of you, Mr. Beshore asked you if it was your opinion that a farmer in California should be paid less than the Class III price that all other farmers in the United States are paid. But not all farmers in the United States are paid the regulated Class III price; is that correct?

A. That's correct. And I don't recall that question, even up there.

Q. Okay. So if that was a predecessor question, then that's something you would want to correct?

A. That's correct. They are not all paid through Class III.

Q. Thank you, Ms. Taylor. And from Ms. Erin Taylor had asked you a bit about the history of whey pricing. And is there anything that you would like to add to that testimony?

A. Sure. I was just, I referenced, among other things, a monograph from Dr. Truman Graf, and that's G-R-A-F, relative to the economics of whey. And my argument was, that to the extent that whey value was reflected in milk prices prior to 2000, they were reflected through the survey price of manufacturers in Minnesota and Wisconsin. And during much of that period, and I haven't taken a full look all the way through the '90's as to when that pivoted, it was reflected through a loss, and so a reduction in the milk price. Which to me is very different than reflecting it as an assumed profit and applied
across people who don't have that capacity.

One of the documents I was referring to is on
Mark Stephenson's website. It is called Economics of the Whey
Problem by Truman F. Graf. It is an Extension Publication from
November 1976, Number 117. And in that there is a table on
page 4 that shows the U.S. wholesale prices for dry whey from
1970 to '76, as quoted by ERS USDA Dairy Situation. The prices
are largely ranging from, it looks like a low of 4.8 cents to a
high of 7.65 cents, with the exception of 1974 got up to 9.41
cents. The rest of the prices are largely in that, you know,
five to five and a half cent range, plus or minus a half cent.
And in that same document --

JUDGE CLIFTON: I'm going to interrupt, I would like you to
give me those numbers again. Now, these numbers from '70 to
'76, are these showing losses or are these showing something
else?

MS. TAYLOR: I'm going to give you the prices and then
separately in the document there is a cost estimate. And so I
can give you the precise numbers for the years rather than
characterizing them.

1970 is 5.59 cents; 1971, 4.84 cents; 1972, 5.63 cents; 1973,
7.65 cents; 1974, 9.41 cents; 1975, 6.02 cents; and 1976, 6.25
cents. Again, it is a table on page 4, and then on the
Page 20 there is discussion of processing economies that says,
"USDA estimates indicate that present drying costs are 8 to 9
cents per pound of human grade non hydro scopic dry whey."

BY MS. VULIN:

Q. So that's an 8 to 9 cent cost?

A. Correct. And so that data is what led me to believe that cheese manufacturers were losing money on the production of whey, and therefore, to the extent that it did get embodied in the survey price, it was a reduction in the ability to pay, to pay, and therefore, a lower survey price.

Q. Thank you. So now I have turned to Attachment A in your testimony, Exhibit 135. And previously we had talked about these ranges. So right now I'm in the moisture column, in the low moisture part skim Mozzarella cheese row, and that has the 45 percent to 52 percent range, and below that it says 46 to 52. Were you able to figure out what this is, and do you have any opinion on if we should keep it in the document?

A. Yes, I did discuss this with the author of the document, and those ranges are internal notes. So those ranges do not appear in the CFR. Therefore, I recommend that we strike those numbers that are found within the parentheses. So for low moisture part skim Mozzarella cheese, the moisture range of 46 to 52 would be struck.

JUDGE CLIFTON: Let me ask you something, you know, so let's read it, start, Ms. Taylor, it doesn't say 45 percent to 52 percent, it says greater than 45 percent to less than or equal to 52 percent, right?
MS. TAYLOR: Correct.

JUDGE CLIFTON: So the 46 to 52 just interprets that, right?

MS. TAYLOR: It was an internal interpretation, and when I asked the author, given the CFR, could you have a low moisture part skim Mozzarella that satisfies the standard of identity that is 45.1 percent. And his answer was, he assumes you can, and so I think rather than us leave our interpretation on the table, we should remove that because that's not specifically in the CFR.

JUDGE CLIFTON: I see. I see now how you have to be very precise with these things. All right. So, Ms. Frisius, are you on this table, Attachment A?

MS. FRISIUS: Uh-huh.

JUDGE CLIFTON: And, Ms. Taylor, we'll strike as you call it, so please lead us through everything you want stricken.

MS. TAYLOR: Please strike under low moisture, part skim Mozzarella cheese, moisture 46 to 52, and in the FDB column, 30 to 44. In the next line for part skim Mozzarella, please strike 53 to 60; and in the FDB 30 to 44. In the low moisture Mozzarella cheese whole milk, moisture, please strike the 46 to 52; and then in the bottom row, the Mozzarella cheese moisture, please strike the range of 53 to 60.

JUDGE CLIFTON: Thank you.

MS. VULIN: Thank you, Ms. Taylor.
JUDGE CLIFTON: Now, while we're there, I'm just referring on the very last box to the right hand side, and we have got a cite to the Federal Regulations, and we all know what it is looking at it, but do you want us to fix it?

MS. TAYLOR: Yes, please. It should be 21 CFR instead of the CFR 21.

JUDGE CLIFTON: All right. Ms. Frisius, do you have that also? Thank you. All right. Go ahead.

BY MS. VULIN:

Q. Thank you, your Honor, good catch.

So, Ms. Taylor, Mr. Beshore asked you a question to which you responded that you recalled, it was your recollection that the cooperatives did not recognize the spatial value of the products.

A. Yes.

Q. And were you in attendance at this hearing on September 30th, 2015?

A. Yes.

Q. And were you present that day for Mr. Hollon's testimony?

A. Yes.

Q. I'm going to read you an excerpt from that testimony that's currently available on the AMS website. The page is 1366, it will be Mr. Chip English questioning, and Mr. Hollon answering the questions. So:
"QUESTION: So going back then, to the regulated price as well, the Class i utilization in a given market will influence mailbox prices, correct?

MR. HOLLON ANSWERS: Yes.

MR. ENGLISH: Does proximity to major population centers, for instance, on the East Coast, have an impact on mailbox prices?

MR. HOLLON: It may.

MR. ENGLISH: Isn't it a fact that major products used in classified pricing such as cheese, butter, and nonfat dry milk, tend to sell at higher premiums the more east they move?

MR. HOLLON: I'm not aware of that.

MR. ENGLISH: You are not aware that cheese products sold, say into New Jersey, command a higher price than cheese products sold in Chicago?

MR. HOLLON: No.

Mr. ENGLISH: And if I asked that question about other geographical regions, the answer would be the same, you are not aware of differences?

MR. HOLLON: Correct."

Is this consistent with your recollection of the Cooperatives' testimony?

A. Yes, it is.

Q. No further questions. Thank you.

JUDGE CLIFTON: Ms. Taylor, I would like you to look at
page 7, and your Footnote 3 is one that we did not read into
the record, and I can't, just looking at Page 7, I can't quite
find what it is a reference -- what reference it is to.

MS. TAYLOR: It is intended to be a reference to Figure 1,
the map.

JUDGE CLIFTON: Okay. So it is where we could find
Figure 1?

MS. TAYLOR: That's correct.

JUDGE CLIFTON: Then I would like you to read into the
record that link so that people who want to find that can do it
easily.

MS. TAYLOR: Certainly. It's the federal, the Central

JUDGE CLIFTON: Thank you very much. All right. Any other
questions for Ms. Taylor? Ms. Taylor, thank you so much. I
appreciate the document and your testimony.

MS. TAYLOR: Thank you.

MR. ENGLISH: Your Honor, Chip English. Steve Kluesner
from Nestle.

JUDGE CLIFTON: Welcome. I believe we will be marking this
as Exhibit 136, is that correct, Ms. Frisius?

MS. FRISIUS: Correct.

JUDGE CLIFTON: I'm marking mine as Exhibit 136.

(Thereafter, Exhibit Number 136, was
marked for identification.)
JUDGE CLIFTON: We'll wait just a minute until everyone has a copy. It appears they have been distributed. I'm going to swear you in in a seated position. Would you raise your right hand, please?

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

MR. KLUESNER: I do.

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

MR. KLUESNER: My name is Steven Kluesner, that's S-T-E-V-E-N, K-L-U-E-S-N-E-R.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon, sir.

Would you please read the first paragraph of your statement and then I'm going to ask you a few questions.

JUDGE CLIFTON: And before you do that, I want Mr. English to tell us again who he is.

MR. ENGLISH: Sorry, he is here on behalf of Nestle.

JUDGE CLIFTON: No, I mean you.

MR. ENGLISH: Oh.

JUDGE CLIFTON: Chip English.

MR. ENGLISH: Thank you, your Honor.

My name is Chip English and I'm an Attorney for the Dairy Institute of California, Proponents of Proposal 2. And I am
presenting the next witness, who is Mr. Kluesner of Nestle.

JUDGE CLIFTON: You may proceed.

MR. ENGLISH: Thank you, your Honor.

MR. KLUESNER: My name is Steven Kluesner. I'm the Group Manager for dairy responsible for Nestle North American Procurement, and today I am representing all Nestle businesses. In my role, I am responsible for milk and dairy ingredients procurement for Nestle brands in United States and Canada. This includes procurement relationships with individual dairy farmers, cooperatives, and proprietary handlers and manufacturers. Prior to my position I currently hold with Nestle, I held positions with Nestle Global Milk Products Procurement in Switzerland; Foremost Farms USA, Wisconsin; and Wells Enterprises in Iowa. I hold a Bachelor's Degree from Iowa State University in Agricultural Studies with an emphasis in Dairy Science. I developed today's testimony in cooperation with Nestle staff and present it today with authorization from Nestle leadership.

BY MR. ENGLISH:

Q. So let me work up from this. You were at Wells Enterprises. A number of us in the room know exactly where that is, but not everybody does. Could you tell us what Wells Enterprises was and what your position with them was?

A. Yeah, I was an Assistant Procurement Manager for Wells, at the time it was called Wells Dairy, Inc., it is a
privately-owned ice cream manufacturer in Iowa.

Q. Not going to put a plug in for the blue bunny?
A. Not today.

Q. I guess not. How long were you there?
A. I was there for four years.

Q. Okay. And then where did you go next?
A. After that I went to work for Foremost Farms in Baraboo, Wisconsin.

Q. What did you do for them?
A. I was the Director of Fluid Milk Marketing.

Q. And how long were you there?
A. I was there for five years.

Q. Okay. And then what was your position, what were your actual positions with Nestle?
A. With Nestle, prior to going to Switzerland I worked on the Nestle dairy team as a Procurement Manager for five years, where I was responsible for the fluid dairy ingredients and the hedging of nonfat dry milk and butter. And after five years, I went to Switzerland where I was on the global team, now I'm managing the purchasing of global powders for 43 different countries.

Q. And how long were you in Switzerland?
A. I was in Switzerland on a mission for two years.

Q. And how long have you been back?
A. I have been back for four months.
Q. And look, you got to come to Clovis.
A. Not quite like Lake Geneva, but it is nice.

JUDGE CLIFTON: You know, so far, I want to be him.

BY MR. ENGLISH:

Q. All right. Why don't you continue with your statement, sir.
A. Okay. Nestle in the United States includes: Nestle USA, Nestle Nutrition, Nestle Purina Pet Care Company, Nestle Waters North America, and is part of Nestle S.A., the world's largest food company, headquartered in Vevey, Switzerland. Nestle S.A. employs over 330,000 globally and operates over 390 manufacturing plants, of which Nestle USA is the largest individual market and employs 23,000 and operates 25 manufacturing facilities and 43 distribution centers focused on making branded food and beverages.

Nestle USA currently operates plants that utilize fluid dairy products: Ice cream factories, California we have two factories; one factory in Indiana; one in Maryland; and one in Utah.

We have evaporated milk factory, one located in California. A fluid beverage factory, one located in Indiana. A prepared foods factories, one located in South Carolina; one in Arkansas; Utah; and one in Ohio.

Nestle nutrition factory located in Wisconsin; and confection factories located in Wisconsin and Illinois.
1. Currently, in California we are buying fluid dairy ingredients for our two ice cream factories and our baking factory. Each receive, excuse me, the baking factory is the evaporated food factory for clarification, I'm sorry, the evaporated milk factory. Each receives fluid milk and fluid dairy ingredients as contracted, either from supplying cooperatives or from patron supply. Nestle is not paying non-cost-justified up charges for the milk we receive. Nestle is testifying to the current situation of fluid dairy procurement in California as being orderly.

2. I testify today in support of the Dairy Institute's Proposal Number 2, which would operate without mandatory price regulation, allowing us to purchase milk priced in California as Federal Orders currently do in the rest of the U.S. Under the Cooperatives' Proposal 1, Nestle plants in California would be required to pay the higher FMMO class prices, while our competitors in other FMMO regions are not required to do so. In the Cooperatives' proposal, all plants are pool plants requiring mandatory pooling. In all other Federal Orders, the handlers decide whether to associate with the Order pool or, excuse me, with the Order pool if it benefits them financially to do so. If they do not associate with the pool, USDA does not mandate the price plants must pay for Class II, III, and IV usage. So if Nestle suppliers decide they want to associate with the pool, Nestle will continue to pay the price negotiated.
with the supplier when Nestle would not be required to pay the regulated minimum price unless they chose to do so.

3. Mandatory pooling within the Order of California would put Nestle's business at a competitive disadvantage to competitors operating in orders that do not have the same pooling requirements. These differences in competitive nature would cause a change in manufacturing strategy, potentially resulting in manufacturers evaluating replacing current production with open capacities in other states resulting in less overall demand for dairy products in California. Manufacturing plants need to be competitive with plants in other Federal Orders. By not being consistent with Federal Order rules in all regulated areas and making all plants only in California regulated, would destroy our ability to compete with others located outside of the state. Nestle has a long history and a huge investment in the California dairy industry. With the size and scale of our operations in the state, and the low margin nature of the ice cream business, we cannot function in a non-competitive environment. Inconsistent rules across Federal Orders would require re-evaluation of current Nestle manufacturing strategies and bring focus to other parts of the U.S.

4. Nestle purchases a large percent of the California dairy, of California dairy products, from dairy commodities, fluid supplies domestically to powders internationally. The
proposals to implement Federal Orders in California would result in higher prices under the Cooperatives' proposal, also making international purchasing decisions now subject to reevaluation. Procurement decisions have to be driven by the economics and the ability to source products at prices that make our operations financially viable. Enhanced product prices caused by higher regulated prices that are not present in other regions of the U.S. or globally, and that are unsupported by market realities, make the purchasing of products from California less likely. The current system that enables the development of supply for international business over the past ten plus years would not be viable any longer and would cause a shift of focus to other less regulated regions of the world for growth.

We currently have a strong relationship with manufacturers in California and would like very much, and would very much like to continue to procure dairy ingredients in the state. Nestle would like to see a consistent approach to regulation across Orders allowing our businesses to continue to be competitive and grow in communities we have established manufacturing.

Q. Thank you. Now, when you discuss some of your competitive situations, your plants in California, is there a facility in Nevada that you feel like you compete against?

A. Yes, very much, yes. Very much.
Q. What is that facility and where is that located?
A. There's a competitive ice cream manufacturing facility in Henderson, Nevada owned by Unilever, I believe.
Q. And to your knowledge, are a number of ice cream plants located in Federal Orders nonpool plants?
A. To my knowledge, yes.
Q. And, in fact, you worked for Wells, and despite my lame joke about the blue bunny, to your knowledge was that a nonpool plant when you were there?
A. It was a nonpool plant, correct.
Q. Your Honor, I move admission of Exhibit 136.
JUDGE CLIFTON: Would anyone like to question Mr. Kluesner before determining whether you object? No one. Is there any objection to the admission into evidence of Exhibit 136? There are none. Exhibit 136 is admitted into evidence.
(Thereafter, Exhibit Number 136, was received into evidence.)
MR. ENGLISH: I have no further questions of this witness. He's available for further examination.
JUDGE CLIFTON: Who will ask the first questions of Mr. Kluesner? Mr. Beshore.
CROSS-EXAMINATION
BY MR. BESHORE:
Q. I tried to look around for other volunteers but didn't work. Marvin Beshore.
Good afternoon, Mr. Kluesner.

A. Hello.

Q. Let's talk a little bit first about, you know, your plants, and their products, and sources of supply, and sales areas, that sort of thing. So if we look at the ice cream factories, I'm just going to go through 136 here. Two factories in California. Do they make products other than ice cream?

A. No, they do not.

Q. Or other novelties?

A. They make novelties, that's correct, yes.

Q. Okay. What I think your testimony indicates, you purchase fluid milk as well as dairy ingredients for those plants; is that correct?

A. Correct. For one of them, fluid milk. The other one's, the other plant does not take fluid milk directly, but dairy ingredients.

Q. Where are there, to differentiate here, where are the two located, what cities?

A. One is located in Tulare the other one is located in Bakersfield.

Q. Which one takes fluid milk, which one doesn't?

A. Bakersfield takes fluid milk, a small amount.

Q. Okay. In addition to fluid milk, what other dairy ingredients are used at Bakersfield?
A. Condensed skim, cream, whey.

Q. Do you use powder at all?

A. No.

Q. Okay. So what portion, you said fluid milk is a small portion of the total ingredient mix there roughly, what portion?

A. I don't know exactly the percentage, but it would be less than five percent.

Q. Okay. Is that supplied from cooperatives or your own producers or how do you get the milk?

A. It is supplied from cooperatives.

Q. Okay. Now, at Tulare there's no fluid milk received at that plant, I take it?

A. Correct.

Q. So what dairy ingredients are purchased there?

A. Cream and condensed skim and whey.

Q. Any powder?

A. No.

Q. Okay. When you say whey, there's been lots of talk in this record about all the various whey products and formulations. Can you tell us what whey product you are buying?

A. Just sweet whey powder.

Q. And that's the only whey product?

A. Yes.
Q. Okay. What is the distribution area of the products that you make at your California factories? And I'll take Bakersfield first.

A. Bakersfield is national, with not all of it, but depending on what's manufactured on which line, you could have national distribution.

Q. How about Tulare?

A. Tulare is national on pretty much everything they make there, but there's a limit to the amounts.

Q. Okay. Now, are the dairy ingredients, setting aside the small portion of fluid milk, which I understand would be subject to minimum prices set by CDFA, correct?

A. Correct.

Q. Okay. Are the dairy ingredients that you purchase in the California plant subject to minimum CDFA prices?

A. We pay the minimum CDFA prices.

Q. Okay. But are you required to pay the minimum CDFA?

A. Yes.

Q. You are?

A. Yes.

Q. For the condensed skim?

A. Yes.

Q. For the cream?

A. Yes.

Q. For the whey?
A. Whey, I do not recall specifically on whey.

Q. From what sources do you acquire the cream and condensed skim for your California plants?
   A. The majority of it is within the State of California. There is a small amount from time to time that would come from outside the state.
   Q. Okay. Is it from cooperatives from other proprietary handlers or --
   A. Both.
   Q. Okay. And it is your testimony that when you purchase those ingredients from, let's just take other proprietary handlers, that they are subject to minimum CDFA pricing?
   A. Yes.
   Q. Okay. Let's move to the ice cream plant in Indiana. What dairy ingredients do you acquire, do you purchase there for its production, fluid milk or just --
   A. Cream and condensed skim, fluid milk and whey as well
   Q. Okay. Is that a, that's a nonpool plant, I assume?
   A. Correct.
   Q. How much?

JUDGE CLIFTON: I have got to slow the two of you down a little bit. Don't answer him until you know the court reporter has finished typing what he said, okay?

MR. KLUESNER: Sorry.

JUDGE CLIFTON: I interrupted you, you were talking about
Indiana, I think.

BY MR. BESHORE:

Q. Yes. What percent of the dairy ingredients is fresh fluid milk as opposed to the cream condensed --

A. Very small. Again, it is.

JUDGE CLIFTON: You are not following my instruction.

MR. KLUESNER: Sorry, I'm a slow learner.

MR. BESHORE: I'm in the same boat, I think.

BY MR. BESHORE:

Q. What products are made there?

A. Ice cream and novelties as well.

Q. And what's the distribution area?

A. It's mainly in the central part of the U.S., some does travel back and forth depending on what was manufactured on what line.

Q. What city is or town is, what's the address of the Indiana plants?

A. It's Ft. Wayne, Indiana.

Q. Okay. The Maryland plant, where is that located?

A. It's located in Laurel, Maryland.

Q. And what are the ingredients that, what, first of all, what products are made there?

A. Ice cream and novelties again.

Q. And what's the distribution area from that plant?

A. Mainly the East, but there is some distribution that
Q. Okay. So what are, what dairy ingredients do you use at the Laurel plant?

A. Again, a small amount of milk. Less, I would say again, less than five percent cream and condensed skim and whey.

Q. And that's a, that's a nonpool plant?

A. Correct.

Q. Where is the plant in Utah located?

A. Salt Lake.

Q. And same set of questions on that plant. What do you make and where do you get the ingredients?

A. They make mainly ice cream there. It is for specific areas that at higher elevations, and it's a very, very small plant, with very small lines.

Q. Okay. Thank you. Now, the evaporated milk factory in California, where is that located?

A. It's in Modesto, California.

Q. And does it make strictly just evaporated canned milk?

A. Yes, it does.

Q. Okay. What's the distribution area from that plant?

A. Nationally.

Q. In fact, that's one of only two canned milk plants in the country anymore, right?
A. Yes.

Q. The other one is in New York?

A. Yep.

Q. Okay. What are the ingredients for the evaporated milk factory?

A. Milk only.

Q. Fresh milk only?

A. Correct.

Q. Okay. Is that supplied from your own producers or cooperatives?

A. Both.

Q. In part 1 of your statement on the second page, you make the statement, "Nestle is not paying non-cost-justified up charges for the milk we receive." Is that an interesting phraseology in terms of what you pay for milk. Do you pay premiums on the raw milk, on the milk you are purchasing for your evaporated milk factory?

A. Yes, we do.

Q. And do you consider them cost justified premiums?

A. Yes.

Q. Okay. And so in what respect are they cost justified from your perspective?

A. Cost justified in the fact that we would have to pay a premium for our own milk supply from producers as well.

Q. Okay. And --
A. It is.

Q. So you pay your own producers a premium?
A. Yes.

Q. And therefore, your cooperative supply is going to, going to get a premium also?
A. Correct. Yes.

Q. Okay. Does the cooperative, you know, balance your needs at that plant?
A. Yes, that's one of the reasons that we buy outside milk is for balancing the manufacturing.

Q. Okay. The fluid beverage factory in Indiana, what location is that?
A. That is in Anderson, Indiana.

Q. Is that a relatively new plant?
A. Yes, it was built in, well, started production in 2007.

Q. And what products do you make there?
A. Class I milk, and coffee creamers, and nutritional beverages.

Q. What's the distribution area for the plant?
A. National.

Q. Do you, what are the, is it solely raw milk supplied to that plant? Is that the sole dairy ingredient or do you have other ingredients?
A. I didn't understand your question, I'm sorry.

Q. Your dairy ingredients at Anderson, is it solely farm
milk or do you purchase other ingredients for those products?
A. It's farm milk and then there are some nonfat dry milk
that goes in there, other ingredients sugars, and different
things for manufacturing, and some MPC that's used in the
nutritional side of the business.
Q. Okay. So is that a pool plant or a nonpool plant?
A. It is a fully regulated plant on Order 33.
Q. Okay. And the milk supplies to that plant, are they
Cooperative or independent supplies?
A. They are Cooperative.
Q. And are those supplies acquired at a premium?
A. Yes, they are.
Q. The plant in South Carolina, where is that and what
products does it make?
A. Gafney, it's prepared foods. It would be any sort of
frozen meal.
Q. Any fresh milk purchased at that plant?
A. No, those are, any of the prepared food plants would be
cream and condensed skim. It's very small amounts.
Q. Okay. So that, the South Carolina, Arkansas, Utah, and
Ohio, I'm going over to the second page, all those prepared
food plants, the dairy ingredients are cream and condensed
skim?
A. Yes, used ingredients, yes.
Q. And no fresh milk?
A. No fresh milk at all.
Q. Okay. The nutrition factory in Wisconsin, what location?
A. That's in Eau Claire, Wisconsin.
Q. The famous Eau Claire, maybe infamous. What dairy ingredients do you purchase there?
A. That is a 2 percent milk that we buy for manufacturing.
Q. So is that acquired from proprietary or cooperative sources?
A. Sorry, I have to think back. I have only been back here for four months, I got to think for a minute. That I believe is from a proprietary supply.
Q. Is the Eau Claire plant a pool or nonpool plant?
A. Nonpool.
Q. What do you make there?
A. It's a nutritional, a specialized nutritional beverage.
Q. What's the distribution in the area for that?
A. It's national.
Q. The confection factories, is that -- is that chocolate?
A. Chocolate, caramel, mainly condensed skim, or evaporated milk, or sweetened condensed milk.
Q. What's the location in Wisconsin?
A. Wisconsin is Burlington.
Q. And Illinois?
A. Illinois is Franklin Park, that's the main one.
Q. I'm sorry?
A. Franklin Park.
Q. And did you say what, condensed skim and sweetened condensed?
A. Sweetened condensed milk, correct. And there is some butterfat that goes in there as well, typically AMF.
Q. No fresh milk?
A. No.

JUDGE CLIFTON: Butterfat typically what?
MR. KLUESNER: AMF, it's basically butter oil.
JUDGE CLIFTON: And does AMF stand for?
MR. KLUESNER: Anhydrous Milk Fat.
JUDGE CLIFTON: Thank you.

BY MR. BESHORE:
Q. Okay. Thank you for that, for that information on your plants there, Mr. Kluesner. From your purchase of milk in California directly from independent farmers, how, within what geographic range of your plant of Modesto are your farmers located?
A. I would guess within 40 miles.
Q. What's the prevailing premium on farm milk in that area, pay price?
A. I would rather not answer that question.
JUDGE CLIFTON: You are not required to.
MR. BESHORE: I think he knows the rules.
BY MR. BESHORE:

Q. Now, you say in point number 2 on page 2 here, that you would like to, I'm paraphrasing, but basically you want to be able to buy milk at prices that are not subject to minimum regulation.

A. We would like to be able to buy milk if regulated, consistent with our other factories across the nation.

Q. Okay. Now, let's just take your, let's take the, well, actually, in California which plant uses the most, obviously the Modesto factory would use the most fresh milk, I assume.

A. Yes, in fresh milk form, yes.

Q. Are you familiar with the status in milk supply of your only competitor in the country for that plant, what it pays for milk?

A. Most specifically, no.

Q. You are not?

A. No.

Q. But you want to, if you, wouldn't that be important? If you want to pay what your competitor's pay, you only have one competitor for that plant in the country, and you don't know what it pays for its milk?

A. Well, I would assume I would know if they were going to pay roughly, well, I would have an idea. I wouldn't know exactly what they were going to pay, but I would have roughly an idea.

6308
Q. They are going to pay Federal Order price plus something, right?
A. I don't know that specifically.
Q. Well, you said you knew, you thought you knew roughly what they would pay. What did you mean by that?
A. You asked me if I would know exactly what they would pay. Not exactly, you asked me if I knew what they would pay, and I said no, but it would probably be somewhere around a regulated price. I would not know if it was higher or lower.
Q. Okay. Now, you have national distribution from your ice cream plants in California. So do you know what your competitors across the country are paying for their ingredients for ice cream?
A. Not specifically, no.
Q. Do you know generally?
A. Again, roughly, I would have no idea if it was exactly the regulated price.
Q. You do know that the minimum regulated price that you have in California is lower than that in the rest of the country, correct?
A. Yes.
Q. Now, you expressed concern in point 2 here about whether you would be required to associate with the pool or not. Do you, have you ever done a cost study on what the value is, if any, of being pooled or not being pooled as an ice cream
manufacturer in the Federal Order marketing areas?

A. Lately, no, I have not.

Q. But you say "mandatory pooling would put Nestle's within an order of California's," this is point number 3, "would put Nestle's businesses at a competitive disadvantage to competitors operating in Orders that do not have the same pooling requirements." Wouldn't that depend on what your, whether, regardless of the pooling requirements, wouldn't it depend, depend on what your competitors were paying there?

A. It comes back to price level, yes. I mean, it depends what the price level would be.

Q. So let me ask the question again. Have you done any study on what difference, if any, mandatory pooling would have on your cost of milk on an annual basis?

A. Have I done personally? No, I have not done personally.

Q. Has your company done such a study?

A. Company? No.

Q. Have you seen any such study presented to you by anyone associated with the Dairy Institute team here today?

A. I have, yes.

Q. At cost study relating to mandatory pooling?

A. I saw a, yes. I saw the numbers that were put together by the Dairy Institute of California that would show what the difference would be between, basically between Proposal
Number 1 and would Proposal Number 2.

Q. Okay. And was it your assumption that those differences were the product of mandatory pooling?

A. That is my assumption, yes.

Q. Okay. Point number 4, I have -- I'm having a little trouble understanding exactly what this is about. Is this mainly directed to international sales?

A. Mainly, yes.

Q. Okay. Do you sell, what, evaporated milk internationally?

A. We do sell some internationally. We are a large buyer of powders internationally of the U.S.

Q. For what uses?

A. Many different uses.

Q. Okay. I didn't -- yeah. And the reason I asked for what uses. They are not, as a large buyer of powders, it would seem from your explanation of the products made and the ingredients used at these plants, that you are not buying the powders for your own use, primarily.

A. Not in the U.S., but for our own use in the 43 other countries that we do business.

Q. Okay. When you say in the first sentence of 4, "Nestle's purchases a large percent of California dairy products from dairy commodities." You are referring there to your purchases of condensed skim and cream and whey I take it?
A. Yeah, I mean it could be condensed skim, cream, whey cheese, butter, so this is, there is a multitude of different things. I don't think there's any dairy product that's manufactured that we do not buy.

Q. Okay. But you buy them, Nestle buys them for other operations other than your dairy manufacturing plants?

A. The majority of it would go into all the plants domestically that I have listed, and I have not listed the international plants or needs.

Q. Okay. I'm only talking about the domestic plants. But you are not using cheese as an ingredient anywhere though, right?

A. Yes, we are.

Q. Okay. Where did I miss that?

A. Cheese is an ingredient that falls underneath our Nestle USA business, Nestle pizza division, and our prepared foods division as well. I'm sorry, I did misspoke in the fact that we do take cheese into prepared foods when we were talking about earlier.

Q. Okay. So among the plants listed here, the prepared foods factories would be ones that use cheese, as well as the other ingredients you mentioned.

A. Prepared foods, yes. To clarify what's listed on the testimony here, are the factories that only take fluid ingredients. We do have factories that use many different
dairy ingredients across the nation that are not listed here.
Q. Okay. And, okay. Thank you. That's all I have right
at the moment. Thank you, Mr. Kluesner.
JUDGE CLIFTON: Who next has questions for Mr. Kluesner?
Ms. Taylor?

CROSS-EXAMINATION

BY MS. TAYLOR:
Q. Good afternoon, Mr. Kluesner.
A. Hello.
Q. I'm Erin Taylor with the USDA. Thank you on behalf of
the Department for coming here today and expressing the views
of Nestle. We do appreciate that.
Just a few questions. I first won't ask you my small
business question because with however many employees, I'm
pretty sure you would not fall under that definition.
For your, since this is about California, for the milk
that you purchase in California, could you give us a rough
estimate on what is supplied by cooperatives and what is
supplied by independent shippers, if you don't mind?
A. As far as what ingredients are supplied? Is that your
question?
Q. Yes.
A. Okay. From, we have cooperatives would be condensed
skim and cream mainly, and milk. And then from independents,
we get cream supply from a few small ones, a few small
suppliers.

Q. Few small plants?

A. Well, small supply that we get from probably larger plants, but it's a smaller supply.

Q. Okay. Under the current California system you do pay California State Order minimum prices, even though your plants, I think you said your plants are not pooled in California?

A. We pay the minimum price in California.

Q. You pay the minimum price.

A. Yeah.

Q. Okay. I take it from, your main concern with Proposal 1 and why you support Proposal 2, it gives your plants the option to pool just like in the other ten Federal Orders currently, there's pooling provisions that allow plants to pool if they qualify or opt not to pool?

A. That is correct.

Q. And so you don't necessarily have a concern with, or maybe you do, you can explain. If you have a concern as to the prices that would be in a Federal Order system, whether they be the prices as proposed by the co-ops or the prices as proposed by the Dairy Institute, so long as you had the ability to opt whether to participate or not. Granted, I'm sure you would like the lower price, but your main issue is with the pooling?

A. Correct. That's correct. If the price was the same across the nation, it would, we would look, or it would be good
to have consistency across the ability to in the pool status as well.

Q. Okay. And my final question is just about your whey purchases. You purchase mostly dry sweet whey?
A. For ice cream manufacturing, yes.

Q. And how do you, there's been a lot of conversation about whey purchasing. Could you elaborate generally how you determine the price that you purchase that for?
A. It varies. Most -- it would be market indexed pricing for the whey. Whether it's the report or some sort of, whether it is the report that establishes a price, there would be an index to that.

Q. Okay. Indexed off the CME or --
A. There's multiple. There's multiple indexes that we use. There's not one specific one.

Q. Okay.
A. But they all function similar, with just different indexes.

JUDGE CLIFTON: If I could inquire further about that. Are these published indexes or do you pay some kind of service to gather the pricing information for you on whey?

MR. KLUESNER: These are the published indexes --

JUDGE CLIFTON: Okay.

MR. KLUESNER: -- that we have been referring to. Some within Sue Taylor's testimony as well.
JUDGE CLIFTON: Okay.

MS. TAYLOR: I think that's it.

JUDGE CLIFTON: Are there further questions for Mr. Kluesner?

MS. TAYLOR: We have one more question.

JUDGE CLIFTON: Good. And there's also in the back.

MS. TAYLOR: I'm going to let me colleague ask you this question.

CROSS-EXAMINATION

BY MS. MAY:

Q. My name is Laurel May. Apparently my handwriting is not legible. So my question was, do you procure any California milk or milk products for use in out-of-state plants?

A. Procure milk, you mean as far as fluid milk itself or are you talking about dairy ingredients?

Q. Either or both?

A. We have taken some California dairy ingredients into our Salt Lake factory, but it's very little volume that we take there.

Q. And then do you bring any out-of-state milk into California for use in your plants here?

A. From time to time we do, yes. Depends on what, there may be a special need of some sort that we would not be able to get here theoretically, and we would bring it in.

Q. What would be a special need?
A. Maybe an rBST-free type of product that wouldn't
necessarily be available, we would buy from whoever we could
get it from.

Q. Okay. Thank you.

JUDGE CLIFTON: Ms. Reed?

CROSS-EXAMINATION

BY MS. REED:

Q. Kristine Reed. I represent Select Milk Producers.

I just have a couple of questions to make sure I'm
understanding your testimony. I wanted to look at paragraph 4
on page 3, and I know you had a conversation with Mr. Beshore
about this. But, in general, in this paragraph you're talking
about, in part, about products that you purchase domestically
for use in your international plants; is that right?

A. Correct.

Q. Okay. So, for instance, is that mostly powders then?

A. Yes.

Q. What percentage of those, if you can tell us, is
purchased in California versus other parts of the country?

A. I can say the vast majority of it is purchased in
California.

Q. Okay. So then in the next to the last sentence when
you are talking about if there's an enhancement in product
prices, that would make the purchase of product from
California, continued purchases of California, less likely for
Nestle is what you are saying?

A. Exactly. Yeah. For other, say more competitive regions globally.

Q. Okay. Would you anticipate if that were the case, that you would shift your purchases elsewhere in the United States to either other federally-regulated regions or non-regulated regions, or would you anticipate is there enough of a market globally that you would look globally for those replacement products?

A. We would evaluate both, of course, but there is, yes, there is enough of a market globally that could be replaced.

Q. Okay. And then finally, in your last kind of closing paragraph you state, "we currently have strong relationships with manufacturers in California and we would very much like to continue to procure dairy ingredients in the state." When I read that whole sentence, I would replace manufacturers with producers, is that what you are talking about in that context? Co-op supplied?

A. Yes, yes, correct.

Q. Okay. I just wanted to make sure. Thanks. That's it.

A. Yes.

JUDGE CLIFTON: Is that -- Mr. English, would you, you can talk about anything, but I'd particularly like to know about that particular word in that last paragraph.

MR. ENGLISH: I would like to explore that, Chip English, I
would like to explore that as well.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. So if you could look at your statement there.

A. Okay.

Q. You are talking about, "currently have strong relationships with manufacturers in California." So let me just see if I can clarify, because I think it may cover cooperatives, to the extent you buy product that's produced by cooperatives, such as nonfat dry milk powders or condensed skim, correct?

A. Correct.

Q. Okay. But I at least thought that it was broader than that, and you mentioned the purchase of cheese that you use in the country, so we would also include other dairy products. So it's broader than co-ops, it would also include cheese products as well?

A. Yes, that's correct.

Q. Okay. So it's basically dairy product manufacturers generally?

A. Exactly. Exactly.

Q. Does that help, your Honor?

JUDGE CLIFTON: Yeah, I, but from Ms. Reed's question, I got the idea that he's talking not only about strong relationships with manufacturers, but also with some producers.
Is that fair?

MR. KLUESNER: Well, it would be co-ops in general, the producer part would go back to the co-ops we do business with as well, I think.

MR. ENGLISH: I agree with you. I think it's even broader than I just made it, I think it includes Ms. Reed's issue, which is actually the dairy farmer element; is that correct?

MR. KLUESNER: Correct, yes.

MR. ENGLISH: But it also includes the cooperatives as manufacturers of finished products, correct?

MR. KLUESNER: Exactly.

MR. ENGLISH: And then it includes those people making other products for dairy ingredients like cheese?

MR. KLUESNER: Yes, correct.

MR. ENGLISH: The full spectrum?

MR. KLUESNER: Yes.

JUDGE CLIFTON: All right. Thank you. And do you have other redirect?

MR. ENGLISH: That is my only redirect.

JUDGE CLIFTON: All right, then. Are there any other questions for Mr. Kluesner? Actually, I want to know where you are going when you leave Clovis?

MR. KLUESNER: Ohio via Denver.

JUDGE CLIFTON: Are you headquartered in -- where are you headquartered?
MR. KLUESNER: My office is in, near Cleveland, Ohio.

JUDGE CLIFTON: All right. Ms. Reed, where is your office?

MS. REED: Cincinnati.

JUDGE CLIFTON: Cincinnati. Mr. English, anything further of Mr. Kluesner?

MR. ENGLISH: No, I would thank him very much for coming. And I was going to suggest our afternoon break, I think the court reporter agrees, and that would give me also a chance to start distributing the testimony of Mr. Zolin part whatever.

JUDGE CLIFTON: Yes, it is already slightly after 4:00. Please be back and ready to go at 4:18. 418. That gives you 15 minutes.

(Whereupon, a break was taken.)

JUDGE CLIFTON: All right. We have Mr. Zolin in the witness chair and in just a minute I'll have him identify himself. We also have two documents that have been distributed Mr. English?

MR. ENGLISH: Yes, your Honor. During the break, I believe everybody should have, I made sure, and of course Ms. Frisius got her four and you and the court reporter. There's is a two-page document labeled Testimony of Alan Zolin, Part 6, that I would like to have marked first. And then there's a, it's three-pages, but it is printed on front and back, an attachment I would have marked as the next document.

JUDGE CLIFTON: Ms. Frisius, will the testimony of

6321
Alan Zolin, Part 6, be Exhibit 137?

MS. FRISIUS: It will be.

JUDGE CLIFTON: Thank you. Exhibit 137

(Thereafter, Exhibit Number 137, was
marked for identification.)

JUDGE CLIFTON: And then the --

MR. ENGLISH: We have a Dairy Institute of California

Modifications to Proposed Section 1051.9(d).

JUDGE CLIFTON: 1051.9(d) all right. We'll mark that then
as Exhibit 138.

(Thereafter, Exhibit Number 138, was
marked for identification.)

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


DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Mr. Zolin, why don't you proceed by reading
Exhibit 137.

A. Okay.

Introduction

My name is Alan Zolin. I have been retained by Hilmar
Cheese Company (HCC) to work with Dairy Institute of California
(DIC) to develop an alternative proposal to Cooperative
Proposal 1. I have worked with a task force made up of a
number of representatives from DIC member companies in order to develop and submit Proposal 2.

Description of Proposal 2 Handler Definition with an Addition of a New Paragraph 9(d)

DIC has included a new paragraph in the handler definition. This new paragraph is 9(d). This paragraph has been in other FMMO's in the past. The original concept of this paragraph was created by USDA in a 1981 decision for a hearing held to determine pooling provisions for the Southwest Idaho, Eastern Oregon, FMMO 135. At the time, USDA was applauded for its innovative thinking and problem-solving by the proponents of changing the way supply plant handlers could qualify as a handler. The new type of handler created is called a "proprietary bulk tank handler" (PBTH). The concept was to allow proprietary handlers to pool milk in a similar manner that cooperative handlers can pool milk under the 9(c) provision. The proprietary handler would not need to create a physical pool supply plant in order to meet the performance requirements of the Order. The requirements for a proprietary handler in order to meet the definition of this section are:

1) The PBTH must operate a plant located in the marketing area and the milk is not processed into Class I at the facility.

2) Prior to operating as a PBTH, the Market Administrator (MA) must receive a statement from the pool plant
operator where the milk of the PBTH is to be received

specifying that the PBTH will be the responsible handler for
the milk.

Back in the 1980's, proprietary handlers did not have
the ability to meet the performance standards via shipments
directly from the farm. Proprietary handlers had -- I'm sorry,
let me start over -- proprietary handlers only had the option
to meet performance requirements via the supply plant
definition. This methodology would require a proprietary
handler to accumulate Grade A milk at a supply plant and make
shipments (transfers) to a pool distributing plant. The
innovative decision recommended by USDA changed that paradigm
and allowed a proprietary plant to meet the performance
standards by moving milk directly from the farm to a pool
distributing plant. This concept followed -- I'm sorry -- this
concept allowed for the more efficient movement of milk by
eliminating unnecessary transportation costs and the unloading
and reloading milk to service the Class I market.

Since 1981, numerous recommended decisions from the
USDA created a methodology for a supply plant to meet the
performance standards with movements to pool distributing
plants directly from the farm. In testimony on the pooling
standards in FMMO Order 30, Mr. Henry Schaefer -- I think
that's a misspelling Henry, I just noticed it -- described the
practice of (wet the tank once a month) --

6324
JUDGE CLIFTON: Are those parentheses or quotations?

MR. ZOLIN: Actually, they are supposed to be quotes, I'm sorry. It's that shade of the microphone again.

As a requirement to -- okay. Let me very start.

In testimony of the pooling standards in FMMO Order 30, Mr. Henry Schaefer described the practice of "wet the tank once a month" as a requirement to demonstrate that a pool supply plant is capable and prepared to meet the performance standards. It is DIC's intent that with that, with the addition of the PBTH that the only difference between the PBTH provision and normal supply plant handler status, is that the requirement to wet the tank will not be necessary, DIC believes that the same market conditions that are present in California were also present in the Western FMMO 135. Plus, the interest of USDA in preventing uneconomic movements of milk, is as important now as it was in the 1980's.

HCC is supportive of Proposal 2 that includes the PBTH provision. Any relief that can be provided on the operational efficiencies at the HCC milk intake is welcome. By not having to wet the tank the HCC cheese plant can focus on milk receiving efficiencies. Currently, HCC received over 250 milk trucks a day and utilizes five receiving bays. The HCC smallest silo size is 1.6 million pounds of milk. Milk is received 24 hours per day, 7 days per week. There is little room and/or time to wet the tank in order to meet the
regulatory requirements. These metrics represented by the HCC plant are significantly greater than the milk receiving systems of cheese plants in the Upper Midwest. Without any intake modification, HCC would not dedicate -- I'm sorry -- without any intake modification, HCC could not dedicate a silo to be its pool supply plant. Therefore, the PBTH provision will allow HCC to pool milk in a manner similar to the 9(c) provision for cooperatives and operate its manufacturing plant without needing to meet additional FMMO restrictions on its milk receiving patterns.

And that concludes my testimony.

BY MR. ENGLISH:

Q. I want to come back to that last paragraph in 137 but after we discuss 138. So the conditions and the terms that you have discussed -- well, first let me say this. Were you involved with Kraft Foods at the time of the original Idaho Order going in?

A. The, I started at Kraft in 1984, so the decision that put the Order promulgation I believe was 1981, so I was not involved with the original decision, but I was involved in decisions that put the proprietary bulk tank handler in other Federal Order across the country.

Q. Now, when you put it, when you got it put in other Orders, did you go back AND look at what the Secretary did in order to put it in in the Idaho order?
A. Exactly. Back in the '80s we looked at what was done, and I would have to say, copied the language. The one area I'm specifically familiar with is a Federal Order that is no longer in existence, I believe it was the Tennessee Valley Order, Order 11.

Q. Okay. Was it your understanding, what was your understanding when you looked at it, of how it developed? Was it a proposal from industry?

A. Oh, the proposal itself was, like I said, it was applauded. It was a, it was not in the hearing record.

Q. It wasn't in the Hearing Notice.

A. I'm sorry, it was not in the Hearing Notice. It was -- it was the Department's solution to a problem, and it was better than the solution that was being provided by handlers and processors in that market to address the same situation. How can a proprietary plant meet the performance requirements, via shipments directly from the farm.

Q. Now, some 20 years later, after Federal Order Reform, there was a Hearing Notice for the Pacific Northwest and Western Order, correct?

A. That is correct.

Q. And was the Proprietary Bulk Tank Handler Provision a subject of discussion at that proceeding?

A. It was the subject of discussion at that proceeding, yes, it was.
Q. Were you at that proceeding?
   A. I was not at that proceeding, but a Kraft representative was.

Q. Now, what had happened in the intervening 20 years or more particularly after Federal Order Reform in your mind that caused the Proprietary Bulk Tank Handler Provision to be discussed at some length in the proceeding in 2002?
   A. In the 20 years that the provision was in effect, I'm going to go way back, Chip, I know early in the '80's, the Kraft plants that operated in the Idaho Order, did use the Proprietary Bulk Tank Handler Provision. Most of those plants were located in the Central Idaho area. And over time, it became the Kraft plants became nonpool plants and no longer pooled milk in that Order, and so we kind of left the system. Other manufacturers came in, other folks came in, and it's my understanding that over time, there were perceived abuses of the provision. One I'm familiar --

Q. Okay. May I interrupt for a second? Well, one thing that happened was Federal Order Reform happened, correct?
   A. Yes. Okay. And merged some Orders, yes.

Q. And merged some Orders, correct?
   A. Correct.

Q. So the Idaho Order ended up being merged with --
   A. I believe --

Q. -- great Basin?
A. Great Basin Order and got the name Western Order.

Q. Did that change the utilization of the market?

A. It did. It did. Because it brought more Class I utilization into the marketplace.

Q. So what impact would that have had on the desirability of using the provision to pool?

A. As we have talked all through the 29 days we have been here --

JUDGE CLIFTON: Today is 31.

MR. ENGLISH: Well, actually, he was on vacation in Italy for part of it, so --

MR. ZOLIN: I apologize. I lost the train of thought.

BY MR. ENGLISH:

Q. I was asking about what impact did Federal Order Reform merger, which as you said, changed the Class I utilization by raising it, have on the desirability of pooling milk?

A. And we have talked about pooling milk, not pooling milk. Class I utilization of a market, in the market is a very key consideration of what the blend price is going to be, which is a major factor in determining whether milk is in the pool or out of the pool. So with higher utilization, the draw to be part of the pool would be very great.

Q. So then I interrupted you. You were about to talk about what was discussed at the hearing, at least in your understanding.
A. And again, I wasn't at the hearing. I remember the discussion back in 2003 I think it was. But I've obviously refreshed my memory by reading the recommended decision. Two items come to mind. The first would be the abuse or possible abuse of the diversion limitations in the Order. I believe the Order had a 90 percent diversion limitation at the time. But with the wording that was in the Order, it allowed for that diversion to be multiplied up until almost a 98 or 99 percent diversion limit, so that would be one.

The second item that I'm aware of that was a concern had to do with minimum order pricing, and specifically, Class I handlers all having the same, paying the minimum price for milk.

Q. Okay. So what we submitted for the Dairy Institute, as you, yourself, said when you went down to Tennessee, was the identical language that had been put into the Idaho Order at the time, correct?

A. That is correct.

Q. Okay. So since the Hearing Notice has been issued, have you and the Dairy Institute had occasion to look at that language and determine whether or not, in light of what happened with the hearing in 2002, that there might be some modifications that you want to make?

A. That --

Q. Are going to make?
A. That's exactly true. I'll get back to the intent. The intent is to allow proprietary handlers to pool milk in the same manner that cooperative organizations can pool milk. If there was a flaw in the language, we should fix the flaw. But the concept is a good concept.

Q. Okay. So -- so, for instance, under both proposal, well, actually, not proposal -- under Proposal 2 there is a 90 percent diversion limit, correct, for cooperatives?

A. That is correct. A 90 percent diversion limit for all handlers.

Q. All handlers.

A. Yes.

Q. And to the extent the Idaho language, once it was merged into, with the Western Order and higher utilization, could have theoretically led to a 99 percent diversion limitation, that's not your intent, correct?

A. That is correct. That is not our intent.

Q. So what modification, looking at Exhibit 138, what modification are we proposing to deal with that risk of interpretation, meaning instead of a 90 percent diversion limitation, to something like a 99 percent diversion limitation?

A. I'm assuming, I have a colored copy in front of me. And of course --

Q. The court reporter has a color copy, the Judge has a
color copy, and the official record has a color copy, everyone else has black and white, but in track changes, you can see stricken language and underlined language.

A. So the real, the real, in the very first paragraph, about four lines from the bottom of the first paragraph, we added the description of two types of plants where the milk would be shipped to, and that would be a 7(a) plant or a 7(b) plant, which are descriptions of pool bottling plants. The language that was in the Order just referred to a pool plant. So we are identifying the type of plant that would, the milk needs to be delivered to.

Q. And the rest of Exhibit 138 is the Hearing Notice for the Idaho Western Order proceeding in 2002. And from that Hearing Notice, does your language track one of those proposals?

A. Okay. Bear with me, yes. Proposal Number 14, which would be on page 9626.

Q. Of the Federal Register.

A. Of the Federal Register. It would be, it was submitted by, it would be in the middle of the page, submitted by the Market Administrator. Proposal 14 was language that is, I believe, identical to the language that we now have written in our modification.

Q. And so that was actually submitted by the Market Administrator's office for that Order at the time, correct?
A. That's correct.

Q. And do you know who testified in favor of that?

A. I didn't until coming to this hearing. It was Mr. Mykrantz that testified at the hearing for that proposal.

Q. Okay. So the second concern that was leveled, and there was obviously a lot of argument about whether it was actually happening, but the second concern that was leveled was the question of minimum prices, correct?

A. That is my understanding, yes.

Q. And on Exhibit 138, have you also proposed changes that would address that issue?

A. We have added a new paragraph 3 for the Section 9(d) to address that, that issue of potential under order payments to a supplier.

Q. And that's because the milk that's actually received at the, whichever plants receives it is going to have to report and pay for it, correct?

A. Correct.

Q. Now, looking again at Exhibit 138, the Hearing Notice, was there a proposal submitted along those lines?

A. Yes, in the Federal Register on page 9625, Proposal 11, which I believe was submitted by, I see it now, MariGold Dairies, there is language that is, as I'm looking making sure, is identical to our new paragraph 3.

Q. And it is proposal what?
A. Proposal Number 11.

Q. Now, if you look above Proposal Number 11, MariGold indicated that it was submitting multiple proposals?

A. That is correct.

Q. Any one of which would solve the problem in its view?

A. Correct.

Q. So, and the other two proposals would be proposals 12 and 13?

A. That is correct.

Q. Okay. Even though we have, for purposes of Exhibit 138, adopted effectively at, you know, Proposal 11 from that Hearing Notice, do you have a position on a preference for any of those provisions?

A. Obviously, we picked the one we have as our preference, but they are all addressing the same subject. They all handle it, I think, and they accomplish the same. So as a preference, no. If the Department picks one of the others, I think that would be fine with, certainly with me and I think with Dairy Institute.

JUDGE CLIFTON: While we're looking at Exhibit 138 and the proposed language, shall we utilize the section number that's at issue here in that final paragraph?

MR. ENGLISH: Your Honor, I typed this ten times and got it wrong.

JUDGE CLIFTON: I knew it wasn't Mr. Zolin.
MR. ENGLISH: Well, I think I mentioned earlier that someone was very busy writing order language and apparently, you know, whatever.

Yes, your Honor, thank you very much. Paragraph 3, would you agree, Mr. Zolin, that says milk defined as producer milk pursuant to -- I don't know how I copied this particular version. So it should be Section 1051.13.

JUDGE CLIFTON: All right. So Ms. Frisius, your copying? Do you see where he is?

MS. FRISIUS: Uh-huh.

JUDGE CLIFTON: Would you do it again, Mr. English?

MR. ENGLISH: It should be Section 1051.13.

MS. FRISIUS: No (d)?

MR. ENGLISH: No (d). The reference to 9(d) is wrong, too, it is supposed to reference Section 13, which is Producer Milk.

JUDGE CLIFTON: And then would you like to conform the opening paragraph, the next to the last line, similarly?

MR. ENGLISH: Yes, your Honor. The scrivener copied from the word document submitted to the Department, and in doing so, just brought in that 50. I don't know why I just didn't use 50, but anyway.

JUDGE CLIFTON: So we're going to strike, Ms. Frisius, in that one, we can just strike the 0 and put in the 1.

MR. ENGLISH: Yes, your Honor. Do you agree with those, Mr. Zolin?
MR. ZOLIN: I'm not on the same page so could you point me to where we are?

JUDGE CLIFTON: Yeah.

MR. ENGLISH: It is the 50 to 51 issue.

MR. ZOLIN: I agree.

MR. ENGLISH: All right. Do you accept those changes, Mr. Zolin?

MR. ZOLIN: I do.

MR. ENGLISH: All right. Thank you, your Honor.

With those modifications to the modifications, your Honor, I would move admission of both Exhibit 137 and 138.

JUDGE CLIFTON: This is a tiny, tiny thing, and I just think we ought to go ahead and do it. We have the Arabic I on page 1 a couple of times, and I think we want the Roman numeral I, is that true?

MR. ENGLISH: That was a different typist.

JUDGE CLIFTON: The first time I see it is in the middle of the page under subsection I, we're talking about Class I at the facility, and do you see, Mr. Zolin?

MR. ZOLIN: I see, yes.

JUDGE CLIFTON: Do you think that should be a Roman Numeral I?

MR. ZOLIN: Yes.

JUDGE CLIFTON: All right. And Ms. Frisius, are you there, too?
MS. FRISIUS: Yes.

JUDGE CLIFTON: And then the next place I see it is the last line of the last full paragraph, it just says Class I market.

MR. ZOLIN: I see that and I agree as well.

JUDGE CLIFTON: Okay. And then I have a question on the next to the last line on page 1. You had read it two different ways, "either in testimony of the pooling standards" or "in testimony on the pooling standards." And it doesn't matter to me, I just want it the way you want it.

MR. ZOLIN: Let's leave it as "of" that's the way it is written.

JUDGE CLIFTON: "Testimony of the pooling standards?"

MR. ZOLIN: Correct.

JUDGE CLIFTON: Okay. So we'll leave that alone. And then you mentioned that you thought you had misspelled Schaefer, I think he has only one F in his name.

MR. ZOLIN: I agree. I saw that as I was reading through it.

JUDGE CLIFTON: So we'll strike an F. All right. That's all I noticed, Mr. English, and I know those are very small.

MR. ENGLISH: No, I appreciate it, your Honor, especially because they weren't my typos. With that, I would move admission of Exhibit 137 and 138 as modified by multiple people.
JUDGE CLIFTON: Does anyone want to question Mr. Zolin before you determine whether you have any objections to Exhibit 137? No one. Is there any objection to the admission into evidence of Exhibit 137? There are none. Exhibit 137 is admitted into evidence.

(Thereafter, Exhibit Number 137, was received into evidence.)

JUDGE CLIFTON: And does anyone want to question Mr. Zolin before determining when you object to the Exhibit 138? No one. Are there any objections to the admission into evidence of Exhibit 138? There are none. Exhibit 138 is admitted into evidence.

(Thereafter, Exhibit Number 138, was received into evidence.)

MR. ENGLISH: So the witness will be available for further examination. I just note that it is 4:45 and yesterday somehow we consumed ten minutes talking about preliminary matters, but I don't know how many questions there will be of this witness he'll obviously be here tomorrow. But if you want to start for five minutes or so, your Honor, that's clearly up to you.

JUDGE CLIFTON: All right. Why don't we. We'll see if we can complete it. If not, we'll carry it over to tomorrow.

Mr. Beshore, would you go first, please?

CROSS-EXAMINATION

BY MR. BESHORE:
Q. At your request, your Honor, I will.

Marvin Beshore.

A. Hello, Marv.

Q. Hi, Al. So let me -- let me see if I can figure out what's going on here. If HCC is a pool plant, such as under Proposal 1, this proposal really doesn't have any pertinence, right?

A. This is proposal language in Proposal 2.

Q. I understand.

A. There is, under Proposal 1, with mandatory pooling, all the bells and whistles that we have talked about, a proprietary bulk tank handler wouldn't be necessary because I understand there's no performance requirements in Proposal Number 1.

Q. Okay. So basically, you're proposing this to be part of Proposal 2 so that, because you don't want to necessarily have Hilmar as a pool plant, right?

A. Correct.

Q. But you want to pool milk?

A. Correct.

Q. And under Proposal 2 you can pool milk by creating a split plant, right?

A. I think I did testify about split plants somewhere in this, but yes, that is a possibility to use a split plant, yes.

Q. Okay. But you don't want to pool milk at Hilmar as a split plant?
A. That would not be our preferred option.

Q. And that's what -- that's what the wet the tank once a month testimony is about?

A. Exactly.

Q. So you want to have a plant, you want to pool milk by reporting it on paper, basically.

A. It is very similar to a 9(c) reporting system. And, in fact, in practice, where I have seen a 9(c) and 9(d) in Tennessee Valley, it is a paper transaction, both the cooperative transaction, and the proprietary handler transaction was filing a report.

Q. Okay. So the, how is it that the abuse of selling milk at under Class I minimum prices, which occurred up in Order 135, is avoided?

A. First, I don't know if it was ever proven that that was what was going on. I know it was discussed, and so I won't, I won't agree that that was going on. But from a standpoint of paragraph 3 in our modification is addressing who the, whose responsible to pay the producers.

Q. But it's -- okay. So who would be responsible to pay the producers?

A. It is at the pool plant where the milk is received.

Q. Okay. So, and you, but you have got what, a ten percent, well, we don't know what your pooling standards are yet.
A. Well, let's just go with the ten, and there is always
the brackets, but the ten is a good base number to use.

Q. So you have a ten percent performance requirement. So
when your proprietary bulk tank unit, ten percent of the milk
goes to 7(a) or 7(b) plant, and the rest of it goes to the
Hilmar nonpool plant, correct?

A. That is a very good strong possibility, yes.

Q. Okay. Now, so on the milk, who pays, and that's all,
that's a given set of producers -- who pays those producers?

A. It could be -- it could be the pool plant where the
milk's received, it could be Hilmar Cheese, it could be a
combination of both.

Q. Okay. So under this system, a producer could, it could
be, the Market Administrator could be obligated to look at two
producer payrolls to determine if one producer was getting paid
the minimum price or not?

A. I would think the more likely scenario is one party
could take over the payroll for the producers.

Q. Okay. But it would not be able to be Hilmar, it would
have to be the plant with responsibility under, as you have
described it to me, I take it.

A. I would think that the pool plant would be the, that
would be responsible for the payroll, because that's where the
Market Administrator would look to if there wasn't payment to
the producer.
Q. So what would, what's the difference then? So that's a distributing plant, they could have their own independent producers, if they were pooling them they could receive ten percent, divert the other 90. Why do you need the proprietary bulk tank handler?

A. From a standpoint of not having to wet the tank, maintaining the producer milk supply at Hilmar. There's a connection there.

Q. But if the customer, if the distributing plant has the responsibility for paying them, and you have said they would be likely to payroll them, you've lost the connection anyway, haven't you?

A. The distributing plant could contract with Hilmar to pay the producers to run their producer payroll.

Q. And then, then the Market Administrator would audit the distributing plant and Hilmar anyway.

A. I'm not concerned about audit.


JUDGE CLIFTON: Okay. This is probably a good stopping point, and we'll continue with cross-examination of Mr. Zolin on this tomorrow. And we'll leave it to Mr. English where in the program you will be. And Mr. English, let's wrap up today with discussion of tomorrow.

MR. ENGLISH: Thank you, your Honor. We certainly had some
slippage today. Now, tomorrow we may have a dairy farmer, I understand.

MR. BESHORE: One for sure, possibly two.

MR. ENGLISH: And as always, if they are here in the morning and want to go first, they get to go first. If they want to wait, they get to wait, whatever they want. So everything I have to say is contingent on that. But our intention is to start tomorrow with Rob Blaufuss, well, it's going to be Part 5 even though he hasn't done Part 4 yet, but start with Rob Blaufuss, Part 5, along with Matt Williams, both from Dean Foods, testifying as a panel about the producer-handler, producer-distributor issue. And that's so Mr. Williams, who was some other operational responsibilities, can get back to those, even though Mr. Blaufuss is now permanently, well, semi-permanently in Clovis. So we're going to start with that, again, subject to producer-handler.

Then I think it would make most sense to finish what Mr. Zolin has done just so we don't leave hanging shades around, so I think we would go to that.

What we have left then, is Mr. Blaufuss on Part 4, fortification, which is produced and all ready to go. And I think that is most likely to be the next piece, but might move this order around. We do have -- I have homework tonight. Hopefully no typos. The modification of 7(c) and try to get that on. Obviously we have got Dr. Schiek on quota, and I
understand for Mr. Vlahos, the ideal situation would be if we
get that tomorrow, and I'm certainly not going to push it to
push it, and I will try to do that, Mr. Vlahos.

And if I'm not missing something, we have got
Sue Taylor, Part 3, and that is the impacts on the pool.
That's a lot. And so I don't know what to say to you,
Ms. Hancock, although you may very well have somebody here
tomorrow anyway because we're putting some testimony on. But I
would strongly suspect that that's going to finish the day. If
it doesn't, as I said all along, I'm not ready to go on
transportation credits anyway. So if Ms. Hancock has somebody
ready and is able to, fine, but we didn't get the short day
today, that's for sure. But that's what we have got.

And I have to say that I would think that leaving aside
finishing -- well, that's just a lot.

JUDGE CLIFTON: You know, you got everything done today
that you had announced this morning except for Mr. Blaufuss on
fortification. It was an excellent day and I have no
complaints.

MR. ENGLISH: Thank you, your Honor.

JUDGE CLIFTON: You're welcome. All right. Are there any
other announcements? Nothing. We go off record at 4:55.

(Whereupon, the evening recess was taken.)

---o0o---
COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA )
 ) ss.
COUNTY OF FRESNO )

I, MYRA A. PISH, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in
the State of California, holder of Certificate Number CSR
11613, issued by the Court Reporters Board of California and
which is in full force and effect.

I am not financially interested in this action and am
not a relative or employee of any attorney of the parties, or
of any of the parties.

I am the reporter that stenographically recorded the
testimony in the foregoing proceeding and the foregoing
transcript is a true record of the testimony given.

DATED: December 21, 2015

FRESNO, CALIFORNIA

[Signature]

MYRA A. PISH, CSR
Certificate No. 11613
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS-VOL. XXXI

November 5, 2015

align (1) 6212:2
aligned (1) 6215:13
Allendale (4) 6195:25;6200:8; 6251:14,16
A-L-E-N-D-A-L-E (1) 6200:9
Allendale's (1) 6251:14
all-in (1) 6163:25
allow (10) 6186:8,12;
6229:11;6235:15;
6265:4;6266:14;
6314:14;6323:15;
6326:7;6331:2
allowance (24) 6156:7;6171:11;
12,15,18;6172:3,4,8,
11,16;6174:7,10;
6180:25;6182:12,14,
15,24;6183:10;
6185:20;6187:6;
6226:7,8;6240:7;
6243:25;6255:19
allowances (13) 6324:13,16;
6330:7
allowing (6) 6150:21;6183:17;
6239:21;6240:22;
6293:13;6295:19
allows (2) 6151:24;6198:2
almonds (2) 6212:9,12
almost (5) 6153:19;6216:1;
6250:25;6268:4;
6330:8
alone (1) 6337:15
along (11) 6146:13,25;
6150:4,7;6155:2;
6157:20;6243:15;
6274:19;6333:20;
6343:10;6344:10
alternative (6) 6153:2;6165:3;
6181:8;6235:4;
6243:1;6322:24
Alternatives (4) 6154:1;6164:1;
6220:7;6244:5
announced (1) 6344:17
announcements (4) 6143:12;6147:6,
14;6344:22
announcing (1) 6175:4
annual (1) 6310:14
annually (1) 6161:7
answered (2) 6278:10,11
anticipate (3) 6184:8;6318:4,7
anticipated (2) 6153:6;6244:23
anymore (2) 6210:13;6302:25
A-O (1) 6142:24
apologies (1) 6171:25
apologize (2) 6261:10;6292:9
apparently (4) 6148:5;6199:11;
6316:11;6335:2
appear (1) 6284:18
appearance (1) 6146:9
appearances (2) 6140:7,8
appears (2) 6146:6;6289:2
applaud (1) 6252:4
applauded (2) 6233:10;6327:10
application (5) 6152:24;6166:16;
6203:4;6220:15;
6226:20
applications (1) 6254:16
applied (5) 6118:5;6178:5;
6221:7;6265:8;
6282:25
applies (2) 6183:17;6225:2
apply (10) 6154:17;21;
6185:2;6199:13;
6226:16;6229:4,6;
6236:2;6250:13;
6257:9
applying (1) 6185:14
appreciate (6) 6146:20;6147:3;
6245:24;6288:16;
6313:12;6337:22
approach (3) 6185:15;6193:23;
6295:18
approaches (2) 6178:3;6262:6
approaching (1) 6211:23
appropriately (3) 6180:14;6241:13;
6264:1
approvals (1) 6194:16
April (1) 6154:13
Arabic (1) 6363:13
area (25) 6157:16,18;
6158:1;6161:24,25;
6162:1;6163:3,7;
6220:15;6221:16;
6230:3;6233:23;
6234:6;6273:7;
6235:6;6299:11;
6301:12,24;6302:22;
6304:19;6306:17;
6307:22;6323:22;
6327:2;6328:12
areas (24) 6161:2,22;
6162:23;6163:1;
6164:12;6177:6;
6188:17,22,24;
6220:16;6221:9,10;
14,17,21;6228:23;
6318:8;6272:21;
6278:2,3;6294:13;
6297:5;6302:15;
6310:1
argue (2) 6303:10;655:3
argued (1) 6273:20
argument (2) 6282:18;6333:6
arguments (3) 6214:5;6273:8,10
Arizona (1) 6226:3
Arkansas (2) 6292:23;6305:20
around (12) 6164:24;6172:19;
6178:14;6212:12;
6234:1;6252:24;
6260:20;6282:1;
6296:24;6309:8;
6343:18,23
arranging (1) 6163:21
arrived (2) 6207:18;6218:8
artificial (1) 6185:4
Ashley (3) 6142:2;6148:5;
6281:16
A-S-H-L-E-Y (1) 6142:2
aside (3) 6221:16;6299:10;
6344:14
aspects (1) 6167:18
assert (2) 6206:20;6207:3
assertion (3) 6206:8;12;6228:6
assessment (1) 6233:1
assets (3) 6157:1;6184:19;
6220:19
assigned (1) 6140:6
Assistant (3) 6140:17;6141:2;
6290:24
associate (4) 6293:20,22,24;
6309:23
associated (7) 6156:1;6196:18;
6175:25;6211:3;
6234:3;6262:25;
6310:20
Association (2) 6142:22;6143:2
assume (8) 6175:23;6196:8,
11;6269:14;6276:3;
6300:18;6308:10,22
assumed (4) 6177:16;6180:24;
6272:21;6282:25
assumes (4) 6172:24;6173:5;
6256:17;6285:7
assuming (1) 6331:23
assumption (9) 6173:1;6179:7;
6221:1;6253:2;
6255:25;6257:3,17;
6312:4
assumptions (3) 6171:9;6172:22;
6257:3
ate (1) 6236:20
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS-VOL. XXXII

November 5, 2015

1618:17;6193:3,4; 5;6195:12;6196:1; 6251:21;6261:23
capable (1)
6325:8
capacities (2)
6275:25;6294:9
capacity (37)
6174:23;6176:16; 6177:2,5,20;6178:6,6; 6180:2;6184:12; 6191:15;6195:3; 6192:4;6219:13,15, 16,17;6220:25; 6221:1;6262:20; 6229:4;6245:10; 6260:12,17;6261:9, 19,19,22,24,25; 6271:2,6;6275:3,6, 14,22;6281:11; 6283:1
-capita (8)
6168:1,11,12,15, 18,6168:3,10,20
capital (8)
6178:9,10; 6181:6;6184:20; 6200:1;6261:21; 6275:4;6276:3
cap (5)
6180:14
capsulates (1)
6264:1
capture (4)
6176:6,6253:2; 6258:14
captured (6)
6172:13,25; 6208:24;6256:18; 6257:4;6259:13
captures (2)
6252:23;23
caramel (1)
6306:20
carbohydrate (2)
6179:14;6247:13
care (3)
6235:7,12;6292:8
-carefully (1)
6245:13
carman (2)
6140:16,16
c-A-R-M-A-N (1)
6331:3,6332:2, 6335:3,6338:22; 6339:4,20;6343:14
canada (1)
6290:8
canned (2)
6302:20,24
cap (3)
6264:2,7,8
capability (8)
6216:8
case (19)
6147:11;6159:2; 6163:25;6167:25; 6169:6;6174:18; 6193:13,25;6223:9; 6241:9,19;6244:12; 6246:11,6263:1; 6274:17,18;6279:1; 6281:19;6318:4
-cases (8)
6176:14,17; 6193:13;6203:18; 6220:25;6221:4,7; 6248:12
Cash-and-Carry (3)
6210:3,4,11
casual (2)
6147:7;6259:18
catch (2)
6230:25;6286:10
categories (1)
6238:16
categorizing (1)
6238:16
category (3)
6166:17;6168:23; 6170:5
cause (2)
6294:7;6295:13
caused (2)
6295:7;6328:6
causes (1)
6270:2
CDFA (20)
6159:20;6160:8; 6168:11;6177:1; 6181:7;6204:6; 6231:19
challenged (2)
6179:7;6204:4
challenges (3)
6174:24;6178:22; 6179:11,6
change (2)
6207:19;6321:8
change (7)
6153:9;6162:13; 6226:18;6274:20,20; 6294:7;6293:22
changed (4)
6145:17;6151:21; 6324:12;6329:15
changes (6)
6151:19;6176:6; 6276:2;6332:2; 6284:10;6336:6
changing (2)
6194:25;6323:12
categorized (1)
6174:22
characterizing (2)
6229:14;6283:20
charges (2)
6293:8;6303:14
charter (1)
6153:19
cheat (2)
6198:5;6251:23
check (1)
6251:23
checked (1)
6215:19
check-off (1)
6150:5
cheddar (66)
6155:21;6165:22; 23,6166:2,6,7,10,14; 6168:23;6169:8,9; 6170:14,16,19,20,22, 22,6171:3,5,11,12, 14,17;6172:7,10,25; 6204:23;6205:8,12; 6206:3,16,19,22; 6207:2,5;6219:1,2, 2,5,17;6263:8;6267:6; 6278:3,25;6279:8, 7,6285:21; 6255:8;6256:18; 6275:2,4,10,11,13, 18,6269:9,11,12,19; 6270:11;6271:2;7,12,19, Cheese (201)
| Page: 10 | 6169:3;6308:19 compiled (1) 6233:25 complaints (1) 6344:19 complete (2) 6267:22;6338:22 completed (1) 6272:9 complex (6) 6149:18;6166:3; 6239:3,3;6243:8; 6244:2 complexes (2) 6185:14;6239:11 complexity (2) 6168:8,9 complicate (1) 6168:8,9 competes (1) 6163:19;6165:2; 6221:10;6280:25; 6294:14;6295:24 competes (1) 6254:17 competition (8) 6149:17;6164:3; 6185:7;6205:3; 6242:22;6243:1; 6265:11;6278:20 competitive (14) 6164:1;6165:3; 6189:12;6194:6; 6232:17,19;6294:4, 611;6295:20,23; 6296:2;6310:5; 6318:2 competitor (3) 6281:2;6308:13, 20 competitors (7) 6198:3;6203:9; 6293:17;6294:5; 6309:12;6310:6,9 competitor's (2) 6253:18 condense (2) 6178:17;6251:16 condensed (21) 6249:13;6250:1; 6251:15;6298:1,16; 6299:21;6300:3,17; 6301:4;6302:6; 6305:19,22;6306:20, 21;6307:3,4,5; 6311:25;6312:1; 6313:23;6319:10 condensing (1) 6178:13 condition (1) 6221:12 conditions (10) 6151:18;6160:19, 24;6161:1,2; 6173:20;6175:6; 6272:14;6235:13; 6236:14 concession (2) 6292:25;6306:19 confident (1) 6262:24 confidentiality (12) 6157:11,14,15, 17,22,25;6158:5; 6159:17;6230:6; 6235:9,12 configuration (2) 6171:7;6195:1 confirm (1) 6186:25 confirmation (1) 6258:13 conform (1) 6335:16 confuse (1) 6261:15 confused (1) 6154:7 confusing (3) 6205:19;6245:20; 6247:6 confusion (1) 6274:19 connection (2) 6342:8,11 consequence (3) 6245:2;6263:20 consequences (2) 6245:14;6263:16 Consequently (1) 6179:20 consider (11) 6143:16;6155:11; 6158:1;6162:9; 6174:4;6122:24; 6215:3;6245:13,14; 6279:2;6303:19 consideration (1) 6329:19 contained (3) 6172:16;6185:19; 6249:5 contains (1) 6157:9 content (4) 6167:8,12; 6247:23;6267:21 contention (1) 6205:22 Context (4) 6149:14;6154:23; 6245:20;6318:17 continous (1) 6158:3 contingent (1) 6343:7 continue (15) 6144:21;6149:12; 6154:15;6163:15; 6166:8;6184:21; 6211:17;6212:22,22; 6292:5;6293:25; 6295:17,19;6318:15; 6342:21 CONTINUED (2) 6182:22;6317:25 continues (2) 6143:21;6173:22 contract (1) 6342:13 contracted (1) 6293:6 contrast (4) 6151:15,20; 6166:14;6239:1 contribute (2) 6150:16;6186:13 contributed (1) 6176:23 contributes (1) 6158:4 contributing (2) 6179:23;6259:19 contribution (5) 6179:5;6180:15; 6232:15;6259:22; 6264:1 conversation (6) 6175:15;6251:10; 6258:3;6274:21; 6315:6;6317:11 conversations (4) 6238:2;6233:14; 6265:24,24 conversion (2) 6240:4,7 convert (1) 6219:19 converted (3) 6173:1;6195:2; 6256:19 converter (1) 6203:15 converting (2) 6165:3;6164:5 converts (2) 6248:4;6250:12 convinced (1) 6273:14 cooking (1) 6147:15

---

IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS-VOL. XXXI

November 5, 2015
cooling (3)
6144:5,8
Corona (2)
6175:2,7
corrected (1)
6227:11
correction (1)
6257:10
correctly (1)
6275:20
corroborated (1)
6182:8
cost (64)
6151:20,6156:2,5;
6164:3,21,25;
6165:10,6169:18,24;
6171:15,16,17;
6172:5,8,9,11,13;
6173:20,6174:9;
6175:24,6176:19;
6178:16,6180:18,22;
6181:4,6182:2,4;
6194:7,6203:23,24;
6205:18,6206:10;
6211:2,2,6212:19,23;
6224:18,19,19,20;
216:26,24,6228:4;
6231:25,6236:17;
6237:1,6240:4,7;
6242:24,6243:7;
6244:3,6255:21;
6259:6,6280:5,6;
6283:18,6284:33;
6303:19,21,23;
6309:4,6310:14,22
costs (28)
6151:19,6153:2;
6155:1,6159:24;
6163:16,24,6164:14;
6165:16,6172:10,12;
6178:10,15,6182:25;
6183:11,6204:8,12;
6211:1,6219:2,4,10;
6227:9,6237:15;
6238:1,6243:13;
6250:14,6255:11;
6283:25,6314:17
Council (1)
6143:5
Counsel (3)
6140:23,25;
6143:7
count (2)
6223:18,19
countries (2)
6293:21,6311:21
country (34)
6135:13,6157:25;
6161:20,6163:18,21;
6164:9,13,24;
6165:4,6172:19;
6189:9,6204:24;
6210:21,6211:2,11;
6215:15,6216:16,20;
creamers (1)
6304:17
create (4)
6178:10,6223:22;
6278:17,6323:17
created (13)
6157:24,6166:25;
6176:7,6211:7;
6216:2,3,6220:14;
6221:8,6244:24;
6280:18,6323:8,13;
6324:20
creates (1)
6178:22
creating (1)
6339:20
credit (1)
6344:11
cricket (2)
6259:20,21
crippled (1)
6260:12
crushing (1)
6414:15,14
cross-examining (20)
6144:24,6188:1,3;
6143:6,214:16;
6182:22,2298:9;
630:16,2621:3;
6267:12,6269:3;
6273:1,6280:14;
6282:2,2629:22;
6313:6,6316:9;
6317:6,6338:24;
6342:21
crowd (1)
6214:13
cumbersome (1)
6151:22
cut (2)
6135:21
curtained (1)
6176:2
cushion (1)
6232:20
customers (9)
6164:1,6192:1;
6169:24,6194:11;
6196:22,6206:12,
23,25,6203:10,20;
6314:18
Dairy (165)
6140:12,15,17,20,
21,6141:3,7,10;
6142:1,6,9,10,23;
6143:2,23,6145:18;
6148:5,13,19,22;
6149:7,14,19,19,21,
23,24,6150:2,2,3,7,
8,6151:1,6154:16;
6157:7,16,18;
6158:6,11,14;
6159:23,6160:14;
6161:2,25,6164:4;
6165:21,6166:4;
6164:1,6167:16;
6174:7,6175:1;
6180:14,6181:9;
6187:2,14,6185:11,15,
6186:2,4,7;
6205:15,17,6207:11;
6208:5,6209:21,24;
62010:2,12,17,19;
6225:21,6211:2,4,5,8,9;
10,12,16,20,21,24;
6212:3,12,16;
6213:12,6217:9;
6224:12,6226:4;
6228:3,20,6230:1;
6232:24,6240:1;
<table>
<thead>
<tr>
<th>Min-U-Script®</th>
<th>Barkley Court Reporters</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IN RE:</strong> MILK IN CALIFORNIA</td>
<td><strong>TRANSCRIPT OF PROCEEDINGS-VOL. XXXI</strong> November 5, 2015</td>
</tr>
</tbody>
</table>

6305:3;6311:14; 6312:22,25;6315:17; 6336:16;6337:7

differentials (1) 6152:17
differentiate (2) 6244:2;6297:18
differentiated (3) 6168:17;6169:19; 6207:8
differentiation (1) 6254:19
differently (1) 6221:19
difficult (4) 6153:19;6184:8; 6230:9;6269:9
difficulties (2) 6174:25;6184:4
difficulty (2) 6232:13;6241:24
digest (1) 6255:16
dilute (2) 6178:12;6259:16

**DIRECT** (7) 6148:7;6209:12; 6238:2;6256:13; 6289:12;6319:2; 6322:16
directed (1) 6311:7
direction (2) 6144:9;6266:10
directly (10) 6160:24;6214:25; 6235:20;6237:5; 6297:16;6307:17; 6324:6,14;22; 6327:17

**Director** (2) 6265:22;6291:10
disadvantage (3) 6211:19;6294:4; 6310:5

disappear (1) 6198:2
discipline (2) 6243:2;6244:6
disciplined (1) 6220:6
disciplines (1) 6150:1
disconnect (2) 6239:7,15
disconnects (1) 6238:24
discount (2) 6163:23;6205:1
discounted (2) 6181:23;6182:2
discourages (1) 6152:6
discovers (1) 6152:14
discovered (1) 6255:14
discovery (5) 6155:19;6157:6;6159:16;6253:7
discretion (1) 6223:13

disciplinary (1) 6220:15
discuss (3) 6284:16;6295:22; 6326:14
discussed (6) 6249:9;6274:24; 6236:15;6328:7; 6329:24;6340:16
discussing (1) 6256:15

discussion (13) 6219:1;6253:17; 6254:2;6275:7;6258:18;6269:8; 6283:24;6327:23;24; 6330:2;6342:24

Discussions (1) 6157:12
disorderly (11) 6212:5;6216:10; 6220:11,13,17; 6221:6,8,11; 6222:13;6223:20,22
disparities (3) 6283:23;6239:3,6
disparity (1) 6239:11
displacing (1) 6202:9
dispose (1) 6181:16

disproportionately (2) 6160:2,3
dissect (1) 6204:5
dissected (1) 6155:18
distance (1) 6196:17

distances (1) 6173:24
distress (1) 6206:17

distribute (1) 6220:24
distributed (6) 6161:24;6195:15; 16;6196:22;6289:2; 6321:16

distributing (8) 6321:9;6324:11; 15,21;6342:9,13; 16
distribution (21) 6164:7,8,14,23;

6191:10;6192:3; 6193:16;6196:16; 6200:22;6202:14; 6236:6;6292:14; 6299:1,6;6301:12; 24,25;6302:22; 6304:19;6306:17; 6309:10
ditch (3) 6256:25;6257:1; 6269:25
diversion (9) 6330:5,6,8,9; 6331:8,9,15,20,21
diversity (1) 6178:22
divert (2) 6204:24;6342:4
dividing (1) 6270:18

Disisco (1) 6285:14

discrimination (4) 6140:13;6175:8; 6132:16,17

docket (2) 6147:10,12
document (8) 6283:12,18;

disclosure (13) 6218:15;6288:16;

documented (2) 6283:2;6321:16
dodging (1) 6146:25
dollar (10) 6171:19,20;

distanc(1) 6227:15,17,6275:3,6,13
dolars (2) 6150:5;6184:20

domestic (5) 6149:15;6161:13;

driven (3) 6204:15,6245:9;

drives (1) 6205:3
driving (1) 6177:3
drop (1) 6170:5
drought (1) 6211:7

drove (2) 6237:16;6260:10
dry (50) 6150:25;6155:22;

6166:18;6167:13,25; 6175:19;6177:13;

6178:24;6179:4,18; 19,21;6182:11;

6185:18,22;6236:2,11;6241:8,11;

6245:8;6246:23,24;

6252:4;6254:19,23;

6248:5,16;6249:12;

6250:12,24;6258:9;

6261:3,10,11,14,19;

22,24;6267:5,6;

6281:7,6,283:6;

6284:1;6287:10;

6291:18;6305:2;

6315:4;6319:10

drying (1) 6283:25
due (4) 6176:3;6211:2;

6220:16;6232:17
dumb (1) 6267:17

during (9) 6152:12;6168:25;

6222:11;6232:14;

6255:13;6259:1;

6282:2,21;6312:18

dutch (2) 6127:3,6

Dutchman (1) 6217:13

Dutchmen (1) 6217:15
dynamic (1) 6184:22

earlier (8) 6171:7;10;6183:3;

6184:7;6195:7;

6245:11;6261:12;

6312:19;6335:1
early (1) 6328:9
easier (1) 6212:10

easily (3) 6153:17;6265:13;

6288:11

East (27) 6159:25;6160:4;

6164:6,10,19;

6165:7;6192:5,7,9;

6193:1,19,21;

6194:23;6200:23,25;

6201:14;6223:11;

6228:4;6230:5;

6326:19;6237:5;

6272:4,5,19;6287:6,

11;6301:25

Eastern (3) 6161:20;6201:16;

6233:10
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS-VOL. XXXI
November 5, 2015

Min-U-Script® Barkley Court Reporters

(13) farming - form
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS-VOL. XXXI
November 5, 2015

Min-U-Script®

Barkley Court Reporters

(16) Honor - influence

6204:21
Honor (28)
6141:22;6145:5;6146:14;6147:4;6188:6;6207:15;6208:5;6218:24;6230:14;6281:25;6286:10;6288:18;6289:23;6290:3;6296:11;6319:22;6321:18;6334:23;6335:18,24;6336:9,11,22;6338:20;6339:1;6342:25;6344:20

6328:10,12,23;6330:16;6331:13;6332:13

idea (8)
6199:10;6229:1;6259:16;20;6308:23,9;25;6309:16;6319:24

ideal (5)
6248:21;6249:22,25;6250:3;6340:4

identical (3)
6300:16;6332:22;6333:24

 identifiers (1)
6156:1

identification (5)
6147:23;6192:9;6288:25;6322:5,12

identified (5)
6143:11;6166:6;6168:24;6205:24,25

importance (5)
6150:14;6151:5,12;6153:7;6241:23

import (10)
6161:2;6172:19;6201:20;6215:3;6225:12;6236:9;6260:8;6287:6;6295:14

impacted (2)
6234:8;6275:25

impacts (5)
6145:12,12;6146:1;6168:1;6345:4

imperil (1)
6299:4

implement (1)
6295:1

implementation (3)
6154:24;6176:13,22

implications (1)
6155:11

implied (1)
6262:1

implies (1)
6224:24

Importance (5)
6150:5;6151:8;6152:7;6159:7;6174:17,19;6186:11;6209:19;6249:6;6259:20,21;6266:12;6267:23;6269:23

incorporates (1)
6234:15;6254:22;6269:18;6290:9;6292:7;6306:9,12;6325:17

incorporated (3)
6317:3;2602:6;6294:19

incorporate (1)
6153:13

incorporated (3)
6178:7;6236:18;6237:21

incorporates (1)
6171:4

incorrect (1)
6179:8

increase (1)
6214:12

increased (10)
6151:13;6175:24;6177:8;6179:9;6180:18;6182:16;6184:13;6185:19;6216:67

incents (1)
6262:21

increasingly (2)
6166:9

increasingly (2)
6149:21;6150:9;6153:7;6241:23

increased (10)
6151:13;6175:24;6177:8;6179:9;6180:18;6182:16;6184:13;6185:19;6216:67

incents (1)
6262:21
influenced (1)
6160:25
information (14)
6166:24;6189:24;
6196:8;6203:24;
6204:17;6205:18;
6206:9;10,10;
6223:25;6259:7;
6269:10;6307:15;
6315:21
informed (1)
6145:24
infrastructure (1)
6157:1
ingredient (5)
6149:20;6298:5;
6304:22;6312:14
ingredients (35)
6290:7;6291:17;
6293:2;6295:17;
6297:13,17,25;
6298:16;6299:10,14;
6300:11,15;6301:3,
21;6302:3,13;
6303:4;6304:23,25;
6305:1,12,24,24;
6306:6;6309:12;
6311:18;6312:23,25;
6313:1,20;6316:15,
17;6318:15;6320:13
inherent (1)
6265:19
inhibits (1)
6150:12
initial (1)
6275:19
inline (2)
6211:14;6212:5
Inn (1)
6144:4
innovated (1)
6260:13
innovating (1)
6149:19
innovation (1)
6279:24
innovative (4)
6149:20;6152:7;
6323:11;6324:12
input (2)
6204:8;6211:2
inputs (2)
6204:3;6280:6
inquire (1)
6315:19
insert (3)
6173:14;6187:3;
6246:16
inserting (1)
6182:22
inside (1)
6198:3
insignificantly (1)
6241:20
inspection (1)
6199:14
inspections (1)
6199:13
instance (4)
6258:23;6287:6;
6317:16;6331:6
instead (4)
6153:20;6257:19;
6286:5;6331:20
Institute (34)
6142:1,6;6148:5,
19;6154:16;
6157:16;6158:6;
6172:16;6174:7;
6180:14;6181:9;
6182:7,14;6185:15;
6186:7;6205:17;
6224:12;6230:1;
6253:8,10,15;
6255:11;6264:1;
6266:17;6281:16;
6289:25;6301:20,24;
6314:21;6322:2,23;
6330:14,20;6334:19
Institute's (8)
6148:22;6149:8;
6157:7,19;6165:22;
6171:4,12;6293:11
instruction (1)
6301:6
insufficient (2)
6182:10;6241:14
intake (5)
6199:16,18;
6235:19;6326:3,5
integrated (1)
6149:23
intend (2)
6203:25;6204:19
intended (4)
6157:21;6168:17;
6267:1;6288:4
intensive (2)
6178:10;6181:25
intent (8)
6157:19;6185:6;
6230:4;6325:9;
6331:1,2,16,17
intention (2)
6244:18;6343:8
interest (1)
6325:14
interested (2)
6269:25;6270:12
interesting (3)
6190:1;6235:17;
6303:14
introduction (1)
6169:25;6160:11
Introduction (1)
6322:21
intrusive (1)
6151:13
invited (4)
6198:1
inversion (1)
6232:11
invest (1)
6157:1
invested (4)
6179:8;6184:19;
6212:3;6260:13
investment (12)
6152:6;6156:6,9;
6215:20,21;6243:23;
6263:11;6275:6,13;
6276:3;6279:23;
6294:16
investments (3)
6150:6;6219:19;
6275:4
invite (2)
6098:26;6297:29
inviting (1)
6269:25
invoked (1)
6182:4
involve (2)
6242:12;6276:3
involved (4)
6276:3;6236:16,
20,20
involves (1)
6252:2
Iowa (3)
6290:14,15;
6291:1
Iowa/Illinois (2)
6160:21,22
IQF (5)
6192:11,13;
6196:1;6201:23;
6202:25
irrational (1)
6202:11
irrelevant (1)
6205:22
Island (1)
6216:21
isolate (3)
6179:14;6248:12;
6258:13
isolated (2)
6163;6223:9
isolation (1)
6179:15
issue (19)
6157:25;6172:18,
20;6174:22;
6226:15;6256:2;
6271:14;6273:5,5,
15;6274:6,24;
6314:23;6320:6;
6333:11,13;6334:22;
6336:4;6343:12
issued (1)
IN RE:
MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS-VOL. XXXI
November 5, 2015

labeled - makes

levied (2)

levels (14)

leverage (1)

life (4)

light (5)

lightly (1)

likely (8)

limited (3)

limitations (2)

limits (3)

line (19)

linked (1)

locations (8)

lock (2)

locked (2)

long (13)

long-term (1)

longer-term (1)

longer (6)

long-term (1)

look (33)

looking (17)

looking (1)

low (35)

lower (25)

lowered (1)

lower (2)

lowfat (1)

luckily (1)

lucky (3)

lunch (4)

levels (14)

list (6)

listed (8)

listed (6)

listening (1)

listen (1)

listed (8)

lots (3)

lost (4)

losses (5)

lose (3)

making (1)

make (5)

makers (19)

major (6)

majority (6)

majors (1)

maker (5)

mack (2)

MADISON (1)

mailbox (3)

mail (4)

mainland (1)

mainly (8)

maintain (2)

maintaining (1)

major (6)

MA (1)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

mainly (8)

mailbox (3)

maintenance (1)

major (6)

mail (4)

mainland (1)

made (2)

maker (5)

Madison (1)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

major (6)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

mainly (8)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

major (6)

mail (4)

mainland (1)

makery (1)

makers (19)

makers (1)

MA (1)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

makers (19)

makers (1)

MA (1)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

makers (19)

makers (1)

MA (1)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

makers (19)

makers (1)

MA (1)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

makers (19)

makers (1)

MA (1)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

makers (19)

makers (1)

MA (1)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

makers (19)

makers (1)

MA (1)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

makers (19)

makers (1)

MA (1)

ma'am (2)

Madison (1)

magnitude (4)

mailbox (3)

main (4)

mainland (1)

maintain (2)

maintaining (1)

makers (19)

makers (1)
merger (1) 6329:15
method (1) 6150:25
methodology (5) 6172:6;6250:9;
               6253:16;6262:9,20
metrics (1) 6326:1
Mexico (1) 6201:7
Michigan (9) 6195:20;6200:4;
              6236:17;6237:11,18;
              19;6251:14;6267:13,
              21
microwave (2) 6208:23;6235:3
mid-90's (1) 6149:25
middle (8) 6167:12;6225:23;
           6242:16;6252:15;
           6254:5;6264:19;
           6332:20;6363:17
midpoint (1) 6203:22
midway (1) 6183:5
Midwest (10) 6141:6;6164:22;
              6165:9;6202:8,20;
              20;22;6203:8;6236:23
might (24) 6146:13;6154:5;
           6157:22;6162:12,13;
           6171:24;6203:12;
           6226:16;6232:16;
           6234:16;6239:15;
           6245:20;6248:10;
           6253:3;6256:11;
           6257:21;6260:3;
           6264:16;6269:24;
           6271:1;6276:24;
           6330:22;6343:22
migration (1) 6261:6
Miguel (1) 6142:19
miles (6) 6144:15;6201:13,
        13;6209:8;6212:15;
        6307:20
milk (315) 6140:4;6141:6;
           6142:11;6143:4,7;
           16;6148:20;6149:7;
           16;6150:3,8,11,15;
           16,17,18,20,24;
           6151:1,2,4,6,8,15,17;
           16;6152:3,15,23,24;
           154:17;6156:6,18;
           19;6158:23;6161:5,
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS-VOL. XXXI
November 5, 2015

steps (1) 6208:11
Stettler (1) 6177:9
Steve (4) 6142:12;6145:14, 17;6288:18
S-T-E-V-E (1) 6142:12
Steven (2) 6289:10;6290:4
S-T-E-V-E-N (1) 6289:11
stiff (1) 6217:12
still (20) 6144:11;6158:10; 6212:11;21;6219:16, 17;6260:20;6262:5; 6232:18;6240:19; 6241:20;6243:20; 6244:6;6250:19; 6253:3,4,21; 6257:16;6262:9
stimulate (1) 6175:9
stirred (1) 6233:11
stive (1) 6217:12
Stoel (2) 6142:21,25
stomach (1) 6149:18
stop (3) 6149:1;6180:2; 6209:2
stopping (1) 6342:20
storage (9) 6235:16;6236:6,7, 8,17,22,23;6237:5, 11,19
store (2) 6233:4;6237:7
straddled (1) 6199:11
straddles (2) 6199:4;6233:18
straight (1) 6144:13
strategies (1) 6294:21
strategy (1) 6294:7
stream (8) 6175:18;6176:8; 6179:13;6180:20; 6247:10,13;6248:11; 6258:17
strengthened (1) 6177:2
stress (3) 6335:19
submitting (1) 6334:3
subsection (1) 6363:18
subsequently (1) 6175:1
substance (1) 6179:12
substantial (4) 6152:1;6220:9; 6275:4;6277:19
success (1) 6175:7
Sue (12) 6142:18;6144:25; 6145:10;25;6146:20; 6148:2;13;6158:13; 16,6273:5;6135:25; 6344:5
S-U-E (1) 6158:13
sufficient (4) 6176:19;6181:15; 6204:23;6279:22
sufficiently (1) 6279:4
sugars (1) 6305:3
suggest (2) 6207:15;6321:7
suggested (4) 6153:9;6166:11, 13;6220:8
suggesting (1) 6269:13
suggests (1) 6221:5
summarize (1) 6167:3
summarizing (2) 6159:6;6167:17
summary (2) 6166:25;6205:15
supplied (11) 6196:7;9,12; 6298:9,11;6303:9; 6304:21;6313:18,19; 20;6318:18
supplier (3) 6232:13;6294:1; 6333:14
suppliers (4) 6187:17;6222:11; 6293:24;6314:1
suppliers' (1) 6232:23
supplies (7) 6188:24;6238:6, 15;6294:25;6305:8, 9,11
supply (37) 6160:1;6161:1,1,4; 22;6164:1;6165:3;
6179:19;6186:3; 6232:2;6238:11; 6243:1;6278:8,8,25; 6280:3,5;6293:7; 6295:11;6297:4; 6303:24;6304:4; 6306:12;6308:12; 6313:25;6314:3,4; 6323:12,18;6324:8, 10,20;6325:7,11; 6326:6;6342:7
supplying (2) 6232:4;6293:6
support (8) 6148:21;6149:7; 6166:6;6209:21; 6210:23;6212:1; 6293:9;6134:12
supported (1) 6183:20
supportive (1) 6325:17
supporting (1) 6148:18
supposed (3) 6235:20;6235:22; 6335:15
sure (39) 6146:11;6147:7,9; 6153:22;6156:10; 6159:1;6194:17; 6198:10;6199:9; 6202:5;6206:23; 6211:22;6228:16; 6233:17;6234:8; 6237:2;6239:25; 6251:3;6254:1; 6255:5;6259:20; 6267:1,16;6271:20; 6273:8;6274:10,23; 6275:9,12;6278:7; 6282:16;6313:15; 6314:22;6317:9; 6318:20;6321:19; 6333:23;6343:3; 6344:13
surely (1) 6249:6
surface (2) 6159:25;6231:20
surplus (11) 6161:4,18,25; 6162:5;6163:1,3,7; 10,13;6164:11; 6324:17
surpluses (1) 6162:21
surrogate (2) 6157:10;6159:18
surrounding (1) 6163:6
survey (18) 6158:10;6159:20;
6160:6;6182:7; 6223:13;6230:12; 6236:21;6237:14,21; 6248:20;6250:3,8; 6253:8;6255:25; 6256:7;6282:20; 6284:7,8
survey-based (1) 6151:15
surveyed (1) 6151:17
suspend (3) 6188:25;6252:25; 6344:9
suspend (1) 6154:24
suspension (1) 6155:3
sustain (1) 6180:21
sustained (2) 6181:5;6219:20
sweat (6) 6147:24;6208:13, 14,19;6289:3,5
sweet (14) 6221:1;6241:8; 6245:8;6247:11; 6251:13;6258:16; 6260:14;6261:10,11, 11,13,15;6298:23; 6315:4
sweetened (3) 6306:21;6307:3,5
SWENSON (2) 6141:1
S-W-E-N-S-O-N (1) 6141:2
switch (1) 6219:13
Switzerland (6) 6290:13;6291:15, 19,22;6292:10
sworn (2) 6147:25;6322:13
synonym (2) 6160:18,18
synonymous (1) 6258:6
system (67) 6149:17;6151:25; 6153:3,17,21; 6156:8,18,19,22; 6176:17;6178:24; 6185:8;6188:15,16; 6189:6,19;6191:13,23; 694:2,3,3; 695:11;6196:21; 697:18,18;6202:17; 6210:19,22,24; 6211:15;6212:2,5; 19,6216:3;6220:13; 6221:18;6223:3;