

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XXXV

TRANSCRIPT OF PROCEEDINGS

November 11, 2015

Myra A. Pish, CSR No. 11613

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BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. 15-0071
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Milk in California)
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

Wednesday, November 11, 2015
9:03 a.m.

Piccadilly Inn Airport
5115 East McKinley Avenue
Clovis, California 93727

TRANSCRIPT OF PROCEEDINGS
VOLUME XXXV

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



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1 WEDNESDAY, NOVEMBER 11, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We're back on record on November 11, 2015.
3 It's a Wednesday. It's approximately 9:03 in the morning.
4 This is Day 35 of the milk hearing. We are in Fresno,
5 California and I would like to take -- well, first let me say
6 who I am. I'm Jill Clifton. I'm the United States
7 Administrative Law Judge whose been assigned to take in
8 evidence at this hearing.

9 I would like to take appearances of other participants,
10 beginning first with my fellow USDA employees, followed by the
11 teams of proponents and opponents, and followed by other
12 participants, including anyone who expects to testify today.

13 MR. HILL: Good morning, this is Brian Hill.
14 Happy Veteran's Day. I'm with the Office of the General
15 Counsel Marketing Regulatory and Food Safety Programs Division.

16 MR. RICHMOND: Good morning, Bill Richmond,
17 R-I-C-H-M-O-N-D, with US AMS Dairy Programs. Good morning.

18 MS. MAY: Good morning, Laurel May with USDA AMS Dairy
19 Program in the Order Formulation and Enforcement Division.

20 MR. CARMAN: Good morning -- Happy Birthday. He's not
21 paying attention. Clifford Carman, C-A-R-M-A-N, Dairy Programs
22 Agricultural Marketing Service USDA.

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

1 MS. BECKER: Good morning, Lauren Becker, I'm an Attorney
2 in the Office of the General Counsel with USDA.

3 MS. FRISIUS: Good morning, this is Meredith Frisius, and
4 today is my last day, so goodbye everybody.

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

9 MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson,
10 Megan is M-E-G-A-N, I'm an Attorney with the firm Hanson
11 Bridgett, H-A-N-S-O-N, B-R-I-D-G-E-T-T, in San Francisco, and
12 also Counsel for the Cooperatives proposing Proposal Number 1.

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

15 MR. JABLONSKI: Gary Jablonski, G-A-R-Y, J-A-B-L-O-N-S-K-I,
16 Consultant with the Cooperatives of Proposal Number 1.

17 MR. ENGLISH: Good morning, your Honor, Chip English,
18 E-N-G-L-I-S-H, I'm an Attorney with the law firm of Davis,
19 Wright, Tremaine, with my principal office in Washington, DC.
20 I'm here on behalf of the Dairy Institute of California,
21 Proponents of Proposal Number 2. And, yes, in honor of
22 Veteran's Day, I am not wearing a tie, and I may not wear one
23 for the rest of the hearing.

24 MS. VULIN: Ashley Vulin, A-S-H-L-E-Y, V -- as in
25 Veteran -- U-L-I-N. Happy Veteran's Day and shout out to

1 Grandpa Clarence, my favorite vet -- here representing the
2 Dairy Institute of California.

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

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

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

9 MS. TAYLOR: Sue Taylor with Leprino Foods, and I am hoping
10 that this is my last day, not that I don't enjoy all of your
11 company.

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

15 MS. de la RIVA: Good morning, Tiffanie de la Riva, that's
16 T-I-F-F-A-N-I-E, de, la, R-I-V-A with the firm Stoel Rives for
17 California Producer Handlers Association and Ponderosa Dairy.

18 MR. SHEHADEY: Good morning, Scott Shehadey,
19 S-H-E-H-A-D-E-Y, with Producers Dairy Foods.

20 MR. SHEHADEY: Richard Shehadey, R-I-C-H-A-R-D,
21 S-H-E-H-A-D-E-Y, and I am one of the owners of Bar 20 Dairy
22 Farms, an exempt quota holder, and Producers Dairy Foods in
23 Fresno.

24 MS. SHEHADEY: I'm Sue Shehadey, S-H-E-H-A-D-E-Y, and with
25 Producers Dairy.

1 MR. SHEHADEY: Good morning, Richie Shehadey,
2 S-H-E-H-A-D-E-Y, Producers Dairy Foods.

3 MR. LAI: Good morning, Victor Lai, L-A-I, with Producers
4 Dairy Foods. Thank you.

5 MS. REED: Good morning, Kristine Reed with the law firm
6 of, I guess it's the Miltner law firm, and we represent Select
7 Milk Producers.

8 MR. VANDENHEUVEL: Rob Vandenheuvel,
9 V-A-N-D-E-N-H-E-U-V-E-L, here with Milk Producers Council.

10 JUDGE CLIFTON: Is there anyone else who has not yet come
11 to the podium that would be, that would like to be recognized?
12 Is there anyone else who has not yet come to the podium who
13 expects to testify today? No one at this time.

14 I would like now to turn to announcements and other
15 preliminary matters, beginning with those from the U.S.
16 Department of Agriculture employees.

17 MS. MAY: Laurel May with USDA. Good morning and welcome
18 to today's session of the hearing. We are glad all of you have
19 come to join us. If anybody would like to ask questions of the
20 witnesses, they may do so by approaching the podium and being
21 recognized by the Judge.

22 We're broadcasting via a live audio feed which is
23 accessible at www.ams.usda.gov/live.

24 The court reporter is steadily working on transcripts
25 for us, and we're making every effort to get those posted as

1 soon as we can after the end of each weeks' hearings. You can
2 access those at our AMS Dairy website.

3 We have copies of some of the past exhibits on the
4 table in the back in the file boxes there, and they are filed
5 by exhibit number, so if you need to find a specific one you
6 can.

7 Yesterday we ended with Mr. Shehadey on the stand, and
8 I believe he will be returning first this morning to do
9 cross-examination. And then I believe it is, Mr. Blaufuss is
10 up.

11 JUDGE CLIFTON: Thank you, Ms. May. Other preliminary
12 matters or announcements? Mr. Beshore?

13 MR. BESHORE: Marvin Beshore. First, I would like to thank
14 your Honor and all the USDA employees for accommodating this
15 hearing and working today on this federal holiday. And I would
16 like to thank your superiors, the powers at be back at
17 Washington for accommodating that and facilitating that,
18 because this hearing's very important -- very important for the
19 dairy farmers here in California.

20 I have an objection that I would like to lodge at this
21 time, or I guess it is an objection. The audio for this
22 hearing is a terrific benefit, it allows people who are not
23 here to be in the room, in essence, and hear what's going on.
24 And the comments that your Honor made in request for additional
25 testimony yesterday at the beginning of this hearing, were

1 heard, they were heard by dairy farmers in California, and the
2 phones in the Cooperative offices were ringing yesterday
3 because of that.

4 The suggestion, and it really, it's an issue that is,
5 you know, that is extremely important to dairy farmers, and if
6 quota, as your Honor suggested, if we are to pursue a
7 discussion that quota is to be in some way termed out, you
8 know, in some way paid off or otherwise sunsetted in this
9 regulatory process, we shouldn't have even been here, because
10 it's a non-starter for California dairy farmers. It's a
11 non-starter. The \$1.2 billion of equity on their balance
12 sheets, which would evaporate as I discussed very early in this
13 hearing on Proposal 2, or which would be sunsetted presumably
14 if the non-proposal suggestion that was not even endorsed by
15 Dairy Institute, but was in Dr. Schiek's testimony and
16 apparently facilitated the whole thought process here, if that
17 idea of paying quota off with farmers' own money is pursued in
18 this hearing, we shouldn't even be here because it is a
19 completely non-starter.

20 And what I think we have lost in this process, and this
21 is really a fundamental, it's a basis for the legal point that
22 I mentioned yesterday, and I would like to emphasize here this
23 morning is, there's no reconciliation of quota and the
24 uniformity provisions of 608c(5)(B) of the Agricultural
25 Marketing Agreement Act. They are not reconcilable. We can be

1 here until Doom's Day, and you can not reconcile those things.

2 That's why we have a Farm Bill to allow this hearing.
3 We couldn't have this hearing with the quota system without a
4 Farm Bill, because the Agricultural Marketing Act uniformity is
5 fundamentally irreconcilable with quota, you can't do it. We
6 had a Farm Bill. It is supercedes, amends, supercedes,
7 whatever word you want to use, it allows this hearing. That's
8 why we're here. The Farm Bill said you can divide up those
9 proceeds in a way that recognizes the value of quota. So
10 that's why we're here. Those things are, to talk about
11 reconciling, to talk about reconciling the pre-existing AMAA
12 with the Farm Bill, is to go on a fool's errand. It can't be
13 done.

14 Now, I understand the Dairy Institute's position. They
15 don't want this hearing, they don't want an Order, and this
16 entire discussion is frankly a cynical attempt to put sand in
17 the gears of this process, to embed it with a poison pill so
18 that it is not able to come to any fruition for the dairy
19 farmers of California.

20 So with that objection to further testimony about
21 terming out, paying off, sunseting quota in this, in this
22 proceeding, I will step down.

23 JUDGE CLIFTON: Mr. Beshore, before you step down,
24 Mr. English, just a minute. I certainly understand that you
25 object to any diminishment or termination of quota, and that's

1 an argument that, of course, you have made from the very
2 beginning. But what you have said today amazes me, because you
3 have said, by saying that we shouldn't even be here, you have
4 said, contrary to my understanding that we were in a
5 promulgation hearing and everything needs to be considered,
6 including the uniqueness of the situation we have already
7 established here in California. And to suggest that we should
8 not even have evidence or examine alternatives that the
9 Department will have a difficult time with no matter what,
10 really does surprise me. So how do you respond to the fact
11 that this is a promulgation hearing and all ideas are welcome?

12 MR. BESHORE: In this manner: With respect to what I said,
13 the dairy farmers of California must vote -- must vote to
14 approve an Order. We have made it clear long before this
15 Hearing Notice was issued, and at the hearing in whatever way
16 we can, that the value of quota and its preservation is a
17 sinequan omen of an Order here, and maybe I have been more
18 emphatic about it and more direct about it, but I mean, it's
19 just, you know, it's just a fact. It's not -- it's not even,
20 you know, it's just a fact. It will not -- an Order that
21 doesn't preserve the value on those dairy farmers' asset
22 balance sheets is just not going to be approved. And yes, it
23 can be discussed, and certainly the manner of accommodating
24 quota and wrapping the Order around the California quota
25 system, the manner of how that works, and the details of

1 that's -- that's on the table. We have discussed it, there are
2 other ways to discuss it, and particular applications of it are
3 certainly appropriate for discussion and part of the whole
4 thing. But, you know, eliminating it, I mean, I just have to
5 be candid, eliminating it by sunseting it through the Order,
6 buying it out through the Order or whatever is, it's frankly a
7 non-starter. We have to -- and I don't -- that's not a secret
8 to anybody here, I don't think, your Honor. And that's what I
9 was trying to make clear.

10 JUDGE CLIFTON: Well, don't leave yet. I just want to
11 think through the ultimate conclusion. So -- so what you are
12 saying, I think, is that if the USDA finds that the Federal
13 Order system is not compatible with the existing California
14 quota system, you don't want a proposed California Order?

15 MR. BESHORE: Well, an Order that would not recognize the
16 value and preserve the existing quota on California dairy
17 farmers' balance sheets, I would not be approved in a
18 referendum.

19 JUDGE CLIFTON: Well, that's a different issue.

20 MR. BESHORE: Well that's the point I was making, that it
21 wouldn't be approved.

22 JUDGE CLIFTON: So -- so you are saying that even before we
23 get to a vote, we should assume that a vote is useless?

24 MR. BESHORE: If it -- if it eliminates the quota system it
25 is. It is a foregone conclusion, I don't say it is useless,

1 but the result is a foregone conclusion. I mean, there is not
2 a dairy farmer in California that's got thousands and thousands
3 and thousands or millions of dollars on their balance sheet in
4 quota that's going to approve a vote that eliminates it in two
5 months. Well, I mean, why would they?

6 JUDGE CLIFTON: Eliminates it in two months? Are you
7 thinking that's the only kind of proposal that would be
8 considered here?

9 MR. BESHORE: Well, that's the only proposal that's been
10 put on the table. The other --

11 JUDGE CLIFTON: No, no, no, were you listening to
12 Dr. Schiek?

13 MR. BESHORE: That was not a proposal.

14 JUDGE CLIFTON: Oh, I see what you are saying. You are
15 saying, you are saying that the USDA is confined to the exact
16 words of proposals and cannot consider alternative suggestions
17 as to how they might work all this out?

18 MR. BESHORE: No, I wouldn't say that. I certainly don't
19 have that -- don't come with that, with that understanding now.

20 JUDGE CLIFTON: All right. I, you know, I am hopeful that
21 everyone will understand about this kind of a process, that you
22 have your first choice and then, in an effort to reconcile
23 competing views, you consider whether you do have a second
24 choice. In other words, I want this, but if not exactly that,
25 I could live with this. The all-or-nothing before we even get

1 to briefing and before we even get to the Secretary's
2 publication of something, to me it's just, it's unfortunate.

3 All right. Thank you. Your objection is lodged.

4 Mr. English?

5 MR. ENGLISH: Your Honor, I'll try to be relatively brief,
6 but I think, you know, maybe on Days 34 and 35 we finally got
7 to the heart of this entire proceeding. And, you know, let me
8 start with, we don't know how dairy farmers would vote. To say
9 in advance I think is unfortunate. If farmers were to get some
10 kind of instrument that is worth at least as much as quota and
11 could be pledged and negotiated and transferred, which is even
12 better than quota, who is to say whether or not in those terms
13 they will be enthusiastic or not.

14 The problem here, the central problem here, is that
15 Mr. Beshore, even in this presentation, had to use words that
16 Congress didn't, twice. He used the word "preserve"; Congress
17 didn't use the word "preserve". Congress didn't use the word
18 "retain", "maintain", "authorize", "in no way diminish",
19 "continue", "have the right to exist". That has been at the
20 heart of this.

21 Long before proposal was submitted, before I was
22 retained by anybody in this proceeding, I spoke at a Western
23 United meeting several years ago, and I presented this
24 conundrum. I said, "Look, don't just go joyfully down this
25 road and think that this language means what you think it

1 means."

2 I think it's wonderful the Internet is out there and I
3 think it is wonderful the dairy farmers are listening, because
4 maybe finally California dairy farmers are hearing something
5 other than the mantra that "don't worry, you are going to get
6 what you want." This is a promulgation hearing. And in a
7 promulgation hearing, everything is open, and most importantly,
8 we have to find out how this is going to work.

9 We are not as inflexible as the co-ops. We will try to
10 find alternatives, and we do think that it is not as simple as
11 saying, in non-negotiable terms, give us what we want or we're
12 going home. And I think that is unfortunate. I think the fact
13 of the matter is that Congress did not say what the co-ops want
14 it to say. Now, ultimately, that's for the Secretary to
15 determine. But we wouldn't have to have this mantra of
16 different words used all the time if Congress had spoken as
17 clearly as the co-ops say.

18 I am grateful for your request yesterday. We will be
19 prepared to testify about it. We will present alternatives and
20 we don't think that people should have a foregone conclusion.
21 If they do, then maybe we ought to have this discussion before
22 we had a hearing. I know these hearings present the
23 interesting conundrum that people can't go to court and have a
24 declaratory judgment.

25 Let's face it, it is going to come down to what does

1 the statute mean? Mr. Beshore and his clients and fellow
2 counsel have their interpretation, we have our interpretation,
3 the Secretary may have a different interpretation. That's why
4 we have a hearing.

5 MS. HANCOCK: Nicole Hancock. Your Honor, I guess I'd just
6 like to, I guess weigh in a little bit. I have to admit, your
7 comment yesterday did take me aback because I do think it's a
8 different direction than where I understood this proceeding was
9 going, and there might be value to it in exploring it, but I
10 have to admit that from my perspective and my client's
11 position, it's difficult at this stage of the case or this
12 stage of the proceeding to start fresh in that new direction,
13 or what could be a new direction. You know, we have held the
14 position all along that exempt quota, just like quota, holds a
15 value. But we have not staged this case in a way that we were
16 presenting evidence and witnesses and testimony in an effort to
17 try and cash out an asset value that is held. And I do think
18 that all of the thought and analysis and presentation of
19 evidence and testimony, would be heavily influenced if it were
20 to take that direction.

21 And so when we are eight weeks in, looking at maybe a
22 week left hopefully, it is difficult to turn corners and go in
23 that way and be able to really have the ability to do the
24 homework necessary in order to place that value on there,
25 because it's not so simple as just calculating a straight

1 number. And even I think the testimony that Mr. Hatamiya
2 offered, he was using a valuation number, but I don't believe
3 at all that that was intended to be a cash out value, and that
4 if you can somehow get that value to farmers, that that somehow
5 makes them whole.

6 I think we have heard testimony throughout this
7 entirety of the proceeding that quota and exempt quota is
8 something bigger and much more tangible to these producers than
9 what is represented or reflected in a purchase or a sale price.
10 And I think even Dr. Schiek reflected that in his testimony
11 when he said, it doesn't make sense to me, I don't know what's
12 going on that there's a carry over legacy even from the
13 producers who no longer hold quota, why they are so interested
14 in preserving it. And I think it goes to the core and the
15 heart of what is in the producer's world and industry here in
16 California. And I think that's what all along both the
17 proposals, and then even 3 and 4 with their design to
18 supplement those proposals, was all along designed with the
19 idea of preserving it. And they have intended to preserve it
20 in different ways, one having a different effect or not. But
21 none of them were in a, designed to have us present evidence to
22 cash it out.

23 So my point here is that I feel like I'm somewhat hem
24 stringed in order to address that, especially in the time
25 that's remaining. I don't have the ability to put evidence

1 into the record or the time that it would take to really
2 calculate and provide that value if that's what we were going
3 to do. So that's my concern with what I believe would be a
4 little bit of an adjustment in direction.

5 I do believe that there, you know, from my perspective,
6 I don't know where the USDA will come out on this. I think
7 there's some other threshold issues of what is the standard
8 that -- that we're really shooting for here? Do we need to
9 prove disorderly conduct or disorderly market conditions in
10 order to maintain an Order or in order to shift an Order from
11 the state system to the federal system? We don't have an
12 answer for that that I know that's clear. That certainly is
13 one of the threshold issues that we have to decide. And then
14 once that's decided, have we met it? And we're playing to all
15 of those issues throughout the course of these eight weeks and
16 in the remaining week, and that's a big challenge in and of
17 itself. And I just don't feel tooled up to be able to change
18 directions without really be able to sit down with my grouping
19 of clients and evaluate whether this is something that they
20 could do, wanted to do, and if they did, how would we actually
21 go about facilitating it?

22 JUDGE CLIFTON: I agree with what you have said,
23 Ms. Hancock. I remember when you cross-examined Mr. Hatamiya,
24 he hadn't even really thought about the exempt quota. And you
25 had him continually agree that if we're going to preserve

1 quota, or if quota has a value, so does exempt quota. But he
2 didn't have, he hadn't analyzed that in the same way he had the
3 regular quota. So you, at this stage, don't even have that
4 foundation of that study for the exempt quota that we have for
5 the regular quota.

6 All I can suggest to you is that you may, after talking
7 with your clients, need to decide whether you are going to move
8 to reopen if we leave here next week. To reopen for the
9 purpose of that issue to receive that as soon as you can, as
10 soon as you can submit it, and how we would do that.

11 I understand that you may not have the ability to
12 quantify the value. I think the value should be quantified. I
13 think all it does is it allows the Secretary, no matter what
14 twists and turns have to be made with each piece of the
15 evidence, it allows the Secretary to have further information.
16 But I don't want your clients to be disadvantaged on providing
17 that. And I agree with you that I didn't even begin to think
18 about that so much until testimony of this week really. So
19 think about it. We'll talk about it some more.

20 MS. HANCOCK: Just one comment on that. I do believe that
21 Mr. Hatamiya provided us an incredible amount of foundation for
22 our position, so I don't want to leave that hanging and assume
23 that I have adopted that position, because I think at the end
24 of the day if I needed it to preserve my position I would
25 absolutely assert it. But I do believe it is a disadvantage to

1 our position that I'm concerned with, and that's the point I
2 was trying to make, so thank you.

3 JUDGE CLIFTON: Yes, now, before you leave, so I think what
4 I have learned so far, and see if I'm on the right track, quota
5 is bought and sold freely, but exempt quota because of the
6 family requirements, is transferrable in such a small arena
7 that it's not bought and sold freely. Am I right about that?

8 MS. HANCOCK: You are partially right. So you can buy it
9 and sell it within the family unit to preserve the exempt
10 treatment for quota, you can sell it outside of the family unit
11 and it's converted to regular quota and it's transferred as
12 regular quota at that point. So there are two markets for
13 exempt quota instead of just the one.

14 JUDGE CLIFTON: Okay. All right. And we'll hear more
15 about it. I know the cross-examination of Mr. Shehadey is
16 going to be very interesting. I'm going to learn more. All
17 right. Thank you so much. Mr. English?

18 MR. ENGLISH: Two things. First, I have been advised the
19 audio may have been lost.

20 JUDGE CLIFTON: When was it lost?

21 SOUND GUY: For about 15, seconds. The Internet kicked me
22 off.

23 JUDGE CLIFTON: Okay. The audio was lost for about 15
24 seconds. Was it during Ms. Hancock's presentation? It was
25 during Ms. Hancock's presentation. All right. To the extent

1 that the audio was lost, the transcript will have it. It will
2 mean if you listen to the audio feed that's on the Agribusiness
3 Publications website, it will be lost there, too. All right.
4 Mr. English?

5 MR. ENGLISH: And I don't want to belabor the point here
6 too much, but I do want to respond very briefly to Ms. Hancock.
7 And I know that she wasn't here on the day that I gave my
8 opening statement, but, boy, if this wasn't pre-staged in my
9 opening statement, I don't know what was. And so for someone
10 to say we were disadvantaged to not know that somehow other
11 issues could come up, I just -- I just beg to differ.

12 Now, I'm the last one to say I want to come back
13 December 7th. And I don't know what the answer is right now.
14 I think let's get back to the hearing, let's get going, but I
15 just don't think that anybody can say they have been
16 disadvantaged. Somebody may say, well, I don't want to hear
17 that because that's just outside my realm of where I want to
18 go, but -- but I think as our own, as Dr. Schiek's testimony
19 indicated, the reason the Dairy Institute's been struggling is
20 they have been trying to figure out how to move this, and they
21 are not as inflexible as everybody else. And I just come back
22 to the fact that all I ever hear is the word "preserve", except
23 from Congress.

24 JUDGE CLIFTON: Thank you. Yeah, I -- the reason I agree
25 with Ms. Hancock is that I never thought about it until this

1 week, about, I guess when I really began to focus on the issue
2 was when we looked at the legislative history that
3 Mr. Gonsalves presented, and it was emphasized by Mr. Vlahos'
4 cross-examination, which was brilliant, that the repeated
5 attempts in California to retire quota or in some other way
6 deal with it, had all failed. And I began to realize through
7 what testimony came in after that, that it may be that the
8 Secretary will decide that, that in order to have a Federal
9 Order it has to work toward what has failed thus far in the
10 California system. I don't know. I have no idea.

11 And as all of you know, it's my job to remain neutral.
12 And sometimes it may look like I'm favoring one proposal over
13 another. I do not intend to do that and I apologize if I have
14 created that impression. What I think my job is, is to try to
15 anticipate the hard, hard work that the United States
16 Department of Agriculture has ahead of it, and to try to make
17 sure that while we were here we gave them as much information
18 as we could. Mr. Beshore?

19 MR. BESHORE: I just want to make one quick point. Before
20 we extend this hearing or take a whole lot more testimony about
21 this hypothetical that has been raised by the Dairy Institute
22 and by no other party, we should all be clear, there, the issue
23 here is dairy farmer's money, it is a dairy farmer issue, the
24 Dairy Institute has not a penny in it.

25 JUDGE CLIFTON: Yes, I agree. Yeah, every processor has

1 its producers. They have to work together as a team or neither
2 will survive. Finding that magic balance where both can
3 survive and thrive is an extremely difficult situation.
4 Obviously, the market has to do the bulk of that. All right.
5 Well, that was certainly an exciting beginning. Are there any
6 other preliminary matters?

7 Then, Mr. Shehadey, I have got the crowd warmed up for
8 you. Ms. Hancock, did you have anything else you wanted to ask
9 on direct before Mr. Shehadey is available on
10 cross-examination?

11 MS. HANCOCK: No, your Honor.

12 JUDGE CLIFTON: All right. Who would like to begin?
13 Mr. English?

14 CROSS-EXAMINATION

15 BY MR. ENGLISH:

16 Q. Chip English. I tried to get Mr. Beshore to go first,
17 but he declined.

18 Good morning, Mr. Shehadey.

19 A. Good morning.

20 Q. And let me just say again, thank you for your
21 flexibility in your schedule for helping filling in a gap
22 yesterday afternoon so we can move the hearing along. That is
23 much appreciated.

24 If you could first turn to your Exhibit 153, which is
25 the exhibits to your testimony, I had a couple of quick

1 questions on that, and then to go back to your testimony. And
2 I wanted to start with Exhibit E, which is near the end, and is
3 your calculation, as I understood it, of your average value,
4 the \$1.14 was the average value of your exempt quota; is that
5 correct?

6 A. Yes.

7 Q. Okay. And I just have a technical question. When you
8 did this analysis, did you factor in the regional, the RQA's,
9 Regional Quota Adjuster, did you calculate that in?

10 A. No, I don't believe so.

11 Q. Okay. Does the RQA affect your location?

12 A. We're in Fresno, yeah. If it was regular quota, it
13 would. But it doesn't affect our exempt quota.

14 Q. Okay. And how does it not affect your exempt quota?

15 A. Because it's exempt from the pool so the RQA is not
16 applied to.

17 Q. Okay. And when you say exempt from the pool, what you
18 mean is that Producers Dairy, it is the entity that accounts to
19 the pool, correct?

20 A. As a processor, yes.

21 Q. Okay. It's not Bar 20 Dairy that accounts to the pool,
22 correct?

23 A. What do you mean by accounts to the pool?

24 Q. Well, somebody files a report every month for the pool,
25 with the pool, correct?

1 A. Yes, the 800 report in California.

2 Q. 800 report. And that's filed by Producers Dairy,
3 correct?

4 A. By the processor, right.

5 Q. Correct?

6 A. Yes.

7 Q. So Bar 20 Dairy does not, in any way, file that report,
8 correct?

9 A. That's correct.

10 Q. Okay. Now, going back to Exhibit 153, and now I'm
11 looking at Exhibit C, and I certainly am not looking for the
12 confidential information, I just want to understand this a
13 little better. It also, by the way, has a label CPHA 0003 at
14 the bottom, just so we're identifying the right document. Is
15 that the page you are on now?

16 A. Yes.

17 Q. Okay. And you have indicated a footnote 2, quota
18 purchased after March 1, 1995, lost exemption, January 1, 1996,
19 held as regular quota. So you have some regular quota that was
20 exempt quota, but lost its exempt status, correct?

21 A. Yeah, it never qualified for exempt because when they
22 made the law retroactive to March '95, that piece of quota fell
23 out of this list.

24 Q. Okay. Now --

25 A. Became regular quota.

1 Q. What's not shown here, and again, I'm not looking for
2 details, but does Bar 20 Dairy also own additional regular
3 quota other than the regular quota that was as identified in
4 footnote 2?

5 A. No, I don't believe so.

6 Q. Okay. Now, as I read your testimony, looking at the
7 Federal Orders and your own discussion that you brought up
8 about producer-handlers in the Federal Orders that ended up
9 being regulated when the 3 million pound cap came in, if you
10 are following me so far. That's -- I'm --

11 A. I believe so, yes.

12 Q. That you recognize, you have testified, that those
13 entities did act in a way that was disorderly, correct? For
14 the market?

15 A. I don't know who those entities are, but I believe what
16 caused the hearings in 2009 was from a disorderly condition
17 around the country, different parts of the country.

18 Q. So you do not disagree with the result the Secretary
19 came in in those proceedings, right?

20 A. I don't know I haven't read the result, but they put a
21 3 million dollar cap in.

22 Q. A pound?

23 A. 3 million pounds, yeah. So there must have had a
24 reason for it.

25 Q. Okay. So you have already discussed a little bit with

1 your attorney, and what is the purpose, if you know, of the 95
2 percent common ownership requirement between Producers Dairy
3 for instance, and Bar 20, but anybody else wants to be, who is
4 a PD? What is the purpose of that provision, if you know?

5 A. I don't know.

6 Q. Okay. So when the plant operation is profitable, does
7 it pay out money to the family?

8 A. The plant operation? No, it's a corporation, so it
9 earns its own money and keeps it.

10 Q. Okay. It doesn't ever -- does it pay dividends?

11 A. When we pay taxes we pay dividends.

12 Q. Well, do you receive, I mean, when you, that statement
13 confused me a little bit and I used to be a tax lawyer, so do
14 you actually receive money out of the, is the family actually
15 receive cash out of the corporation?

16 A. The people that work for the corporation have a salary.

17 Q. Right.

18 A. The people that do not, and the people that work there
19 that have ownership would receive a dividend when and if we pay
20 it.

21 Q. And have you paid dividends in the last ten years?

22 A. Yes.

23 Q. Okay. Does the plant pay bonuses to employees?

24 A. Yeah, if they earn it.

25 Q. Are some of those bonuses paid to employees who are

1 also owners?

2 A. Could be.

3 Q. Okay. When the farm is profitable, does it pay out
4 money to the family?

5 A. No.

6 Q. It never has?

7 A. No.

8 Q. Are family members employed on the farm?

9 A. Some.

10 Q. Do they receive a salary?

11 A. Yes, if they are employed there.

12 Q. Do some of the family members who are owners, who are
13 employed on the farm receive bonuses from the farm?

14 A. Yes.

15 Q. Okay. So I want to go over a couple terms. So
16 yesterday I think you gave an example, and if I get the example
17 wrong, let's correct it. But I thought you had the example,
18 and I emphasize that I don't, certainly do not want this to be
19 representative of your operation, but I think I heard the
20 example discussed about a hundred pounds with 20 pounds of
21 quota, and the remaining being -- 20 pounds of exempt quota and
22 the remaining just being non-quota, correct? Was that what I
23 heard?

24 A. I'm trying to remember why I gave that example, but if
25 you can refresh my memory.

1 Q. Well, let's assume -- let's assume a plant with a
2 hundred pounds or a hundred hundredweight, whichever you wish
3 to go with, and it has 20 exempt pounds, so it has a hundred
4 pounds and 20 exempt pounds.

5 A. Well, it wouldn't be the plant, it would be the farm.

6 Q. Okay. So the plant has a hundred pounds, it processes
7 a hundred pounds, and 20 of those are farm exempt pounds. All
8 right. Does that help?

9 A. Okay. Continue.

10 Q. All right. And it otherwise receives 80 pounds.

11 A. From other sources that were --

12 Q. From other sources or even from its own farm that it is
13 more --

14 A. It is not exempt.

15 Q. -- it is not exempt.

16 A. Okay. Continue.

17 Q. Okay. So, and now, I think you said that assume that
18 plant, and you may have actually said it is your plant, but
19 again, I'm not looking for that, but assume that plant is 95
20 percent Class 1.

21 A. Yes.

22 Q. Okay. So would you agree with me that in that case,
23 you take, for calculating the pool accounting report, the form
24 800 that you need to file, that you subtract those 20 pounds of
25 exempt quota off of the 95 pounds of Class 1 in order to

1 account to the pool.

2 A. Yes, that's correct.

3 Q. And then the remaining 80 pounds are 75 pounds Class 1
4 and 5 pounds whatever else you have within the plant, correct?

5 A. That sounds correct, yeah.

6 Q. Okay. You used for your Exhibit D, as one of the
7 bases, Exhibit 61(a)(c), correct?

8 A. Yes.

9 Q. Okay. Do you have that in front of you?

10 A. Yes, I do.

11 Q. Great. So would you agree that, with our conversation
12 we have just been talking about, that if we look at the, the
13 lines, the first two lines, and this is now an aggregate,
14 correct? So this is certainly not your operation, because this
15 is all the exempt producer-distributors, correct?

16 A. Yes.

17 Q. Okay. So you agree that in order to calculate the
18 total Class 1 pounds at the four producer-distributors, you
19 would add those first two lines, correct?

20 A. Yes.

21 Q. Okay. And going back to the discussion we just had, if
22 all the producer-distributors filed just one report, just to
23 simplify things, the first thing they would do on the form 800
24 is subtract those 20,989,392 thousand pounds, correct? From
25 their Class 1 pounds, correct?

1 A. It's been so many years since I did the 800 report, I'm
2 not sure of the priorities as to which step goes first.

3 Q. It would happen near the front, near the beginning,
4 right?

5 A. Yeah, we report all the sales, so it would be those two
6 together, and then we credit the exemption.

7 Q. Right. You just credit the exemption out?

8 A. I believe so. I'm trying to remember how the report
9 works, there's a lot of lines on the report, because you have
10 fat and solids and fluid and --

11 Q. Okay.

12 MS. HANCOCK: We will have -- this is Nicole Hancock -- we
13 will have a witness that will bring his costing director who
14 will be able to walk through the calculations with you.

15 JUDGE CLIFTON: Who is that?

16 MS. HANCOCK: Dennis Lund.

17 JUDGE CLIFTON: All right. L-U-N-D?

18 MS. HANCOCK: Yes, your Honor.

19 JUDGE CLIFTON: Good. Thank you.

20 BY MR. ENGLISH:

21 Q. SO just to be clear from our discussion earlier, it is
22 handlers like Producers Dairy who are regulated by the
23 California State Order, correct?

24 A. What do you mean by regulated?

25 Q. They are the ones who have to file the form 800 report

1 and have to account to the pool, correct?

2 A. They file the 800 report, yes.

3 Q. Well, when I say regulated, you in your own testimony,
4 used the phrase fully regulated, did you not?

5 A. You are talking about the milk receipts and reporting?
6 We are audited by the state, so I guess we're regulated and
7 audited.

8 Q. All right. So, I mean, that's why I used the term
9 because you used the term on page 3 of your testimony. Okay?

10 A. Okay. But we're regulated in many ways, so I just want
11 to clarify what you were trying to ask.

12 Q. You are regulated by -- I used the phrase California
13 State Order, I didn't mean regulated by environmental
14 regulators or anything else, I used the phrase California State
15 Order, okay?

16 A. Okay.

17 Q. All right.

18 JUDGE CLIFTON: Just so I'm clear on what you mean,
19 Mr. Shehadey, when you respond to him in these questions, you
20 have in your mind Producers Dairy. Producers Dairy is the one
21 that has to file the report; Producers Dairy is the one that
22 gets audited. Am I correct?

23 MR. SHEHADEY: Yes, thank you.

24 MR. ENGLISH: And thank you, your Honor.

25 BY MR. ENGLISH:

1 Q. Similarly, dairy farmers, and I'm going to use the word
2 dairy farmers, I usually use the word producers, but that's
3 going to confuse the heck out of everything right this second.
4 So dairy farmers are not regulated by the California State
5 Order, correct?

6 A. Well, they are not audited, although the pooling
7 auditors that audit the processor are there to protect the,
8 I'll use the word dairy farmers.

9 Q. They are to protect them, but not regulate them,
10 correct?

11 A. Probably. Yeah. Probably not under your definition of
12 regulate there.

13 Q. Okay. So -- so, for instance, looking at the Food and
14 Agricultural Code, and specifically the discussion of exempt
15 quota, the language I see is that any producer-handler who
16 qualifies under this section and elects to operate outside the
17 pool, the entity that elects to operate outside the pool to the
18 extent permissible in the language that follows, is Producers
19 Dairy, Correct?

20 MS. HANCOCK: Your Honor?

21 MR. SHEHADEY: I'm not sure what you are reading.

22 MS. HANCOCK: One second. One second. I'll object to the
23 extent that he's being asked about some statutory provisions
24 that the witness doesn't have in front of him. And also to the
25 extent, I guess, Mr. English has been objecting about asking

1 people for legal conclusions. I think he, at a minimum, he has
2 to establish this witness' knowledge about the specific
3 provisions, give him a chance to look at it, and then respond
4 accordingly so he's not just asking him things in isolation
5 without putting it into full context.

6 JUDGE CLIFTON: The objection is noted. I -- I need a
7 break. I know it's not even 10:00. I -- let me say this, it
8 is important what Mr. English is doing. It is important for us
9 to understand how this quota exempt, this exempt quota, is in
10 play both with respect to the pool and with no respect to the
11 pool. It's particularly complicated since it all goes through
12 a handler. So I want Mr. English to continue to ask
13 Mr. Shehadey about these things, but the objection is noted.
14 Mr. Shehadey may not have at his beckon call the vocabulary
15 with which to respond to Mr. English. So, you know, if when
16 Mr. Shehadey contemplates the question, if he does not feel
17 qualified to respond to that and would prefer to defer to
18 someone who has hands on experience lately with that part of
19 the operation, that's fine with me. Ms. Hancock?

20 MS. HANCOCK: And just to be clear, I'm in no way saying
21 that Mr. Shehadey is not capable of answering how this works.
22 I mean, he's been in this business and was the Controller when
23 this Pooling Act was implemented, so I believe that he can
24 answer these questions.

25 I just don't want him asked about statutory language

1 that he doesn't have the ability to look at in front of him,
2 and put it into context. I just want him to be given the most
3 full and fair opportunity to understand what he's answering.

4 JUDGE CLIFTON: Okay. I think what we need here is not so
5 much him looking at the statute, I think we need him to think
6 about how it works. So let us all take a break.

7 It's now 10:00. Please be back and ready to go at
8 10:15. 10:15.

9 (Whereupon, a break was taken.)

10 JUDGE CLIFTON: We're back on record at 10:16.
11 Mr. English, I'm sorry that I interrupted you. I hope you can
12 pick up where you left off.

13 MR. ENGLISH: I believe I can. I just wanted to have one
14 quick response which is that this witness in his testimony went
15 through some detail about how he viewed the exemption to work,
16 and so I was just trying to follow up on that.

17 BY MR. ENGLISH:

18 Q. So first, do you understand that while it might be
19 economically foolish, you would have the right, effectively, to
20 not elect to treat the farms' exempt quota as exempt and
21 effectively treat all your milk as being pooled regardless?

22 JUDGE CLIFTON: Now, let's not use the word your, let's
23 talk about Bar 20 or let's talk about Producers Dairy.

24 MR. ENGLISH: I would like to do that, your Honor, and I
25 guess one thing is, do you understand that CDFA treats a

1 producer-distributor as one entity?

2 MR. SHEHADEY: No, they don't.

3 BY MR. ENGLISH:

4 Q. Do you understand that the term producer-distributor
5 used in the singular, is intended to refer both to a producer
6 side and the processing side of your operation?

7 A. But they are two separate entities.

8 Q. With 95 percent common ownership rule, correct?

9 A. Family, common family ownership.

10 Q. Yes.

11 A. Yes.

12 Q. And do you understand --

13 MS. HANCOCK: If he could finish.

14 MR. ENGLISH: Yes, sure, go ahead.

15 MR. SHEHADEY: But they are separate entities and they are
16 different family members between our two entities.

17 BY MR. ENGLISH:

18 Q. Do you understand that for Pooling Plan purposes,
19 regardless of whether legally they are two separate entities,
20 CDFA treats them as if they are one entity?

21 A. I don't know. I can't answer that.

22 Q. Fine. You do agree that the entity that must account
23 to the pool for the form 800 is Producers Dairy, correct?

24 A. They, they fill out the 800 report and send it in to
25 CDFA as required.

1 Q. Okay. And that is the entity that is permitted to
2 deduct from its Class 1 pounds, any exempt pounds for milk
3 received from Bar 20 Dairy, correct?

4 A. That would be part of the reporting process, but the
5 exemption is owned by Bar 20. So in effect, they would be
6 required to do that because Bar 20 Dairy owns the exempt quota
7 as if any other dairy that had quota would be reported to the
8 CDFA on the 800 report accordingly.

9 Q. Nonetheless, as a result of exempt quota, in your view
10 owned by Bar 20 Dairy, the form 800 report filed by Producers
11 Dairy will deduct those exempt pounds from Producer Dairy's
12 Class 1 pounds in before calculating what is due to the pool,
13 correct?

14 A. Yes, that's the process.

15 Q. Thank you.

16 A. We also report quota for other shippers that we would
17 have.

18 Q. And so now we're talking about, effectively, that
19 again, not wanting to use a specific example, but assuming 80
20 pounds that's other shippers, at 95 percent, that that is what
21 you have to report to the pool, and part of that; is that
22 correct? Let me start with that before I do the next part.

23 A. It would be, if you took used the hundred pound
24 example, you would take the 20 pounds out that would be exempt,
25 and then you would deal with the other 80 pounds as pool,

1 normal pool reporting.

2 Q. Okay.

3 A. Which could be quota and overbase.

4 Q. Correct. So for normal pool reporting, you now figure
5 out the plant blend on your 80 percent, correct?

6 A. No.

7 Q. Okay. All right. Let's back up. So we're now talking
8 about the 80 pounds, and you said that, well, the example we're
9 using is a 95 percent Class 1, so of the 80 pounds, we agree
10 that 75 pounds is Class 1, correct?

11 A. Based on your example, yes.

12 Q. Based on the example. And let's just assume for
13 simplicity purposes that the five pounds is 4(a), okay?

14 A. Well, it could be Class 2 and 3, also. In our plant,
15 more likely 2 and 3 like eggnog or buttermilk.

16 Q. I'll be happy to go with 2/3.

17 A. Okay.

18 Q. You would multiply the 75 pounds of pooled Class 1 by
19 the Class 1 price, correct?

20 A. Okay. Yeah, Class 1 price as established by the state.

21 Q. Yes.

22 A. We would pay the 75 pounds at Class 1, and then
23 whatever the other five was, 2 or 3, we would be obligated,
24 they caught it a pool obligation, so it is an obligation for
25 that amount into the pool.

1 Q. Right. So you calculate on your 75 pounds, and you
2 calculate on your 5 pounds, and that creates a total amount
3 due, correct?

4 A. To the pool.

5 Q. To the pool.

6 A. Yes, that's correct.

7 Q. And you would then pay your producers, if they are
8 quota producers, you would pay them the quota price on their
9 milk for the month, correct?

10 A. Yeah, that we probably have, we have probably paid them
11 an advance, and trying to think of the timing of this. We pay
12 them in advance and then there's a settlement later in the
13 month where you pay them based on their quota, you know, base
14 and overbase.

15 Q. Sure. So but simplifying and leaving the timing out
16 for a moment, at the end of the day, you are going to pay your
17 quota holders on those 80 pounds of milk, the quota price,
18 correct?

19 A. Yes, although two-thirds of our milk comes from CDI, so
20 we really owe that to them.

21 Q. And do they tell you how much that milk is quota milk
22 or overbase?

23 A. You know, I'm not sure. I haven't seen the reporting,
24 but it would come through the pool and we would follow whatever
25 the pool requirements are.

1 Q. So to simplify it a little bit, you pay your producers
2 what is required by the order for quota and overbase, correct?
3 At some point?

4 A. Yeah. And also our own farms, because Bar 20 has about
5 a third of their milk is exempt, so that means two-thirds of it
6 goes through the pool as overbase. And they produce about a
7 third of the milk that we sell, so that means a sixth of the
8 milk that we sell would be exempt, and of the milk we produce,
9 two-thirds of it is overbase and the other two-thirds we buy
10 from CDI.

11 Q. Thank you. I think I can try to make that work. I'm
12 just trying to simplify it. What I'm trying to get at is, at
13 the end of the day you have paid producers, whether, I'm sorry,
14 dairy farmers?

15 A. Yes.

16 Q. I'm sorry, you are in a unique situation here so this
17 will be easier for the next witness, but you pay dairy farmers,
18 whether it's Bar 20 or CDI, and leaving aside the exempt for a
19 moment, exempt quota, you pay them a price as determined by the
20 CSO based on overbase and quota which leaves something left
21 over to pay the pool, correct?

22 A. Usually because we're 95 percent Class 1, so our
23 prices, we usually have a pool obligation, yes.

24 Q. Okay.

25 A. Beyond what we pay out to our own farm through the pool

1 and to CDI.

2 Q. And that's what I was trying to get to, you have a pool
3 obligation. And I realize in some extraordinary month you
4 might not have a pool obligation.

5 A. Yeah, it fluctuates from month to month.

6 Q. Okay. So trying to get to two bottom lines here, the
7 first part of my examination. The first is, to the extent you
8 pay money into the pool, after doing all these calculations, it
9 is only on those 80 pounds and not on those 20 exempt pounds we
10 have been using in our example, correct?

11 A. Well, the 20 pounds we took out is not part of our pool
12 obligation, so we wouldn't pay into the pool on that.

13 Q. That's what I was saying.

14 A. Because that's the word exempt, it is taken out before
15 the pool calculation is done.

16 Q. Precisely. And that was what I was trying to get at
17 sir, and so thank you for that. And part of that was, I think
18 at the end of your examination, before, at least at the end of
19 your statement, before Ms. Hancock asked you a question, Judge
20 Clifton yesterday had sort of a question of, you know, why is
21 the word exempt used. And the answer is because there really
22 is these 20 exempt pounds that you don't account to the pool
23 for, correct?

24 A. Well, we, you used the word account. It is reported
25 all the way through, the deduction is shown, it's taken from

1 our sales, our sales are reported or usage they call it.

2 Q. Okay.

3 A. So yes, it's accounted for all the way through.

4 Q. All right. It is accounted for, but in the end it is
5 washed out and you don't calculate a pool obligation based upon
6 it, correct?

7 A. Not to the pool, but we have an obligation to our dairy
8 farm, Bar 20.

9 Q. I'm going to get to that in a moment, but I'm talking
10 about the pool, all right? You do not have an obligation to
11 the pool on those 20 pounds and that's why it is called exempt,
12 correct?

13 A. That's correct, yes.

14 Q. Thank you. Now --

15 JUDGE CLIFTON: Could I just interrupt?

16 MR. ENGLISH: Of course.

17 JUDGE CLIFTON: So with regard to Bar 20's exempt quota,
18 there is no obligation to the pool, and I believe you told me
19 there is no benefit from the pool.

20 MR. SHEHADEY: That's correct.

21 JUDGE CLIFTON: So you don't get the transportation credits
22 for that milk, you never get a draw from the pool for that
23 milk, it's as if the pool doesn't exist for that exempt quota;
24 is that correct?

25 MR. SHEHADEY: That's correct.

1 JUDGE CLIFTON: You have to report but there are no, no
2 money goes either into the pool or comes out of the pool for
3 that exempt quota?

4 MR. SHEHADEY: Well, we do have to pay all of the fees on
5 that exempt milk. On our reporting statement, we have the,
6 that we pay to the, our Bar 20 Dairy farms every month, we have
7 all of the income is on there. The exempt milk, the Class 1,
8 fat, solids, fluid, because they are all three factors in
9 California on the pricing on Class 1, and then we have overbase
10 milk which is reported or paid based on the pool prices. And
11 we even have a regional quota adjuster in there that lowers the
12 quota price. And the farm has a settlement every month. And
13 we also have all the deductions for the administrative fees,
14 for administering the pool, the Dairy Council fees, so holds at
15 various fees and hauling costs. It is a normal dairy farmer
16 settlement, only for the exempt milk we pay Class 1 instead of
17 the pool prices. And at the end we have the amount that we pay
18 the farm, a settlement sheet just like any other farmer would
19 have, producer.

20 JUDGE CLIFTON: So are there, are there administrative fees
21 based on Bar 20's exempt quota paid to CDFA?

22 MR. SHEHADEY: Yes. It is on the total pounds that we
23 produce, total hundredweight.

24 JUDGE CLIFTON: And Dairy Council fees on behalf of Bar
25 20's exempt quota have to be paid.

1 MR. SHEHADEY: Yes, they are. They are reported every
2 month on the settlement sheet.

3 JUDGE CLIFTON: Okay. Thank you, Mr. English.

4 MR. SHEHADEY: So that's why I was having a hard time
5 saying it is totally outside of everything, because it's not.
6 It's recognized, and they charge fees on it. Of course, the
7 hauling cost would haul that exempt milk along with the others
8 so they pay for that, so there's other things that do tie it
9 into the settlement.

10 BY MR. ENGLISH:

11 Q. Nonetheless, leaving aside the fees for the actual cost
12 of the milk, that cost of the milk is not ultimately, for the
13 exempt quota, is not ultimately paid into or paid out of the
14 pool, correct?

15 A. No, it's not paid through the pool, it's paid directly
16 to Bar 20.

17 Q. All right.

18 A. As we have for 60 years.

19 Q. Now, nonetheless, regardless of what you choose to pay
20 Bar 20, CDFA does not audit that amount on exempt quota, that
21 is, the transaction between Producers and Bar 20, correct?

22 A. They audit the pounds to make sure we're accounting for
23 everything that we have sold, because it's a -- you have an
24 obligation, and then you have your payments to your farmers, or
25 to CDFA, or whatever, CDI, excuse me.

1 Q. They audit the pounds but they don't audit the price
2 you pay, correct?

3 A. I don't believe so, no.

4 Q. So it would be fair to say that whether, you know, you
5 may have done it for 60 years, but, in essence, what the
6 transaction is between Producers Dairy and Bar 20 as to the
7 exempt quota is a private determination between those two
8 entities that CDFA does not interfere with?

9 A. Well, we have done it for 60 years. We've paid Class 1
10 before the pool was in, and we pay Class 1 after the pool was
11 in, and we haven't changed.

12 Q. I understand what it is you do, what I'm asking you to
13 do is to confirm, since you believe, and I agree with you, that
14 CDFA does not audit beyond the pounds, but they don't audit the
15 dollars, that that is strictly a voluntary as to CDFA, it is a
16 voluntary transaction as to the dollars.

17 A. I never thought about it that way, but I guess so.
18 We're consistent. We do the same thing we have done for 60
19 years.

20 JUDGE CLIFTON: Well, let me follow up on Mr. English's
21 question and ask it a different way. When you say you're
22 paying Class 1, you mean you are paying the regulated minimum
23 price in California for Class 1 milk.

24 MR. SHEHADEY: Yes, as published each month by the State of
25 California.

1 JUDGE CLIFTON: Would you feel that you would have the
2 right in California to pay less than the Class 1 regulated
3 price for that milk that you get from Bar 20 on the, on its
4 exempt quota?

5 MR. SHEHADEY: We know the people, the family members that
6 are involved in Bar 20 would rather have us pay more than the
7 Class 1 price, so that's probably, I don't want to open that
8 argument up. After 60 years of working together with the other
9 people in our family on the farming side, we just have a policy
10 that we do that. And we have been consistent for 60 years, so
11 we follow whatever the published price is, but we never thought
12 about deviating from that.

13 JUDGE CLIFTON: Sorry to keep interrupting you,
14 Mr. English. I find this whole exempt quota thing fascinating
15 because it's so different from quota in my mind.

16 MR. ENGLISH: Thank you, your Honor, and thank you,
17 Mr. Shehadey.

18 BY MR. ENGLISH:

19 Q. So, but in addition, whether, so you choose to pay the
20 Class 1 price from Producers to Bar 20, and you have done so
21 for 60 years, but you also agree that you are not, on those 20
22 pounds of milk, unlike the 80 pounds of milk, paying into the
23 pool or some unusual months getting out of the pool, correct?

24 A. On the 20 pounds?

25 Q. Correct?

1 A. Correct, it is outside the pool.

2 Q. Okay. And that is different from the treatment for
3 your competitors who are not producer-distributors, correct?

4 A. I don't know what they do.

5 Q. Well, they, don't they, aren't they regulated on all of
6 their milk?

7 A. I guess so. I don't own -- I don't own those
8 companies, but we pay the same prices they pay, we pay Class 1
9 for a Class 1 usage.

10 Q. But you are paying it, at least on a portion, directly
11 to your farmers, and not having to share it with the rest of
12 the pool on those 20 pounds, correct?

13 A. Well, yeah, but the farmer shipped us the milk, we sold
14 it as Class 1 and we paid Class 1 for it, so in effect it went
15 to a farmer, went to our farm, we produced the milk.

16 Q. Well, but to the extent your competitors have to pay
17 hundred pounds of their milk, they have less money left over to
18 say. Pay for premiums, correct?

19 A. I don't know what you mean premiums.

20 Q. Does that mean you don't pay premiums on your milk?

21 A. Not to our farm.

22 Q. Okay. So if a competitor of yours pays a premium
23 because it doesn't have its own farm milk over and above paying
24 the Class 1 price either directly to its farmers or to the
25 pool, they are paying more for their milk than you are for that

1 own farm milk, correct?

2 A. I don't know. We pay premiums on the milk we buy from
3 the outside. So --

4 Q. Okay.

5 A. We do pay premiums, yes.

6 Q. So you pay premiums on the milk you buy from outside
7 but you don't pay premiums on 20 percent, assuming it's 20
8 percent, of the exempt quota, correct?

9 A. Yeah, but we have other costs. We have a, like a field
10 man cost, we have other costs similar to the other cooperatives
11 that charge premiums. There's a series of reasons that they
12 have premiums more than grade, and it's covered by things that
13 they have to, expenses they have to handle the milk. And
14 there's a legitimate cost for that. So we have some of those
15 same kind of costs with our own dairy farm, so to say there's
16 no cost to it because we are not paying somebody else for a
17 premium wouldn't be right or accurate.

18 Q. Now, you have testified on page 2 of your testimony,
19 and you have already mentioned a few times I think here today,
20 this is the second paragraph, "We have a great deal of urban
21 market customers in deficit areas and we have to absorb the
22 cost of shipping to those markets." Correct?

23 A. Where was that?

24 Q. I'm on the second paragraph of your testimony.

25 A. Okay.

1 Q. Yeah, it is the second paragraph of the one we heard.
2 Listen, I understand why you were reading on bigger yesterday
3 and we did it, too, it does get confusing.

4 A. I have got the original one now so we're tracking here.

5 Q. If you have the original, that is terrific. So I'm
6 looking at the second paragraph?

7 A. Yes, in the middle there.

8 Q. Yes.

9 A. Okay. Go ahead.

10 Q. And you say, "We have a great deal of urban market
11 customers in deficit areas and we have to absorb the cost of
12 shipping to those markets." Correct?

13 A. Yes.

14 Q. And you are successfully able to do that, correct?

15 A. Well, it's a cost to us, yes.

16 Q. But you succeed. You sell out in those deficit areas
17 and you absorb those transportation costs, correct?

18 A. Yeah, we absorb those costs along with all the other
19 costs of producing the product and running the business.

20 Q. Okay. Yesterday, on additional direct from
21 Ms. Hancock, you discussed the hardships that the farm faced in
22 2009, correct?

23 A. Yes.

24 Q. And you said that the family put money into the farm as
25 a result, correct?

1 A. We did. Yeah, we had to.

2 Q. Does the family also invest money in the plant?

3 A. No.

4 Q. So the plant's self-sustaining?

5 A. Yes, it is.

6 Q. Okay. Do you know what the term individual handler
7 pool is, or means?

8 A. No.

9 Q. Okay. If a Federal Order were to be adopted, and, as
10 you propose, and I understand, we'll see the text later, let's
11 assume a Federal Order is adopted and voted in along the lines
12 that you're looking for, nothing prevents you or the California
13 Producer Handlers Association from seeking from the California
14 legislature, more exempt quota, correct?

15 A. That's pretty hard to predict what the legislature's
16 going to do.

17 Q. But nothing prevents you from asking, right?

18 A. There's no law against asking. I don't know how
19 realistic the request would be.

20 Q. I'm not agreeing with you. So I want to turn now, and
21 last, to your Exhibit D on Exhibit 153. And I want to just
22 look at this, and I also want to compare it, I'm sorry, I
23 apologize. I want to compare it to your testimony on page 7.

24 A. Okay.

25 Q. And so where would I find, and maybe it's not on here,

1 so I apologize, but when I look at the bullet points on page 7,
2 and you say first, "0.65 percent of the total pooled milk from
3 California (note that exempt quota is calculated in the total
4 pool and then deducted)" is that found on this table or is that
5 found on Exhibit 61, Table AC?

6 A. That's found on Exhibit 61, and it's the, let's see,
7 the total pooled milk divided by the producer-handler Class 1,
8 exempt Class 1, to give a percentage of exempt milk to the
9 total pool.

10 Q. Okay. I think you may have told me the right
11 parentheses, but you might have had the wrong thing dividing
12 the wrong number. I think you might have meant that to get .65
13 you would divide the exempt quota by the total pool, is that --

14 A. Yes.

15 Q. Okay. All right. I may have misheard, but I thought I
16 heard just the opposite. I want to make sure we're on the same
17 page.

18 A. My math might have been upside down.

19 Q. That's okay. And then the next bullet you have 2
20 percent, it's, the exempt quota is 2.6 percent of quota, and
21 you say that's a drop of 10 percent since 2007. Where would I
22 find that, if it's on here?

23 A. The 2.6 is calculated by, if you go down to
24 producer-handler quota, fat is 24,078 and the regular quota is
25 909,196. And if you divide the 909 into the 24, you get to

1 2.6.

2 Q. Okay. And then you say, "the exempt quota is 4.6
3 percent of the total Class 1 pooled," correct?

4 A. That's what I said.

5 Q. And where do I get that from?

6 A. Okay. That's, the exempt quota product is 20,989,392.

7 Q. Okay.

8 A. And it is divided by 452,270,540.

9 Q. Okay.

10 A. Which is a total pool utilization.

11 JUDGE CLIFTON: Say that number again, please?

12 MR. SHEHADEY: It's 452,270,540 it is the fourth category
13 down from the top, under product.

14 JUDGE CLIFTON: Yes. I'm looking at the very last page of
15 Exhibit 61 with you, Mr. Shehadey, and I agree that that's what
16 that number says. I thought that the first time you read it
17 you said, 452,275,540 and that's why I asked you to read it
18 again.

19 MR. SHEHADEY: Thank you for clarifying.

20 JUDGE CLIFTON: Well, I may have misheard. But at any
21 rate, say it again how you are looking at it.

22 MR. SHEHADEY: Okay. It is 20,989,392, which is the exempt
23 Class 1 quota, divided by total Class 1 utilization,
24 452,270,540.

25 JUDGE CLIFTON: Thank you.

1 MS. SHEHADEY: And that comes out to 4.6 percent.

2 MR. ENGLISH: Okay.

3 BY MR. ENGLISH:

4 Q. And then finally, looking at the, you have referenced,
5 and it's exempt quota is 17.4 percent of the California
6 Producer Handlers Association Class 1 production, and you have
7 indicated that's compared to 1985, and that looks like you are
8 getting that data from Exhibit D, correct?

9 A. Is that the right number here? Yeah, D.

10 Q. Okay. So --

11 A. Down at the bottom, the boxes at the bottom there have
12 those figures.

13 Q. So I'm interested in the boxes at the bottom and I want
14 to talk a little more about what's going on there. But first,
15 you indicated in your testimony that you serve on the
16 California Milk Processor Board, correct?

17 A. Yes, I do.

18 Q. Now, what is -- is one of the purposes of that board to
19 help figure out ways to increase Class 1 sales?

20 A. Yeah, fluid milk sales.

21 Q. Right. So having been a founding director and a Board
22 Member for 22 years, and I know you folks have worked as hard
23 as you can, but we're not exactly going in the right direction,
24 are we?

25 A. Well, across the country lots of competition with other

1 beverages out there.

2 Q. And in California we're not doing real well, are we?

3 A. No, about the same as the rest of the country.

4 Q. And would you agree with me that the total Class 1
5 sales in 2015 are less than the Class 1 sales in 2009? Total
6 California, I don't know if you have the numbers in front of
7 you yet, would you agree with me just because of you're
8 founding director and Board Member for 22 years, that fluid
9 milk sales have been down year over year, and are lower in 2015
10 than they were in 2009?

11 A. There's probably a one or, one to two percent decrease
12 per year.

13 Q. Okay. So if that's correct, you might be somewhere
14 between a 6 and 12 percent decrease over 6 years?

15 A. Yeah, although it's leveled off the last year, which is
16 a good thing for the industry.

17 Q. Sure. I'm interested in the fact that if you look at
18 your, I mean, you have discussed in your percentages the
19 percentage of exempt quota as a percent of various numbers, but
20 you didn't talk about the total sales for
21 producer-distributors. You agree that if you look at that
22 first line, total producer-handler Class 1 sales, from 1985 to
23 March 2009, you have helped us out and you have told us that's
24 a 332.8 percent increase, correct? I'm looking at your boxes
25 that you just said were on Exhibit D, and I'm looking at the

1 first line that is total producer-handler Class 1 sales.

2 A. 1985?

3 Q. Yeah, and I was comparing '85 of 27, say .8 million,
4 and then March 2009, which is 120.2 million.

5 A. Yes.

6 Q. And you have indicated that that is a 332.8 percent
7 increase, correct?

8 A. Yes, on the sheet here.

9 Q. And then from March 2009 to August 2015, you have
10 indicated that it's essentially flat, but even so, the
11 increases, there's a modest increase from March 2009 to
12 August 2015, correct?

13 A. That's pretty much flat.

14 Q. Well, when do schools open in California?

15 A. The middle of August.

16 Q. Okay. And schools are open throughout March?

17 A. Yeah, unless there's Easter week.

18 Q. Okay. So you might be three weeks versus two weeks, so
19 there's a modest difference, but so, but, if there's been a 6
20 to 12 percent drop in fluid milk sales, if you take 1 to 2
21 percent for 6 years, nonetheless the producer-handlers have
22 stayed pretty even, correct?

23 A. Yeah, we work pretty hard. You have to remember, we're
24 farmers. We're not Wall Street guys, corporate guys, we're all
25 dairy farmers. And we know how to work hard and how to make a

1 living, you do what you got to do. You milk those cows 360
2 days a year, it's 365, excuse me, I left the five days out for
3 vacation.

4 Q. That's gonna hurt those cows for the five days.

5 A. A lot of farmers don't get a vacation. I mean, it's
6 not an easy life. You harvest your product, in effect, twice a
7 days, 365 days a year. If you are growing almonds, you harvest
8 them once a year so you got time to enjoy your family and take
9 a vacation. Dairy farmers have a tough life. And that's what
10 we're, that's the way our family thinks, those are our family
11 values.

12 Q. And that's true, of course, of the two-thirds of the
13 milk you buy from CDI, correct?

14 A. Those dairy farmers? Yes.

15 Q. Okay.

16 A. Good people.

17 Q. So you were here yesterday for the testimony of
18 Mr. Gonsalves?

19 A. Yes, I was.

20 Q. Okay. And I don't know whether you have his Exhibit
21 151 with you?

22 A. No, I don't.

23 Q. I mean, if I can, if the last page, I don't know
24 whether your counsel wants to bring the whole thing up or if I
25 can have the Judge hand over, but I have the last page.

1 JUDGE CLIFTON: I'll be happy to hand that to him. There
2 you go.

3 MR. SHEHADEY: Thank you.

4 JUDGE CLIFTON: You're welcome.

5 BY MR. ENGLISH:

6 Q. So I had Mr. Gonsalves go over this and while he
7 couldn't remember the genesis of it, he agreed with the
8 numbers. So in the second paragraph, it says that "in 1978,
9 producer-distributors only represented 3.96 percent of the
10 total Class 1 sales," correct?

11 A. That's what it says.

12 Q. And then to date, and I think we heard this was about
13 1995, they represent less than 3.64 percent, correct?

14 A. That's what it says, yes.

15 Q. Okay.

16 A. There were also 49 PD's when it started, and by 1976 or
17 '75 there was 27.

18 Q. Right. So I'm going to hand out a document to be
19 marked as an exhibit, your Honor, and we have unfortunately, a
20 production error, but we'll discuss that in a second.

21 JUDGE CLIFTON: All right. Everybody else, don't go away
22 from your seat, because these will be distributed to you, but
23 you may stand up and stretch. We'll go off record for about 2
24 or 3 minutes.

25 (Whereupon, a break was taken.)

1 JUDGE CLIFTON: I believe the distribution of the documents
2 has been completed. Ms. Frisius, I'm thinking this will be
3 Exhibit 154, see if you agree with that.

4 MS. FRISIUS: Yes.

5 JUDGE CLIFTON: Yes, all right. Exhibit 154. I have
6 marked mine accordingly.

7 (Thereafter, Exhibit Number 154, was
8 marked for identification.)

9 JUDGE CLIFTON: Does anybody else need a copy? All right.
10 Mr. English, you may proceed.

11 MR. ENGLISH: Thank you. And people are going to want to
12 have Exhibit 61 in front of them, in addition to Table AC and D
13 and Z, and I gave Ms. Hancock some advanced notice, which is to
14 say in the last three minutes. And also handed the tables to
15 the witness, Mr. Shehadey. And I would first note that in
16 putting this together, we had a little production error, and so
17 down to the right hand side there is a column that lists
18 August 2009 source, that's supposed to be August 2015 source.

19 JUDGE CLIFTON: All right. Ms. Frisius, do you see that,
20 the heading, the extreme right hand part of the page, the
21 bottom box? All right. What are we changing it to,
22 Mr. English?

23 MR. ENGLISH: 2015.

24 JUDGE CLIFTON: August.

25 MR. ENGLISH: Yeah, the month is correct, the year is 2015.

1 All right.

2 JUDGE CLIFTON: Thank you. We have made that change on the
3 record copy.

4 BY MR. ENGLISH:

5 Q. So Mr. Shehadey, to spare everybody looking at my
6 handwriting, we produced the tables at the bottom of Exhibit D,
7 of Exhibit 153, which we have just been discussing for the last
8 few minutes. Do you see that? That's the first part and it
9 says excerpt from Exhibit 153, do you see that?

10 A. Yes.

11 Q. So unless we have a typo, and God willing we don't,
12 that is supposed to have been reproduced identically from
13 Exhibit D. And were you here for the testimony?

14 JUDGE CLIFTON: Sorry, from Exhibit D as in David of
15 Exhibit 153.

16 MR. ENGLISH: Of Exhibit 153, sorry. Thank you, your
17 Honor.

18 BY MR. ENGLISH:

19 Q. So were you here, Mr. Shehadey, and I believe you were,
20 for the testimony of Mr. Blaufuss last Friday with respect to
21 producer-distributors?

22 A. Some of it, yeah.

23 Q. Okay.

24 A. I was in and out.

25 Q. Did you get a copy of his statement?

1 A. No.

2 Q. You didn't. Okay.

3 A. No.

4 Q. Are you aware that he testified about a calculation of
5 trying to figure out what the size of the California pool was,
6 not the California pool, I strike that. The total amount of
7 California Class 1 sales?

8 A. Yeah, I remember a discussion about that, whether it
9 included out-of-state or in-state, I wasn't sure where those
10 figures came from or what it meant.

11 Q. Okay. Well, why don't we quickly look through it. So
12 for August 2015, below for additional analysis, the
13 out-of-state Class 1 August 2015, is listed as 29,756,864, and
14 there's an asterisk, which we'll get back to in a minute. And
15 over the source, we're saying that's Exhibit 139, page 5, and
16 Mr. Blaufuss testified that that was a number he got by calling
17 CDFA. All right? Do you see that?

18 A. Yes.

19 Q. Okay. Now, still staying on August of 2015, we have
20 just moved the number down, the 20,989,392, from your Exhibit D
21 from Exhibit 153, which also comes from Table AC of Exhibit 61.
22 We have just moved that number down. Do you see that?

23 A. Yes, I do.

24 Q. Okay. And then looking at Table AC, the total pooled
25 Class 1 from Table AC is 452,270,540 do you see that?

1 A. No.

2 Q. Table AC, it's the fourth line of Table AC. Starting
3 at the top of the page, you have got total producer-handler
4 Class 1 pool utilization is the first line, total
5 producer-handler exempt use is the second line?

6 A. Oh, here it is.

7 Q. You see it?

8 A. Yes, it's the fourth line down.

9 Q. Okay.

10 A. Okay.

11 Q. Now, to be clear, and going to the asterisk, there may
12 well be, according to CDFA, if there is, there may be
13 duplication between, of some kind, I don't know, it could be
14 one pound, it could be far more than one pound, that could be
15 duplication of the out-of-state Class 1 that is included in
16 Table AC total producer-handler Class 1 pool utilization.
17 Okay? So there could be some duplicative pounds. You know the
18 entities of the California Producer Handler Association,
19 correct, sir?

20 A. I know who they are, yes.

21 Q. Yes. And you know, for instance, that without naming
22 names, one of them has a farm out-of-state that it receives
23 milk from, correct?

24 A. I believe so, yeah.

25 Q. So if that entity is receiving pounds from

1 out-of-state, some of those pounds are likely going to be in
2 the Class 1 out-of-state pounds, and also in the total
3 producer-handler Class 1 pool utilization, correct?

4 A. I imagine so, I don't know.

5 Q. Okay. So I'm not going to ask you to do the math, but
6 if our math is correct, that ends up with 503,016,796 pounds.
7 We had to use slightly different data for March 2009 because we
8 don't have Table AC. But we do have, and I have provided to
9 you, first we have Table Z from Exhibit 61, it's the, that's
10 right, the vertical page. So do you see on that page for March
11 03, so it uses the third month of the year, do you see March
12 2009, Class 1 of 64,806,798 pounds?

13 A. I don't know what Table Z is, there's no title on it.

14 Q. The CDFA witness, Mr. Shippelhoute, testified that it
15 was out-of-state milk being received and how it was classified
16 in California.

17 A. So it is out-of-state milk coming in?

18 Q. Yes.

19 JUDGE CLIFTON: On -- I'm having trouble, Mr. English.

20 MR. ENGLISH: If you look at CDFA Z, page 3.

21 JUDGE CLIFTON: Well, yes, and I'm looking at March of
22 2009.

23 MR. ENGLISH: Right

24 JUDGE CLIFTON: And the first column has 74 million.

25 MR. ENGLISH: But that's total product.

1 JUDGE CLIFTON: Then where your number comes from is which
2 column?

3 MR. ENGLISH: Is the Class 1 line, which is 64 million.

4 JUDGE CLIFTON: Which is the very next column.

5 MR. ENGLISH: Yes. All right.

6 BY MR. ENGLISH:

7 Q. All right. Do you see that, Mr. Shehadey?

8 A. Yes.

9 Q. Okay. So again, for the next line, PD exempt Class 1,
10 we have simply, I mean, confirming it is also Table AC, we have
11 just moved it down from Exhibit D of Exhibit 153, your own
12 information, which is 21,253,353 pounds. Do you see that?

13 A. Yes.

14 Q. Okay. Now, I'm going to strain everybody's eyes. If
15 you turn to page 2 of CDFA D, of Exhibit 61, and again, I
16 provided that to you. We have the data there for a number of
17 years and months, but in particular, the bottom, we have got
18 2009 and we have March.

19 Do you see that?

20 A. Yeah, down toward the bottom.

21 Q. Yes, do you see March?

22 A. Yes.

23 Q. Okay. Now, I'm not going to ask us to do the math, but
24 do you see that after the producer-handler exempt Class 1,
25 there is a whole series of columns for pooled component pounds,

1 and the first one, the first set of columns is for fat. Do you
2 see that?

3 A. Yes.

4 Q. Okay. And the first column of the fat columns is the
5 Class 1 fat, correct?

6 A. Yeah, I see the number here.

7 Q. Okay.

8 JUDGE CLIFTON: Okay. I'm sorry, I'm looking at Table D
9 and I'm seeing fortification, powder, condensed skim, I don't
10 think I'm in the right place.

11 MR. ENGLISH: All right. This is page 2, and maybe just D
12 is one of these tables that has a number of -- yes, it's --

13 JUDGE CLIFTON: Thank you, Mr. English, all right.

14 MR. ENGLISH: It is, the Table D is a little confusing
15 because it's a series of different documents, but it only has
16 one page 2.

17 JUDGE CLIFTON: All right. Thank you.

18 MR. ENGLISH: Okay.

19 JUDGE CLIFTON: And so the columns up at the top --

20 MR. ENGLISH: There's pool pounds, then there's
21 producer-handler exempt Class 1 pounds, and then there's an
22 enormous column for pooled component pounds, which has three
23 categories; fat, fluid carrier Class 1, and SNF. And maybe I'm
24 just going to simplify this, because this has gone on too long,
25 Mr. Shehadey. Would you agree that if you add fat Class 1,

1 fluid carrier Class 1, and SNF Class 1 for pooled component
2 pounds, you should come up with the total pooled Class 1?

3 MR. SHEHADEY: Yeah, how did you calculate the fluid
4 carrier?

5 BY MR. ENGLISH:

6 Q. It is in the middle, there's three columns. There's
7 three sets of columns, it's literally right in the middle. You
8 have fat and you have SNF on the right, and between fat and SNF
9 you have one single column for fluid carrier Class 1.

10 Do you see that?

11 A. Yeah, I see it now.

12 Q. So would you agree that if you take, for the month of
13 March 2009, the fat for Class 1, the fluid carrier for Class 1,
14 and the SNF for Class 1, that should be, and add those
15 together, total pooled Class 1, correct?

16 A. It should be, yeah.

17 Q. Okay. All right. So assuming my math is correct, and
18 consistent, I think, with what we have heard about Class 1
19 sales dropping, Class 1 sales for March 2009 to August 2015,
20 went down by a little over 14 percent, correct?

21 A. Based on your calculations here.

22 Q. Okay. And nonetheless, using the calculations of the
23 producer-distributor percentage of their pounds of Class 1 on
24 total Class 1, you have gone up by 0.84 percent, correct?

25 A. Yeah, pretty much flat.

1 Q. And none of that is because you have a price advantage?

2 A. No, it's not.

3 Q. Thank you. I have no further questions.

4 A. There's many other factors in the industry that have
5 caused that. And last night when I was thinking about this
6 discussion, I went back and made some notes from my memory.

7 In 1971, Borden left California. They closed five
8 plants in Northern California, sold them to different
9 processors, there was turmoil in the marketplace.

10 1977, Arden sold to Knudsen. There were three or four
11 plants involved in that that affected Southern California.

12 In 1978, Challenge sold to Foremost. There was about
13 five plants and they were all over California.

14 In 1984, Foremost and Knudsen merged and became a \$1.7
15 billion company.

16 In 1986, Knudsen and Foremost went bankrupt. They were
17 both run by investors. They went bankrupt, they closed for a
18 week, I won't use the word how they treated the farmers, but
19 there was a lot of money they owed the farmers and didn't pay
20 it. They sold their plants, north and south, there was big
21 disruption in the market, there were opportunities, and we had
22 customers calling us and coming to us like crazy. And when I
23 say we, I'm talking about all the producer-handlers. Each one
24 of these transitions caused turmoil in the marketplace and it
25 gave us opportunities to gain business. Had nothing to do with

1 price.

2 1988, Carnation Company, who was owned by Nestle at the
3 time, closed two fluid plants in Los Angeles on Main Street and
4 in Oakland. They just closed them. Everyone was scrambling
5 for business. We happened to be at the right place at the
6 right time in each one of these. All of our producer-handlers.
7 These are opportunities for gaining business without price
8 involved.

9 In 1998, Berkeley Farms sold to Dean Foods. Here we
10 went from the Sabatti family that owned Berkeley Farms to a big
11 corporation out of Texas. A lot of customers in San Francisco
12 didn't like buying from a big corporation.

13 In 1989, Alta Dena sold to Bongrain, which is a French
14 company.

15 In 1999, Bongrain sold it to Deans. Here's more
16 disruption and change in the marketplace.

17 In 2009, Santee Dairy sold to Dean Foods.

18 All of these activities that were designed to, for big
19 corporations to make money or make more money, affected our
20 marketplace, and it had nothing to do with price, the price of
21 milk, it had to do with service, customer service, and having a
22 relationship with the customer. So I just wanted to lay that
23 out, because there's a lot more going in this marketplace than
24 than some small exemption.

25 I also did a calculation on our exemption, and when

1 you, when you go to -- where's my exhibits -- you go to this
2 \$1.14 in Exhibit E, if you take the \$1.14 and you reduce it to
3 a gallon, that's a hundred pounds. If you reduce it to a
4 gallonage, which you divide it by 11.6, you get 9.8 cents a
5 gallon over this 20-year period, so-called advantage. But if
6 17.4 percent of our sales are from this exemption, you reduce
7 that 9.8 cents down to 1.7 cents, and that's the money that's
8 going to our farming operation, but it's not a lot of money to
9 work with when you look at all the other factors that have to
10 do with business today.

11 Q. You want to add anything else?

12 A. No, that was my notes from last night before I went to
13 bed.

14 Q. That's fine. Nonetheless, your, the CPHA are now 24
15 percent of the Class 1 market in California, correct?

16 A. That's your calculation, yeah.

17 Q. I have no further questions of the witness.

18 JUDGE CLIFTON: Okay, I have got some spellings here before
19 I invite the next cross. So Borden sold five plants, then
20 Arden.

21 MR. SHEHADEY: A-R-D-E-N. They were a grocery store and
22 milk processor that sold milk out of the marketplace.

23 JUDGE CLIFTON: And then Knudsen, help me again.

24 MR. SHEHADEY: K-N-U-D-S-E-N.

25 JUDGE CLIFTON: All right. And then I think I know

1 Challenge and Foremost.

2 MR. SHEHADEY: That's F-O-R-E-M-O-S-T.

3 JUDGE CLIFTON: All right. And then you named --

4 MR. SHEHADEY: Carnation Company.

5 JUDGE CLIFTON: Well, no, I'm going to skip a few, and I'm
6 going to go down to when Alta Dena sold to something sounding
7 French.

8 MR. SHEHADEY: Okay. B-O-N-G-R-A-I-N.

9 JUDGE CLIFTON: B-O-N-G-R-A-I-N. All right. Is that all
10 one word?

11 MR. SHEHADEY: Yes, Bongrain.

12 JUDGE CLIFTON: And no capital in the middle?

13 MR. SHEHADEY: No, it's one word with a capital B.

14 JUDGE CLIFTON: All right. And then the next one I need to
15 spell is the last one you mentioned and it sounded like Santee?

16 MR. SHEHADEY: Santee, S-A-N-T-E-E.

17 JUDGE CLIFTON: Okay. That was an amazing compilation of
18 information. How were you able to pull it together? Where did
19 you have it written? It is all in your head?

20 MR. SHEHADEY: 50 years of being in this industry, I can
21 tell a story about each one of those transitions.

22 JUDGE CLIFTON: And you remember the years they happened?

23 MR. SHEHADEY: Yes.

24 JUDGE CLIFTON: That's amazing. Okay. Now, on this, I
25 wanted to go back --

1 MR. SHEHADEY: Sure.

2 JUDGE CLIFTON: -- on this \$1.14 that I find in your
3 Exhibit --

4 MR. SHEHADEY: D.

5 JUDGE CLIFTON: Exhibit 153, your Exhibit D, and that's the
6 average at the bottom, over what period of time?

7 MR. SHEHADEY: Exhibit E, I believe.

8 JUDGE CLIFTON: E, thank you.

9 MR. SHEHADEY: Yeah, it was over 20 years.

10 JUDGE CLIFTON: All right. And tell me again how you
11 converted the \$1.14?

12 MR. SHEHADEY: Okay.

13 JUDGE CLIFTON: To get the cents per gallon?

14 MR. SHEHADEY: The \$1.14 is for a hundred pounds of milk.
15 A gallon weighs 8.62 for one gallon, so when you divide 8.62
16 into a hundred, it comes up with a factor of 11.6. So you
17 divide the \$1.14 by 11.6 and you will find out how many gallons
18 are in that \$1.14. And it ends up at 9.8 cents a gallon, but
19 our exempt sales are 17.4 percent, which comes from Exhibit D.
20 Our August '15 sales are 17.4, and our March '09 were 17.7.
21 But I used the 17.4 percent to show what percentage of our
22 sales are actually exempted where this figure would apply, and
23 it ended up as 1.7 cents actually, value.

24 JUDGE CLIFTON: Per gallon advantage for the last 20 years
25 on Bar 20's exempt quota.

1 MR. SHEHADEY: Yes. And that money went to Bar 20.

2 JUDGE CLIFTON: All right. Who next has cross-examination?
3 Mr. English?

4 MR. ENGLISH: I'm sorry, I forgot one thing.

5 CROSS-EXAMINATION

6 BY MR. ENGLISH:

7 Q. This is just clarification. When you talk about the
8 fact that Producers does not receive transportation funds for
9 delivering to these deficit areas, I want to be clear. That's
10 because the existing transportation credit system in the CSO
11 does not provide them to any plant located in Fresno, correct?

12 A. Well, it wouldn't provide it for us because we haul
13 finished products. There's no transportation allowance on
14 finished products.

15 Q. I understand. But I wanted to make clear that
16 whatever's going on in the transportation credit,
17 transportation allowance system, the fact that you are not
18 getting it has nothing to do because of your location with
19 being a producer-distributor, correct?

20 A. No, I don't understand your question.

21 Q. So assume for a moment that you did not have
22 producer-distributor status on exempt, you didn't have exempt
23 pounds. Because of your plant's location in Fresno, you
24 wouldn't be eligible for transportation credits?

25 A. Because the plant's in Fresno.

1 Q. Yes.

2 A. That's correct.

3 Q. That's what I was trying to get at, sir.

4 A. That's correct.

5 JUDGE CLIFTON: Okay. Who will go next. Mr. Beshore,
6 thank you.

7 CROSS-EXAMINATION

8 BY MR. BESHORE:

9 Q. Marvin Beshore.

10 Good morning, Mr. Shehadey.

11 A. Good morning.

12 Q. Just a couple of areas I wanted to ask you a few
13 questions.

14 A. Sure.

15 Q. First off, with respect to Bar 20 Dairy, I think you
16 testified you now have 7500 cows?

17 A. Yes, milking.

18 Q. Can you -- can you give us a little history of Bar 20
19 in terms of its -- of its size? I think you, if I remember
20 right, you referred to a five years ago or so there was an
21 expansion there. So could you take it from, say, 1970 or '69,
22 from that period up, you got a great memory for your business,
23 which is understandable. Can you take the Bar 20, the dairy
24 farm operation, from, you know, roughly its size back around
25 '69, '70 when the Pooling Act went in, to date?

1 A. Well, 1972 we built a new dairy. We had an older
2 facility we were renting in '69, and we had probably, if I can
3 think of the number of cows then, maybe 700, 750, on two
4 facilities. And we built a new dairy east, or west of Fresno
5 in 1972, and then we expanded that, or filled in, we built a
6 larger dairy than we had cows for so we had room to grow. We
7 bought some land around it, over time, these are over a few
8 years. And we continued to buy some land as it came available
9 around us for feed because as we had more cows, we wanted to
10 have more feed, and it made sense.

11 So next change would, well, through the '80's we pretty
12 much expanded that operation as much as we could. We got up to
13 about 32, 3300 cows between our old original dairy and the new
14 place. And then in the early 2000's we were looking at
15 building another dairy nearby. So we ended up buying the
16 property across the street, it was 320 acres, across from the
17 dairy we built in '72, west of Fresno, about 25 miles. And
18 took about a year and a half, it's right when they passed
19 SB 700, and requirements were really strict, and we were kind
20 of the test case at that time, so it took longer to build it,
21 and cost more. And but we finally got through that, work well
22 with the Air Board and Water Board and opened it in 2005.

23 But in the meantime there was, I think it was a Mad Cow
24 Disease problem. And they closed the borders and the price of
25 cows -- so heifers couldn't come in from Canada, and the price

1 of cows went through the roof, right at a time when we were
2 committed to this facility. So the cows cost more. We had to
3 go all over the country to find cows to fill our dairy. And
4 the quality of the cows was questionable. When you buy them in
5 a hurry and buy what you can, you get what you got. So the
6 quality of the cows was not up to our standards.

7 So we ended up building the new facility, which was for
8 6500 or 6400 actually, 3200 on each side. There's two sides,
9 two 80-cow rotaries. And across the street was our older
10 operation, which was really overcrowded. So we -- we took
11 about 2,000 of those and moved them over. And so we were
12 milking about 12 to 1500 there, and then the 6400 in the new
13 place.

14 But the quality of the cows, the, you know, pounds per
15 day was down, health wasn't as good as it should be, all the
16 issues that dairymen understand. And so it took us years to
17 get, years and years, in fact, this year is probably the first
18 year where we're comfortable with having our own replacements,
19 which is about ten years from when we built it.

20 Q. Okay. So by 2005, if I got, if I have my notes right
21 here, you had the facilities, the capacity for your present
22 herd size of 7500?

23 A. Yes.

24 Q. Okay. And -- okay.

25 A. We're actually permitted for more than that, but right

1 now we're at 7500.

2 Q. Okay. Now, during that -- during those years, was
3 your, and let me back up. Presently you are roughly one-third
4 your own production and two-thirds supplied through CDI; is
5 that correct?

6 A. That's correct.

7 Q. Okay. Besides the Bar 20, do you purchase from any
8 other family farms in family herds?

9 A. Not at this time. We have in the past.

10 Q. Okay. Has the one-third, two-third ratio, has that
11 been pretty much your pattern back through the decades there,
12 '70's, '80's, '90's, in terms of one-third your own production
13 and two-thirds or the rest outside?

14 A. No, at one time we were nearly all exempt at the farm,
15 because we only had 3,000 cows, or 2800 to 3200 cows, so we
16 were probably 80 percent exempt. It's the same pounds we have
17 today, but because we have added cows, it's all been on the
18 overbase, you know, the pool value.

19 Q. So that period of time would have been probably in the
20 early '90's, which is when you acquired the, got up to the
21 level, well, when you were allowed to acquire the exempt quota
22 that you have today?

23 A. Well, we didn't build a new facility so we were limited
24 to like 3200 at the old facility, so we really didn't get to
25 the larger amounts until 2005.

1 Q. Okay. Very good. That's -- that's helpful.

2 A. It also made it difficult, not only 2009 was upside
3 down because of the cost of feed and the low price of milk for
4 everyone, and we had an inefficient operation running, but we
5 also, you know, had to pay the bills like everybody else. Pay
6 the feed bills, you got to feed them, got to milk them.

7 Q. Is your production from your own herd today, is it
8 running, you know, something around the state average which
9 might close to 2,000 pounds per month per cow?

10 A. We look at it gallons per day.

11 Q. Okay.

12 A. So our pounds per day, which, we are up there. We are
13 over 8 and a half, to 8 gallons per day.

14 Q. Per cow?

15 A. Per cow.

16 Q. Okay. The Producer Handler Association, can you, can
17 you tell us a little bit about that? Is that -- and you're a
18 professional Board Member, I think. Is that a, is that like a
19 non-profit corporation that's got bylaws and the Board of
20 Directors?

21 A. It is just an association, so it is -- it's kind of
22 loose, like most small organizations put together by a group of
23 farmers.

24 Q. Okay. So it's an unincorporated association?

25 A. I think so. I don't know if it's incorporated or not.

1 Q. Do you know if it has bylaws?

2 A. I don't -- I don't know if we do or not.

3 Q. Do you have a Board of Directors?

4 A. All four of us.

5 Q. Okay. You know, do you have regular meetings?

6 A. No.

7 Q. Okay. So do you have minutes, files, anything like
8 that?

9 A. No.

10 Q. Okay. The, in your testimony you have cited the
11 investment that was, has been made in exempt quota, the
12 \$9,000,000 amount, which I can't put my fingers on it the
13 immediately. I take it that's a, that's a number that
14 represents the aggregate investment by the four members of the
15 Producer Handler Association?

16 A. Yes, that's correct.

17 Q. Okay. And we know the total amount of exempt pounds,
18 but I have never seen any information in the submissions prior
19 to this hearing or in your testimony with respect to an
20 investment per pound of exempt quota. Can you, do you have

21 that information or can you tell us what the, you know, what
22 the average price per pound of exempt quota has been that --

23 A. No, no, I can't because we buy it as regular quota and
24 it becomes exempt with those amendments in 1978 and 1995.

25 Q. Okay. So you buy it as regular quota, so it would

1 have, would it have been reflected in, for instance, the
2 transactions that Dr. Erba testified to at the history of quota
3 transactions from the CDFA files? Would your purchases, the
4 four producer-handler purchases be reflected in those
5 transaction documents, in your understanding?

6 A. I would think so, because Exhibit C came from the CDFA,
7 the one with the blackout there for the prices and that per
8 pound.

9 Q. Right.

10 A. That came from CDFA. So I would imagine they would
11 have every producer's background.

12 Q. Right. Okay. So when you were purchasing there in
13 1994, and I'm looking at Exhibit C, you were just purchasing
14 quota from the general regular quota market?

15 A. Yes.

16 Q. And then in your hands it became exempt quota if you
17 attached it to your farm that was supplying your plant?

18 A. We were allowed to do that with that legislation.

19 Q. I understand that you are allowed to do it, I'm just
20 trying to understand the nature of the transaction. And I
21 guess I was under a misconception that there was a sort of
22 another market just in exempt quota here, but you were actually
23 buying in the regular quota market and then in your hands it
24 became exempt?

25 A. That's correct. And we cannot sell exempt quota. I

1 could not sell exempt quota to one of the other
2 producer-handlers.

3 Q. Right. But you could sell it back as regular quota?

4 A. To the marketplace, to anybody. Right. That's
5 correct.

6 Q. So one of the, one of the statutory limitations you
7 have as a producer-handler in California relates to the
8 consanguinity regulations. And as I understand it, tell me if
9 this is correct, I think it is from your testimony, the law is
10 such that because of those consanguinity requirements,
11 eventually that exemption will go away by the passage of time.

12 A. Yeah, literally we'll die off.

13 Q. Literally. So that's what I wanted to get to.

14 A. Yes.

15 Q. When do you expect that to happen, for instance?
16 That's really morbid, I guess.

17 A. That's a good --

18 Q. I didn't -- sorry. Let me depersonalize that. Okay.
19 So, you know --

20 A. How many years?

21 Q. Knowing what the -- knowing what the generational
22 limitations are and the average generational life expectancies,
23 I don't have -- can you tell us anything about, you know, not
24 necessarily your family, but the, you know, the four, you know,
25 I mean, what's the -- what's the horizon on that exemption?

1 A. Well, since we're dairy farmers and we drink a lot of
2 milk we're pretty healthy. My father lived to 102 and a half
3 and he drove a Dodge Viper until he was 95, so he was pretty
4 active and pretty healthy.

5 And I'm 73, so I plan on being around for awhile. And
6 my children are in the business. And it's hard to project, but
7 it would be years.

8 Q. Okay. Which generation is the last under the law in
9 your family?

10 A. I think it is past our grandchildren.

11 Q. Your grandchildren?

12 A. Yeah. And they, you know, they may not like the
13 business. They may not like milking cows. They may become
14 doctors and attorneys, have an easy life.

15 JUDGE CLIFTON: Did he say easy life?

16 MR. BESHORE: We have heard that one.

17 BY MR. BESHORE:

18 Q. On, this is 153, Exhibit D, it shows the change from
19 five producer-handlers in 2009, to four in 2014. And maybe you
20 talked about this and I missed it, but who was the
21 producer-handler that was, shows up here in 2009 and isn't here
22 in 2014? And what happened to that operation?

23 A. It was Scott Brothers down in Southern California, and
24 they weren't producing, too my knowledge, they weren't
25 producing enough Class 1 to really justify the exemption,

1 although they still have a dairy farm, they produce a lot of
2 specialty yogurt products, and they have a good business going
3 there, so they kind of focused in a different direction. So it
4 was their choice to convert it. I imagine they converted it to
5 regular quota so that their farm would still have regular
6 quota, then it wouldn't matter where they shipped it. I mean,
7 they could ship it, but it wouldn't matter how they used it,
8 excuse me.

9 Q. So one of the, and again, maybe Mr. English asked this
10 and I didn't get it, but there's a, on one of the exhibits you
11 show it, the 10 percent drop in one period of time. Well,
12 maybe I have to pursue that later. I can't find it. That's
13 all I have at the moment. Thank you, Mr. Shehadey.

14 JUDGE CLIFTON: We'll invite you back up if you find it,
15 just signal, Mr. Beshore, and I'll let you finish your
16 examination.

17 Who would like to go next with questions for
18 Mr. Shehadey? I have got a couple of questions. Let me ask
19 this. From what you have done, Mr. Shehadey, I believe that
20 the Bar 20 operation prefers exempt quota to regular quota. Am
21 I correct?

22 MR. SHEHADEY: That's correct.

23 JUDGE CLIFTON: Why?

24 MR. SHEHADEY: Well, exempt quota they can get the Class 1
25 price direct, as they always had from the outset of the dairy

1 farm, and regular quota would be at whatever the pool price is.
2 And over the years, that pool price has been dragged down
3 because of the high Class 4a and 4b price here, and the fixed
4 differential of \$1.70, it keeps getting dragged down because of
5 the lower usage, lower price usage.

6 JUDGE CLIFTON: All right. And so if a proposal was to
7 convert all exempt quota to regular quota, have you tried to
8 figure out what that would cost the Bar 20 operation?

9 MR. SHEHADEY: Oh, it is probably, and it varies from month
10 to month, as you saw in that Schedule E how it varies from
11 month to month, the differential, but it could be \$750,
12 \$800,000 a year.

13 JUDGE CLIFTON: Mr. Beshore?

14 BY MR. BESHORE:

15 Q. Yeah, I found the number I was looking for, and again,
16 I hope this isn't repetitive. I'm on page 7 of your testimony,
17 at least page 7 of 152 at least on the copy I have. The bullet
18 points. Your second bullet point, two-thirds of the way down
19 in the page?

20 A. Yes.

21 Q. Says that the quota is dropped 10 percent from 2007,
22 to, I guess this is today. Can you tell me what happened there
23 or what that reference is, and I get --

24 A. I think it was the loss that the one producer-handler
25 that converted it to regular quota.

1 Q. Okay. Okay. So that's what you think that would be?

2 A. I believe that was the difference, yeah.

3 Q. Yeah. Very good. Just one other, one of the other
4 question. In terms of your milk supply, is it correct that CDI
5 would balance your needs at your plant?

6 A. They do balance our needs, yes.

7 Q. And there hasn't been a lot of discussion about this at
8 this hearing, and I just want to, want to ask you to describe
9 that a little bit. Do you run, your fluid milk plants, does
10 their demand for milk vary from day-to-day during the week
11 depending on production runs somewhat?

12 A. Well, we run six days, so it's pretty balanced through
13 the week. Weekends are usually a little more, but you can play
14 with inventories produce products on different days to balance
15 that out as best you can.

16 Q. Are the demands, are the seasonal with the schools and
17 college and those sorts of contracts somewhat --

18 A. Yeah, that affects it to some extent, volume-wise.

19 Q. So does CDI absorb those ups and downs, either from
20 day-to-day or over the seasons in your, for your plant
21 operations?

22 A. Yeah, they have a number of customers so they can
23 balance it between their customers. If fluid milk goes down in
24 the summertime because of schools, ice cream goes up, so they
25 sell more ice cream to the ice cream manufacturers, more

1 product. And they try to balance it. They do a good job.

2 Q. I know they find a place for the farmers milk.

3 A. They might make butter and powder out of it and sell
4 it.

5 Q. And they have invested plants in order to be able to
6 have that option for that milk, right?

7 A. Oh, yeah, and they sell it all over the world.

8 Q. Right. And but just in terms of, in terms of the, of
9 your operation, your milk at Bar 20 goes to the plants seven
10 days a week, 365?

11 A. Yes.

12 Q. Okay. And then whatever variations you have, whatever
13 they may be are balanced through your Cooperative supply?

14 A. Yes.

15 Q. Okay. Thank you.

16 A. That's part of the fee we pay, that's part of that
17 balancing. Balancing is one of the factors of the cost of the
18 premium.

19 Q. Right.

20 A. I mean, the value of the premium.

21 Q. Right. And that's a service that you need and is
22 valuable and you negotiate a payment for it?

23 A. Yes, it is.

24 Q. Yep. Thank you.

25 JUDGE CLIFTON: Help me remember, Mr. Shehadey, what CDI

1 stands for?

2 MR. SHEHADEY: California Dairies, Inc.

3 JUDGE CLIFTON: And is that a Cooperative?

4 MR. SHEHADEY: Yes.

5 JUDGE CLIFTON: And the source of the milk that supplies
6 Producers Dairy plant is located where?

7 MR. SHEHADEY: It comes from Cooperative members, but it's
8 direct shipped to us from their farms, and it's within about 25
9 miles of our plant. And we monitor the quality, you know,
10 extensively. And so if there's a problem with the shipper,
11 then we, you know, they have working on a quality issue, then
12 we change that shipper and they send us another one.

13 JUDGE CLIFTON: They being the Cooperative?

14 MR. SHEHADEY: CDI, yeah. The Cooperative.

15 JUDGE CLIFTON: Puts you in touch with a separate shipper.

16 MR. SHEHADEY: A separate shipper, yes.

17 JUDGE CLIFTON: Who else has questions for Mr. Shehadey?
18 Mr. English.

19 MR. ENGLISH: So, your Honor, turns out when you do
20 exhibits at 5:00 a.m. in the morning, you get what you get.

21 What I have is, and I've already discussed this very
22 briefly with Ms. Hancock. On Exhibit 153, where we already
23 corrected the August 2009 to be August 2015 source.

24 JUDGE CLIFTON: We're looking at 154?

25 MR. ENGLISH: I'm sorry, 154. Thank you. I can't correct

1 153, it's already admitted and it is not my exhibit.

2 So Exhibit 154, this is the exhibit that we have shown,
3 we have not offered so it's not been admitted, so it wasn't
4 objected to yet, Mr. Shehadey. And 154 we have found two other
5 errors and we have actually made new copies. Since we haven't
6 admitted it already, it might make sense if I identify right
7 now what the errors are.

8 Under March 2009, the bottom area, where we have
9 percent PD Class 1, and we had 23.12 percent. That number,
10 actually, when we were running the numbers later in the
11 morning, that number should actually be 20.55 percent.
12 Now, again, my idea answer is to provide another document,
13 since we haven't admitted, and then that would actually change
14 the August 2015, last line, California PD Class 1 percentage,
15 raising it from 0.84 percent to 3.41 percent. And we can do it
16 either way, but I have a clean document which fixes all those
17 errors.

18 JUDGE CLIFTON: What I would propose to do, Mr. English, is
19 we have already had testimony about the one we have got.

20 MR. ENGLISH: I agree.

21 JUDGE CLIFTON: And so I would like you to give us the
22 clean one, and but either, we'll refer to it as Exhibit 154(a)
23 or we'll refer to it as Exhibit 155, either way.

24 MR. ENGLISH: And I will accept, obviously, the answer of
25 adding a document, and I think going back to the beginning of

1 the hearing, the only reason we had an Exhibit 20(a) was
2 Exhibit 20(a) showed up long after we had done Exhibit 20, and
3 I don't have a preference. I don't like (a) designations, so I
4 would prefer going Exhibit 155.

5 JUDGE CLIFTON: Good. Let's do that. And that way we'll
6 know what he was looking at when he testified, and then we'll
7 see the new one. So we'll mark this correction as 155. Thank
8 you.

9 (Thereafter, Exhibit Number 155, was
10 marked for identification.)

11 JUDGE CLIFTON: And of course, the way Mr. Shehadey wisely
12 testified is, he said, "if your math is correct", relying on
13 your math. We're just now distributing copies of Exhibit 155.

14 MR. ENGLISH: In answer to Mr. Carman's question about
15 whose math it was, I take full responsibility.

16 JUDGE CLIFTON: All right. If you do not have a copy of
17 Exhibit 155, would you raise your hand? Appears everyone has
18 it. Mr. English, you may proceed.

19 MR. ENGLISH: So I just, and the reason I did it now, your
20 Honor, rather than when I actually offer it through a different
21 witness, I wanted to at least give this witness an opportunity.
22 Obviously, the increase from March 2009 to August 2015, as a
23 percentage, it is much more significant. So I at least wanted
24 to the give witness, in fairness, if he chose, he already gave
25 some extensive explanation, but I wanted to give him an

1 opportunity, if he chose, to discuss this difference as opposed
2 to the 0.84 percent difference that he showed earlier. And if
3 he doesn't want to, that's fine. But if he wants to add
4 something, that's fine, in fairness.

5 JUDGE CLIFTON: So Mr. Shehadey, as I recall, the way you
6 characterized the change for the producer-distributors was that
7 it was essentially flat when we were looking at Exhibit 154 at
8 the very last number shown.

9 MR. SHEHADEY: Yes.

10 JUDGE CLIFTON: And now that you are seeing Exhibit 155
11 where it is not so flat, do you want to add to your comments
12 about any changes that might have occurred between March of
13 2009 and August of 2015?

14 MR. ENGLISH: And maybe in fairness, your Honor, his
15 reference to flat, I think was pure numerical number. And you
16 are now referring to percentage. So I want to be clear on the
17 record, again, out of fairness, and I think Ms. Hancock's going
18 to do it anyway, but I think when he was testifying earlier
19 about relatively flat, he was doing strictly the numbers, and
20 the numbers haven't changed. All that's changed is the
21 percentage. So just taking that into consideration, and then
22 if Ms. Hancock wants to add something, that's fine, too.

23 MS. HANCOCK: So I agree with what Mr. English said, and I
24 think, I guess that my caution about this document is obvious,
25 that one, Mr. Shehadey didn't, and this will obviously go to

1 the admissibility, but I want to caution that he didn't create
2 this document. And what we're looking at is the total, the top
3 we have the number of total producer-handler Class 1 sales
4 reflected in three different time periods. And then there's
5 some additional things going on down below that are not related
6 necessarily, or I don't think, I think it is obvious they are
7 not related to the producer-handler Class 1 sales. It's the
8 changes in the out-of-state Class 1. And so, I guess I just
9 want to make sure that we're comparing apples to apples when
10 he's asking these questions. Up top is where we're looking at
11 producer-handler numbers for Class 1 sales.

12 JUDGE CLIFTON: Thank you, Ms. Hancock. I appreciate that.

13 MR. ENGLISH: Your Honor, to be clear, what we did for the
14 number that's just been corrected for percent PD Class 1, is we
15 did take the line from up above. So for instance, March 2009,
16 we took the 120,242,049, and that was divided by the
17 584,942,733, which is our calculation of the total Class 1 in
18 the market, done the exact same way Mr. Blaufuss did last
19 Friday. And yes, obviously there is a difference in the
20 Class 1 pounds, that's obvious. But even if you account for
21 that, there is some significant change, and besides which it is
22 our contention that this is consistent with the change in fluid
23 market. So I think we have lost track probably of the question
24 that was being asked of the witness, and if Ms. Hancock wants
25 to ask, that's fine.

1 MR. HANCOCK: I guess then, he's just, I guess, highlighted
2 what the real objection here is, and that this is his argument
3 and not a question for the witness.

4 MR. ENGLISH: I'm not making an argument. I was giving him
5 the courtesy of saying, okay, look, I made a mistake, here's
6 the real numbers. It looks like if we're right the number
7 change is bigger. And in that case, if he wants to, he doesn't
8 have to say a word, but if you would like to, does he have
9 anything he wants to say about, assuming our numbers are right,
10 about that number. That's all I'm asking.

11 MS. HANCOCK: My concern is that they are asking him about
12 their own mistakes and putting the document in front of him.
13 They put one document in front of him earlier and tried to get
14 him to adopt it, and now they have come back and put another
15 document in there and they want to ask him about their own
16 mistakes. So, I mean, the numbers are in there, they are what
17 they are, we're just adding them up, dividing them, and
18 quantifying them in different ways, in whatever ways that makes
19 it look more favorable to whatever our position is. To me,
20 this is argument. The numbers are what they are.

21 When Mr. Shehadey put his numbers in, he was putting
22 new numbers in that hadn't been in the record before. But at
23 this point, it is just asking him to do the calculations that
24 Mr. English has been objecting to all along when we have other
25 witnesses do it, they have done the calculations so they

1 haven't given Mr. Shehadey the benefit of doing the
2 calculations, but they are asking him to confirm their own
3 numbers that they have just proven they have made mistakes on
4 along the way.

5 So this is my concern with asking this witness. If
6 they want to put their own witness on and talk about this, you
7 know, that would make more sense to me.

8 MR. ENGLISH: Your Honor, Chip English. I think we're
9 losing the forest through the trees. I never once asked him to
10 adopt it. I asked specifically, assuming our numbers are
11 right, and I merely was providing a courtesy, which may have
12 been a mistake, of giving him an opportunity, assuming our
13 numbers are right, and assuming if he wants to say anything,
14 which he may not want to do, that since I asked him the
15 question when the number was showing a much smaller difference,
16 assuming our numbers are correct, and it's not argument, is
17 there something when he wants to say about that. If he doesn't
18 want to say, he doesn't. And I think the question was fairly
19 simple and fairly straightforward, and it was done in the
20 spirit of fairness as opposed to ambushing after he was off the
21 stand and may have left the room.

22 JUDGE CLIFTON: Okay. So Mr. Shehadey, do you want to add
23 anything with regard to whether the producer-distributor
24 percentage of Class 1 has, in fact, increased from March 2009
25 to August 2015?

1 MR. SHEHADEY: Well, the 14 percent drop just seems a
2 little extreme. I know it's gone down, but just 14 percent
3 seems more than what it -- what it should be. But I don't want
4 to get into a percent here or percent there, but we have good
5 relationships with our customers. We have been able to
6 maintain them through this decrease in milk consumption. And
7 we, I think most of the producer-handlers feel the same way,
8 they are family businesses, they have relationships with their
9 customers, and it's more than just, you know, bidding on price.
10 I mean, maybe your large customers are thinking more about
11 price, but we have one large customer that we have had since
12 they had five locations in Northern California, five warehouses
13 in Northern California, and that was in 1985. And they have
14 stayed with us since 1985 to today. We have a good
15 relationship with them. So if other sales are going down, we
16 have not experienced that, as like maybe some other people
17 have.

18 JUDGE CLIFTON: Mr. English?

19 MR. ENGLISH: No further questions.

20 JUDGE CLIFTON: Thank you. And thank you for your team for
21 getting us corrected on this right away. We have all made
22 mistakes here, we have all misstated things, it's been
23 difficult. Very often when the brain's focused on one thing,
24 something else slips a bit. All right.

25 Who else has cross-examination for Mr. Shehadey on this

1 issue? Mr. Richmond?

2 CROSS-EXAMINATION

3 BY MR. RICHMOND:

4 Q. Bill Richmond, USDA. Thanks a lot, Mr. Shehadey, we
5 appreciate it.

6 A. Yes, thank you.

7 Q. As you know, producer-handlers in California are very
8 different than producer-handlers in other Federal Order
9 systems.

10 A. Yes.

11 Q. So we appreciate your help in understanding what
12 happens here in California, and I also just wanted to express
13 thanks for the work of your sons, and also with Mr. Lai, too,
14 they have put a lot of work into this and really helped us kind
15 of get to this point. So thank you.

16 A. I think it's really important that you understand how
17 California, you know, works, has operated from Day 1. So
18 that's why we brought Mr. Gonsalves in to explain the history.

19 Q. It helped a lot. In looking at the initial proposal
20 compared to your exhibit, there's a few minor differences. And
21 I just wanted to maybe give you the opportunity first, to back
22 way up and just tell us, give you the opportunity to tell us
23 exactly what you want us to do.

24 A. Well, all along we have said that, you know, quota
25 should be part of the new Order. If you are going to write up

1 an Order, quota has to be part of it, because, you know, I'm
2 on, I'm on a number of boards and committees that have a lot of
3 dairy farmers on it and I know how they feel. They are really
4 concerned about the value of quota. And I was on the Quota
5 Review Committee and it was comprised of producers, which we
6 are one. And the discussion at that time, we had six meetings
7 in Sacramento to discuss what do we do with quota, what do we
8 do with quota, back in 2007. And the big concern was, well, we
9 need to protect it. But if we are going to get to equalize it,
10 say, to get rid of it, then there's a value there. And at that
11 time it was a billion dollars, today it's like \$1.2 billion
12 because the value of quota has gone up some. But it is really
13 important that we maintain that.

14 And our exempt quota was really based on quota. It's a
15 kind of quota. It is quota, only it's exempt quota because we
16 created the Class 1 sales ourselves, as opposed to another
17 producer that might sell to a Class 1 plant.

18 When I was a controller at the time the pool went in, I
19 did the reporting for the pool to set up the quota for the
20 people that qualified for quota, so we had two or three other
21 shippers, I can remember two of them for sure, and they they
22 shipped to us, and we had 95 percent Class 1, so the milk they
23 shipped to us, they got 95 percent quota on it. Our own farm
24 shipped to us and we got a percentage of, and at that time we
25 didn't have, we didn't have a large herd, but the herd we had

1 we qualified in '69 for the quota that we have now, but it was
2 exempt quota, so that we could continue to pay the Class 1 like
3 we had for the years before to our own farming operation. That
4 was a philosophy behind exempt quota. It was to protect, the
5 quota went to protect the producers, and it's a good thing.
6 And they got the freedom to buy it and sell it, which we don't
7 have. And they have the freedom to keep it forever which we
8 don't have, because we have the consanguinity requirement.

9 But we got exempt quota, which allowed us to continue
10 to pay ourselves the Class 1 price since we had created the
11 sales for that milk, went out and got the customers, and beat
12 the streets, and, you know, kept the business. And so that was
13 really the philosophy behind it.

14 Then they said, well, we can't have it wide open, we
15 need to have it controlled, and that's understandable, and
16 that's why we have a fixed amount of quota. They adjusted it a
17 couple of times in '78 and '95, but the philosophy was based on
18 the original philosophy of exempt PD's have exempt quota, and
19 the rest of the producers have regular quota.

20 Q. Okay. As you know, in current Federal Orders and under
21 Proposals 1 and 2, when the level of Class 1 sales exceeds 3
22 million pounds you are essentially not a producer-handler
23 anymore, you become a fully-regulated handler. So is the
24 position of the Producer Handlers Association, are you in
25 support of that or opposed or?

1 A. We want to maintain our exemption even in a Federal
2 Order, as we have it today. Not a new increased exemption, but
3 the same amount of pounds, and we feel it should be
4 administered through the State of California so they can manage
5 the quota portion of the Federal Order.

6 I think they would have to handle the purchases between
7 other producers on regular quota. They have to manage who has
8 it, how many pounds they have, and how that's technically, how
9 that would be done, I don't know, but I think it would be a
10 working relationship between, you know, the Federal Order
11 administrators and California.

12 Q. And I think in your exhibit you stated that along with
13 any other changes the USDA deems necessary to kind of maintain
14 this, I took that as imposing some kind of level of flexibility
15 in figuring out a way to kind of meet that end?

16 A. Yes. We have an expert coming in to help with language
17 and he's pretty well knowledgeable, I think, on Federal Orders.
18 And he should be able to help with, you know, those kind of
19 technical questions as to how could you make it work.

20 Q. Okay. So in terms of whether or not you would be a
21 producer-handler or a handler under a potential California
22 Federal Milk Marketing Order, you are indifferent to that as
23 long as the exempt quota is preserved?

24 A. Yeah, as long as we can handle it similar to the way we
25 do now, and I think that's the concern of all the producers out

1 there. And I'm sure if you, if you write it up so that, you
2 know, there's a chance that the quota could go away, especially
3 at no value, they could lose it, it will be voted down. I
4 mean, the producers know what they have now. I don't think
5 they want to go into a black hole. So their anticipation is
6 that they will have the same quota value there and quota
7 benefits, which would be the monthly, you know, difference in
8 price, whether it's \$1.70 continuing or whatever you came up
9 with. But I'm sure that's going to be a key part of the value
10 to the whole thing you are going to write up, as far as whether
11 they like it or not or would vote on it or not.

12 Q. Sure. Okay. Thank you.

13 Shifting gears a little bit. This, into the kind of
14 specifics of the exempt quota space. Do you know if there's a
15 way that the volume of exempt quota issued to a
16 producer-handler can exceed the level of production at one of
17 the producer-handler farms? Like, is there a way for you to
18 have exempt quota on milk that you would potentially purchase
19 from a farm you don't own?

20 A. No, it has to be our own farm.

21 Q. Your own farm?

22 A. Yeah. That's one of the requirements.

23 Q. Got it. Okay. I think that's all. That's all we have
24 for now. I appreciate it.

25 A. Okay. Thank you.

1 JUDGE CLIFTON: Who else has questions for Mr. Shehadey?
2 None. Mr. Shehadey, is there anything else you would like to
3 say before you step down? Redirect? Never mind. Redirect.
4 Thank you, Ms. Hancock.

5 REDIRECT EXAMINATION

6 BY MS. HANCOCK:

7 Q. Mr. Shehadey, have you been able to increase the
8 business that you have at your plant over the years?

9 A. Yes, we have.

10 Q. Is any of the increase that you ever had from your
11 plant, attributed in any way to the exempt quota that you hold
12 by your farm?

13 A. No, it's not, because if the money goes to the farm.
14 We don't have the money to give.

15 Q. Have you ever distributed money from your, from the
16 profits that you make at the farm and recapitalize them back
17 into your plant in any way?

18 A. No. They are different family members, they are
19 different businesses. Bar 20 Dairy Farms was a partnership for
20 many years, and then our attorneys said it should be an LLC
21 instead of a partnership, but basically we operate it as a
22 partnership, and Producers Dairy is a Sub S corporation.

23 Q. And so you talked about with Mr. English about you have
24 made dividend payments to your members from the plant, to your
25 shareholders. Tell me about those?

1 A. The only time we make dividends is when we have tax
2 liability, because maybe we made a profit that year and we pay
3 taxes, and we share, since it's a Sub S corporation, whatever
4 the taxes are, each owner pays his percent, becomes a personal
5 tax. And then each owner has to pay taxes on that profit that
6 the company made. So we have a family policy that says we will
7 pay dividends to help pay those taxes. There's no other reason
8 we pay dividends. We don't pay dividends just for the fun of
9 it or joy of it. We keep the money in the business, we put the
10 money that we make back into the business, that's helped us
11 grow and be efficient, put out a good quality product with the
12 latest technology throughout our operation.

13 One of the things we have had this last year has been
14 the Air Board requirements in California has been a big expense
15 for all the dairies here. Having to change their trucks, and
16 new engines, and air quality requirements, so the business
17 requires money to keep it going.

18 Q. I'm going to shift gears a little bit. At the very
19 beginning of Mr. English's examination of you he asked you
20 questions about how your, how the payments were reported or how
21 your plant reports to the pool.

22 Do you remember talking about that with him?

23 A. Yes.

24 Q. Okay. And you said your farm owns, Bar 20, owns some
25 regular quota, right?

1 A. Yes.

2 Q. Okay. Are these sale reported to the pool as well?

3 A. Yes.

4 Q. By your plant?

5 A. Yes, it is.

6 Q. Does Bar 20 report any of those pounds to the pool?

7 A. Well, the processing plant reports it on the 800
8 report, because they are responsible to fill it out for whoever
9 you receive milk from. Every processor has to fill out an 800
10 report.

11 Q. Okay. Does any of the reporting that your plant does
12 to the pool or to CDFA have any impact on who actually owns
13 that regular quota?

14 A. I don't understand your question.

15 Q. Well, because the plant reports that, just because the
16 plant reports those volumes to the pool, it doesn't mean that
17 the plant owns the regular quota, right?

18 A. No.

19 Q. Okay. And similarly, the plant making the report to
20 the pool about what exempt quota is held, there's no ownership
21 title, there's no ownership tied to the reporting obligations
22 is my point.

23 A. No, there's not.

24 Q. Okay. The reporting obligations that you are, whether
25 you are reporting the Class 1 sales that you paid to your farm

1 for exempt quota or for regular quota, that's just to determine
2 how much your plant owes to the pool?

3 A. That's correct.

4 Q. Okay. If exempt quota, if a Federal Order were
5 implemented in California and exempt quota was not part of it,
6 who would suffer that loss?

7 A. Our family.

8 Q. Which family?

9 A. The Shehadey family.

10 Q. Right, but which entity would suffer that loss?

11 A. Oh, the farm would.

12 Q. Okay. And --

13 A. Bar 20 Dairy farm.

14 Q. The family that owns the plant, would they suffer the
15 loss from, if exempt quota were not continued?

16 A. Well, not because of the processing plant, but if they
17 have ownership, which a number of them do, in the farm
18 operation also, they would suffer from that.

19 Q. Okay. So only the ones that also had an interest in
20 the farm would suffer the loss?

21 A. That's where the loss would be.

22 Q. And the ones who have an ownership interest in only,
23 the family members who have an interest only in the plant, but
24 not the farm, it would be, it would make no difference to them?

25 A. No, because it wouldn't matter who woe bought the milk

1 from, and to the processing plant, they are going to pay the
2 Class 1 price either as an exemption to the farm or to the
3 pool. So the cost is the same from a cost standpoint to the
4 processing plant.

5 Q. Thank you.

6 JUDGE CLIFTON: Are there any other questions for
7 Mr. Shehadey? Mr. English, re-cross?

8 RE-CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. But there would be, on the, following up directly,
11 following up directly on the questions from Ms. Hancock. But
12 the plant would now, as the plant, be contributing the money it
13 is not presently contributing on that hypothetical 20 percent,
14 to the pool, correct?

15 A. If -- give me the scenario.

16 Q. The scenario is Ms. Hancock's scenario, that if the
17 Federal Order doesn't incorporate exempt quota and, as she
18 said, the loss is at the farm, I'm following up and saying but
19 in addition, the plant which presently pays, in your testimony,
20 the Class 1 price on those 20 pounds, hypothetically, to Bar 20
21 Dairy, would have to contribute whatever share there is to the
22 pool on those 20 pounds even as it contributes on the 80 pounds
23 today, correct?

24 A. We would pay into the pool if we were a normal producer
25 without the exemption. And then we would pay Bar 20 the quota

1 price for the milk, as opposed to the Class 1 price that they
2 have got all along.

3 Q. And that's it. Thank you.

4 JUDGE CLIFTON: Anything further on that issue,
5 Ms. Hancock?

6 MS. HANCOCK: No, thank you.

7 JUDGE CLIFTON: Thank you. Mr. Shehadey, now, is there
8 anything else you would like to add for our understanding?

9 MR. SHEHADEY: No, not particularly. Other than, you know,
10 it's, I think it's important that that the people responsible
11 to put this together, put together something that the producers
12 would be willing to back. I mean, otherwise it can be a futile
13 effort. Because you have got to look at the value of the quota
14 and what, and the way the banks look at it and the way the
15 producers look at it and the value to them. And if they have
16 any fear of losing that without a legitimate buy out of some
17 kind, they won't vote for it. I mean, so it's when I say
18 futile effort, it will be a waste of time in the long run. It
19 would be nice to have an improvement in what we have now is
20 what, why the original proposal was written.

21 And the co-ops for three co-ops to work together on
22 anything is astounding. So to have them work together on this
23 for the benefit of their members, you know, the good dairy
24 farmers out there that are working their tails off, I commend
25 them on that. And that's why we support the co-op proposal,

1 because we understand the farmer's plight and that we need to
2 make some changes. Hopefully you can put together a good
3 program.

4 MR. RICHMOND: Bill Richmond. Can I just make one
5 suggestion?

6 MR. SHEHADEY: Sure.

7 MR. RICHMOND: There's a sentence right before the
8 conclusion part on page 10 that says based on your discussions
9 with representatives of the co-ops, they would not oppose this.
10 We would really, it would really help us to see something like
11 that in a brief, as to the Cooperatives support of this
12 proposal.

13 MR. SHEHADEY: Yeah, okay.

14 MR. BESHORE: We'll have some rebuttal.

15 JUDGE CLIFTON: Mr. Shehadey, I extend my personal thanks
16 to you. We have been hearing about this, you know, since the
17 very beginning. And not until you, did it begin to have some
18 clarity. And I appreciate very much what you have brought to
19 the hearing.

20 MR. SHEHADEY: Well, thank you. Our counsel wanted to put
21 me on first just because of my years involved since the outset
22 of the pool, and understanding of the marketplace, so I was
23 happy to be able to try to explain. I mean, I could talk for
24 hours about this business, but I appreciate the opportunity to
25 speak, and I appreciate your clarification on some of the

1 issues as we went through the language to make sure it said
2 what we were trying to say. So I thank you for your time.

3 JUDGE CLIFTON: You're welcome. Thank you. All right. I
4 think it might be wise to take at least a stretch break. What
5 time is it?

6 MR. ENGLISH: 12:15, your Honor, 12:20. I also thank you,
7 Mr. Shehadey, again, for jumping in and helping us fill the
8 gap.

9 I was going to suggest, I think the court reporter
10 certainly needs the break. I would think partly because I know
11 we have some dairy farmers coming, it might make sense to take
12 like a ten-minute break and then at least start with
13 Mr. Blaufuss. I know there's some issues I need to discuss
14 with him, so I think we won't get completely done and then take
15 lunch, but I think let's at least use some of the time, say,
16 get started back at 12:30, and work with him for a little
17 while, and then maybe take lunch at either 12:45 or 1:00 and
18 see how far I get in his examination for now

19 JUDGE CLIFTON: All right. Let's do that then. It is
20 12:20. Please be back and ready to go at 12:30.

21 (Whereupon, a break was taken.)

22 JUDGE CLIFTON: We're back on record.

23 MR. ENGLISH: So your Honor, we're going to call
24 Mr. Blaufuss back to the stand, and what we have handed out in
25 the interim are two documents; one, a revised Table 2, which

1 refers to Exhibit 148, but we can talk about its number in a
2 second; and the second document I have handed out is Testimony
3 of Rob Blaufuss, and I believe everybody should have one.

4 JUDGE CLIFTON: So raise your hand if you do not have one
5 of these very colorful one-page chart, and one of these,
6 Testimony of Rob Blaufuss, Part 6. You should have one, you
7 should have each. So do we want to number each of them,
8 Mr. English?

9 MR. ENGLISH: Yes, and because of the order I'm going to go
10 in, I would prefer to label the revised Table 2, first. And I
11 still think, my preference would be to go with the next exhibit
12 number, but you could conceivably, based upon what we did with
13 Exhibit 20, make this 148(a) if you so desire, but I have no
14 preference.

15 JUDGE CLIFTON: All right. I like the idea of making it
16 148(a) because it either replaces or supplements what 148 has.
17 So please mark revised Table 2 as Exhibit 148(a).

18 (Thereafter, Exhibit Number 148A, was
19 marked for identification.)

20 JUDGE CLIFTON: And with regard to the testimony of
21 Rob Blaufuss Testimony, Part 6, Ms. Frisius, I would say this
22 is Exhibit 156. Is that what you have?

23 MS. FRISIUS: Correct.

24 JUDGE CLIFTON: Exhibit 156

25 (Thereafter, Exhibit Number 156, was

1 categories.

2 I also made the adjustments, as I mentioned yesterday,
3 my nonfat dry milk make allowance was too low, so I went ahead
4 and updated that to be reflective of what's in the Dairy
5 Institute Proposal, as well as adding the additional make
6 allowance factor for the butterfat, SNF, other solids, and
7 protein, adding the .0015 addition to the make allowance as
8 will, as per Proposal 2 that Dr. Schiek walked through.

9 Q. And rather than burdening the record with the 63 pages
10 of tables and going through that really fun analysis from
11 yesterday, what you are giving us is the cliff notes, correct?

12 A. Correct. Using the same formulas we walked through
13 just making those adjustments.

14 Q. So anybody can duplicate it in the same way by building
15 the spreadsheet, correct?

16 A. Correct.

17 Q. So when you do that, what conclusion do you reach?

18 A. There's no change in the conclusion. The numbers might
19 adjust, adjusted a little bit, but they are still roughly 4
20 cents a gallon difference when you look at a high test versus
21 low test on a two factor pricing, which is fat and skim, and
22 you shrink that gap significantly when you move to a three
23 factor.

24 Q. So on your testimony you had given us the precise
25 numbers, so why don't we go through the exact same numbers. So

1 in the upper left hand column, two factor test for the high
2 test skim, what number do you end up with?

3 A. Excuse me, what numbers are you --

4 Q. In the upper, I'm looking at Table 2, and looking at
5 reduced fat, upper left hand corner for two factor, which is
6 the high, correct? That's the high skim?

7 A. Correct.

8 Q. Okay. So what number do you get?

9 A. \$1.5973 a gallon.

10 Q. And if you use the low test for reduced fat, what
11 number do you get?

12 A. \$1.6356 per gallon.

13 Q. And what's the difference?

14 A. 3.83 cents per gallon for reduced.

15 Q. And then for the three factor for reduced fat milk,
16 what number do you get?

17 A. For the high test I have \$1.6925 per gallon, and for
18 the low test skim I have \$1.69 per gallon.

19 Q. So that's gone from .05 cent difference to .25 cent
20 difference, correct?

21 A. That's correct.

22 Q. From yesterday to today?

23 A. Correct.

24 Q. Is there anything else you want to tell us about
25 revised Table 2, Exhibit 148(a)?

1 A. No.

2 Q. Okay.

3 JUDGE CLIFTON: Let me ask, since Mr. Blaufuss hopes to be
4 gone after today, whether you have created an exhibit to show
5 us what you got from the Market Administrator that you used as
6 the basis for your spreadsheets? They were e-mail attachments
7 which gave you your start.

8 MR. BLAUFUSS: Yeah, I have no problem sharing that. I
9 mean, I think that's data that USDA would, if asked, release
10 anyway, so if that's something that they wish, then yes, I can
11 share those two snapshot files that I was sent.

12 JUDGE CLIFTON: Yes. So how would that become an exhibit
13 here if Mr. Blaufuss is leaving today?

14 MR. ENGLISH: I don't know. I guess he will provide us the
15 spreadsheet and we will, he'll get us an e-mail and we will
16 somehow get it to USDA, or maybe USDA --

17 JUDGE CLIFTON: It needs to be an exhibit. If he has the
18 e-mail and can, with his laptop, send it to somebody here, who
19 could then testify they got it from him, you will recall the
20 conversation here, he doesn't want to release his spreadsheet
21 but --

22 MR. ENGLISH: No, I know, I am just trying to think it
23 through. Just, I'm sorry, I'm trying to think this through.

24 MR. RICHMOND: Bill Richmond, USDA. We absolutely don't
25 have a problem with it. I think we would feel a lot better, if

1 necessary, having the author of the document here, having
2 someone that could at least attempt to explain the methodology
3 and what the document attempted to try to convey. So I think
4 until we're able to do that --

5 MR. ENGLISH: I guess that's what I'm struggling with, your
6 Honor, is who should do it. Since I didn't make the request, I
7 wasn't going to suggest that USDA do that, but I'm thinking the
8 better way, if it can be done, is for USDA to do it, but I was
9 not going to put them to that burden. But I think it is
10 probably better than --

11 MR. RICHMOND: We, I think for the time being, we feel
12 comfortable with this.

13 JUDGE CLIFTON: And you are pointing to Exhibit 148(a)?

14 MR. RICHMOND: Yes.

15 JUDGE CLIFTON: All right. And it was Mr. Mykrantz who
16 gave you the original spreadsheet; is that correct,
17 Mr. Blaufuss?

18 MR. BLAUFUSS: Yes, there was two spreadsheets, one for a
19 two factor, one for a three factor, both of which came from
20 him, yes.

21 JUDGE CLIFTON: All right. So I guess if USDA finds it
22 useful to show the math, even though we don't have
23 Mr. Blaufuss' math, the template would be available from
24 Mr. Mykrantz, and the USDA could put it on the website.

25 MR. RICHMOND: Absolutely.

1 JUDGE CLIFTON: Okay. Let's leave it at that. Very good.

2 MR. ENGLISH: Thank you, your Honor, and thank you for your
3 flexibility, and thank you, Mr. Richmond.

4 BY MR. ENGLISH:

5 Q. All right. So turning to Exhibit 155, first, you were
6 not the initial author of this document, correct?

7 A. That is correct.

8 Q. Absolve you of the error. But you have -- you have
9 looked at it and have you verified the information on what is
10 Exhibit 155?

11 A. Yes.

12 Q. So just to confirm, did you pick the month of March
13 2009 to do this analysis?

14 A. No, the months chosen were just the months that were
15 given for the total sales volume for the producer-handlers.

16 Q. Could you have picked a different month?

17 A. If I had the producer-handler sales volume I could
18 have.

19 Q. Okay. But in other words, there's -- there is
20 insufficient data in the record for you to select a different
21 month other than March 2009 and August 2015, correct?

22 A. Correct.

23 Q. Okay. And that's because the data point that you don't
24 have, other than for March 2009 and August 2015, is the total
25 producer-handler Class 1 sales numbers that appear for

1 January 1985, March 2009, and August 2015?

2 A. That's correct.

3 Q. Okay. And none of us have any data in the record for
4 1985, other than that data point, correct?

5 A. Correct.

6 Q. So you have already, the analysis for August 2015, is
7 that identical to the analysis you gave us last Friday?

8 A. That's correct.

9 Q. Okay. And the data from March 2009, the out-of-state
10 Class 1 sales, is the number from where?

11 A. It's from one of CDFA's exhibits that's in the hearing
12 record.

13 Q. Okay. And again, you have now personally looked this
14 over and looked at all the documents and verified that these
15 numbers are correct?

16 A. That's correct.

17 Q. All right. Why don't you now read your statement that
18 is Exhibit 156.

19 A. Okay.

20 Introduction

21 I am an appreciative of the work that Proponents of
22 Proposal 1 performed with regards to their transportation
23 credit language. It is clear that the cooperatives spent
24 considerable time in developing a transportation credit program
25 for a potential California Federal Order. That said, I would

1 like to provide an overview of how the transportation credit
2 and allowance program would function in Proposal 2 and concerns
3 I have with parts of the Cooperatives' proposal.

4 Dairy Institute of California Transportation Credit Proposal

5 The Dairy Institute of California Federal Order hearing
6 proposal language with regards to transportation allowances and
7 credits, largely mirrors that of current California State Order
8 regulations. The key difference however is that the DIC
9 proposal takes into account the differences and the location
10 value of milk. Under the Dairy Institute proposal, the current
11 California transportation credits and allowances would be
12 reduced by the difference in the location differential value of
13 the plant receiving milk and the supply area to which it is
14 serving that market.

15 In all current Federal Orders, producer pay prices are
16 adjusted based on the location value of the plant to which they
17 ship to. As an example, a producer delivering milk into a
18 Class 1 plant in Los Angeles would be paid at the base zone
19 differential. A producer whose milk is shipped to a butter
20 powder plant in Fresno, which is located in a \$1.60 per
21 hundredweight differential zone, would have their blend price
22 reduced by 50 cents per hundredweight. This difference in the
23 location value of milk is a tool which assists in ensuring an
24 adequate supply of milk for fluid purposes. Proponents of
25 Proposal 1 have not included a location adjustment in the

1 producer pay prices in their California Federal Order proposal.

2 Concerns

3 While I am very appreciative of the study undertaken by
4 the Proponents of Proposal 1 on this issue, I do have some
5 concerns with parts of their proposal. These concerns are
6 addressed below.

7 1) No producer location differential adjustments. As well as
8 not including any direct requirements to serve the Class 1
9 market byway of performance standards, the Proponents of
10 Proposal 1 also do not include plant location adjustments for
11 producer milk. All producers will be paid at the same rate
12 regardless if they ship milk to a Class 1 plant in Los Angeles,
13 or if they ship milk to a butter powder plant in Fresno. This
14 further reduces a Class 1 plant's ability to track a milk
15 supply.

16 2) The fixed coefficient values used in the computation of the
17 transportation payment. In order to calculate the monthly
18 transportation allowances, the Cooperatives rely on the fixed
19 coefficient values calculated in their regression analysis of
20 2013 data. In time, there is the potential that these
21 coefficients may not be as predictive in the future as they are
22 today.

23 3) Using an 8-week average EIA diesel price. The Proponents of
24 proposal one use an eight-week average EIA diesel price to
25 adjust the base diesel price in their Transportation Allowance

1 Program. An eight-week price average could potentially make
2 the allowance program slow to respond to real time changes in
3 energy prices. The Southeast and Appalachian Federal Orders
4 transportation credit programs, for example, use a four-week
5 average diesel price to adjust their credit payment program
6 levels.

7 JUDGE CLIFTON: We're done?

8 MR. BLAUFUSS: We're done.

9 MR. ENGLISH: Well, we're done until I do my additional
10 direct. And as a preview of that, are we going to make some
11 changes to the proposal language after lunch, Mr. Blaufuss,
12 with respect to who and under what circumstances transportation
13 allowances and credits can be paid?

14 MR. BLAUFUSS: Yes.

15 MR. ENGLISH: Okay. And does that have to do with the
16 issue of out-of-state milk?

17 MR. BLAUFUSS: That's correct.

18 MR. ENGLISH: So at this point, your Honor, I do think
19 subject to two things, I think it is efficient to move to
20 lunch. And that is, before lunch I would at least like to move
21 the admission of 148(a) and 155, I'm going to hold off on 156
22 because we haven't had a chance to do additional direct. But I
23 would move admission of 148(a) and 155 at this time.

24 JUDGE CLIFTON: And just a moment ago when you said what
25 sounded like 140(a), it was actually 148(a) in your clipped

1 manner of speaking; is that correct?

2 MR. ENGLISH: I might object to the characterization, but
3 yes, 148(a).

4 JUDGE CLIFTON: We have got him trained.

5 MR. ENGLISH: For 13 seconds.

6 JUDGE CLIFTON: Does anyone wish to question Mr. Blaufuss
7 before determining whether you have any objection to the
8 admission into evidence of Exhibit 148(a)? No one. Are there
9 any objections to the admission into evidence of
10 Exhibit 148(a)? There are none. Exhibit 148(a) is admitted
11 into evidence.

12 (Thereafter, Exhibit Number 148(a), was
13 received into evidence.)

14 JUDGE CLIFTON: With regard to Exhibit 155, does anyone
15 wish to question Mr. Blaufuss before determining whether you
16 object?

17 MS. FRISIUS: Your Honor, it is 156, not 155. 155 was the
18 corrections that are --

19 MR. ENGLISH: That's the one we're looking at, I'm sorry.

20 MS. FRISIUS: Sorry, 155 you want marked?

21 JUDGE CLIFTON: So 155 should look like this.

22 MS. FRISIUS: So you don't want 156, his testimony?

23 MR. ENGLISH: Not at the moment. I apologize. I'm going
24 to hold off because we're going to do additional direct. What
25 I'm asking for, Ms. Frisius, is the admission of Exhibit 155,

1 which is the corrected version of Exhibit 154, and in case
2 anybody is wondering, we are not offering 154, it will be
3 marked.

4 JUDGE CLIFTON: But thank you, Ms. Frisius, I'm glad you
5 are paying close attention. So Ms. Hancock?

6 MS. HANCOCK: I just have a couple of questions in aid of
7 exploring whether I have an objection, I guess.

8 VOIR DIRE EXAMINATION

9 BY MS. HANCOCK:

10 Q. Mr. Blaufuss, on Exhibit 155, at the top of the page
11 there's some charting there and it shows a total
12 producer-handler Class 1 sales. Do you see that?

13 A. I do.

14 Q. And then there's volumes that are assigned for January
15 of '85, March of 2009, and August of 2005?

16 A. 2015.

17 Q. 2015, I'm sorry. Thank you. Is that otherwise
18 correct?

19 A. Yes.

20 Q. And in March of 2009 it shows that the total
21 producer-handler Class 1 sales were 120,242,049.

22 A. 120 million.

23 Q. I was trying to read slow, and I kind of lost track.
24 120,242,049?

25 A. Yes.

1 Q. And then August of 2015 is 120,546,754?

2 A. That's correct.

3 Q. Okay. So are those the numbers that you used to factor
4 into, on the bottom, your California PD Class 1 percent change?

5 A. Are you, I'm trying to figure out which number you are
6 looking at.

7 Q. Now I'm at the very bottom of your calculations. What
8 I'm trying to figure out is whether those two numbers that I
9 just read you in March of 2009 and August of 2015 are at all
10 factored into what you have on the bottom chart.

11 A. Yes.

12 Q. Where are they reflected?

13 A. So if you are looking at the March 2009, you are going
14 to take that 120,242,049 divided by the 584,942,733 and that's
15 how you should land at the 20.55 percent.

16 Q. Okay. And then the same for August of 2015, you have
17 taken that 120 million number and divided it by the 503 million
18 number?

19 A. That's correct.

20 Q. And so -- and so from that, then, you have created the
21 two percentages that are below that as well? The 20 .55
22 percent, those are the results of that division that you did?

23 A. So I'll guess I'll start with the negative 14 percent,
24 that's just looking at the 5 --

25 Q. Hold on one second, I'm not there yet, you got to go

1 slow for me. What I'm trying to figure out is, so for, let's
2 back up. For March of 2009, you took the 120,242,049 divided
3 by the 584 million number to get your percentage? Your 20
4 percent?

5 A. The 20.55 yes, the math that we walked through.

6 Q. Okay. And then August 2015 you did the same thing to
7 get your 23.96 percent, right?

8 A. Correct.

9 Q. And then you have subtracted the difference between
10 those two to come up with the difference or to total the
11 producer-distributor Class 1 percent change?

12 A. It's, I believe, a share change. So, in this case, you
13 look at March 2009, it was 20.55 percent of the Class 1 market,
14 and in August 2015 it was a 23.9, 23.96 percent share of the
15 Class 1 market. And so the difference between that 23.96
16 percent and the 20.55 percent equals that 3.41 percent.

17 Q. Okay. So that 3.41 percent you are, you are point
18 there is just to say it is a share of market? An increase in
19 the share of market?

20 A. That's what that percent difference would be, yes.

21 Q. Okay. But to figure out the percent of change in
22 there, actual producer-handler Class 1 sales, you would just
23 compare the 120 million number; is that right?

24 A. The actual pounds on the sales growth you take X2 minus
25 X1 over X1. So X2 would be August 2015 sales data, X1 in this

1 case would be March 2009, and then you divide that by the March
2 2009 sales, and that would be your sales volume percent change.

3 Q. Okay. And if I have done my math right, that is a .25
4 percent change; is that right?

5 A. Yes.

6 Q. Okay. And you would agree that this 3.41 percent
7 change in the percentage of the pool is largely attributed to
8 the difference in how much out-of-state milk was coming in?

9 A. That's the data that's laid out by CDFA, so that's
10 representative of here's the total Class 1 sales.

11 Q. Is that a yes?

12 A. I'm not sure what the question was, but I'm looking at
13 it here is the Class 1 volume for both months.

14 JUDGE CLIFTON: Mr. Blaufuss, just look up at the
15 out-of-state Class 1, look at the volume for March 2009, and
16 the volume for August 2015.

17 MR. BLAUFUSS: Uh-huh.

18 JUDGE CLIFTON: All right? So ask your question again,
19 Ms. Hancock.

20 BY MS. HANCOCK:

21 Q. So my question to you, Mr. Blaufuss, is that difference
22 in the percent of the producer-handler share of the market that
23 you have reflected between March of 2009 and August of 2015, is
24 largely attributed to the difference in the out-of-state
25 Class 1 numbers that are noted there?

1 MR. ENGLISH: Objection, your Honor, I'm not sure what the
2 word largely means. If she means majority, she's not right.
3 Because it's 81 million pound difference of 35, so 35 would be
4 less than majority, so maybe it would help her to, help if she
5 would define what largely means. I also think we have strayed
6 beyond voir dire, your Honor, in the cross-examination.

7 JUDGE CLIFTON: No, this is proper, she is trying to
8 determine whether she objects to the admission of this
9 document. So, Mr. Blaufuss, you may respond to her question.

10 MR. BLAUFUSS: Let me do some quick math here. If I'm
11 looking at the difference, and I would agree with what
12 Mr. English said, if we're looking at the difference between
13 out-of-state Class 1 between March of 2009 and August of 2015,
14 we're looking at roughly a 34 million pound difference. We'll
15 call it 34 and a half to be easy math. The total difference in
16 the Class 1 sales was roughly 82 million pounds so that doesn't
17 even equal half. So yes, it's played a factor, but just to say
18 it was a majority factor I wouldn't agree with that
19 characterization.

20 BY MS. HANCOCK:

21 Q. Okay. But it is a factor, then, that affects the
22 number, right? Because it -- it shrinks by 30,000 or whatever,
23 30 million?

24 A. Yes.

25 Q. Okay. And then the other component to the difference

1 in the change in the percentage of the total pool is just the
2 amount that is actually pooled as a whole for Class 1 plant?

3 A. There's been a loss of sales in California.

4 Q. Okay. But you had to kind of back out of that
5 calculation by kind of breaking down the fat and solids nonfat
6 to factor that; is that right?

7 A. To figure out the pounds of pool Class 1?

8 Q. That's correct, for March of 2009?

9 A. I mean, that's the pounds that were in the pool per
10 CDFR Exhibit, it's already been introduced in the hearing.

11 Q. I guess, your Honor, I would object on the grounds that
12 I think it is misrepresentative of what they have offered it
13 for. And for what they offered it for was in the testimony of
14 Mr. Shehadey. Further, I would move to strike to the extent
15 that they have asked Mr. Shehadey about these numbers and
16 represented it to be something different than what this
17 actually reflects. I think that when they were proposing the
18 numbers to him, they were talking about, and Mr. Shehadey was
19 talking about, the sales remaining flat, he was talking about
20 the total sales of the producer-handler which have, in fact,
21 remained flat at .25 percent, and the difference in the change
22 compared to the pool is not at all attributed to the
23 producer-handlers, but in fact, changes to the out-of-state
24 market and the pool itself. So that's the basis for my
25 objection to this document and the basis of my motion to strike

1 or to the extent that they discussed this with Mr. Shehadey.

2 MR. ENGLISH: Your Honor, Chip English.

3 JUDGE CLIFTON: Wait, let me hear from Mr. English first,
4 and then let me here from --

5 JUDGE CLIFTON: Okay. Mr. Beshore.

6 MR. BESHORE: Well, I just wanted to join in, I think this
7 is probably stated by Ms. Hancock, but on 155, the two numbers
8 at the bottom, minus 14 and plus 3.1, are labeled as identical,
9 but they are not identical. One is a share percentage the
10 other is a volume percentage comparison, and there's been
11 testimony to that. But I think that makes it quite misleading.

12 JUDGE CLIFTON: Go -- don't leave. Okay. So when we're
13 looking, let's look first at the producer-distributor percent
14 change.

15 MR. BESHORE: Yes.

16 JUDGE CLIFTON: So --

17 MR. BESHORE: That's a market share percent change.

18 JUDGE CLIFTON: Yes, correct.

19 MR. BESHORE: And it's not a volume percent change. The 14
20 is a volume percent change. They are two different ratios
21 labeled as if they are comparative ratios.

22 JUDGE CLIFTON: You know, you are amazing, Mr. Beshore,
23 thank you. Mr. English?

24 MR. ENGLISH: I think we can explain the label and it's
25 being explained as we go along. And then we can call that, you

1 know, a share. The fact of the matter is, your Honor, that
2 what Exhibit 155 demonstrates, and it doesn't matter whether
3 the milk comes from out-of-state. First, Mr. Blaufuss is the
4 point to come up with a total Class 1 sales in California?

5 MR. BLAUFUSS: Correct. Out-of-state milk coming in as
6 Class 1, the exempt pounds, and then just the total pooled
7 Class 1 is supposed to be representative of the total Class 1
8 in the State of California.

9 MR. ENGLISH: So if you left out the out-of-state Class 1
10 sales for either or both months, would you be properly
11 representing the total sales of Class 1?

12 MR. BLAUFUSS: No, no, I would not.

13 MR. ENGLISH: So the fact of the matter is, that what the
14 14.01 percent is, is a drop from March 2009 to August 2015,
15 correct?

16 MR. BLAUFUSS: That's correct.

17 MR. ENGLISH: Okay. And we can call it a share, your
18 Honor, so we can modify the exhibit to call it a share, that
19 nonetheless, the share that the producer-distributors have of
20 Class 1 over that period has changed. So I would propose that
21 we say if that's what people say it is, and I don't disagree, I
22 think it wasn't intended to be, to say otherwise, but if it's
23 the share of Class 1 producer-distributor change, then I would
24 say that corrects any misperception, and it is the case that
25 that share has gone up from 20.55 to 23.96.

1 JUDGE CLIFTON: All right. So I propose then, and I'm
2 going to ask Mr. Blaufuss if he agrees with this. The words at
3 the very bottom of Exhibit 155 that now say, "California
4 producer-distributor Class 1 percent," no, "Class 1, percent
5 change," I would add, "of market share". Would that be
6 accurate, Mr. Blaufuss?

7 MR. BLAUFUSS: Yes.

8 JUDGE CLIFTON: All right. So I'm going to add that, and
9 I'm going to ask Ms. Frisius to add that on the record copy.
10 So after the word "change" we add "of market share". So
11 there's a, there is Class 1, and I'm going to ask her to put a
12 comma after Class 1. So it's Class 1, and then the percent is
13 a percent change of market share. All right.

14 Now, let's look at the number just above that. That's
15 also Class 1, and so I'm going to propose, Mr. Blaufuss, that
16 we put a comma after the 1, Class 1, and then add something to
17 explain what the percentage change is of. And Mr. Blaufuss,
18 what should we call it?

19 MR. BLAUFUSS: CA Class 1 percent change volume share or
20 volume sales.

21 JUDGE CLIFTON: Okay. Mr. English, is that satisfactory to
22 you?

23 MR. ENGLISH: That is satisfactory to me.

24 JUDGE CLIFTON: That's called change of volume sales.

25 MR. BLAUFUSS: Or sales volume, however you want to write

1 it.

2 JUDGE CLIFTON: Let's call it sales volume, thank you.
3 Change of sales volume. Okay. Ms. Frisius, on the record copy
4 I want you to put a comma after the 1, on California Class 1,
5 comma, percent change of sales volume. All right.

6 So the way that will read, those last two categories,
7 say, "California Class 1, percent change of sales volume," and
8 the next line down says, "California producer-distributor"
9 which is shown as P-D, "Class 1 percent share of market share."

10 MR. ENGLISH: And, your Honor, I would like to bifurcate
11 and deal with the exhibit first and then deal with the motion
12 to strike, because I think that will take us longer. If we
13 can't bifurcate it, we can't bifurcate it. It is to strike the
14 testimony of Mr. Shehadey as it relates to the exhibit.

15 JUDGE CLIFTON: Well, okay. Let me just comment on that.
16 The reason we have Exhibit 154 identified and therefore, in the
17 record, is that the witness testified from it. And his
18 testimony related to it, until today. And so it will remain in
19 the record, but I understand why Mr. English is not moving its
20 admission, it has flaws. So the identified Exhibit 154 remains
21 in the record, and anyone can look at it as part of what, well,
22 as, when Mr. Shehadey is asked to look at Exhibit 154, this is
23 what he looked at.

24 All right. Now, with regard to 155, Mr. English, you
25 may continue.

1 MR. ENGLISH: All right. I believe that, the fact at this
2 point the exhibit is properly labeled, it is identified where
3 the data comes from, and I think it should be admitted. And it
4 shows precisely that, even as Class 1 sales have dropped in
5 California, the market share for one group of entities and
6 maybe others, but for this group of entities has gone up.
7 That's what it shows, that's what it's intended show, and I
8 think it is admissible.

9 As to the further motion to strike testimony related to
10 it or 154, I don't think it's a fair representation,
11 Mr. Shehadey did not understand that what we were talking about
12 at least generally, was the concept that producer-handlers had
13 grown in relative market share as to others. And he certainly
14 found a way to answer the question more than adequately, and if
15 you are going to strike any portion of the testimony, you then
16 have to strike all of it, including his explanation. So I
17 think that the fair reading is that it all should come in. I
18 think he more than adequately explained in his view of why the
19 markets have changed.

20 JUDGE CLIFTON: We had -- let me tell you what I think the
21 significance of Exhibit 155 is. We had previously had
22 testimony, and it may have been from Mr. Blaufuss, I don't
23 recall, that made us focus on the difference between saying the
24 producer-handlers, the producer-distributors, share of the
25 California sales is rather minimal. And we had had testimony

1 that said, but if you look at the Class 1 fluid sales, it's not
2 minimal. And so, for example, when we look at page 7 of
3 Exhibit 152, Mr. Shehadey's testimony, the percentages that he
4 is indicating there, include bullet points that talk about the
5 total pooled milk in California, saying that the exempt quota
6 is calculated in the total pool and then deducted, and that
7 looks quite minimal in his statistic, 0.65 percent, less than a
8 one percent figure, he gives. So to me, that then, is in
9 contrast with both the prior evidence about, look at the
10 Class 1 fluid sales. Look at that.

11 And that is emphasized again in this Exhibit, Exhibit
12 155. So I certainly am not going to strike it. I think it has
13 value, and I think that Mr. Shehadey had ample opportunity to
14 discuss all of the issues, including how producer-distributors
15 serve and maintain their customers, and how they added, in
16 fact, milk when milk couldn't find a home elsewhere. So I
17 think that all goes together nicely, in my opinion, and I'm not
18 going to strike it.

19 I will hear any other further objection, and
20 Mr. English, I'll hear anything further you want to add at this
21 point. No. Any further objection? All right. So I admit
22 into evidence, over objection, Exhibit 155.

23 (Thereafter, Exhibit Number 155, was
24 received into evidence.)

25 JUDGE CLIFTON: All right. Now, lunch.

1 MR. ENGLISH: Precisely.

2 JUDGE CLIFTON: Let's be back and ready to go at 2:30. We
3 go off record at 1:16.

4 (Whereupon, the lunch recess was taken.)

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1 WEDNESDAY, NOVEMBER 11, 2015 -- AFTERNOON SESSION

2 JUDGE CLIFTON: We're back on record at 2:30. Mr. English?

3 MR. ENGLISH: Chip English. Thank you, your Honor. I
4 don't have a lot of questions for additional direct, but if
5 people could have Exhibit 1 handy, and this is a discussion on,
6 the overall discussion is on pages 47230 and 47231.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. ENGLISH:

9 Q. Do you, on behalf of the Dairy Institute, have any
10 proposed modifications with respect to transportation
11 allowances, Mr. Blaufuss?

12 A. Yes.

13 Q. Okay. And what is the purpose of the modifications?

14 A. To include milk that is being pooled that's outside the
15 State of California to be eligible to receive the
16 transportation allowances.

17 Q. So for that purpose, do you have language to offer and
18 would you tell us the first place where it would be offered?

19 A. So in Section 1051.55.

20 Q. We're going to be on page 47231, but he's carrying over
21 from 47230, paragraph B(2)(iii), does that help?

22 A. Yes, sorry.

23 Q. So this is on the first column, on the left, that is on
24 the left hand column of 47231?

25 A. Correct.

1 Q. Okay. So where would you insert language?

2 JUDGE CLIFTON: First, read for us what you're looking at
3 before you tell us what you would insert.

4 MR. ENGLISH: Well, that's what I was asking him to do,
5 your Honor. I was asking him where in 3 little i he would
6 insert language, then we're going to have him read the language
7 that he's going to insert.

8 JUDGE CLIFTON: Oh, okay. In order to make sure we're all
9 looking at what he's looking at, I would like for him to at
10 least begin to read how it looks now. Okay. And first of all,
11 Mr. Blaufuss, what is the page number that you are going to
12 read from in Exhibit 1?

13 MR. BLAUFUSS: It would be 47231.

14 JUDGE CLIFTON: All right. And start it out for us so we
15 can see if we're looking at the same thing you are looking at.

16 MR. BLAUFUSS: Correct. So in 3 little i, and the first
17 sentence says, "for plants located in the located, located in
18 located in the Southern California."

19 JUDGE CLIFTON: Yeah, that's what it says. Yeah. So it's
20 good we're revising it.

21 MR. ENGLISH: More changes than we thought.

22 JUDGE CLIFTON: Okay. So I think everybody's there. So
23 when he says 3 little i, he's talking about (iii) all right.

24 MR. ENGLISH: So for plants located, and then strike in the
25 located.

1 JUDGE CLIFTON: So Mr. English, you may ask your next
2 question now.

3 BY MR. ENGLISH:

4 Q. Well, why don't we -- well, because it's going to --
5 we're going to change it. So would you read it, the first
6 clause as it should read, Mr. Blaufuss, for plants.

7 A. For plants located in the Southern California receiving
8 area consisting of the counties of Los Angeles, Orange,
9 Riverside, San Bernardino, San Diego, and Ventura Counties
10 receiving milk from counties other than Riverside or
11 San Bernardino -- and we would insert "or from outside the
12 marketing area".

13 Q. So the insert that we're going to ask you is going to
14 be the same language that we insert in several locations; is
15 that correct, sir?

16 A. That's correct.

17 Q. And the language again is, slowly?

18 A. Or from outside the marketing area.

19 Q. Okay. And it looks like we somehow managed to have the
20 same error of extra language in each of these sections, so each
21 of them should read, for plants located in the, once, correct?
22 So we don't have located in the twice, correct?

23 A. That's correct.

24 Q. Okay. So 3 little i, so where else would you make this
25 change?

1 A. In Section iv.

2 Q. Or four in the hole? And where would that change go in
3 that one?

4 A. It would be inserted, so I guess I'll just read the
5 sentence, "for plants located in the Bay Area receiving area
6 consisting of the counties of Alameda, Contra Costa,
7 Santa Clara, Santa Cruz, San Francisco, and San Mateo,
8 receiving milk delivered from any county," and then I would
9 insert "or from outside the marketing area".

10 Q. Okay. And where is the next change?

11 A. In part lower case v.

12 Q. And is the same language?

13 A. Correct.

14 Q. And so could you read that clause with the added
15 language in 5 in the hole?

16 A. Yeah, for plants located in the North Bay receiving
17 area consisting of the counties of Marin, Napa, Solano, Sonoma,
18 receiving milk delivered from any county or from outside the
19 marketing area.

20 Q. Okay. And finally, do you have one more change?

21 A. Lower case vi.

22 Q. vi?

23 A. That's what I said.

24 Q. All right. So for 6 in the hole, yes?

25 A. Yes.

1 Q. Could you read the language as it should read?

2 A. For plants located in the Sacramento receiving area
3 consisting of Sacramento County, receiving milk delivered from
4 any county, and following that insert "or from outside the
5 marketing area".

6 Q. Okay. Is that all the changes you have to offer?

7 A. Yes.

8 Q. Okay. Your Honor, at this time I call for admission of
9 Exhibit 156 and make the witness available for
10 cross-examination.

11 JUDGE CLIFTON: Does anyone wish to question Mr. Blaufuss
12 about his testimony with regard to Exhibit 156 before
13 determining whether you object? No one. Are there any
14 objections to the admission into evidence of Exhibit 156?
15 There are none. Exhibit 156 is admitted into evidence.

16 (Thereafter, Exhibit Number 156, was
17 received into evidence.)

18 JUDGE CLIFTON: Who would like to begin the questioning of
19 Mr. Blaufuss? This is your last chance, this hearing.
20 Mr. Beshore?

21 CROSS-EXAMINATION

22 BY MR. BESHORE:

23 Q. Thank you. Marvin Beshore. I would not pass up the
24 last chance.

25 With the -- let me ask you. Start with the discussion

1 on page 1 of your testimony, on Dairy Institute Proposal. So
2 does the Dairy Institute Proposal retain all three, three
3 provisions for movement of milk or relating to the location of
4 which milk is delivered, relating to compensation for getting
5 milk to certain locations, that is location values for
6 delivered prices, transportation credits, and transportation
7 allowances?

8 A. Yes, that's my understanding.

9 Q. Okay. So unless I missed it, you didn't talk about the
10 transportation credits at all. What's that about?

11 A. I focused on the allowances. I'm a Dairy Institute
12 member but I'm also here for Dean Foods. Dairy Institute
13 proposal still calls the transportation credits, but I didn't
14 really discuss it in any form.

15 Q. Do you know why it's in the proposal?

16 A. I believe that's what we agreed to as a group and
17 that's what ultimately Dairy Institute decided to put in their
18 proposal.

19 Q. Okay. Do you know anything more than that, about what
20 function those credits serve or are intended, why they are
21 intended to be there?

22 A. Generally, I believe the credit system is meant to help
23 move milk from plant to plant.

24 Q. And why would plant to plant, why should the pool pay
25 for movements from plant to plant?

1 A. I believe we just maintained California, current
2 California regulations in the proposal.

3 Q. Okay. You don't know anything more about why they are
4 needed?

5 A. No.

6 Q. Okay. So the location value, location differential,
7 zone differential payment system, let's talk about that a
8 little bit.

9 And let's, just for purposes of discussion, talk about
10 plants in Southern California, the \$2.10 zone, which Dean Foods
11 has two fluid plants in that area, right?

12 A. That's correct.

13 Q. So when you, under Proposal 2, you have a system that
14 provides a higher blend price payment out of the pool for all
15 deliveries of producer milk to those locations, correct?

16 A. Correct, because \$2.10 is the highest zone in the state
17 of California.

18 Q. So that \$2.10 is payable irrespective of the distance
19 from which the milk travels to the plants, correct?

20 A. That's correct.

21 Q. So that within, you know, within the \$2.10 zone, there
22 could be milk movements that, well, are there milk movements
23 within the zone that get the differential only or do they all
24 get a differential plus an allowance?

25 A. I believe from looking at our mile brackets, we are

1 reducing, we're reflecting the fact that if milk is coming from
2 Fresno, where it is 50 cents difference, you are relatively
3 subtracting that value off of what is currently in the CDFA
4 regulations for the current allowance.

5 Q. Okay. So are the allowance amounts in Proposal 2, the
6 current CDFA allowance amounts less some value related to the
7 location differential grid?

8 A. Given that the regulations obviously call for milk to
9 come from multiple counties or different counties, I believe
10 there was some averaging based on the differences in some of
11 those counties and what their differential value was to go into
12 some of those Southern California facilities. So to say, I
13 can't sit here and say that it is a one for one subtraction,
14 there was a little bit of average to bundle the groupings of
15 counties as they are laid out in the proposal.

16 Q. Does your, does Proposal 2, what's the, there are
17 non-Class 1 plants in the \$2.10 zone, correct? Are you aware
18 of that?

19 A. I don't have the plant list in front of me, but it
20 wouldn't surprise me.

21 Q. Okay. Well, there have been a couple of witnesses from
22 Dairy Institute, a couple of cheese plant operators that are in
23 the Southern California area as I recall.

24 Do you remember that?

25 A. Yes.

1 Q. Okay. So -- so you have got cheese plants down in the
2 \$2.10 zone. If milk's delivered to those plants, it will be
3 entitled to the same blend price as milk delivered to the
4 Class 1 plants in the same zone, correct?

5 A. That's correct.

6 Q. And that would represent, you know, a cost to the pool,
7 correct? In that they are going to draw \$2.10, draw a blend
8 price out of the pool based on the \$2.10 zone, same as the
9 Class 1?

10 A. Correct. If they are in that same zone, base zone
11 differential, they would have the same blend price.

12 Q. So one of the differences between Proposal 1 and
13 Proposal 2 is that in your, in the deficit zones, the
14 Non-Class 1 or 2 facilities do not draw additional value out of
15 the pool. Would you agree with that, as you understand
16 Proposal 1 and 2?

17 A. Sorry, could you restate that?

18 Q. Okay. So let me just, you talk about Proposal 1, so I
19 think transportation credits under Proposal 1, so I'm assuming
20 you have got a basic working understanding of --

21 A. Yeah, are we talking allowances or credits?

22 Q. Well, we're talking about what you call allowance and
23 what we call credit.

24 A. Okay. So I can see where, how we're confused here.

25 Q. Okay. So Proposal 1 has, does not propose continuing

1 what's called, what you call, what Proposal 2 calls the
2 transportation credit program, okay?

3 A. Okay.

4 Q. Okay. So I don't know what we want to call them, we'll
5 call them transportation/credits or something.

6 A. Yep, I got it in my notes. There will be no further
7 confusion of the terms.

8 Q. Okay. Good. So one of the differences, and you know,
9 a basic difference between the way Proposal 1's system of
10 compensating milk for moving to Class 1 is that, under
11 Proposal 1 we'd only compensate movement to Class 1 or 2 plants
12 in our system. You understand that?

13 A. Yes, I believe that to be true.

14 Q. Okay. Whereas under Proposal 2, working with the blend
15 payments payable to all plants in the deficit zones, in
16 essence, you are going to be taking money out of the blend
17 price pool for movements to the Class 3 or 4 plants in that
18 zone, correct?

19 A. I would say we carry forward the rules and regulations
20 that are found in other Federal Orders, in that the plants,
21 depending on where they are located and the base differential
22 zones, that will be the payment they are allowed to take out in
23 the blend price. So if they are a price point that's below the
24 base zone differential, then they will have a negative number
25 on their blend calculation.

1 Q. And if they are in a plus zone they would have a
2 positive number?

3 A. Yeah, and I think that was some of the math I worked
4 through my first time up, was some of that Class 2 condensed
5 numbers and adjusting those blend prices.

6 Q. Okay. But just so it's clear for the record, one of
7 the aspects of the location price system is that it prices all
8 milk in that location zone, whether it be Class 1, Class 2,
9 Class 3 or Class 4?

10 A. That's correct.

11 Q. Okay. Okay. So let me -- the modifications to your
12 proposal, Proposal 2, to provide for payment of out-of-state
13 milk or out of marketing area milk, is the rate to be the
14 highest rate that you have or what would the rate be?

15 A. It would be the rate, whatever bracket they fit into.
16 So I would assume if milk's coming from outside of the state,
17 assuming the plant's in the Central part of California or the
18 Coast, it would probably be fitting in the top category of
19 miles bracket.

20 Q. Okay. So moving to your comments on on Proposal 1, and
21 we appreciate your appreciation, of course. On the fixed
22 coefficient number, of course that could be changed if need be
23 by, you know, by a hearing and an amendment, of course, right?

24 A. Certainly. Yeah, I mean, I'm just raising it as a
25 potential concern. It's not something that I have a major

1 issue with.

2 Q. Okay. If cost did go up and with that fixed
3 coefficient, the additional cost would fall on the, you know,
4 on the handler supplying the milk, as opposed to the pool. I
5 mean, this is something that basically you would be, with the
6 fixed coefficient, your reimbursement is going to be subject to
7 that fixed coefficient. If costs went up, you wouldn't have an
8 adjustment in there to change it automatically, and the handler
9 would -- would have, would bear the cost if they went up?

10 A. And by handler, do you mean plant or the reporting, the
11 person reporting the producer milk.

12 Q. Well, I meant the handler that would be able to capture
13 the transportation allowance/credit?

14 A. So if there would be the adjustment, yeah, that would,
15 it would either be adjusted higher or lower, depending
16 ultimately how it was adjusted and what happened with the
17 energy prices.

18 Q. Okay. But setting aside energy prices, if, because it
19 is a fixed coefficient you don't get an additional
20 reimbursement, even though general cost of transportation had
21 gone up, that's going to fall on whoever's responsible for
22 those costs, right?

23 A. I believe that's true, yes.

24 Q. Okay. And with respect to the moving average on the
25 fuel adjustment. You suggest a four week, we proposed an eight

1 week. One of the basic difference there is just how, to what
2 extent spikes in short term movements in prices up or down are
3 reflected in the short-term in the reimbursement, correct?

4 A. Correct. Yeah, you are using a longer sort of
5 eight-week average compared to a four, so it should flatten out
6 the spikes. And all things being equal, eventually you will be
7 made whole in that transaction. I just noted to say that eight
8 week is longer than what's been in other Orders, not that
9 there's, you know, it creates undue pressure on folks from
10 using eight week versus four.

11 Q. But if it, if one of the thoughts was that it would
12 smooth it out a little bit, you would agree that it would, and
13 that it would eventually roll in whatever the price movements
14 were?

15 A. Yeah, from a pure theory basis, yeah, that's how it
16 should work. The number will eventually get caught up in the
17 average.

18 Q. Okay. You have a provision in Proposal 2, it's
19 10.55(c), it says, "the credit rates, transportation allowances
20 and credit rates shall be increased or decreased by the Market
21 Administrator to reflect per hundredweight changes in the
22 actual transportation cost as published by the California
23 Department of Food and Agriculture and its hauling rates
24 survey."

25 I didn't hear you testimony about that, but is that

1 still part of the proposal?

2 A. I believe so.

3 Q. Do you have any other comments for the record about,
4 you know, what, you know, what data from what cost studies
5 would be used by the Market Administrator, whether there would
6 be any notice and comment before they were changed, or whether
7 there was a lockstep change, what our base is? Do you have
8 anything more to offer on how that's supposed to work?

9 A. Not outside what's written in part (c).

10 Q. Okay. That's all I have right now. Thank you,
11 Mr. Blaufuss.

12 JUDGE CLIFTON: Who next has questions? Ms. Hancock.

13 CROSS-EXAMINATION

14 BY MS. HANCOCK:

15 Q. Good afternoon. Nicole Hancock.

16 The changes that you made to allow out-of-state milk to
17 receive transportation allowances or to qualify for
18 transportation allowances, can you tell me why it is that you
19 decided to make that change?

20 A. Yeah, I think it keeps with what I talked about with
21 fortification. It's my opinion and the Dairy Institute's
22 opinion, that if that milk is in the pool and it's fully pooled
23 and fully regulated, then it should enjoy the same benefits of
24 other milk that's in the pool, be it fortification or
25 transportation.

1 Q. So how does that impact or does it impact, the
2 treatment for out-of-state producers' ability to participate in
3 the quota payment plan under Proposal 2?

4 A. I don't know. Speaking from a quota perspective, just
5 from what I just said, if it's fully pooled and fully
6 regulated, they would enjoy the same benefits. But if it's
7 milk that isn't being pooled, then they would not enjoy having
8 fortification or transportation credits or allowances,
9 depending on how you use the term.

10 Q. So as you, and I recognize that you are not the quota
11 person, I am just -- as you sit here, are you aware of any
12 changes that proposal, that are being made to Proposal Number 2
13 with respect to who can participate in the quota, in the quota
14 program?

15 A. I don't believe we have adjusted our quota from what we
16 have discussed with, what Dr. Schiek discussed and what was in
17 the proposal.

18 Q. Okay. Thank you.

19 JUDGE CLIFTON: What other questions are there for
20 Mr. Blaufuss? Mr. Vandenheuvel?

21 CROSS-EXAMINATION

22 BY MR. VANDENHEUVEL:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Rob Vandenheuvel, Milk Producers Council. Just a

1 couple clarifying questions, Mr. Blaufuss.

2 Following up on Mr. Beshore's question about
3 Provision C of that section relating to future adjustments, and
4 I got distracted for minute so if I'm covering something he
5 already asked you -- this statement indicates that "the
6 allowance in credit rate shall be increased or decreased by the
7 Market Administrator to reflect per hundredweight changes in
8 the actual transportation costs."

9 Is it intended that that's kind of vague in its
10 application, that the Secretary would have flexibility? And
11 the reason I ask is because these, the hauling rate survey that
12 is noted in that language does not, it does not aim to try to
13 say what a transportation allowance or credit should be, but
14 rather what rates are from different locations and different
15 mileages. So is it purposely vague in how it's written?

16 A. I can only say what I told Mr. Beshore. I really have
17 no other explanation or more details I can offer outside what's
18 written in the language.

19 Q. Have you participated in a CDFA hearing in the past
20 where they set these allowance rates in the brackets?

21 A. No, I haven't participated in any CDFA hearings.

22 Q. Okay. Thank you. All right. In general, in your
23 experience, who pays the hauling costs of transporting milk
24 from the farm to the plant, in this case, a Class 1 plant that
25 would be eligible for these transportation allowances or

1 credits?

2 A. Sometimes that transaction is picked up by the plant,
3 most of the times it is picked up, borne onto the cost of the
4 producer, as I understand it.

5 Q. As you understand it. The language of Proposal 2,
6 Section 1055, or 1051.55(b) is, contains the provisions related
7 to the Transportation Allowance Program, just making sure I'm
8 looking at the right place, correct?

9 A. Yeah, (b) would be the allowances.

10 Q. So if I'm looking here, it appears that (b) starts,
11 "each handler operating an eligible pool plant and the handler
12 that transfers or diverts bulk milk from a pool plant to an
13 eligible pool plant, and each handler described in 1051.9(c) or
14 1051.9(d) that delivers producer --

15 JUDGE CLIFTON: Just to be clear, Mr. Vandenheuvel,
16 1051.9(c)?

17 MR. VANDENHEUVEL: Yes.

18 JUDGE CLIFTON: Or 1051.9(d)?

19 MR. VANDENHEUVEL: Yes. I'm sorry, shorthand there.

20 BY MR. VANDENHEUVEL:

21 Q. So I guess my point, rather than reading Federal
22 Register language into the record, my point is that this
23 allowance applies to a handler that's either purchasing milk or
24 responsible for delivering milk to a, to a pooled handler that
25 meets the definitions of this section, that would be who gets

1 credit for the transportation allowance?

2 A. Yes. So it would be a 9(c), 1051.9(c), 1051.9(d) and
3 then a pool plant, I mean, there's the language, so "eligible
4 pool plant, handler transfers or diverts bulk milk to a pool
5 plant to other eligible pool plants that would be available to
6 receive that credit for that allowance," or however you want to
7 use the term.

8 Q. Okay. And 1051.9(c), those are cooperatives?

9 A. That is correct.

10 Q. Okay. Does Dean Foods buy all of its milk supply from
11 cooperatives in California?

12 A. No.

13 Q. So there are independent shippers that Dean Foods has a
14 relationship with?

15 A. That's correct. And I have testified to such in
16 complete Part 1.

17 Q. Okay. Under a scenario where Dean Foods purchases milk
18 direct from a dairy farmer who receives the credit or the
19 allowance in this case, who -- what -- to what is that
20 allowance applied? Is it directly to the producer or is it on
21 the plant's obligation to the pool, or the plant's accounting
22 to the pool?

23 A. I believe as it's been described to me, that would go
24 to the producer, or at least that's my understanding.

25 Q. You are aware that is how it is in currently in

1 California, that milk is, or that those dollars are sent to the
2 producer?

3 A. Yes.

4 Q. Okay. I don't see in this section where that is, so is
5 there in another section where there's an obligation from the,
6 an obligation for the pool plant to pass along those
7 transportation allowance dollars to their direct shipper, in
8 order to mirror what's currently going on in California? Maybe
9 it is another section.

10 A. Sorry, I'm just trying to read to see here.

11 Q. Okay.

12 JUDGE CLIFTON: And for the record, this discussion has
13 been on Exhibit 1, page 47230, the third column.

14 MR. BLAUFUSS: I don't see where that language is included,
15 but it would be my understanding that that would be a change
16 that we would be willing to make to be reflective of what's in
17 current regulations.

18 BY MR. VANDENHEUVEL:

19 Q. Okay. So it is the Dairy Institute's position, as you
20 understand it, that these transportation allowances in the case
21 where a Cooperative is not involved in the transaction, that
22 that money would, in fact, be directly, it would be passed
23 through the handler of the pool plant to its direct shipper?

24 A. That's my understanding how the California system works
25 today, and that's how we would intend that to be in our

1 proposal.

2 Q. All right. With that understanding, I can't say I see
3 that in the proposal, and so perhaps another witness, since,
4 you know, your availability is limited, could provide
5 additional testimony at some point, because it doesn't, at this
6 point I don't see it, and it's -- it's difficult to assess
7 whether I'm done with this issue unless it is very clear in the
8 language. So with that caveat, I don't have anymore questions
9 at this time.

10 JUDGE CLIFTON: Thank you for that, Mr. Vandeneuvel. Who
11 else has questions for Mr. Blaufuss?

12 MR. RICHMOND: Bill Richmond, USDA. I think we have some
13 questions, but could we just have maybe perhaps a couple of
14 minutes?

15 JUDGE CLIFTON: Yes. Let's see, it's 3:03. Let's -- it's
16 3:04. Let's plan to be back and ready to go about 3:12. 3:12.

17 (Whereupon, a break was taken.)

18 JUDGE CLIFTON: We're back on record at 3:12.
19 Mr. Richmond?

20 CROSS-EXAMINATION

21 BY MR. RICHMOND:

22 Q. Thank you, your Honor. Thank you for the short break.

23 Just a couple questions, Mr. Blaufuss.

24 Okay. So help us understand Exhibit 156. So what this
25 does is identify some of the issues that the Dairy Institute

1 has with Proposal 1. I think what we're having trouble
2 understanding is, do you intend to provide any alternatives to
3 what was proposed or are we just identifying areas that could
4 potentially be improved?

5 A. I think our proposal calls for both transportation
6 credit allowance, and that's what I have referred to. So I'm
7 not making any amendments besides the one that I talked through
8 with Mr. English from our original proposal.

9 Q. Okay. And I think what triggered the break was -- was
10 from Mr. Vandenheuvel's questions about figuring out where in
11 your proposal there are provisions for milk coming directly
12 from farms to plants, and how that credit scheme could work.
13 So it would really help us if maybe you could help us
14 understand the intent the Dairy Institute a little better?

15 A. With respect to Mr. Vandenheuvel's question, you know,
16 I think it would just take a little clean up, a sentence or two
17 addition, or just a couple words. It's part (b) that he talked
18 through, to make sure that it's clear that if it is direct
19 ship, it is functioning as it is today. And I don't know what
20 the exact language would be, but it would be our intent to
21 maintain what occurs today would occur under our proposal, so
22 that that money is being passed along, it's not being collected
23 and saved and not distributed as it is today.

24 Q. Okay. I appreciate that. That helps. So has Dean
25 Foods or the Dairy Institute done any kind of analysis in terms

1 of the total dollars involved that we're talking about here? I
2 mean, what might a typical Dean Foods plant or a plant of that
3 size, not to get into any kind of proprietary information of
4 the like, but what kind of allowance dollars are we talking
5 about?

6 A. Without getting into specifics, if you look at my
7 Testimony 1, you can kind of do some math around it and
8 figuring out, you know, potentially what ballpark it would be
9 miles-wise, as I put in our milk supply maps, so you can kind
10 of get a sense that route, how many miles our milk is away from
11 our plants.

12 Q. Okay. And maybe a better way to frame the question is,
13 if you think about the entire dollar amount that would be
14 subtracted from the pool in order to pay transportation
15 allowance or transportation credits?

16 A. The total credit or the, and I guess in our case, the
17 allowance, Proposal 1 would be the credit, I would assume that
18 that dollar amount would be what's generated today or pulled
19 out of the California pool today, and I don't have that number
20 available. I would imagine that's a number we could find, but
21 I don't have that number.

22 Q. So you don't see as a result of your modification to
23 Proposal 2, regards to milk coming from outside of the
24 marketing area, you don't envision there to be any kind of
25 increase in total dollars that are coming out of the pool?

1 A. I think you would have an increase because you would be
2 regulating out-of-state milk that today you are not regulating,
3 but at the same time you are also adding, in this case, a
4 Class 1 product that's not being regulated, so you are also
5 adding value to the pool while also having some subtraction as
6 well, so it cuts both ways.

7 Q. Okay. Are you able to perhaps estimate the volume of
8 milk from out-of-state that --

9 A. I think you can get a rough estimate on CDFA Exhibit 61
10 and I don't know which part that would be, but they actually
11 have a calculation for the amount of out-of-state Class 1
12 pounds coming into California. And they go month by month, so
13 you can do an estimate, roughly, of how many pounds that is on
14 a monthly basis.

15 Q. Okay. I think that's all we have. Thank you.

16 A. Yep.

17 JUDGE CLIFTON: Before I invite redirect, is there anyone
18 else who has questions for Mr. Blaufuss on this topic or any
19 other, since he's leaving us? Oh, Mr. Beshore's excited. I
20 see none. Is there any redirect, Mr. English?

21 MR. ENGLISH: Chip English. Your Honor, I have no
22 redirect, I just want to thank Mr. Blaufuss for Parts 1, 2, 3,
23 5, 4, and 6 of his testimony, and especially thank him for his
24 long attendance at that proceeding, since he and a few others I
25 think are starting to get out of here. But I'm very grateful

1 for his assistance. I have no redirect.

2 JUDGE CLIFTON: Yes, I already nominated you to be called
3 Doctor. I do encourage you to work on that Ph.D., young man.

4 MR. BLAUFUSS: That's way too much math and statistics for
5 me to ever want to do.

6 JUDGE CLIFTON: Thank you so much. You may step down.

7 MR. BLAUFUSS: Thank you, your Honor.

8 JUDGE CLIFTON: What I would like to do is invite some
9 dairy farmers to testify, and I would like to begin with
10 Mr. Netto. If you would come forward, please.

11 Please make yourself comfortable and I'll be swearing
12 you in in a seated position and then I'll ask you to state and
13 spell your name for us.

14 Speaking into this microphone is a little tricky, you
15 may have to scoot closer toward it, and it is also difficult,
16 when it's in your face, to see your notes, but hopefully that
17 will work out. All right. Feel comfortable?

18 MR. NETTO: I'm good.

19 JUDGE CLIFTON: Good. If you would raise your right hand,
20 please.

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

23 MR. NETTO: I do.

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

1 MR. NETTO: My name is James Netto. It's J-A-M-E-S, N --
2 as in Nancy -- E-T-T-O. I'm from Hanford, California. You
3 want a little background?

4 JUDGE CLIFTON: Yes.

5 MR. NETTO: Okay. I'm -- actually, my family emigrated
6 here in the early 1900's and I'm actually the third generation
7 at different times to have dairy cows and milk them, and we
8 have been different businesses.

9 I started in business when I was 20 years old in a
10 small little 50-cow dairy in Laton, California. I proceeded to
11 go into the grain business in 1986. I am a partner at a
12 company called Penny Newman Grain, based out of Fresno,
13 California. We service one-third of the dairymen in California
14 buy feed from us. I'm Vice President of Production and Sales.

15 Over the years, I have had different companies. Me and
16 my brother and my family, we formed a company called Netto Ag.
17 We process corn silage. We're the second largest corn silage
18 company in the State of California and possibly in the nation,
19 we do a million and a half tons a year.

20 I also have two dairies. I have a 1200 cow Holstein
21 dairy and about 950 cow Jersey dairy. So I'm pretty
22 intertwined in the dairy business, to say the least. Most of
23 my income, or non-income, comes from the dairy industry.

24 JUDGE CLIFTON: Now, let me stop you there. That is
25 amazing. All right. What is the company called that's right

1 here in Fresno that produces the feed, including the silage?

2 MR. NETTO: It's called Penny Newman Grain Company. We're
3 a 138 year-old company and there's three owners. And we're the
4 fourth set of owners, and it's been sold to the employees each
5 and every time in the last 138 years. So we're the fourth set
6 of owners. We're the second oldest company in Fresno.

7 JUDGE CLIFTON: Wow. Truly?

8 MR. NETTO: Truly. Continuously ran company. Penny, like
9 penny in your pocket -- Newman Grain.

10 JUDGE CLIFTON: Is Penny Newman all one word?

11 MR. NETTO: Yeah. Penny Newman Grain Company.

12 JUDGE CLIFTON: So if it's the second oldest business in
13 Fresno, in what year did it begin?

14 MR. NETTO: I think it was 1876, I think. It's 138 years
15 old so I would have to back up the math, but we're right there.

16 JUDGE CLIFTON: Wow. And currently it's owned by the
17 employees?

18 MR. NETTO: There's three of us. We were all employees
19 when we got there, and our boss sold us the business. I was
20 there a year and a half, and I think my the one partner was
21 there eight years, the majority owner, and so there's three of
22 us that own it. We have been together for almost 28 years now.
23 And our big thing is we service the dairy industry, so we have
24 seen the high's and the low's of the industry.

25 JUDGE CLIFTON: Now, I mentioned the silage, but I might

1 have gotten that mixed up. Is the silage strictly Netto Ag's
2 business or does Penny Newman do silage?

3 MR. NETTO: It is strictly Netto Ag. It is owned by myself
4 and my brother, his wife and my wife. And we have been in
5 business about 32 years, I think, from the time we bought our
6 first silage truck. And now we employ about, during the season
7 we employ about 135 people. Penny Newman employs about 180 and
8 the dairy and the farming, which we farm about 1900 acres, we
9 have, oh, I think about 26 employees there.

10 JUDGE CLIFTON: Who is filling in for you while you are
11 here?

12 MR. NETTO: You know what? I hire good people. So -- and
13 the key to any business is to have the right people work for
14 you. So --

15 JUDGE CLIFTON: That is a tremendous amount of work going
16 on. I'm very impressed.

17 MR. NETTO: Thank you.

18 JUDGE CLIFTON: So how old were you when you first were
19 around cows?

20 MR. NETTO: Well, I was, I started milking cows at the age
21 of 10. We had 20 cows. Then my dad got out of the business
22 when I was 15, I think. And I always had a love for the
23 animals. So when I was 20 I married a dairy girl and went to
24 work for my father-in-law. Quit college, got married, went to
25 work for my father-in-law. And six months after that I said I

1 went to go into business for myself, so I found a neighbor up
2 the road that wanted to sell some cows, and I borrowed some
3 money from my grandfather, and I started. And, you know what?
4 We didn't have much, but we just made it work. And over the
5 years, the dairy industry has been very, very good to me.

6 JUDGE CLIFTON: Now, you mentioned Laton, California.
7 Would you spell that for me?

8 MR. NETTO: L-A-T-O-N.

9 JUDGE CLIFTON: L-A-T-O-N. Where is that?

10 MR. NETTO: That's about 20 miles due south of here.

11 JUDGE CLIFTON: All right. And the Fresno business,
12 Penny Newman's, obviously been here all that time.

13 MR. NETTO: Correct.

14 JUDGE CLIFTON: Is Netto Ag also based in Fresno?

15 MR. NETTO: It's in Hanford, which is probably about 28
16 miles south of here.

17 JUDGE CLIFTON: And that's where you have your business
18 address?

19 MR. NETTO: Yeah. Born and raised there, too. I live two
20 miles from where I was born.

21 JUDGE CLIFTON: All right. Very good. All right. That's
22 excellent background. Do you want to give us any additional
23 background before you begin with your message?

24 MR. NETTO: No, I think that's probably enough. It's more
25 than everybody wants to hear, probably.

1 JUDGE CLIFTON: No, that's very exciting, actually.

2 MR. NETTO: The reason I came down here today was, it's
3 pretty simple, is that I have watched the industry in a
4 tailspin for the last, except with the exception of last year
5 since last year was a great year, but since '09 we have been in
6 a tailspin. And so I came down here to support the California
7 Co-ops Proposal to move to the Federal Order. And probably the
8 reason, I think every dairyman in California ought to be able
9 to wake up in the morning and compete with everybody across the
10 U.S. And you can't, you -- if we're on equal playing field,
11 and then if we can't make it in the dairy industry in
12 California, we should exit the industry. But right now, we're
13 at a different, we're at a disadvantage the way the CDFA is
14 pricing our milk. And in order to, in order to move the next
15 level, to find out -- I think California dairymen are already
16 doing it.

17 I hear a lot of things about diversification. Our
18 industry, there's a lot of dairymen moving to trees already.
19 We have, you know, we just recently, I went over some numbers
20 with my friends who I have been on a co-op board before, but
21 I'm not anymore, and the average co-op, the three co-ops in
22 California are almost averaging 6.6 reduction in milk in the
23 last, this is in the last few months, over year on year, month
24 on month might be better to put it on that way, it's not year
25 on year. I can understand why that's coming because I have two

1 dairies, and if it wasn't for the love of the cows, it is not a
2 very good business, to be honest with you. I stay in it
3 because my family did it, and I feel this loyalty to my
4 animals, and my employees, and everything. But, you know,
5 it's, dairymen are price takers, not price givers. And so we
6 need somebody to rationally look at what we are doing and how
7 we should be paid. And it seems like the state has let us
8 down. In my opinion, I have gone to the hearings, I have
9 listened to it, we come out with nothing.

10 I was with a dairyman this morning, I had breakfast
11 with him, and he's debating getting out. Really good friend of
12 mine. He says, you know, "I'm getting at the age, why should I
13 stay in, James? I am not making enough money to pay my bills,
14 I can't go on vacation, I'm just getting by. I am eating up
15 equity." And he brought up, he said, look, because I told him
16 I was coming to the hearing, he goes, "If we got to the Federal
17 Order and it was, and got rid of change the whey allowance and
18 all that," the numbers that he's looked at, he said it would,
19 per thousand cows, would be \$200,000 a year, and he has 1200,
20 so math says it's \$240,000. He would make more. He goes,
21 "James, that's the difference between making it and not. And
22 you know, you need to go here and tell people, well, what are
23 we doing? We have to move in a different direction."

24 I know the processors have electrical costs that are
25 expensive, and but so does every dairyman. We live in the same

1 state. So they always talk about their costs, they want us to
2 pay the highest feed price, but yet get the lowest price for
3 our milk over the rest of the United States, or at the lowest.

4 What I keep telling everybody is that, put us at a
5 level that if we belong in the dairy business, if I can compete
6 with the guy in Wisconsin, then I'll stay in the business. But
7 if we can't, then we need to move on to pistachios and almonds.
8 But if that happens, we're going to lose a lot of jobs in the
9 state. I mean, the numbers of the, what is it, I don't know
10 exactly the numbers, I don't -- but it's huge. One dairy job
11 versus six it makes. It's -- the numbers are big. I don't
12 know exactly what they are, but -- so, you know, I been doing
13 this for a long time.

14 And from 1986, if I remember the year, let me see.
15 Well, let's put it this way, from 2009 until this year, we have
16 lost 471 dairy families in the State of California. And it is
17 out of those, I looked, I wrote a bunch of names down last
18 night just to see, and I come up with that it affected my
19 businesses, out of those 471 I serviced 120 of them in that
20 timeframe. And I watched people, I knew two really good guys
21 that just couldn't take it, they decided to take their lives,
22 and, you know, tragedy.

23 But I think in any business, you don't mind waking up
24 in the morning and having a chance. But the CDFA continues to
25 send us to a gun fight with a knife, by not getting us in a

1 price that is equal to our Wisconsin friends, our Michigan
2 friends, and the rest of the country. We're not saying give us
3 more money, we're saying, put us in the game, Coach, get us off
4 the bench.

5 And that's -- that's all we're asking for with our
6 proposal. I have been wanting a Federal Order for five years.
7 I spoke up on it, and you know, so, I think that's that's a big
8 point. That I think people just, nobody's asking for more,
9 we're asking to give us a chance, you know, let us compete.

10 And the processors want to compete, but they want us to
11 compete at a disadvantage. We just can't go on like this.
12 We're going to, you know, ethanol, you know, yeah, I heard the
13 Rien Doornenbal's testimony. I happened, somebody said, listen
14 to this guy, so I put it on the other day and I listened to it
15 from my office. Everything -- I wanted to make a statement
16 about that gentleman, everything he said about this history of
17 California was spot on. And I want to back his statements when
18 I testify, that his historical from day one to today was
19 really, really good, and his historical view and his
20 perspective of the industry. So that was pretty impressive.

21 You know, we can't, you know, I know we got the Milk
22 Protection Program, you know, MPP they call it, and it just
23 doesn't work. I spent \$53,000 last year signing up for that
24 and we never got close. And when the price of milk was down
25 this year, I never got close to getting a payment, because

1 we're only 20 percent of the market, so they use 20 percent of
2 the feed cost. And they blend that into the pool, the Federal
3 Government does. The problem is, we got the highest feed cost
4 in the country. Yet, so -- so whenever they do start paying,
5 we'll be the last ones to get paid. And then -- then the
6 processor says, "you guys can use hedging to make money."
7 Well, I tried that, too. And the problem is, is because the
8 California Order is different than the Federal Order, our basis
9 does not work, because it we got different pricing schedules.
10 So the, you know, and so you, you it's like being a bull spread
11 in the corn business. It don't work.

12 JUDGE CLIFTON: It's like being what?

13 MR. NETTO: Well, it's like, it's in the corn business when
14 you, when you, when you buy I coined this, but you buy Canola,
15 and you buy soy bean meal to cut the, what it is, it basically
16 covers your hedge. In other words, but they are supposed to
17 run parallel. So if Canola, theoretically if Canola goes up,
18 if soybean meals goes up 20, Canola should go up \$20 a pound,
19 but it don't happen.

20 And that's the same thing that's happened when we try
21 to hedge milk in California. I think if you ask just about
22 every dairyman in California, that's tried to hedge milk. 80
23 percent of them don't do it anymore because they don't run
24 parallel.

25 So in closing, you know, I just think that we need to

1 be, give the California dairymen a chance to make it. And I go
2 back, I don't want to be in business if I don't belong. But I
3 just want the opportunity, and I think every dairyman in
4 California wants the opportunity to compete. And if we don't
5 belong in the business, fine. But what we have today puts us
6 at a disadvantage every morning when we wake up. And we can't
7 continue down this road. And I think that's why the California
8 dairymen, the co-ops are here today. And what they are trying
9 to do. And I appreciate the time you folks have been here
10 since late September, and it's kind of like, you know,
11 fascinates me that you can sit here that long, to tell you the
12 truth.

13 But please, when we look at this, think about just
14 giving the California dairymen opportunities to compete. And
15 I'll end my statement there.

16 JUDGE CLIFTON: Thank you. That's a very powerful
17 statement. Who would like to begin asking questions?
18 Mr. Beshore?

19 CROSS-EXAMINATION

20 BY MR. BESHORE:

21 Q. Marvin Beshore. Thank you, Mr. Netto, very much, for
22 coming and your statement. Just one quick question. Where are
23 your herds located and how do you -- how do you market your
24 milk from the your areas?

25 A. Both my herds, one is located in Hanford, California,

1 and one is located seven miles, which is on the Hanford-Laton
2 border. All my milk is marketed through Land O'Lakes co-op.

3 Q. Thank you very much.

4 JUDGE CLIFTON: Who next has questions for Mr. Netto?
5 Mr. Richmond?

6 CROSS-EXAMINATION

7 BY MR. RICHMOND:

8 Q. Bill Richmond, USDA.

9 Thank you very much, Mr. Netto, for your testimony. We
10 appreciate it.

11 Do you own quota?

12 A. Yeah, I have, I think I'm about, my Holstein dairy
13 does. It's about 25 percent of my production is in the quota,
14 25 percent of my milk is in a quota position.

15 Q. And so in your support of the Cooperatives' proposal to
16 establish a Federal Milk Order for California you would --

17 A. Include the quota? Yeah. I think there's hundreds of
18 millions, I don't even know the amount of money invested, and I
19 think if we don't include it and proceed forward with it, that
20 it would have financial disaster for our industry in
21 California. It needs to be a part of the process going
22 forward. Quota is basically, it's taken out of the dairyman's
23 money. We adjust it between ourselves if it stays in the pool,
24 so I don't know how it would affect a processor. Because it is
25 really the dairymen part it out the way, we take 16 percent of

1 the total gross milk goes to quota, and the rest of the money
2 goes to everybody else. So I think it is a dairyman issue, the
3 quota. I don't know how it really is a processor issue, other
4 than maybe the Class 1 people have to pay a little more for
5 milk, and I don't know that part of the game that well to speak
6 about it. But it is really governed by the, it is overseen by
7 the state, but it is dairymen money that's distributed where it
8 needs to be distributed. And there's a lot of dollars invested
9 in it. And I think if the quota is not put in, I would bet any
10 amount of money the quota, that we would not get the Federal
11 Order off the ground in California.

12 Q. I appreciate it very much. Thank you.

13 A. No problem.

14 JUDGE CLIFTON: Mr. English?

15 CROSS-EXAMINATION

16 BY MR. ENGLISH:

17 Q. Mr. Netto, Chip English for the Dairy Institute of
18 California. I just want to follow up on that series of
19 questions and your response.

20 I mean, I understand your statement that the quota is
21 about dairy farmers, but do you understand in Proposal Number
22 1, it is the co-ops position that in order to make the quota
23 work, that you have to have mandatory pooling so that all
24 processing facilities in the state are required to be pooled?

25 A. Are required to be pooled?

1 Q. Yes. Do you understand that?

2 A. Yes, I understand that, sure.

3 Q. So that certainly impacts processing plants, correct?

4 A. I would imagine.

5 Q. Okay. Do you understand that as part of that, first,
6 do you understand there are Federal Orders that every existing
7 Federal Order has performance standards to make sure that milk
8 moves to Class 1 operations at some level?

9 Do you know about that?

10 A. A little bit, not a lot.

11 Q. Okay. Do you understand that Proposal Number 1, if
12 adopted, would have no performance standards so the Class 1
13 plants would have no assurance of receiving an adequate supply
14 of milk?

15 A. We're only quota milk, Class 1 milk is less than 20
16 percent of our total milk supply, I don't see what the issue
17 would be. There's plenty of milk to take care of the Class 1
18 milk supply, and by having a pool that would seem to facilitate
19 it better than not having a pool.

20 Q. If Class 1 plants feel differently, does that mean that
21 they have a stake at this?

22 A. Pardon me?

23 Q. If Class 1 plants feel differently, that they need
24 performance standards as they have them under existing Federal
25 Orders, doesn't that mean that Class 1 plants have a stake in

1 how Proposal 1 comes out and deals with quota?

2 A. Wouldn't -- wouldn't the price go to the highest,
3 wouldn't the milk price -- why would any dairyman turn down
4 more money for his milk if it was in a pool? Why would we
5 starve a Class 1? If I'm going to get \$1.50 more a
6 hundredweight for my milk in a Class 1 situation, don't you
7 think the milk would rise to the highest price? It would go to
8 the highest bidder, which would not be a cheese plant, which
9 would be a Class 1 plant?

10 Q. But if in a pool you get the same amount of money
11 regardless, why do you bother shipping milk to a Class 1 plant
12 at all?

13 A. Well, because when you have a pool, you got the quota
14 system, we're not going to get rid of the quota, and it's going
15 to facilitate the Class 1 market.

16 Q. What will actually encourage an individual producer or
17 an individual organization to move the milk once you pool the
18 price and have no performance standards?

19 A. I don't have an answer to that because I'm not a
20 processor on that part.

21 Q. Thank you, sir.

22 JUDGE CLIFTON: Who else has questions for Mr. Netto?
23 Ms. May?

24 CROSS-EXAMINATION

25 BY MS. MAY:

1 Q. Hi there. Laurel May with USDA.

2 I have just a small one. Early in your testimony you
3 said, you were talking about many dairies going to trees, and
4 you said there's an average, there's an average of 6.6
5 something reduction in milk, and you didn't say what the unit
6 was that you were --

7 A. Well, in California, all three co-ops, in talking to
8 their board members and some of their management, have all seen
9 a reduction since like September forward to now, of at least
10 6.6 percent of their milk production is down from a year ago, a
11 month on month. So you take in October versus October, October
12 '14 versus October '15, the average, the three largest co-ops,
13 their board members are telling me the least amount down is 6.5
14 percent in production in total milk that is being sent to the
15 creamery.

16 So what that's telling me is that our system is, we,
17 for the last, for the last, I have been in this business 30
18 years, and I understood the processor's point of view that, you
19 know, how can you guys cry uncle, you keep growing. You keep
20 growing. And you know what? They actually had a good point.
21 And, if things are so bad, why don't you guys get out of
22 business? But you guys keep growing.

23 Well, okay. And so I sit there and I think about it as
24 a businessman I say, yeah, you know what, they got a good
25 point. Part of it was the real estate in California was just

1 doing this in LA, and guys would sell out for \$300,000 an acre,
2 bring it down here and buy land for \$4,000 an acre, and instead
3 of milking 1,000 cows in LA, they milked 3,000 and still have a
4 ton of money in the bank.

5 So we had that kind of false economics going on, we had
6 little dairymen going out, and we had bigger dairymen getting
7 bigger. Now, I'm watching 5,000 cow dairies go out of
8 business, I'm watching 500 cow dairies go out of business. And
9 in the past it was hard to plead your case that we weren't
10 making money because production was always rising.

11 Well, let's look at an opposite now. Production is,
12 this year, is down 6.6 percent, the rest of the country is up
13 3.1. A lot of areas, a lot of the large milk sheds are up 2.9,
14 I just looked at it. And so I think that crude model we have
15 in California is broken, and we need to go in a different
16 direction. We need to try to save our industry and save all
17 the jobs in California.

18 So -- and we have a lot of jobs here due to the dairy
19 industry. I'm sure somebody's testified to how many jobs that
20 the dairy industry actually, you know, materializes because of
21 that little cow milk in that milk barn. And so, but, so now I
22 think finally the dairymen in California have something to
23 stand up and say, yeah, things are bad, we're down over 6.6
24 percent. Statewide we're down 3 and a half percent total
25 supposedly by CDFA. But I know the three co-ops, all of them

1 are telling us they are down tremendously this year.

2 And what's happening, I'll go back to the tree
3 scenario, is a lot of dairymen I talk to say, "I'm cutting back
4 a little bit on cows. I'm going to go plant me some" -- I own
5 pistachios, walnuts, and almonds, I farm them all. They are
6 not even in the same category as a milk cow financially, I
7 mean, it is just a fact.

8 And so we have a lot of dairymen that are talking
9 about, we haven't had a new dairy built in California, that I
10 can think of, in five years. You know, all the existing
11 dairymen are just hanging on, fixing this, fixing that, and
12 continuing to try to survive in the business. But this
13 business model cannot go on. And I'm here because I have a lot
14 of jobs that I, that I have to try to keep, keep my people in
15 money and keep them taking care of their family. And if I
16 don't have dairymen, I have got to let people go, and I don't
17 look forward to that. So I would like the dairy industry to
18 get healthy. And the only way to do it is to put us on an even
19 playing field with the rest the country, and then let's let the
20 chips fall where they may, and then we did everything we can,
21 that we can do for our dairymen.

22 Q. Thank you so much for clarifying that for us.

23 A. Thank you.

24 JUDGE CLIFTON: Mr. Netto, if I wanted to look on CDFA's
25 website, I wouldn't be able to tell from that, would I, that a

1 co-op's receipts of milk are down 6.6 percent from September
2 2015, looking back to September 2014?

3 MR. NETTO: No.

4 JUDGE CLIFTON: You know because you talk to people?

5 MR. NETTO: I'm friends with, I probably know close to a
6 third of the dairymen in California. So yeah, I do talk to the
7 board members. I, like I say, I was a former Board Member, and
8 I have heard numbers that just floored me. And I can tell by
9 the amount of feed I'm selling, too, my numbers are down in
10 seals. Because the dairymen, if simple math, if there's 8
11 percent less milk being produced, or 6 percent, there's 6
12 percent less feed being consumed. And, so, yeah. It's pretty
13 obvious we are in a tailspin. It has started.

14 JUDGE CLIFTON: And you specifically mentioned September
15 compared to last September, October compared to last October,
16 has it just started?

17 MR. NETTO: Well, last year was a really, really good year.
18 We had a spike in milk prices, as did the whole country. And
19 even when the whole country, we were still behind by a dollar,
20 we are always behind by a dollar in California, we have learned
21 to live with that. But yeah, we were behind, and but last year
22 was a great year. My dairy, it was -- it was, but I have given
23 it all back this year. And the only reason that I probably
24 have just started going into the red at my facility, is because
25 I had all that extra cash in feed that I had bought to feed my

1 cattle because I had money to buy it, just like every dairyman.
2 So the first few months of this year, I, on my accounts
3 receivables, people were paying their bills. I was saying, how
4 are these guys paying their bills at, you know, the price of
5 milk is pretty cheap. Usually my AR starts getting bigger, my
6 accounts receivable, and it takes longer to pay, and we have
7 got to go out and push for money, but this year they seem to
8 have made it pretty good until April or May. But what happened
9 was, the old money they made last year ran out. So now we're
10 starting to see the effects of our accounts receivables are
11 starting to increase and getting bigger.

12 So, yeah, that was the difference between one year to
13 the other. It's, you know, we have had I think the last month
14 we have averaged at least two dairies a week selling out in the
15 last month across the state, maybe three at the auction barns
16 are pretty busy. It usually gets slow around Christmastime, so
17 we won't have too many more. But off the top of my -- like I
18 said, I just talked to the auction yard, I think in the last
19 month between all, between four auction yards, they have had 11
20 sales. So yeah, we are seeing a decrease in -- and what's
21 funny is every, every sale we go to now, you know, young stock
22 is the important, is the bloodline of a dairy that you have
23 heifers to replace your aging herd. But when we go to the sale
24 now and 90 to 95 percent of the every heifer bought at the sale
25 that the dairymen put up, every one of them is going

1 out-of-state. So it tells you that we are just moving in a
2 different direction.

3 Where before, 15 years ago, we bought all the heifers
4 in Wisconsin and brought them to California. Now Wisconsin is
5 coming to California and buying all the heifers and taking them
6 back. So, yeah, we do have an issue here and we have to cure
7 it.

8 JUDGE CLIFTON: Who else has questions from Mr. Netto?
9 Mr. Netto, is there anything you would like to add before you
10 step down?

11 MR. NETTO: No. I just want to thank you for your time.
12 And all, I know you guys have made some big sacrifices in being
13 here. I know it hasn't been easy being here in beautiful
14 Fresno all these months. But thanks for coming.

15 JUDGE CLIFTON: Fresno has been wonderful to us.

16 MR. NETTO: Yeah, it is actually a great place to live.

17 JUDGE CLIFTON: It is. And congratulations to those who
18 planned the infrastructure here, including the highways and so
19 on. It is just a marvelous place. Thank you.

20 I have many Adams' here. I would like to begin with
21 Mr. Adams, please. Thank you. We're now distributing a
22 document. Ms. Frisius, I believe this is 157. And this
23 particular document has a name at the bottom, Lantz Adams.
24 Please be seated.

25 (Thereafter, Exhibit Number 157, was

1 marked for identification.)

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

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

6 MR. ADAMS: Yes.

7 JUDGE CLIFTON: Thank you very much. Please state and
8 spell your name.

9 MR. ADAMS: Lantz Adams, L-A-N-T-Z, A-D-A-M-S.

10 JUDGE CLIFTON: Thank you. And I want to make sure
11 everyone has a copy of your statement before you actually
12 begin. If you need a copy of the one-page Exhibit 157, please
13 raise your hand. All right. It appears that everyone has one.

14 Mr. Adams, I see that we have the written statement.
15 As you read it into the record, you are welcome to depart from
16 it at any time and add things. It may help if you say, I'm
17 adding something here, just so we can keep track.

18 MR. ADAMS: Okay.

19 JUDGE CLIFTON: Okay. All right. You may proceed.

20 MR. ADAMS: Good afternoon. My name is Lantz Adams and I
21 am 15 years old and in the Tenth grade at Immanuel High School.
22 My father is a third generation dairy farmer and our dairy is
23 in Laton, California. I am writing to you because our dairy
24 farm, like many others, is in dire financial straits and may
25 not make it to a fourth generation. That thought makes me

1 sick. As I think of my family's situation, and understanding
2 that the USDA will make the final decision about how a
3 California Federal Order will look, I have thought of several
4 issues that you should consider:

5 1. Dairymen are going out of business due to low milk prices.

6 A. Many multi-generation family dairies are going out of
7 business.

8 B. Over 90 percent of dairies, including our own, are
9 family-owned.

10 C. All of the earlier generations' work is sacrificed when
11 a dairy exits the industry.

12 2. Dairies going out of business cause a negative impact on
13 society.

14 A. Unemployed people become dependent on social programs.

15 B. When dairies go out of business, it negatively affects
16 allied industries.

17 C. After a loss of a dairy, it can be catastrophic to the
18 family structure.

19 3. Additional items regarding milk.

20 A. Dairy products from other countries could be
21 questionable quality. (Example, melamine in Chinese
22 baby formula.)

23 B. If less dairy products are getting produced, prices may
24 go up. This could result in a less healthy diet.

25 C. According to well-known doctor expert,

1 Dr. Wendy Bazilian, author of The SuperFoods Rx Diet
2 and co-owner of San Diego-based Bazilians Health
3 Clinic, unlike most other "wellness" drinks, milk is
4 naturally nutrient-rich and balanced with a unique
5 proportion of carbs, protein, in addition to the
6 bone-boosting calcium, phosphorous and Vitamin D.
7 Finally, I understand the importance of having milk
8 processors in the State of California, but I also understand
9 the necessity of having dairy families willing and able to
10 profitably produce the milk to fill those plants.

11 I know I'm only a kid, but what I see in this industry
12 is not good and is only getting worse.

13 Sincerely,

14 Lantz Adams.

15 JUDGE CLIFTON: This is extremely thoughtful. I appreciate
16 very much your putting it together. I would like now to invite
17 questions from others. Mr. Beshore, would you begin?

18 CROSS-EXAMINATION

19 BY MR. BESHORE:

20 Q. I will. Thank you, very much, Lantz, for coming today.
21 Marvin Beshore. Do you need an excuse to get back to school
22 tomorrow?

23 A. No, I think I'm okay.

24 Q. I think we might be able to arrange it.

25 How did you, how did you come to learn what you know

1 about the dairy business and what's in your statement here?

2 A. Well, being a part of a dairy family, we experience
3 these issues daily, going throughout the, going through being a
4 dairy and producing milk.

5 Q. What are your chores on the farm?

6 A. Well, I often feed cows, vaccinate, ear tag, I feed all
7 the cows on the weekends, I usually end up milking once or
8 twice. We're a small dairy, 80 cows. A lot of the work is
9 family done. We only have one working hand on the dairy, so a
10 lot of the chores is done by myself and my sisters and mother
11 and dad.

12 Q. Do you have FFA at Immanuel?

13 A. Second year.

14 Q. Second year?

15 A. Yes.

16 Q. Way to go.

17 JUDGE CLIFTON: Who next has questions for young Mr. Adams?

18 Now, I can't believe your sisters are not coming up here to
19 ask you a few questions. I tell you what, would each of you
20 just come to the podium and tell us who you are, since you have
21 already been identified as dairy hands. I would like you to
22 state and spell you name and tell us your age and where you go
23 to school.

24 MS. ADAMS: Hello, everyone. My name is Kolbi Adams.

25 K-O-L-B-I. I'm currently in eight grade and I go to

1 Woodrow Wilson Junior High School in Hanford.

2 MS. ADAMS: Hi, I am Rikki Adams, R-I-K-K-I. I'm ten years
3 old and I go to Laton Elementary School.

4 JUDGE CLIFTON: Does either of you have any questions for
5 the witness?

6 MS. KOLBI ADAMS: Who is your favorite sister?

7 MR. ADAMS: No comment.

8 JUDGE CLIFTON: Let's move along to the next question.

9 Rikki Adams, do you have any questions?

10 MS. RIKKI ADAMS: No.

11 JUDGE CLIFTON: Thank you both very much for coming
12 forward. Who else has questions for Mr. Lantz Adams? Ms. May?

13 CROSS-EXAMINATION

14 BY MS. MAY:

15 Q. Mr. Adams, thank you so much for testifying today. We
16 appreciate it. It helps USDA be able to formulate
17 recommendations for the Secretary when we get the input from
18 producers such as yourself.

19 Were you planning to continue in your family's dairy
20 business?

21 A. Of some sort, yes. Maybe in partnership with my
22 sister, hopefully. The dairy is a lot of work.

23 Q. Your favorite sister?

24 A. Yeah, that's right, my favorite sister.

25 Q. All right. In some fashion you say?

1 A. In some fashion, yes.

2 Q. Well, good for you. All right. Well thank you very
3 much.

4 JUDGE CLIFTON: Are there any other questions for
5 Mr. Adams? You know, you make us all very proud.

6 MR. ADAMS: Thank you.

7 JUDGE CLIFTON: Do you have anything to add?

8 MR. ADAMS: I just want to thank you for allowing me to
9 come up here and testify.

10 JUDGE CLIFTON: You're most welcome, and thank you. You
11 may step down. Do we have any other dairymen, dairy producers,
12 dairy farmers, who are ready to testify?

13 The document that's being distributed now, I'm marking
14 as Exhibit 158.

15 (Thereafter, Exhibit Number 158, was
16 marked for identification.)

17 JUDGE CLIFTON: All right. It appears they have been
18 distributed. Let me go back to Exhibit 157, which is Lantz
19 Adams' statement. Is there any objection to that being
20 admitted into evidence? There is none. Exhibit 157 is
21 admitted into evidence.

22 (Thereafter, Exhibit Number 157, was
23 received into evidence.)

24 JUDGE CLIFTON: Welcome, Ms. Adams. Would you raise your
25 right hand and I'll swear you in in a seated position.

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

3 MS. ADAMS: I do.

4 JUDGE CLIFTON: Thank you. And now as you testify, be sure
5 to testify into the microphone, and state and spell your name
6 for us, please.

7 MS. ADAMS: My name is Michelle Adams, it's
8 M-I-C-H-E-L-L-E, A-D-A-M-S.

9 JUDGE CLIFTON: Thank you. You may proceed.

10 MS. ADAMS: Before I begin my testimony, this is in
11 addition to what I have written. I just want to share with all
12 of you that I was not born into a dairy family. I grew up here
13 in Fresno. I went to McLane High School. I was an athlete.
14 And when I first met my husband, the flies really bothered me.
15 And I just want all of you to know that this dairy has become a
16 huge part of my life, and I hope that during my testimony that
17 you can understand that I don't come from a dairy background,
18 so what I'm going to share with you is very personal to me and
19 I apologize if I get teary about it.

20 JUDGE CLIFTON: Let me have you spell McLane for me, your
21 high school.

22 MS. ADAMS: It's M-C, L-A-N-E, we were the Highlanders.

23 JUDGE CLIFTON: Very good.

24 MS. ADAMS: I won't tell you when I graduated because that
25 would give away my age. I'll keep that to myself.

1 Anyway, hello, my name is Michelle Adams, and I want to
2 tell you a story about our family farm. I feel it is important
3 for you to identify with dairy owners and their families on a
4 personal level in order to have a clear picture of real faces
5 of the dairy industry today.

6 In 2009, my father-in-law sold out and left the dairy
7 business. When the cows were sold and loaded on a trailer, it
8 was heart wrenching to watch them go. They weren't just money
9 making machines, but really members of our family which we had
10 taken care of for generations. Out of that misery, my husband
11 Rick and I started Adamscows Dairy, a small 85 cow, third
12 generation dairy farm. When Rick and I started the dairy over,
13 we were milking 12 cows in July of 2009. We are currently
14 milking closer to 100 cows with plans to grow back to 160.

15 In 2009, the dairy outlook was bleak and many dairymen
16 could not believe that we would venture into starting over with
17 12 cows. However, my husband's life has been this farm from
18 the time he was born and it has been his destiny to be a
19 dairyman.

20 I have been married to Rick for 16 years now, 10 of
21 which he worked for his dad, and 6 years since we started over
22 making all of our own decisions, including which bills we
23 couldn't afford to pay. It has not been easy. In fact, there
24 have been times for me personally that the depression and bad
25 feelings were more than I could bear. I am very fortunate to

1 have an income outside of the dairy. I have been a teacher for
2 19 years and I love my job, and the income and benefits it
3 provides for my family. It is because of my steady income that
4 we are still in the dairy business. The milk check just isn't
5 enough to pay all our dairy bills on a regular basis. I would
6 say at least 10 months of a 12 month fiscal year, my salary
7 supplements the dairy's needs financially. It seems to be a
8 regular event to temporarily dip into my off farm salary to
9 make end's meet. Rick does not draw a salary, and too often
10 there just isn't enough money to go around.

11 Our herd hasn't grown over time as it should, because
12 we have to beef cows in order to pay astronomical energy, fuel,
13 and feed bills. It is devastating to call my husband and say,
14 "You need to see who can go to the sale" because we just don't
15 have enough money to pay the basic bills to keep the power on
16 and buy fuel to irrigate our crops to keep them from burning up
17 in the field.

18 There are many days in the last few years that I will
19 say to my husband, "If you told me tomorrow you were selling
20 the cows, I would be all over it." I guess I'm a stronger
21 person than I realize because sometimes I think the stress to
22 make end's meet is more than I can handle, but somehow I get
23 through it. Rick has always seemed to know when I need a smile
24 and a hug. And I know he doesn't like hearing my wish to sell
25 out, in fact, I know it probably strikes his heart like a

1 piercing knife every time I have said it. He still manages to
2 be the best dairyman he can be and walks out the door to the
3 farm that has his sweat and blood and soil, in the soil and the
4 cows.

5 My husband is amazingly kind-hearted. When I drive out
6 to see him working, he always has a smile on his face. You
7 see, he loves being a dairy farmer. It is just what he does
8 everyday, day in, day out. His hours are 24 in a day. He
9 milks and feeds the cows everyday, and farms 115 acres to make
10 sure we have the feed to feed them. He is one of the most
11 dedicated people to the cows he loves. He works 7 days a week,
12 365 days a year, and he is still smiling. I often wonder how a
13 person can be so happy when each month is a struggle to
14 survive. He can always find the good, even on the worst days.

15 We have one employee who has been with us over 20 years
16 who is also instrumental in the survival of our dairy farm.
17 The real story, though, is that of our three children who work
18 in almost every capacity of our farming operation. Our son
19 Lantz, nearly 16, milks cows, does mechanical repairs, drives
20 silage trucks, takes care of baby calves, and heifers and he
21 feeds every weekend. Our daughter Kolbi, nearly 14, also milks
22 cows and works on the farm in various jobs. Recently she
23 disked a 20 acre, 20 acres all by herself. Her dad smiling
24 again at the great life adventures our farm allows our kids to
25 have. Kolbi has an uncanny knowledge of the herd and can

1 nearly identify each cow by their markings, and who each cow's
2 moms are. She is really amazing. Our daughter Rikki, 10, is a
3 great assistant in the barn, bringing in cows to be milked,
4 washing out the poop in the parlor, helping feed calves, and
5 other tasks given to her.

6 As for me, besides teaching full-time, coaching
7 volleyball at my school, and coaching high school basketball, I
8 swath all of our feed and drive the silage trucks. I ear tag
9 and vaccinate our baby calves, and I'm also an extra set of
10 hands when Rick need me for something...and I have the burden
11 of facing and paying the bills, even when there isn't enough
12 money to cover them. That is clearly the worst job on the
13 dairy, a job that should be easy, but ultimately consumes me
14 with frustration, desperation, and pain.

15 Here is the big question -- why is our milk worth less
16 than other producers in the United States of America, and what
17 can be done about it? Frankly, it is unjust and unethical for
18 other dairymen in this great free country to have a higher milk
19 price than the dairymen in California. I have been told the
20 average price over the last few years have been about a dollar
21 per hundredweight higher.

22 JUDGE CLIFTON: Read that sentence again, would you please?

23 MS. ADAMS: Yes. I have been told the average price over
24 the last few years could have been dollar per hundredweight
25 higher. I can't help but get excited about how much that would

1 improve the bottom line of our dairy. We are a small dairy,
2 that, it should say that has everything tied up in the farm,
3 and we absolutely have no savings. Everything we make is
4 invested back into our farm and that is a huge risk.

5 It would be an amazing feeling if we could count on the
6 milk check covering bills four out of five years, instead of
7 one out of five years. Rick isn't getting any younger and our
8 kids are growing up before our eyes. Someday we will reach the
9 point that Rick can't work like he does. We need to get fairly
10 compensated for our milk, it just might enable us to pay all of
11 our bills and hire someone to help take some of the load off of
12 Rick. At this point it is only a dream to be somewhat
13 profitable, to pay the bills that come in every month, and to
14 be able to rest easy knowing all is good at AdamsCows Dairy.
15 Things aren't good. We are a loving, supporting family that
16 works everyday to carry on a family tradition. Our plan was,
17 and still is, for Rick to milk the cows himself for a few years
18 until we are milking enough cows to justify hiring a
19 milker/calf feeder. At the current milk pricing system through
20 CDFA, there is no way we will ever reach that point yet.

21 Today is Veteran's Day, a day that hold I hold very
22 dear to my heart. It honors people like myself, a Veteran who
23 proudly served in the United States Army. It honors their
24 sacrifice so willing and determined to protect this great
25 country from foreign and domestic issues. How ironic that I

1 testify today regarding a domestic issue, sharing the sacrifice
2 and determination my family gives each day to survive in the
3 face of economic hardship to maintain a dairy that is not paid
4 a fair price for the milk we produce. It should not be a
5 burden we have to bear. I will continue to pray and hope that
6 someday things will get better.

7 Thank you for hearing my family dairy farm story.

8 Respectfully,

9 Michelle Adams.

10 JUDGE CLIFTON: Ms. Frisius, I would like you to make the
11 change that Ms. Adams suggested on page 3, the first full
12 paragraph, up three lines, we're just going to insert the word
13 "has". So that will read, on that line "dairy that has
14 everything tied up in the farm." Thank you.

15 Ms. Adams, this is a remarkable document and I thank
16 you very much.

17 MS. ADAMS: It is very heartfelt.

18 JUDGE CLIFTON: I would like to invite questions of
19 Ms. Adams. Mr. Beshore, would you begin, please?

20 CROSS-EXAMINATION

21 BY MR. BESHORE:

22 Q. Marvin Beshore. Thank you, Ms. Adams for your
23 testimony. I've just a question or two.

24 One of the factors, one of the things that the United
25 States Department of Agriculture is to consider in making their

1 decision at this hearing is how the decision would impact
2 small, what are called small businesses, as defined by the
3 Small Business Administration in DC, for dairy farms that is an
4 entity that has a gross revenue, annual gross revenue of less
5 than \$750,000, I think, if I got it right. Is the AdamsCows
6 Dairy have a gross income of less than \$750,000?

7 A. Yes, it does.

8 Q. How is your milk from your dairy marketed? Where you
9 ship your milk?

10 A. We ship to Land O'Lakes and the technical aspect of
11 that, I would not be able to answer that question.

12 Q. That's fine.

13 A. We ship to Land O'Lakes. I know we make terrific
14 butter.

15 Q. No doubt about it. Thank you very much. That's all.
16 Thank you.

17 JUDGE CLIFTON: Who next has questions for Mrs. Adams?

18 MR. RICHMOND: Bill Richmond, USDA. Ms. Adams, we just
19 really want to thank you and your family for coming. We
20 appreciate it. It helps us a lot.

21 MS. ADAMS: Thank you. I think it is important for you
22 guys to see a face of the families that work very hard to
23 produce the milk that this state has, and we are a very unique
24 entity in California, where we have 85 cows, and everything we
25 do on our farm is, we do everything on our farm. The only

1 thing we hire is we have a guy come up and pick our hay up. We
2 bale our hay, we chop our corn, we milk our cows, because
3 financially it was the only way for us to survive, and we're
4 really struggling to do that. So thank you.

5 MR. RICHMOND: Thank you.

6 JUDGE CLIFTON: Who next has questions for Mrs. Adams?

7 MR. ADAMS: Who is your favorite husband?

8 MS. ADAMS: That would be you, the only one I have.

9 JUDGE CLIFTON: May I presume that you are Rick Adams?

10 MR. ADAMS: I'm Rick Adams.

11 JUDGE CLIFTON: Well, I love your family.

12 MS. ADAMS: Thank you. Very proud of them.

13 JUDGE CLIFTON: And we also want you to have a less
14 desperate day.

15 MS. ADAMS: Well, it's my day because I'm a Veteran, so I'm
16 going to enjoy the rest of it.

17 JUDGE CLIFTON: I would like to just ask, I meant to do
18 this earlier, would the Veterans in this room please stand?

19 Do you have anything else you would like to add,
20 Ms. Adams

21 MS. ADAMS: No, I think I'm good. I appreciate all of your
22 time today in hearing my story.

23 JUDGE CLIFTON: Thank you so much. Is there any objection
24 to the admission into evidence of Exhibit 158? There is none.
25 Exhibit 158 is admitted into evidence.

1 (Thereafter, Exhibit Number 158, was
2 received into evidence.)

3 JUDGE CLIFTON: Thank you so much, Adams Family.
4 Mr. Adams, you may come forward. Ms. Frisius, I'm going to
5 mark the document currently being distributed as Exhibit 159.

6 (Thereafter, Exhibit Number 159, was
7 marked for identification.)

8 JUDGE CLIFTON: So the question is, do we need a break?
9 No, she's good. It's almost 4:20. I'll swear you in in a
10 seated position. All right. Please raise your hand if you
11 still do not have a copy of Exhibit 159. It is also entitled
12 at the top Adams cows Dairy, but this one is showing Rick Adams
13 at the end.

14 All right. It appears the documents have been
15 distributed. I'll swear you in, Mr. Adams. Would you raise
16 your right hand, please?

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

19 MR. ADAMS: Yes.

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

22 MR. ADAMS: Rick Adams, R-I-C-K, A-D-A-M-S.

23 JUDGE CLIFTON: Thank you. You may proceed.

24 MR. ADAMS: Thank you for your time and for holding this
25 hearing. My name is Rick Adams of Adams cows Dairy in Laton,

1 California. Our family dairy operation strongly supports
2 California joining the Federal Milk Marketing Order system so
3 much that three members of my family are testifying here today.
4 We are all here testifying in support of Proposal 1 put forward
5 by the State's Cooperatives, CDI, DFA, and LOL.

6 I want to begin by describing our dairy operation. As
7 a Land O'Lakes member-owner milking under 100 cows, we are
8 definitely one of the smaller dairies in the state, given that
9 the average herd size is now more than 1200 cows. We are a
10 small dairy farm and grow our own forages with family labor
11 doing many of the milking, feeding, and farming operations.

12 Given the failure of our system to pay a price that is
13 in line with prices paid across the Federal Order system --

14 JUDGE CLIFTON: Let me have you read that one again, you
15 left out one word.

16 MR. ADAMS: Okay. I'm sorry. Given the failure of our
17 state's system to pay a price that is in line with prices paid
18 across the Federal Order system, dairy operations in our state,
19 both large and small, continue to question whether or not they
20 can afford to continue producing milk in our state. We are
21 quota owners and have made that investment in an effort to
22 reduce our risk. We are in support of maintaining the quota
23 system as it is, and are adamantly opposed to modifying the
24 program in any way.

25 As an older, smaller dairy farm, we realize that we

1 have unique challenges in today's economic landscape, and that
2 is why we do everything we can to cut expenses, including
3 eliminating hiring custom operators. It simply isn't possible
4 for us to pay these costs. In fact, when my son was 11 years
5 old, he started driving his own silage truck when we chop our
6 silage. We struggle to survive without bank loans because we,
7 as a family farm, refuse to lose what my dad and grandpa before
8 him worked so hard to achieve. So --

9 JUDGE CLIFTON: I just want you to read that sentence one
10 more time, please. We struggle.

11 MR. ADAMS: We struggle to survive without bank loans
12 because we, as a family farm, family dairy farm, refuse to lose
13 what my dad and grandpa before him worked so hard to achieve.
14 So my wife's teaching income is, in the short run, continually
15 being used to keep our dairy in operation. This is not a
16 planned business strategy and not one we can maintain
17 long-term.

18 Under our state system, when California Department of
19 Food and Agriculture Secretary Ross denied our petitions to
20 increase our prices so that they are in line with the Federal
21 Order system, one of the things she claimed was that she
22 couldn't provide such an increase because of her concern about
23 the small cheese makers. No such concern has been given to
24 small dairy operations like mine, and I do not, I don't agree
25 that milk pricing regulations should be driven by the possible

1 impact on small cheese makers. One of my biggest frustrations
2 has been the fact that CDFA regularly publishes cost of
3 production reports, and these reports clearly show that our
4 costs are well above our prices we that we receive.

5 In conclusion, I would like to thank you for your time
6 and implore the USDA to adopt the Cooperative's proposal so
7 that dairy farmers in California are paid prices that are in
8 line with the Federal Order system.

9 One last closing thought. President John F. Kennedy
10 was once quoted as saying, "The farmer is the only man in our
11 economy who buys everything at retail, sells everything at
12 wholesale, and pays the freight both ways." Well, I agree with
13 sentiment, but I would like to take it, but I want to take it
14 one step farther. As California dairy farmers, we are here
15 pleading for our mere survival. While it is off of our backs
16 that cheese makers with benefit packages and 401k's are telling
17 us they can't afford to pay us what we deserve. It seems
18 obvious to me that when they are crunching numbers, their only
19 concern is their profitability, rather than giving any concern
20 to whether ours or any other dairy can survive on the bargain
21 basement prices they claim they can afford to pay. Makes me
22 one, why can other western cheese processors in the Federal
23 Order afford to pay Federal Order prices, but California's
24 can't?

25 Thank you for the opportunity to testify here today.

1 Rick Adams.

2 JUDGE CLIFTON: Thank you, Mr. Adams.

3 MR. ADAMS: Sorry I didn't make you cry.

4 JUDGE CLIFTON: Your wife did, that was enough.

5 So this is Day 35, and yet your wife's testimony, your
6 son's testimony, and your testimony give us yet another new
7 look. And I really appreciate this. Thank you.

8 I would like to invite questions. Who would like to
9 begin. Mr. Beshore. Thank you.

10 CROSS-EXAMINATION

11 BY MR. BESHORE:

12 Q. Thank you, Mr. Adams. Marvin Beshore.

13 One of the items that you mentioned that, in addition
14 to the information your family members have provided, is the
15 quota ownership. I would just like to ask you about that.
16 Have you tell us about that. Approximately how much quota do
17 you own? What portion of your production does it cover, and
18 can you tell us how you came to own it, when you acquired it,
19 what your investment thought was?

20 A. Well, we actually, when my dad sold the cows we bought
21 the quota from him. When he sold the cows, we knew we were
22 going back into business. So we bought his quota, and our plan
23 was to fully utilize that quota much shorter order than we have
24 now. We actually have about 200 percent of our utilization. We
25 have way more, our plan was to grow into that production, and

1 circumstances haven't allowed it. So we're making my dad
2 payments that we cannot utilize the full ownership of the
3 quota.

4 Q. So your production doesn't reach your quota amount
5 right now?

6 A. No.

7 Q. Okay. Very good. Thanks again for coming. I
8 appreciate that.

9 A. Thank you.

10 JUDGE CLIFTON: Who next would like to ask questions of
11 Mr. Adams, I should say Mr. Rick Adams.

12 MR. LANTZ ADAMS: Who is your favorite child?

13 MR. RICK ADAMS: The one with the last name Adams. I just,
14 you know, this is not something I had prepared, but, you know,
15 we are a very committed little tiny dairy farm family, and you
16 know, my wife says that, you know, when she comes out I'm
17 always smiling. Well, I hope you guys recognize that with a
18 family like I have, how can I not smile?

19 JUDGE CLIFTON: You are making me cry now. Who next has
20 questions for Mr. Adams? Ms. May?

21 MS. MAY: We don't actually have any questions. However,
22 we just wanted to thank you very much for coming and bringing
23 your family with you today to let us know what your dairy
24 experience is. It helps us with, like I told your son, to make
25 our decisions, so, or our recommendations. So thank you very

1 much.

2 MR. ADAMS: Thank you guys, we really appreciate it.
3 On behalf of my industry, I thank you.

4 JUDGE CLIFTON: Does anyone have any questions of Mr. Rick
5 Adams before you determine whether you have any objection to
6 the admission into evidence of Exhibit 159? No one. Are there
7 any objections to the admission into evidence of Exhibit 159?
8 There are none. Exhibit 159 is admitted into evidence.
9 Mr. Adams, thank you again.

10 (Thereafter, Exhibit Number 159, was
11 received into evidence.)

12 JUDGE CLIFTON: Are there any other producers, dairymen,
13 dairy persons, dairy farmers, who would like to testify now?
14 Let's take three minutes while we say good-bye to the people
15 who are departing and then we'll get right back to work.
16 Please be ready to go at 4:31.

17 (Whereupon, a break was taken.)

18 JUDGE CLIFTON: We're back on record at 4:33. A document
19 is being distributed, two documents are being distributed.
20 Ms. Vulin, shall the testimony of Sue Taylor, Part 3, be our
21 next exhibit number?

22 MS. VULIN: Yes, please, your Honor, I believe Exhibit 160.

23 JUDGE CLIFTON: Yes, that's what I have. Ms. Frisius, do
24 you agree, this will be Exhibit 160, that is the Testimony of
25 Sue Taylor, Part 3.

1 MS. FRISIUS: Yes.

2 JUDGE CLIFTON: All right.

3 (Thereafter, Exhibit Number 160, was
4 marked for identification.)

5 JUDGE CLIFTON: And then the numerous documents, I see that
6 I have right at the top of the first page a blank where I can
7 put in the exhibit number. I'll put in there 161, 161.

8 (Thereafter, Exhibit Number 161, was
9 marked for identification.)

10 MS. VULIN: And, your Honor, some of these are stapled a
11 little bit separately just for convenience of printing, but
12 this is intended to be one entire exhibit together.

13 JUDGE CLIFTON: Very good. Ms. Taylor, you remain sworn.
14 Would you again state and spell your name?

15 MS. TAYLOR: Certainly. Sue, S-U-E, Taylor, T-A-Y-L-O-R.

16 DIRECT EXAMINATION

17 BY MS. VULIN:

18 Q. Now, Ms. Taylor, before we begin, we had intended for
19 you, probably too optimistically, to get on the stand a bit
20 earlier today; is that correct?

21 A. Correct.

22 Q. And in doing so, we thought that Mr. Blaufuss could
23 assist in any additional questions so that we might be able to
24 provide the USDA with as much information as possible, correct?

25 A. That's correct.

1 Q. But with the timing of your getting on the stand now,
2 and Mr. Blaufuss having to return to work, he will be unable to
3 join you on the stand today, correct?

4 A. That's correct. And in light of that, I would like to
5 strike the final sentence of the first paragraph.

6 Q. The sentence reading, "Rob Blaufuss of Dean Foods has
7 joined me on the witness stand to assist with potential
8 questions related to Class I or II.

9 A. Correct.

10 JUDGE CLIFTON: Ms. Frisius, do you see the sentence we're
11 to strike?

12 MS. FRISIUS: Yes.

13 JUDGE CLIFTON: Thank you. And that is the last sentence
14 of the first paragraph of Exhibit 160. Ms. Vulin?

15 MS. VULIN: Okay.

16 BY MS. VULIN:

17 Q. Okay. Ms. Taylor, I'll ask now that you please read
18 your statement into the record.

19 A. I'm Sue Taylor. I previously testified at this
20 proceeding on behalf of Leprino Foods. Today, I'm testifying
21 on behalf of Dairy Institute and my testimony is focused
22 specifically on the regulated milk price impacts of the Dairy
23 Institute proposal, Proposal 2.

24 Attached are tables that show the calculated minimum
25 regulated prices resulting from the application of the

1 Proposal 2 (Dairy Institute) formulas documented in Attachment
2 A to the commodity prices that existed over the ten-year period
3 from January 2005 through December 20 -- that should be '14
4 instead of 2015.

5 JUDGE CLIFTON: All right. And Ms. Frisius, do you see
6 that change for the record copy, third line down of the second
7 paragraph?

8 MS. FRISIUS: Yes.

9 JUDGE CLIFTON: Thank you.

10 MS. TAYLOR: This analysis does not capture the adjustments
11 that would be expected -- and please strike "to" -- in the
12 marketplace, including changes in the commodity prices that
13 would occur as milk allocation adjusts due to increased
14 competition across a manufactured product complexes of cheese
15 versus butter and dry milk. Additionally, the analysis does
16 not include adjustments that would likely occur in over order
17 premiums.

18 Throughout the tables I refer to the two methodologies
19 for evaluation of other solids in the Class III formula as "dry
20 whey" referring to the proposal, as modified, contained in the
21 "Notice of Hearing" or "liquid WPC" referring to the
22 alternative proposal that was submitted to USDA in the May 27,
23 2015, letter to the Department and is also under consideration
24 at this hearing.

25 The following is a brief description of the tables:

1 BY MS. VULIN:

2 Q. So now, Ms. Taylor, we'll have you go through and read
3 this brief description but then we're going to back and dig
4 into the tables together so we can get into some of the data.

5 A. Yes.

6 * Attachment B, Table 1: Class III, Class IV, pricing
7 factors.

8 * Pages 1-3 shows the Proposal 2:

9 * Western pricing factors calculated based upon
10 the default value formulas in the left table;

11 * NASS/NDPSR/AMS pricing factors currently in use
12 in the Federal Milk Marketing Order system in the
13 middle table; and

14 * California State Order commodity prices in the
15 right table.

16 * Pages, and replace 5 with 4 -- pages 4-6, show
17 the Proposal 2 Western pricing factors less:

18 * NASS/NDPSR/AMS as appropriate, pricing factors
19 currently in use in the Federal Milk Marketing
20 Order system in the left table; and.

21 * California State Order commodity prices in the
22 right table.

23 * Attachment B, Table 2: Advanced Pricing Factors

24 * Pages 1-3 show the Proposal 2:

25 * Western advanced pricing factors calculated

1 based upon the default value formulas in the left
2 table;

3 * The NASS/NDPSR/AMS advanced pricing factors
4 currently in use in the Federal Milk Marketing
5 Order system in the middle table; and

6 * California State Order advanced pricing factors
7 for Class I in the right table.

8 JUDGE CLIFTON: Now, we have gotten to the bottom of page 1
9 and I just want to coordinate with Ms. Frisius. Ms. Frisius,
10 you did strike, as requested, the "TO" in the fourth line of
11 paragraph 2?

12 MS. FRISIUS: Yes.

13 JUDGE CLIFTON: Thank you. And with regard to the first
14 inset in the bottom half of the page, you did strike the number
15 5 and insert the number 4 for the pages?

16 MS. FRISIUS: Correct.

17 JUDGE CLIFTON: Thank you.

18 MS. TAYLOR: And we'll have another correction immediately.

19 The top of page 2. As I reprinted and tried to resize
20 some of these tables, the number of pages that the tables ended
21 up on got moved around. So the top of page 2:

22 * Should be pages 4 to 5, rather than 5 to 6, show the
23 Proposal 2 advanced pricing factors less:

24 * AMS advanced pricing factors currently in use
25 in the Federal Milk Marketing Order system in the

1 left table; and
2 * California State Order advanced pricing factor
3 in the right table.
4 * Attachment B, Table 3: Class IV Pricing Impact
5 * Pages 1-3 show the Proposal 2:
6 * Class IV component and hundredweight prices
7 under Proposal 2 in the left table;
8 * Class IV component and hundredweight prices
9 restated based upon current price formulas adopted
10 in October 2008 in the middle table; and
11 * Class 4a component and hundredweight prices
12 using the most recent permanent formulas
13 (August 2012) under the California State Order in
14 the right table.
15 * Pages 4-6 show the Proposal 2:
16 * Class IV prices less Class IV component and
17 hundredweight prices restated based upon current
18 price formulas adopted in October 2008 in the
19 Federal Milk Marketing Order system in the left
20 table; and
21 * Class 4a component and hundredweight prices
22 using the most recent permanent formulas (August
23 2012) under the California State Order in the
24 right table.
25 //

1 * Attachment B, Table 4: Class III pricing impact
2 * Pages 1-3 show the Proposal 2:
3 * Class III component and hundredweight prices
4 under both the dry whey and liquid WPC other
5 solids valuation proposals in the left table;
6 * Class III component and hundredweight prices
7 restated based upon current price formulas adopted
8 in October 2008; and
9 * Class 4b component and hundredweight prices
10 using the most recent permanent formulas (August
11 2012) under the California State Order in the
12 right table.
13 * Pages 4-6 show the Proposal 2 Class III prices less:
14 * Class III component and hundredweight prices
15 restated based upon current price formulas adopted
16 in October of 2008 in the Federal Milk Marketing
17 Order system in the left table; and
18 * Class 4b component and hundredweight prices
19 using the most recent permanent formulas (August
20 2012) under the California State Order in the
21 right table.
22 * Attachment B, Table 5: Class II Pricing Impact
23 * Pages 1-3 show the Proposal 2:
24 * Class II component and hundredweight prices
25 under Proposal 2 in the left table; and

1 * Class II component and hundredweight prices
2 restated based upon current price formulas adopted
3 in October 2008 in the right table.

4 * Pages 4-6

5 * Weighted Class 2 and 3 component and
6 hundredweight prices using the most recent
7 permanent formulas (August 2012) under the
8 California State Order. This table consolidates
9 the California price across Classes 2 and 3 by
10 weighting a simple average of the Northern
11 California and Southern California Class 2 prices
12 with a statewide Class 3 price based upon total
13 solids utilization.

14 JUDGE CLIFTON: Now, let me interrupt, we're at the top of
15 page 3, shall we add to the record copy the word "California"?

16 MS. TAYLOR: Yes, please.

17 JUDGE CLIFTON: All right. You see where she read that,
18 Ms. Frisius, where we're in the top topic and we're down about,
19 I don't know, seven lines, and we see the line begins "by
20 weighting a simple average of the Northern California and
21 Southern" and that's where we insert the word "California".

22 MS. FRISIUS: Okay.

23 JUDGE CLIFTON: Thank you.

24 MS. TAYLOR: * Pages 7-9 show the Proposal 2, Class II
25 prices less:

1 * Class II component and hundredweight prices
2 restated based upon current class formulas,
3 excuse me, that should be current price formulas,
4 adopted in October 2008 in the Federal Milk
5 Marketing Order system in the left table; and
6 * Weighted Class 2 and 3 component and
7 hundredweight prices using the most recent
8 permanent formulas (August 2012) under the
9 California State Order in the right table.

10 * Attachment B, Table 6: Class I Pricing Impact

11 * Pages 1-3 show the Proposal 2:

12 * Class I component and hundredweight prices
13 under both the dry whey and liquid WPC, other
14 solids valuation in the left table. Actually, it
15 is the entire table.

16 JUDGE CLIFTON: How should we have this written?

17 MS. TAYLOR: I would strike left?

18 JUDGE CLIFTON: Do you see where she is, Ms. Frisius?

19 MS. FRISIUS: Yes.

20 JUDGE CLIFTON: We're just striking the word left.

21 MS. TAYLOR: Pages 4-6 show the:

22 * FMMO Class I component and hundredweight prices
23 restated based upon current price formulas adopted
24 in October 2008; and

25 * The CDFA Class 1 component in hundredweight

1 prices using the most recent permanent formulas
2 (August 2012) under the California State Order in
3 the right table.

4 MS. VULIN: And just to clarify, you want to include right
5 table there?

6 MS. TAYLOR: Yes.

7 MS. VULIN: Okay. Thank you.

8 MS. TAYLOR: Pages 7-9 show the Proposal 2 Class I base
9 component in hundredweight prices less:

10 * The Class I base component in hundredweight
11 prices restated based upon current price formulas
12 adopted in October 2008 in the FMMO in the left
13 table; and

14 * The California differential Class 1 -- strike
15 differential from that -- the California Class 1
16 component in hundredweight prices, using the most
17 recent permanent formulas (August 2012) in the
18 right table.

19 JUDGE CLIFTON: Let me stop you there. Ms. Frisius, do you
20 see where to strike differential?

21 MS. FRISIUS: Yes.

22 JUDGE CLIFTON: Thank you. Continue on the very bottom of
23 page 3.

24 MS. TAYLOR: It is important to note that this is a bit of
25 an apples and oranges comparison, since the Proposal 2 Class I

1 prices represent the Class I base prices to which the Class I
2 differential (\$1.80 per hundredweight in Northern California,
3 and \$2.10 per hundredweight in Southern California) are added
4 to determine the Class I price. In contrast, the California
5 State Order does not apply a discreet differential for Class 1
6 price -- that should be prices, plural -- and the price is
7 inclusive of all value.

8 JUDGE CLIFTON: And Ms. Frisius, you will just make the
9 word "price" at the end of the fourth line on page 4 "prices".

10 MS. FRISIUS: Okay.

11 JUDGE CLIFTON: Thank you.

12 MS. TAYLOR: In addition to the adjustments that will occur
13 in the Proposal 2 pool related to the conformance of the
14 application of pricing and pooling consistent with the balance
15 of the Federal Milk Marketing Orders, the pool revenue from
16 Class I will be enhanced by the additional volume that is
17 currently exempt from pool obligation through the Type 70
18 producer-handler exemption under the California State Order.

19 BY MS. VULIN:

20 Q. Thank you, Ms. Taylor. In the first sentence of that
21 last paragraph you added the word "the" before "conformance"
22 "related to the conformance of the application." I'm not sure
23 if that changes the meaning, but wanted to check with you.

24 A. I'll take input from people who are better at grammar
25 than me. I'm not sure it makes any difference.

1 Q. I didn't think so, but just wanted to confirm. So
2 Ms. Taylor, thank you for your statement today.

3 I note that we only have about ten minutes left, so I
4 think I would just like to introduce Exhibit 2, but refrain
5 from digging into some of the details since I think that's
6 going to be clearer if we can do it all at once rather than
7 piecemeal here and then begin again tomorrow morning, with your
8 Honor's permission.

9 JUDGE CLIFTON: Certainly. I would like her to talk about
10 Attachment A to the Exhibit 160, just to say what it is.

11 MS. TAYLOR: Certainly. Attachment A is a summary of the
12 Dairy Institute Proposal 2 class price formulas as they have
13 been amended through the hearing process. And so as you may
14 recall during my testimony, the make allowances were amended
15 for the marketing and administrative adjustment that's
16 incorporated in the current Federal Order make allowances, so
17 they will vary from, Dr. Schiek's testimony, I believe, by that
18 amount.

19 MS. VULIN: But otherwise, the formulas are identical to
20 what he had in his testimony?

21 MS. TAYLOR: I believe so.

22 BY MS. VULIN:

23 Q. Thank you, Ms. Taylor.

24 So Attachment B is a series of six tables reflecting
25 pricing factors under different approaches of determining the

1 price; is that correct?

2 A. Correct. It was my attempt to calculate the class
3 prices under the Dairy Institute proposal and compare them with
4 the prices that would be generated under the identical
5 commodity prices historically under the current Federal Order
6 formulas, and also compare them versus the class prices that
7 would be generated under CDFA's milk price formulas. And in
8 both the federal comparison and in the state comparison, we
9 compared them with the class prices that would be generated
10 under the most current permanent formulas. So, for example,
11 the California comparison would not include the temporary price
12 adjustment that currently is deployed by CDFA.

13 And in the case of California, or the Federal Orders, I
14 believe that in many of these class prices there was a formula
15 change that occurred in October 2008, so we would have restated
16 the prices before that to use the same formula that was
17 implemented in October of 2008.

18 Q. And all of these prices are historical looking,
19 correct?

20 A. Correct.

21 Q. Okay. And you prepared all of these tables or oversaw
22 individuals who helped with the preparation?

23 A. Yes.

24 Q. Thank you, Ms. Taylor. I think I will reserve the
25 remainder of my questions, unless there's anything else

1 preliminary you would like to add, Ms. Taylor, until tomorrow
2 morning.

3 A. That's fine.

4 JUDGE CLIFTON: Ms. Taylor, this means you did not get out
5 of here in time to meet the obligations that you have. I'm
6 sorry.

7 MS. TAYLOR: Thank you.

8 JUDGE CLIFTON: All right. Mr. English, do you want to
9 give us a preview of tomorrow, or Ms. Vulin, do you want to
10 give us a preview of tomorrow?

11 MS. VULIN: You will get to see me again tomorrow and
12 Ms. Taylor. And we will be finishing this up in the morning
13 and then -- we hope -- and then I think other than a few small
14 kind of wrap up matters that we might have, we will be
15 concluded with presenting our case, absent rebuttal.

16 MR. ENGLISH: Absent any rebuttal on Proposals 3 or 4, and
17 of course, we are, you know from yesterday's discussion and
18 today's discussion, at some point, and not tomorrow, and I
19 suspect not Friday, Dr. Schiek will, we expect, return to speak
20 to the issues addressed in that discussion.

21 JUDGE CLIFTON: Thank you. And I persist in my request for
22 it. I thank you.

23 MR. ENGLISH: Fine.

24 JUDGE CLIFTON: All right, then. Ms. Hancock?

25 MS. HANCOCK: So we have another, tomorrow we have another

1 producer-handler. It's much shorter. It is a producer-handler
2 and his cost accountant, it's much shorter but he'll be the one
3 that gives us the calculation, but they do have to leave by
4 3:30 to get back to town for another meeting that they have.
5 And then they are not available on Friday, so I'm hoping that
6 we can get him on and off.

7 And then we have Gino Tosi who will provide Federal
8 Order language for the producer-handlers, then he will go sit
9 down quickly in the seat, to hop back up to provide Federal
10 Order language for Ponderosa. And then we are out of witnesses
11 tomorrow. Those are the only three that we will have
12 available.

13 We will only have one more after that, and that will go
14 on on Friday, and that's Ted DeGroot. And he will testify on
15 behalf of the California Producer Handlers Association, sit in
16 a seat really quick, pop back up, and talk about Ponderosa, and
17 then we are done.

18 JUDGE CLIFTON: So, Mr. Beshore, you had anticipated that
19 by Friday you might need to go forward with your rebuttal or
20 anything else that you wanted to put on in response to what we
21 have gotten so far. So it appears that may be true. All
22 right.

23 Does anyone else have anything byway of announcements?
24 We, I presume, can leave everything in this room overnight.
25 That's very helpful. Good. Anything else?

	7118:14;7148:2	acquire (1) 7078:21	7185:11;7189:14; 7191:5;7193:12,25	16;7210:12
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\$1.14 (8) 7027:4;7071:2,2; 7073:2,11,14,17,18		acre (3) 7173:1,2;7187:23		administered (1) 7099:4
\$1.2 (2) 7012:11;7097:11		acres (4) 7076:16;7160:8; 7187:9,23		administering (1) 7046:14
\$1.50 (1) 7171:5		across (10) 7056:25;7076:16, 16;7077:9;7162:9; 7176:15;7194:13,18; 7202:14;7207:9		Administration (1) 7191:3
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\$1.6356 (1) 7112:12	absent (2) 7213:15,16	activities (1) 7070:18	addition (9) 7049:19;7061:12; 7105:19;7111:7; 7154:17;7180:5; 7184:11;7197:13; 7210:12	administrators (1) 7099:11
\$1.69 (1) 7112:18	absolutely (4) 7022:25;7113:24; 7114:25;7189:3	actual (5) 7047:11;7123:22, 24;7146:22;7149:8	additional (19) 7011:24;7029:2; 7052:20;7063:12; 7092:5;7110:6; 7111:5;7119:9,22; 7120:24;7134:4; 7142:14;7145:3,19; 7153:5;7161:22; 7179:19;7200:23; 7210:16	admissibility (1) 7092:1
\$1.6925 (1) 7112:17	Absolve (1) 7115:8	actually (31) 7021:20;7030:14, 14;7032:18;7073:22, 23;7077:8,25; 7081:22;7089:5,10, 11,13;7090:20; 7103:12;7119:25; 7126:2,17;7156:10; 7158:5,6;7162:1; 7171:16;7172:20; 7173:20;7177:16; 7178:11;7197:20,24; 7198:21;7208:14	admission (12) 7119:21,23; 7120:8,9,25;7125:8; 7130:20;7138:8,14; 7192:24;7199:6,7	admissible (1) 7092:1
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